

W.D. Kennedy

A
Compleat Collection
O F
STATE-TRYALS,
AND
PROCEEDINGS
UPON
Impeachments for HIGH TREASON,
AND OTHER
CRIMES and MISDEMEANOURS;
FROM
The Reign of King *HENRY* the Fourth,
TO
The End of the Reign of Queen *ANNE*.

The *FOURTH* VOLUME.

With an Exact Alphabetical Table to the Whole.

LONDON,

Printed for *TIMOTHY GOODWIN*, against *St. Dunstan's Church* in *Fleet-Street*; *JOHN WALTHOE* in the *Middle-Temple Cloysters*; *BENJ. TOOKE* at the *Middle-Temple Gate* in *Fleet-Street*; *JOHN DARBY* in *Bartholomew-Close*; *JACOB TONSON* against *Katherine-Street* in the *Strand*; and *JOHN WALTHOE Jun.* against the *Royal-Exchange* in *Cornhill*. M. DCC. XIX.

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A N D

PROCEEDINGS

UPON

Impæchments for HIGH TREASON,

A N D O T H E R

CRIMES and MISDEMEANOURS;

F R O M

The Reign of King HENRY the Fourth,

T O

The End of the Reign of Queen ANNE.


The Fourth Volume.

With an Exact Alphabetical Table to the Whole.

L O N D O N

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A Compleat

A Compleat

COLLECTION

O F

TRYALS, &c.

The Tryals of ROBERT CHARNOCK, EDWARD KING, and THOMAS KEYES, at the Sessions-House in the Old-Baily.

Die Mercurii 11^o Martii, 1695. Anno Regni Regis Gulielmi Tertii, Octavo.

Published by A U T H O R I T Y.

THIS Day the Tryals of Robert Charnock, Edward King, and Thomas Keyes, who were indicted at Hicks's Hall on this Day sevenight, upon a special Commission of Oyer and Terminer for High Treason; in compassing the Death of the King by a barbarous Assassination, in order to further and assist an Invasion into this Kingdom from France, and Subversion of the Government, were proceeded upon in Manner following.

After opening of the Court, at which were present a great many of the Nobility, Members of Parliament, and other Persons of Quality, the Petty Jury returned by the Sheriff of Middlesex to try the Prisoners, were all call'd over, being in number above Eight-score, and consisting of Baronets, Knights, Esquires, and Gentlemen, and the Appearances of those who answered to the Call were Recorded; and Six of the Judges, viz. The Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr. Justice Nevill, Mr. Justice Powell, and Mr. Justice Rokeby, being upon the Bench, the Prisoners were called for to the Bar, and there Arraigned upon the said Indictments.

Clerk of Arraignments. Robert Charnock, hold up thy Hand: (Which he did.) Edward King, hold up thy Hand: (Which he did.) Thomas Keyes, hold up thy Hand: (Which he did.) You stand Indicted in the County of Middlesex by the Names of Robert Charnock, late of the Parish of St. Clements Danes in the County of Middlesex, Gent. Edward King of the said Parish and County, Gent.

and Thomas Keyes of the same Parish and County, Yeoman, for that You the Fear of GOD in your Hearts not having, nor the Duty of your Allegiance weighing, but being moved and seduced by the Instigation of the Devil, as false Traytors against the most Serene, most Illustrious, most Clement, and most Excellent Prince, our Sovereign Lord William the Third, by the Grace of GOD, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. your Supreme, True, Lawful, and Undoubted Sovereign Lord, the Cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of Our Lord the King that now is, towards him Our said Lord the King should bear, and of Right ought to bear, withdrawing, and utterly to extinguish intending and contriving, and with all your Strength purposing, designing and conspiring the Government of this Kingdom of England under him Our said Sovereign Lord the King that now is of Right happily and duly Established, altogether to subvert, change and alter; as also Our said Sovereign Lord the King to Death and final Destruction to put and bring, his Faithful Subjects and the Freemen of this Kingdom of England into intolerable and miserable Slavery to Lewis the French King to subdue and subject, the 10th Day of February, in the Seventh Year of the Reign of Our said Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish aforesaid, in the County aforesaid, falsely, maliciously, devilishly and traiterously, did compass, imagine, contrive, purpose, design and intend Our said Sovereign Lord the King that now is, to Slay, Kill, and

Murder, and a miserable Slaughter amongst the Faithful Subjects of Our Lord the King throughout this whole Kingdom of England to make and cause. And the same most abominable, wicked and devilish Treasons and traiterous Contrivances, Intentions and Purposes of yours aforesaid to fulfil, perfect, and bring to Effect, you the said Robert Charnock, Edward King, and Thomas Keyes, and very many others, false Traytors to the Jurors unknown, afterwards, to wit, the said 10th Day of February, in the Year aforesaid, at the Parish aforesaid in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, clandestinely, traiterously, and with Force and Arms, &c. did meet, propose, treat, consult, consent and agree our said Sovereign Lord the King by lying in wait, to Assassinate, Kill and Murder: And that execrable, horrid, and detestable Assassination and Killing the sooner to execute and perpetrate, afterwards, to wit, the same Day, Year and Place last mentioned, traiterously did treat, propose, and consult of the Ways, Manner and Means, and the Time and Place where, when, how, and in what Manner Our said Sovereign Lord the King, so by lying in wait the more easily you should Kill, and did consent, agree and assent, that Forty Horsemen, or thereabouts, of you the said Robert Charnock, Edward King, and Thomas Keyes, and the said other Traitors unknown, and others by them to be hired, procured and paid, with Guns, Carbines and Pistols with Gun-Powder and leaden Bullets charged, and with Swords and other Arms armed, should lie in Wait, and be in Ambush, Our said Sovereign Lord the King in his Coach being when he should go abroad to set upon, and that a certain and competent Number of those Men so armed upon the Guards of Our said Sovereign Lord the King then and there attending upon him, and being with him, should attack, and should overcome and subdue them, whilst others of the said Men so armed Our said Sovereign Lord the King should Assassinate, Kill, Slay and Murder: And also that You the said Robert Charnock, Edward King, and Thomas Keyes, your Treasons and Traiterous Intentions, Designs and Contrivances aforesaid, to execute, perpetrate, fulfil, and fully to bring to Effect afterwards, to wit, the Day and Year last aforesaid at the Parish aforesaid, divers Horses, and very many Arms, Guns, Pistols, Swords, and other Weapons, Ammunition, warlike Matters, and military Instruments, falsely, maliciously, secretly and traiterously did Obtain and Buy, Collect and Procure, and cause to be Bought, Obtained, Collected and Procured with that Intention, the same in and about the detestable, horrid and execrable Assassination, Killing and Murdering of Our said Sovereign Lord the King, as aforesaid, to be Used, Employed and Bestowed against the Duty of your Allegiance, and against the Peace of Our Sovereign Lord the King that now is, his Crown and Dignity, as also against the Form of the Statutes in such Cases made and provided.

How say you Robert Charnock, are you Guilty of the High Treason whereof you stand indicted or not Guilty?

Charnock. My Lord, I desire, I may have a Copy of this Indictment; that I may advise with Council upon it before I plead.

* Lord Chief Justice Holt

* L. C. J. Pray Mr. Charnock, will you speak out, that we may hear what you say.

Charnock. My Lord, I find here is a very bad Crime that is laid to my Charge; I desire that I may have a Copy of the Indictment, to advise with Council upon. And that I may have Council to assist me in my Tryal, and to direct me, who am an ignorant Man in these Matters, how to manage my self according to the New Act made this Session of Parliament, for regulating Tryals in Cases of High Treason.

L. C. J. Have you not had Council already to advise and direct you, Mr. Charnock?

Char. My Lord, I had Notice on Wednesday that I should be tried this Day, and it was Saturday last before I could get my Council to come to me.

L. C. J. And what did your Council advise you? Did they tell you, you were to have a Copy of your Indictment, by virtue of the late Act of Parliament?

Char. My Lord, though the Act does not take force as to some things till the 25th of this Month, yet the Equity of that Act, it being now reduced into a Law, is conceived to reach to Cases of the like Nature before the 25th, and I desire the Act may be read.

L. C. J. You shall have it read if you will; but of what Avail or Benefit it will be to you I cannot tell; for you your self take Notice that it is an Act of Parliament made this Session, and is not to take Effect until the 25th of this Month. You now here stand indicted before the 25th, and for a Treason committed before, and therefore you can't claim, nor have any Benefit or Advantage by this Act; but you are to be proceeded against according to the Law before, and the Practice used in all Proceedings against other Persons in your Circumstances. And it is the known Practice and received for Law, in all Times before this New Act was made, That no Copy of an Indictment for High Treason should be granted, nor Council assigned, or permitted to assist the Prisoner in making his Defence: True it is, a Copy of the Indictment has been often desired, but as true that it has as often been denied.

Char. My Lord, the Equity of this Act (it being now an Act of Parliament) is now in force, as much before the 25th of this Month as after.

L. C. J. Equity is nothing in these Cases: You are here tried by the Law, and we are bound to go in all such Cases according to the Rules of Law, and are not to be guided by any equitable Consideration, farther than the Law it self does allow us.

Char. But, my Lord, the Ground of that Act, which is the Reasonableness and Equity that all Prisoners should be made capable of fairly defending themselves is now in force, I say: And I hope your Lordship and the Court will look upon it to be reasonable that I should have the Benefit of that Equity.

L. C. J. I tell you we are not here in a Court of Equity, but must proceed according to the Rules of Law; and the Law you now speak of does not yet commence.

Char. My Lord, I am informed, for I am very ignorant in these Matters my self, that there is nothing that I now desire which is contained in this Act, but what was Law before the making of this Act, though the Practice may have been otherwise.

L. C. J. Then I must tell you, Mr. Charnock, you have been very much misinformed; for if all

all that is contained in this Act of Parliament that you mention was Common-Law before, there would have been no Occasion for the making a new Act of Parliament.

Char. My Lord, I do not say that all Things in this Act of Parliament were Law before, because there are several Things in it that have not been Law before. But, my Lord, there are several Things besides; and particularly those two Things which I now desire, a Copy of the Indictment and Council to assist me, were things that were agreeable to Law before; and I must take the liberty to appeal to a Judge that I see upon the Bench, my Lord Chief Justice *Treby*, as to his own Opinion, and desire he would please to declare whether formerly in a Conference between the Lords and the Commons he did not deliver his Opinion, That it was the Common Law, that a Prisoner should have a Copy of his Indictment and Council to assist him.

L. C. J. Here is my Lord Chief Justice *Treby*, you had best to apply your self to him for his Opinion.

L. C. J. Treby. Pray Sir, What is your Question you would ask me?

Char. My Lord, I am here for my Life, and must take all the Advantages that I can; I am here Arraigned for a very grievous Offence, I desire I may have a Copy of the Indictment, and Council to assist me in my Defence. Here is an Act of Parliament, out of the Equity of which I apprehend, I ought to have some Advantage; for I am informed that what I desire was Common Law before the making of the Act; and particularly that your Lordship's Opinion in a Conference between the two Houses was, that the Prisoner ought to have those Advantages by the Common-Law.

L. C. J. Treby. Then, Sir, I take your Question to be this; You would have my Opinion to be declared, That this Act which was lately pass'd for regulating Tryals in Cases of High Treason, and all the Particulars in that Act were Common-Law before.

Char. No, My Lord, I do not say that all the Particulars in the Act were Common Law before.

L. C. J. Treby. Then pray, Sir, name your Particulars, and I will endeavour to give you an Answer.

Char. My Lord, the Particulars that I do ask are these, First, that I may have a Copy of the Indictment, and Council to advise me, because it is a grievous Crime I stand here accused of, and that I may have them to assist me at my Tryal in Court: This I do insist upon from the Equity of the Act of Parliament, and your Lordship's Opinion at the Conference that it was Common Law before.

L. C. J. Treby. As to my Opinion about the having a Copy or Council, I do not think or believe, that I ever said that it was Common Law.

Char. My Lord, I beg your Pardon; I was informed your Lordship had delivered such an Opinion, at a Conference between the Lords and the Commons: But I desire the Assistance of Council, because I my self am ignorant of the Law; and particularly as to this Point, whether I am not entitled to the Equity of this Act of Parliament; for it now having pass'd both Houses of Parliament, and had the Royal Assent, it is a good Law; and though it be to

take its Commencement on the 25th of this Month, yet that which is the Law of all Laws, the Reason and Equity of it is, and always will be the same.

L. C. J. No, Mr. *Charnock*, that does not follow, that because the Wisdom of the Law-makers has thought it to be equitable *de futuro*, therefore it should be Law now; which as I told you before, is the Rule that we are to go by; it is Equity and Justice, that the Proceedings be according to this Act of Parliament, from and after the 25th of this Month; but it is not Justice that such Proceedings should be till then, because not according to Law.

Char. My Lord, the Ground of all Laws is Equity, and certainly it cannot be Equity, that a Prisoner should make his Defence against an Accusation in Writing, without having a Copy of it.

L. C. J. The time of the Court must not be spent in this Manner, you have been already told, that by Law you are not to have a Copy of the Indictment; but you are to plead without having any Copy; for there is no Law now in being that allows the giving of such a Copy, and 'tis but a short Question that you are asked in Order to your Tryal; *viz.* Are you Guilty or not Guilty?

Char. My Lord, it is impossible for me to go to Tryal presently, and without the Assistance of my Council.

L. C. J. Why, had you not Notice of your Tryal?

Char. My Lord, I confess, I had notice upon *Wednesday* last.

L. C. J. Had you not your Council with you since that?

Char. Yes, my Lord, I had on *Saturday* last; but from that time I have not been able to prepare my self, as I think I ought; and I cannot conceive but that I should have the Assistance of some Council to direct me in my Tryal; for here is a very great Crime, and hainous Charge laid against me in this Indictment, and I am very ignorant in all Law Proceedings.

L. C. J. It is very reasonable that there should be convenient Notice given to all Persons in your Circumstances; and truly this Day *Sevenight*, is a very convenient Notice; especially you having had, by your own Confession and Acknowledgment, Council with you in the mean time.

Charnock. But, my Lord, what is the Advantage of having Notice, if one have not Privilege of Pen, Ink and Paper, and one's Council and Friends coming to them, and Privacy without the presence of the Jaylor.

L. C. J. What say you that are of the King's Council, Was there Council allow'd to come to them?

Mr. Attorney General. My Lord, there was Order given that their own Council that they desired should come to them. Sir Thomas Trevor.

Mr. Baker. My Lord, as soon as ever they desired Council there was an Order for it, and left with the Jaylor, that he should permit the Council to come to them and be with them in private.

L. C. J. Then though you had not your Council come to you till *Saturday*, it was your own Fault, for you had an Order for Council, as soon as you desired it; and even from *Saturday*, is a reason-

able Time enough to prepare for answering the Question, whether Guilty or not Guilty.

Char. I suppose Mr. *Bale* is in Court, who gave notice on *Wednesday*, and I acknowledge he came upon the *Thursday*, and asked if I would have any Body come to me; and he took then the Names of the Council that I desired might come to me; and told me he would carry them to Mr. Attorney General, and see what his Opinion was of them; I suppose he did so: For upon *Friday* he came again, and brought me an Order for it; but when that Order was brought, the Council that was desired was not to be had, or at least with very great Difficulty, because it was the time of the Assizes, or very near it, and Council were gone or going out of Town; so that we could not have the Advantage of the Order for Council.

L. C. J. Look you Sir, We think you have had convenient Notice, with Liberty of consulting whom you had a mind to; if you have neglected your Opportunity of consulting them, you must blame your self, and no Body else; we must go on according to Law.

Mr. Att. Gen. My Lord, they had the Liberty of naming their own Council, and the Names were brought to me, and as soon as ever they were so brought, those that were named had Leave to go to the Prison to them, and they had a further Order than the first, which was, that their Friends should be permitted to come to them; but that was not, as it was not convenient to be, in private; but the other Order was, that the Council should speak with them in private, and not in the Presence of the Jaylor.

L. C. J. Pray hear what Mr. Attorney says, that your Council was ordered to be with you in private.

Char. But there was no Order, my Lord, for my Solicitor to be with me in the absence of the Jaylor, who is the only proper Person for the consulting with, and for going about to summon the Witnesses.

L. C. J. We think you have had convenient Notice, and all the Allowances that can be in such a Case. Ask him to plead.

Cl. of Arr. Robert Charnock, Are you Guilty of the High Treason whereof you stand indicted, or not Guilty?

Char. My Lord, I hope you will give me some more Time to get my Witnesses, that are now absent; several of them are Ten Miles out of Town; and therefore, I would beg your Lordship to give me some time.

L. C. J. Why, is Ten Miles such a Distance, that you could not have your Witnesses between this Day Seven-night and this Day? but besides, Mr. *Charnock*, what you now urge is out of time, you speak too soon to put off the Tryal, for there can be no Tryal till Issue joined; and that cannot be till Plea pleaded.

Char. My Lord, I was never instructed in Quirks of Law, nor bred up to the Law; and I hope your Lordships will take care that I be not hurt for Want of Knowledge in the Forms of Law.

L. C. J. You may assure your self, Mr. *Charnock*, you shall not be hurt by your Ignorance in the Law: All the Harm you will receive will be for having done contrary to the Law, and there is none of your Council, if they have been faithful to you, but must tell you the same Things that we tell you now.

Char. My Lord, if I am to have no Council, I must desire that the Court would be pleased to take the greater Care of me: For, as I have been informed, that was the Reason of the Practice of denying Council, that the Court should be of Council for the Prisoner.

L. C. J. Mr. *Hardesty*, ask him whether he be Guilty or not Guilty.

Cl. of Arr. Robert Charnock, Are you Guilty, or not Guilty?

Char. Not Guilty.

Cl. of Arr. Culprit, how will you be Try'd?

Char. By God and my Country.

Cl. of Arr. God send you a good Deliverance. *Edward King,* How say you, Are you Guilty of the High Treason whereof you stand indicted, or not Guilty?

King. My Lord, I beg the same Favour that Mr. *Charnock* has done, that I may have some more time to prepare for my Tryal, and a Copy of the Indictment, and Council assigned.

L. C. J. But you hear what has been said to Mr. *Charnock* upon those Points, and the same Rule that was given in his Case, you must expect will be in your Case.

Cl. of Arr. What say you, Are you Guilty or not Guilty?

King. Not Guilty.

Cl. of Arr. Culprit, how wilt thou be Try'd?

King. By God and my Country.

Cl. of Arr. God send thee good Deliverance. *Thomas Keyes,* are you Guilty of the same High Treason or not Guilty?

Keyes. My Lord, I have had no Council at all.

L. C. J. But you might have had if you would; you had an Order for it as well as the others.

Keyes. My Lord, I was a Servant to Captain *Porter*, I was not able to Fee any Council.

L. C. J. But you can tell whether you are Guilty or not Guilty.

Cl. of Arr. Art thou Guilty or not Guilty?

Keyes. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be try-ed?

Keyes. By God and my Country.

Cl. of Arr. God send thee good Deliverance.

Charnock. My Lord, I desire I may have the Favour of Pen, Ink and Paper, upon my Tryal.

L. C. J. Yes, yes, you shall have it; and if you have a mind to it, you shall have the Indictment read to you in Latin.

Char. My Lord, my Ignorance in Forms of Law made me not ask that before, because I did not know whether I should properly ask it or not: And I do not know whether I should ask it properly now.

L. C. J. Yes, it is a very proper time to ask it, and you shall have it, if you have a mind to it.

Char. My Lord, I do really desire it, if it be a proper time for me to have it.

L. C. J. Read the Indictment in Latin.

Char. And now my Lord, I hope your Lordship will please that I shall have Pen, Ink, and Paper, that I may make the best Observations I can, since I cannot have a Copy.

Cl. of Arr. Juratores pro Domino Rege super Sacrum suum presentant quod Robertus Charnock, nuper de Parochia Sancti Clementis Dacorum, in Com. predicto, Generosus; Edwardus King, nuper de Parochia Sancti Clementis Dacorum in Com. predicto, Gene-

Generosus; & Thomas Keyes, nuper de Parochia Sancti Clementis Dacorum, in Com. predicto, Teoman, timorem DEI in cordibus suis non habentes, nec debitum Ligeantia sua ponderantes, sed instigatione diabolica moti & seducti, ut falsi Proditores contra serenissimum, illustrissimum, clementissimum & excellentissimum Principem, Dominum Gulielmum Tertium, DEI Gratia Angliæ, Scotia, Franciæ, & Hiberniæ Regem, Fidei Defensorem, &c. Supremum, verum, legitimum, legalem & indubitatum Dominum suum; cordialem dilectionem, ac veram & debitam obedientiam, fidelitatem & ligeantiam, quas quilibet subditus dicti Domini Regis nunc erga ipsum Dominum Regem gereret, & de jure gerere teneretur, subtrahentes & penitus extinguere intendentes & machinantes, & totis suis viribus excogitantes, designantes & conspirantes, gubernationem hujus Regni Angliæ sub ipso Domino Rege nunc de jure feliciter & debite stabilitam omnino subvertere, mutare & alterare, nec non eundem Dominum Regem ad mortem & finalem destructionem ponere & adducere; ac subditos suos fideles, & liberos homines hujus Regni Angliæ, in servitutem intolerabilem & miserrimam Ludovico Regi Gallico subjugare & mancipare decimo Die Februarii, Anno Regni dicti Domini Regis nunc septimo, & diversis aliis Diebus & vicibus tam antea quam postea, apud Parochiam predictam in Com. predicto, falso, malitiose, diabolice & proditorie eum assassinauerunt, imaginati & machinati fuerunt, excogitauerunt, designauerunt & intendebant dictum Dominum Regem nunc occidere, interficere & murdrare —

Char. What Word was that last, Sir?

Cl. of Ar. Murdrare.

Char. That is an odd Word, I can't understand what it means.

L. C. J. It is a Term of Art, the Signification of it is to Murder: —Go on Mr. Hardesty.

Cl. of Ar. Ac stragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regni Angliæ facere & causare, & easdem nefandissimas, nequissimas & diabolicas proditones & proditorias machinationes, intentiones & proposita sua predicta perimplend' perficiend' & ad effectum redigendum ipsi iidem Robertus Charnock, Edwardus King, & Thomas Keyes, & quam plurimi alii falsi proditores Juratoribus predictis ignoti, postea, scilicet eodem decimo die Februarii, Anno supra dicto, apud Parochiam predictam, in Com' predicto, ac diversis aliis diebus & vicibus tam antea quam postea, ibidem & alibi in eodem Com. falso, malitiose, advise, clandestine, frauditorie ac vi & armis, &c. conveniebant, proposuerunt, tractaverunt, consultaverunt, consensaverunt & agreeaverunt ad ipsum Dominum Regem ex insidiis & dolo percutiend' Anglice To Assassinate, interficiend' & Murdrand'; & ad execrabilem horrendam & detestabilem Assassinationem Anglice Assassination, & interfectionem illas citius exequend' & perpetrand' postea scilicet eisdem die, Anno, & Loco ultimo mentionatis, proditorie tractaverunt, proposuerunt, & consultaverunt de viis, modis, & mediis ac tempore & loco ubi, quando, qualiter, & quomodo dictum Dominum Regem sic ex insidiis facilius interficerent, & consenserunt agreeaverunt & assenserunt quod quadraginta homines Equestres, aut eo circiter de ipsis Roberto Charnock, Edwardo King & Thoma Keys & predict' aliis proditoribus ignotis ac aliis per eas conducend' procurand' & impendend' cum Bombardis, sclopetis, pulvere Bombardico & globulis plumbeis oneratis, & cum gladiis ensibus & aliis armis armatis insidiati forent & essent in subsesta, Anglice in Ambush, ad eundem Dominum Regem in Rheda sua, Anglice

his Coach, existentem, quando foris in et invadend', quodq; quidam & competens numerus de hominibus illis sic armatis in satellites, Anglice the Guards, ipsius Domini Regis eum tunc ibidem attendentes, & secum exissententes aggressi forent, & eos devincerent, & expugnaverent, dum alii eorundem hominum sic armatorum ipsum Dominum Regem percuterent, interficerent, occiderent & Murdrarent; & etiam iidem Robertus Charnock, Edwardus King & Thomas Keys ad proditones & omnes proditorias intentiones, designationes & machinationes suas predictas exequend' perpetrand' perimplend' & plenarie ad effectum redigend' postea scilicet die & Anno ultimo supra dictis apud Parochiam predictam diversos equos & quam plurima arma, bombardas, sclopos, enses & gladios, & alia armamenta, munitiones & res Bellicosas & instrumenta militaria falso, malitiose, secreta & proditorie obtinuerunt, emebant, colligerunt & procuraverunt, ac emi, obtineri, colligi, & procurari causaverunt, ea intentione ad illa in & circa detestabilem, horrendam & execrabilem Assassinationem, interfectionem & Murdrum dicti Domini Regis ut praefertur utend', occupand' & impendend' contra Ligeantia sua debitum & contra pacem dicti Dom. Regis nunc, Coronam & Dignitates suas, nec non contra formam Statut' in hujusmodi Casu edit' & provis'.

Char. My Lord, I desire the Indictment may be read again, for there is so great a Noise in the Court, and that Gentleman has not the most perfect delivery; he is more used to Law Latin than to any other. But I beg I may have it read again, that I may as perfectly as I can understand it.

The Indictment was read again in Latin.

L. C. J. Look ye, you that are the Prisoners, every one of you has the Liberty to Challenge 35 of those that are returned to serve upon the Jury, that is to try you, without shewing any Cause; now if you will all joyn in the same Challenge, then we can Try you all together, as ye are altogether jointly in the Indictment; and save the Time and Trouble that will otherwise be unavoidable. But if you will not joyn in the same Challenge, but every Man challenge for himself, as by Law he has Liberty to do, we must be forced to try you single, and therefore we would know of you, whether you design to joyn in your Challenge or not.

Char. My Lord, I hope the Court will give me leave to have my Solicitor by me during my Tryal, that I may be instructed in some Measure how to manage my self, and when it is proper for me to speak, and what.

L. C. J. No, we can order no such Thing, you must speak for your self.

Char. My Lord, I am Ignorant of the Methods of Law, and may make a great many Mistakes and Slips, and omit what may be material to be observed for my Defence, and therefore shall the more need a Friend or Solicitor to be by me, to mind me of it.

L. C. J. No, we cannot direct any such Thing by Law. What say you as to your Challenges?

Char. As to the Jury, I had not a Copy of the Pannel till Yesterday, and I have been informed, that it is usual to have a Copy of the Pannel Ten Days before the Tryal; they are Gentlemen that I have no Knowledge of, nor can come at any Account of their Qualifications, so as to make proper Challenges.

L. C. J. You have the same Priviledge that is ordinarily given to Persons in your Condition.

Mr. Att. Gen. There was Order given for a Copy of the Pannel to be delivered.

L. C. J. That was not of Right, but of Favour; and it is a Practice that has of late obtained; but for what you talk of 10 Days, that never was in any Case, nor is it practicable; you have the same Favour shewn you, that all other Prisoners have, and you can expect no more: But you do not answer the Question, whether you will joyn in your Challenges or not.

Char. It is an indifferent Thing to me my Lord.

L. C. J. Do you agree to it, *Mr. King*?

King. My Lord, I do not well understand it, I am ready to do any Thing I should.

L. C. J. What say you *Keys*?

Keys. My Lord, I have had no Council at all, to advise me about any Thing.

L. C. J. I tell you what the Law is in such Cases; You may every Man of you Challenge 35 peremptorily without Cause, but if you do not all agree in the same Challenges, ye cannot be tried together by the same Jury: But the Court must separate you, and try you every one single.

Char. My Lord, I have got a Copy of the Pannel, if these Gentlemen that are by me do agree to joyn in the Challenge, I am very well content; it is indifferent to me.

L. C. J. Do you understand what is said to you, *Mr. King*, and *Mr. Keys*? Every one of you may without shewing any Cause, except against 35 of those that are returned of the Jury, which are to try you, if you have no Mind that those should be Sworn; but then if each of you do severally Challenge 35, ye cannot be tried by the same Jury.

Char. I hope, my Lord, if I do Challenge, as I do not know how I shall be enabled without knowing their Qualifications, the Court will put me in mind when I come near the Number, that my challenging may not injure me; because I am ignorant in the Law, and perhaps may slip in point of Number; and therefore, I would beg that your Lordships would allow me a Solicitor to assist me, and put me in Mind, that I may not run into Errors.

L. C. J. You have been told over and over, that we cannot do that, the Court will take care that you be informed in Time; that you do not exceed in challenging a greater Number than you ought: What say you, *Mr. King*? Do you agree that one shall make challenges for you all?

King. I do agree, that whatsoever Exception *Mr. Charnock* makes, I will abide by.

Char. My Lord, I cannot but think it hard, that I have not either Council or Solicitor; my Council that I had are out of Town.

L. C. J. Why, was there no Council but those that are gone the Circuit?

Mr. Att. Gen. My Lord, he had Order first for one Council and then for another, and whomsoever he named he had Order for.

L. C. J. If you will chuse none but those you cannot have, that is your own Fault; You *Mr. Keys*, will you joyn in the Challenge?

Keys. Yes, with all my Heart.

Cl. of Ar. Then you the Prisoners at the Bar, those Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King, and you, upon Tryal of your several Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be Sworn, and before they be Sworn.

Then those of the Pannel that had appear'd were called, and the Prisoners challeng'd 33. And the Names of those that were Sworn are as follows.

<i>Samuel Harwer,</i>	}	<i>Simon Smith,</i>
<i>Jonas Morley,</i>		<i>Thomas Dunck,</i>
<i>Anthony Nurse,</i>		<i>Richard Heath,</i>
<i>Jasper Hodgden,</i>		<i>John Mills,</i>
<i>William Farnborough,</i>		<i>James Ketwisch and</i>
<i>William Bird,</i>		<i>Christopher Redknapp.</i>

Then Proclamation for Information, and the Witnesses appearing, was made in usual Form.

Cl. of Ar. Robert Charnock, hold up thy Hand, (which he did;) *Edward King*, hold up thy Hand, (which he did;) *Thomas Keys*, hold up thy Hand, (which he did;) You Gentlemen of the Jury look upon the Prisoners, and hearken to their Cause; They stand Indicted by the Names of, &c. (prout in the Indictment, *mutatis mutandis*) ——— And against the Form of the Statutes in that Case made and provided. Upon this Indictment they have been Arraigned, and thereunto have severally pleaded, Not Guilty, and for their Tryal have put themselves upon God and their Country, which Country you are; your Charge is to Enquire of them, and every of them, whether they be Guilty of the High Treason whereof they stand Indicted, in manner and form as they stand Indicted, or Not Guilty; if you find them, or any of them Guilty, you are to inquire what Goods or Chattels, Lands or Tenements they had, at the Time of the High Treason committed, or at any Time since. If you find them, or any of them Not Guilty, you are to inquire whether they fled for it; if you find that they, or any of them fled for it, you are to inquire of their Goods and Chattels, as if you had found them Guilty; if you find them not Guilty, nor that they did fly for it, you are to say so and no more; and hear your Evidence.

Mr. Mountague. May it please your Lordship, and you Gentlemen of this Jury; The Record that has been now read unto you, is an Indictment of High Treason, which charges the Three Prisoners at the Bar, *Robert Charnock*, *Edward King*, and *Thomas Keys*, with a Traiterous Conspiracy, and Design to Subvert the Government of this Kingdom, and to Murder the King, and to bring the Subjects and Freemen of this Kingdom into Slavery and Subjection to the *French King*; and to this End the Indictment sets forth; That upon the Tenth of *February* last, and divers other Times, as well before as after, at the Parish of *St. Clements Danes*, in the County of *Middlesex*, these Three Prisoners at the Bar, with divers other Traytors unknown, did Consult and Agree, to Assassinate the Person of Our Sovereign Lord the King, as he was riding in his Coach; and did likewise agree, that Forty Horsemen of which they themselves were to be Part of the Number, should lye in Ambush, and set upon the King, so being in his Coach, and upon the Guards that were to attend him: And it likewise Charges them with buying Horses and Arms, for the Execution of this Wicked and Villainous Intention; to this they have pleaded Not Guilty. we shall call our Witnesses and prove this Matter upon them; and then we doubt not, but you Gentlemen will do Justice according to your Evidence.

Mr,

Mr. Att. Gen. My Lord, and you Gentlemen of the Jury, these Gentlemen at the Bar stand Indicted for a most Horrid and Barbarous Conspiracy, to Assassinate, and Murder his Majesty's Royal Person; Gentlemen, this Assassination was to be seconded with an Invasion from *France*, where Troops lay ready at *Calais*, as soon as the dismal Stroke was given, to have Landed upon our Coasts; which if it had taken effect, we had not only suffered that most unspeakable Loss of the King, but it would have made an End of all our Liberties and Laws at once.

Gentlemen, This Offence in its Nature, is so Horrid and Barbarous, that as it needs no Aggravation, so it is incapable of having any, by any Words that can be used; for the very Naming of an Assassination of a King, carries such Horror and Detestation in its self, to all honest People, that it is impossible to aggravate it by any Expressions that can be used about it. But there is this peculiar Consideration to be had, by all *English* Men, who love their Country, that this designed Assassination upon the Person of His Present Majesty, was to take away the Life of a King, who every Body knows first ventured his own Life, to restore our Religion, Laws and Liberties, when they were just Expiring under the Oppression of Popery and Tyranny. And as he ventured his Life first to Restore 'em; so he has since upon all Occasions, with the utmost Hazard, exposed His Royal Person to the most imminent Dangers, for the preserving and maintaining our Religion, Laws and Liberties, against the Power and Violence of the Common Enemy; this Consideration to all true *English* Men must have a very great Weight, and create the greatest Horror and Detestation, both of the barbarous Design, and of all those who had any Concern or Hand in it, to attempt upon the Life, not only of a King, but of such a King.

Gentlemen, when you hear the Evidence that we shall offer to you, to prove this bloody Conspiracy against these Prisoners, I doubt not but that there will be enough, and more than enough, to satisfy all true hearted *English* Subjects, and all People that have a Desire to preserve our Constitution and Government, in what Danger we and our Posterity were of being utterly ruined, and involved in a Common Destruction. I shall not detain you longer with any Discourse about the Hainousness of this Offence, because every Man's own Thoughts cannot but suggest to him, how dismal the Consequences must have been, if so fatal a Stroke had been given.

But, Gentlemen, I must crave Leave to take up so much of your Time as to open how this Bloody Execrable Conspiracy was first framed, and afterwards carried on by the Prisoners at the Bar, together with others, till it was very near putting in Execution, had not the infinite Mercy of God prevented it, by a timely Discovery.

Gentlemen, this Conspiracy was first framed and consulted upon the last Year; there were several Consultations and Meetings, at several Places about the Town, for this purpose; then and at those Consultations and Meetings, there were present Captain *Porter*, the Prisoners, and others of whom you will have an account from the Witnesses; and at that Time they had an Expectation of Commissions from the late King, to Authorize the Design; that not coming, they yet resolved to put it in Execution before the King went away. But because the *French* Troops were

then not in a readiness to come over hither, to protect them, after the Execution of their bloody Design, it was necessary for them to fly thither for shelter; and therefore they endeavoured to procure a Vessel to be ready to carry them over to *France*. But they could not get a Vessel time enough; and then the King's going over into *Flanders* quickly after, prevented the Execution of the Design for that Time, and so Matters rested till the King's Return.

About Two or Three Months ago, Sir *George Barclay*, who is an Officer in the late King *James's* Guards in *France*; and some other Officers, with Sixteen or Eighteen Troopers in those Guards, privately came over from *France* to put this Design in Execution; and he did acquaint Mr. *Porter* and Mr. *Charnock* with the Design, knowing that they had been engaged in the Matter before, and so could not but expect that they would readily assist. This Design was treated and consulted of between 'em, at several Times, and in several Places, at Captain *Porter's*, and Mr. *Charnock's* Lodgings in *Norfolk-street*; at the *Globe* Tavern in *Hatton-Garden*, the *Nags-head* Tavern at *St. James's*, and several other Places; several Consultations and Meetings were had between the Prisoners at the Bar, and others, whom you will hear named at these Meetings; several Ways and Methods were proposed, how it should be best effected; it was proposed by some, that it should be done by Ambuscade, that should be laid near the King's House at *Richmond*, such a number of Foot were to lye in the Wood, there ready to Attack the King as he came by, and the rest of the Conspirators at the same Time to fall on the Guards. But this Method was not so well approved of, as that which was afterwards proposed and agreed to: That is, there were to be three Parties of them, and the Place was the Lane, lying between *Brentford* and *Turnham-Green*, at the end next *Turnham-Green*, which the King used to pass through, upon his return from *Richmond*; The Order and Method of the Design was this; Sir *George Barclay*, with Eight or Ten more was to attack the Coach, and by firing into it, to have killed the King, and all in it, and the rest were to attack the Guards, in two Parties, on each side of the Lane, whereof Mr. *Charnock* and *Porter* were to command one, and Brigadier *Rookwood* the other. In order to see how feasible this Design might be, the Prisoner King, Captain *Porter*, and *Knightly*, were to go and survey the Place; and the next Day after that Consultation, they went to view the Ground, and did very carefully do it, both on this side the Water, and on the other side the Water; and they came back and met the rest of the Company at the *Nagg's-Head* Tavern late at Night, to give an Account what they had done in order to this Enterprize. It was agreed the Number should be about Forty; Sir *George Barclay* was to make up about Twenty, Mr. *Charnock* was to furnish Eight, Captain *Porter* Seven, and so in other Proportions, in all to make up the Number of Forty; which they thought were enough to effect and accomplish the Design.

In order to make this Matter the more sure, they did appoint Two to lodge and wait at *Kensington*, near the Guards; who were to give notice, when the King went abroad: And they had their several Persons assigned to whom they should give notice, who thereupon were to send Orders to the several Parties; one of which was

Chambers, who was to give Notice to the Prisoner at the Bar *Mr. Charnock*, and there was one *Durance*, who was to give Notice to *Sir George Barclay*; and when such Notice was given, then they were to send Orders to the several Persons, who were to be concerned in this bloody Business, to come at the time appointed, to be disposed of into their several Posts.

Gentlemen, in order to the furthering of this Design, they did likewise send *Durance* to go and view, and give them an Account of the most convenient Inns at *Brentford*, and *Turnham-Green*, and the Places adjacent; which were least lyable to Observation, where the Men might be the most conveniently disposed of, to lie ready against the time, when they were to execute this barbarous Assassination; accordingly he went, and took an Account of the several Inns within that Compass, and they were to be Billeted by Two or Three in an Inn, so as not to be observ'd; *Sir George Barclay* and his Party at *Turnham-Green*, and the rest at *Brentford*.

Gentlemen, after they had thus laid the Design, *Saturday* the 15th of *February* was the first Time pitched upon for the putting it in Execution, if the King went abroad, as he used to do, upon *Saturdays*, to *Richmond* to Hunt; and if they had notice from *Durance* and *Chambers*, that he was so to do, which notice they had; and every thing was prepared in Order to have perpetrated this villainous Design; but it happened that the King went not abroad that Day, of which they had notice about Noon from *Chambers* to *Charnock*, and *Charnock* sent Word so to *Porter's* Lodgings, and then the Order for their getting together was countermanded, and the Note, by which *Charnock* sent Word, was subscrib'd with the Name of *Robinson*; which you will hear is a Name he goes by, as well as by that of *Charnock*.

Thus they were disappointed at that time, but they were not discouraged from pursuing this inhumane Enterprize; but resolved to go on the next Opportunity that should be given. And to omit several Things that intervened, which the Witnesses will give you an Account of, on the *Friday* following they met again, to have every thing ready against the next Day, which was *Saturday* the 22d of *February*; when they expected the King would go abroad, as he usually did on that Day of the Week; and that Meeting was at the *Sun Tavern* in the *Strand*, and there were present *Captain Porter*, *Sir William Perkins*, *Sir George Barclay* and *Mr. Charnock*; and at that time there was a Discourse amongst them about the Disappointment, which they had had the Week before, and some of them had a Jealousy that a Discovery had been made of their Design: But then upon further Consideration, They concluded, if it had been so, they should not have met there, but should have been taken up: And therefore they concluded the King's staying at Home that Day was but Accidental, and so resolved to put their Conspiracy in Execution the next Day.

While they were there, several Persons for whom *Captain Porter* had undertaken, that is, one *Cranborne*, *Kenrick*, and *Keyes*, the Prisoner at the Bar, came to *Porter*; these were carried into a nother Room, and Commanded all to be ready the next Day, when it was resolved to put the Assassination in Execution: And then *Captain Porter* asked *Kenrick* for *Sherborne*, who it seems had been undertaken for; but it was

answer'd, That he asked so many Questions about the Matter, that he did not think fit to trust him.

The next Morning they met again at *Captain Porter's* Lodgings; and there met, as the Witnesses will tell you, amongst others, *Mr. Pendergrafs*, *Mr. Keyes*, and *Mr. King*; *King* brought a Message to *Captain Porter* from *Sir George Barclay*, to know the Names of those that were concerned, and upon that Message *Captain Porter* writ down the Names of his Men, who were for his Quota, and sent the List by *Cranborne* to *Mr. Charnock*, to add his List to it of the Men he was to have under him; *Cranborne* afterwards came back, and brought the List that *Captain Porter* sent, with the additional List sent by *Mr. Charnock*, written with his own Hand, and subscribed *R. C.* and *Cranborne* told them that *Chambers* had sent Word, that the King would go out that Morning: At the hearing of which there was very much Joy amongst them; for they hoped then their wicked Design would be put in Execution that Day. There was a Discourse then likewise, that *Porter* had a Piece which carried Six Bullets; and this, it was ordered, should be put into the Hands of *Pendergrafs*, who was to be one of *Sir George Barclay's* Men to attack and fire into the King's Coach.

This was upon *Saturday* the 22d of *February*, when they had News that the King was to go abroad, and every Thing was to be put in Execution at his Return from *Richmond*. From *Captain Porter's* Lodgings they went to the *Blue Posts* in *Spring Garden*; but about 12 a Clock there came News from *Chambers*, one of the orderly Men at *Kensington*, that the King did not go abroad that Day: This put them into a very great Confusion, they then thought some Discovery must needs be made because of the Disappointment two *Saturdays* together; and *Keyes*, the Prisoner at the Bar, came up and told them, that the Guards were all come back in a Foam, and the King's Coaches were brought back to the *Meuse*: And this confirmed them in their former Jealousy that the Matter was discovered; upon which *Captain Porter*, *Mr. Pendergrafs* and *Mr. Keyes* went together to lye hid some time; but they said they would send *Keyes* to *Mr. Charnock*, to let him know where they might be heard of; and if the matter was not discovered they would still go on to put it in Execution: But they could not part without drinking some Trayterous Healths, which the Witnesses will tell you of, to the Restoring of the late King and his Queen, and the Prince of *Wales*; and after all, one of the Company taking an Orange in his Hand, began a Health to the Squeezing of the Rotten Orange; and in this Manner it was drunk by all of them before they parted, tho' they were under the Apprehension at that time of being discovered already.

This is the Beginning and Progress of the several Consultations that were had for the Carrying on this execrable Trayterous Conspiracy. I have opened it shortly to you, but you will hear it much fuller in its several Parts by the Witnesses. By what I have opened, you cannot but observe, that it was very near coming to be executed, if there had not been a Discovery of it time enough, thro' the Providence of Almighty God, to prevent it. They had agreed, after the intended Assassination to keep together, till they came near the Town, and then they were to lie hid

hid till the *French* Troops landed, which they were assured of were ready upon the least Intimation of the Success of this Conspiracy.

Gentlemen, every Body may guess at the dismal Consequences that would have follow'd, had this bloody Design taken Effect; and I am sure, as we and our Posterity could not have expected any thing less than the perpetual Yoke and Burden of Slavery and Popery, if it had pleased God to permit this Conspiracy to take effect; so I hope we shall always remember the merciful Hand of Providence, that has detected and disappointed it.

Gentlemen, I shall not detain you any longer; I have opened unto you Part of that which will more fully be made out by the Witnesses; only I would observe, that the Providence of God has not only made a Discovery to prevent the Execution of this abominable Villany, but hath brought this Conspiracy so far to light, by such unquestionable Testimony, that no Man can doubt of the Reality of it, which I hope will raise in every honest Man's Mind an Abhorrence and Detestation of those Principles, upon which so villainous and barbarous a Design was founded; and I think I may say, that after the Evidence you will hear this Day, no one will pretend any Doubt of the Truth thereof, but either such as are sorry for the Discovery, or such as knew too much of the Conspiracy before. I shall trouble you no further, but call our Witnesses, who will give you a clear and full Account of this Conspiracy. Swear Captain Porter. (Which was done.)

Mr. *Soll. Gen.* Captain Porter, I would not lead you with any Question, but pray will you give the Court and the Jury an Account what you know concerning any Conspiracy about assassinating the King, and when it was to be done, and where, and how, and by whom; and particularly what relates as to that Matter to the Prisoners at the Bar.

Charnock. My Lord, there are two Things that I must beg of the Court, in Relation to the Witnesses that are to be produced, and the Evidence that is to be given against me at this time: And the first is, That before any of the Witnesses give any Evidence against me, the rest that are to be sworn and produced, may be kept out of Court, till they that are called have severally given their Evidence, that one may not hear what the other says; That I suppose is but reasonable in a Case of this nature, and what was never denied, but always allow'd, as I have been informed.

L. C. J. There is but one Witness sworn, and I believe, that there are none of the rest here.

Char. Yes, my Lord, here is one Gentleman in Court whom I suppose to be an Evidence, and that is Mr. *De la Rue*.

L. C. J. If there be any others of the Witnesses let them withdraw till they be called for; let there be some Body to look after them and attend them. (Which was accordingly done.)

L. C. J. Mr. Charnock, you have your Desire as to this matter, all the rest of the Witnesses are withdrawn.

Char. My Lord, there is another Thing that I have to beg of the Court, and that is, in relation to the Evidence in general, That if there be any Thing prov'd to be spoken in company, and talked of by Way of common Discourse, or only in jollity in ordinary Conversation, that may not be interpreted as a Proof of any settled Design or Practice.

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L. C. J. Look you, Mr. Charnock, who can tell what the Evidence will be until it be given; you will hear what is deposed by the Witnesses, and you have Pen and Ink, and may make such Observations as you think fit: When the Witnesses are heard, you will have all the Advantage that can be allowed you, and you may then propose your Objections to the Matter of their Evidence; which, no doubt, will have their just weight with the Court: In the mean Time, have you any Exception to this Man's being a Witness? If you have no Exception against him, then he must give his Evidence; and after he has delivered himself, and the King's Council have done with him, you are at Liberty to ask him what Questions you think fit.

Mr. *Soll. Gen.* Captain Porter, I desire you will acquaint the Court and the Jury what you know of any Conspiracy to take away the Life of his Majesty, when it began, in what Manner it was carried on, how far it proceeded, how it came to be disappointed, who were concerned in it, and what relates to the Prisoners at the Bar, as to their Share therein.

Capt. Porter. My Lord I am unfortunately engaged in this Matter, and have made a frank Discovery, to make the King all the Atonement I can, for having been concerned in such a Design. Some Weeks before this Conspiracy for Assassinating the King was in hand, there came to my Lodging—

Mr. *Att. Gen.* Captain Porter, I would not interrupt you, but to put it into a Method, and order of Time, will you please to recollect yourself, and give the Court and the Jury an Account of your Knowledge about the first Beginning of this Conspiracy the last Year; I would not lead you, and therefore I ask you the general, and no particular Question.

Charnock. My Lord, I suppose that any Question about what was done the last Year is not at all to the purpose in this Case, for there is nothing mentioned in the Indictment of the last Year.

L. C. J. It is in the Indictment diverse Days and Times, as well before as after.

Charnock. The Crime for which we are accused is laid to be the 10th Day of February, 1695.

L. C. J. The Day is not material, but only a Circumstance, but in Form some Day before the Indictment preferred must be laid; and tho' the Day mentioned in the Indictment is the 10th of February, yet it is also said, that the Things contained in the Indictment, of which you are accused, were done likewise at diverse Days and Times, as well before as after, and so the Indictment comprehends even what might be done the last Year as well as this.

Charnock. I beg the Favour of the Court in this Matter, for sure the 10th of February last can no way be supposed to be in the last Year.

L. C. J. I told you before, the Day is not material, nor are the Witnesses nor the King's Council tyed up either to the particular Time or Place, mentioned in the Indictment, so it be within the County, and before the Indictment preferred. All that is to be regarded is, that no Evidence be given or admitted of any other Species of Treason, but what is contained in the Indictment; for a Man may certainly be indicted for a Treason committed this Year, and upon his Tryal Evidence may be given of the same Treason committed the Year before.

C

Char-

Charnock. But then how can a Man prepare for his Defence?

Mr. Att. Gen. The Time is but a Circumstance; it may certainly be proved at another Day than what is laid in the Indictment, and yet very good Proof; and so it is in all other Cases, as well Civil as Criminal.

Charnock. Mr. Attorney General has said enough I think to confute himself; for if one Year may be put in the Indictment, and another Year brought in in the Evidence, how shall any Man be able to apply himself to his Defence, whose Thoughts run only upon the Time laid in the Indictment. I hope neither the Court nor the King's Council will come so hard upon us, as to put our Thoughts quite out of all Order, that when we apprehend we are only to defend our selves against what is said to be done this Year, we must afresh prepare our selves to answer what was done the last Year.

L. C. J. It is always so; for Form sake, there is a particular Time laid in the Indictment, but the Proof is not to be tyed up to that Time; but if it be proved at any Time before or after, so it be before the Indictment preferred, it is well enough. And not without great Reason, for the Treason consisting in imagining and compassing the King's Death, which may be manifested by diverse Overt Acts, some before, some on, and others since, the Tenth of February, yet they are Evidences of one Treason, which is the Compassing the King's Death.

Char. Then we may be under an Obligation to give an Account of all the Transactions of our Lives, if that be the Rule.

L. C. J. No, not so neither, for that very Treason assign'd in the Indictment must be proved, and therefore you are only to give an Answer to that, and nothing else.

Char. But, my Lord, it may give a great Loose, and much hinder our Defence; for as it is now desired that Proof may be given of what was done last Year, at the same Rate, the (as well before and after) may signify seven Years ago.

L. C. J. And so it may if your Conspiracy reach'd so far, or did then begin, and was afterwards pursued, this is not any Thing that is unusual, but the Common Law is plain in it. Well, what say you, Mr. Porter?

Capt. Porter. My Lord, I will give you an Account, if your Lordship pleaseth, of what was done this Year; and if any Questions afterwards be thought fit by the King's Council to be now asked me, about what passed before, I will answer them very readily.

Mr. Att. Gen. Well then go on your own way, we will reserve our selves till afterwards.

Capt. Porter. Some Weeks before this Design was on Foot, for assassinating the King, Sir William Perkins, when he was in Town, was at the same Place where Mr. Charnock and I did lodge; it was about the latter End of January: He asked Mr. Charnock where he would be at Night; and I told them, if they were not about private Business, I would meet them. He told me, there were some Friends come from France, and that something was a doing that would be for the Service of the King: I told them, if any Thing of that Nature was a doing, I would readily engage in it; and they told me I should know it very soon. A little after I fell Sick of the Gout, and could not stir from my Chamber: But then Mr. Char-

nock did acquaint me that Sr. George Barclay, and those that came from France, had brought a Commission to raise and levy War upon the Person of King William, and he asked me how many I could bring to joyn with them, if the King landed; I desired to consider of it, and he told me Sr. George Barclay would come to him about it. Accordingly, he and Holmes came to the House where we lodged, in Norfolk-street, and there they were in private with Mr. Charnock, and afterwards, because I was lame, and could not stir, they came into my Room, and Sr. George Barclay, told me he was glad to see me in good Health, but sorry to find me lame, but he hoped to see me abroad in a little Time; and I told him, I hoped so too. They said they were going then to some Company, and they hoped to see me afterwards. After that there were several Meetings that we had, particularly at the Globe-Tavern in Hatton-Garden, the Naggs-Head at St. James-Street, and the Sun-Tavern in the Strand, and in all these Places we did consult together, which was the best Way, and where was the best Place to Assassinate the King, when he came from Hunting. Sr. George Barclay told us he had some Money to buy Horses, but not much, he had as much as would furnish about Forty. Capt. Charnock said, he would bring six or seven Men, that should come out of the Country, Sr. William Perkins said he would lend five Horses, three to be mounted by Men of his own, the other two by such as should be provided. I promised to bring seven Men with Horses, and Sr. George Barclay said, that Lowick and others that came over with him from France, would engage in the Design, and make up the Number. I desired very much to see the Commission that came from the late King, and asked Mr. Charnock about it, he said he never saw it, but Sr. William Perkins told me, he had seen it, and that it was all writ with King James his own hand, and signed by himself. All this was agreed to, and then there were Consultations in what Method it was to be done. Several Proposals there were; one was to set upon him as he came from Richmond by the Road, others when he was upon Horseback at Cue. Sr. George Barclay was for having it done by Ambuscade in the Park by Richmond, and therefore desired me to go with Mr. Knightly, and view the several Places and Ground thereabouts, to find out which was the most convenient Place. The Day before we were to go, Capt. King came to me, and would know if we were to go about such a Matter, and proffered to go with us. I told him I had never a Horse, but he said, he would get one. We went that Night to the Swan at Knights-Bridge, and there we lay, and went the next Day to view the Ground, and came the next Evening to the Company, to give an Account, what we had done; and upon the Account that we gave, Sr. George Barclay's Mind was altered, and it was agreed to do it in the Lane coming from Bransford to Turnham Green, and the particular Manner was agreed on too. There was one Rookwood that was to command one Party of Sr. George Barclay's Men to attack the Guard; he told us, he had bought twenty Horses which were to be employed in this Expedition; they were to be divided in three Parties, and Sr. George Barclay was to have four out of each of the other Parties, and to seize upon the King's Coach, and to Shoot into it, and kill the King, and all those that were with him:

And

And this was to be done on the 15th of *February*, which was a *Saturday*, and the King usually went to *Richmond* on *Saturdays*. We had two Orderly Men (as they were called) who were to lie at *Kensington*, to give Intelligence, when the King and the Guards went out, the one was *Chambers*, and the other one *Durant*, a *Flemming*, I think, or I do not well know what Country-man he was; and *Durant* was to bring an Account when the Guard went out, and *Chambers* when the King went out, and when we had Notice that the King was gone, we were to go by 3. or 4. in a Party to prevent Suspicion, and we were to be dispersed in the several Inns about *Brentford* and *Turnham Green*. Sir *George Barclay* was to be at the King of *Bohemia's* Head; and we ordered a Man to give Notice to him when the King landed, and then he was to give Notice to us, and so we were to form our selves into our several Bodies, to take our several Posts as were agreed upon. I asked him what he thought to do when the Matter was over, how we should dispose of our selves? He told me, we need not fear any Thing, but might go to Town and lie still, and that there would come a sufficient number from abroad ready to assist us. That 4. or 5000 *French* were to divert in *Scotland*, and the King would be near the *French* Shore with a sufficient Army. On *Friday* before the 22d, when it was to have been executed again, we met at the *Sun-Tavern* in the *Strand*; and there discoursed, for a Matter of half an Hour, about the former Disappointment, and several in the Company were afraid the Design was discovered; but then I told them, if it had been so, sure we should have been taken up before now; upon which it was agreed, then let us resolve upon it again to Morrow, and so it was resolved upon. *Cap. Charnock* said, he could not stay, because he should want some Men that were come up out of the Country on purpose. I said, I was afraid my Horses were Sick, and could not be used in the Service. And Sir *William Perkins* thereupon undertook to furnish me, and told Mr. *Charnock* and me he had sent to Mr. *Lewis* that belongs to the Earl of *Feversham*, to procure some, having, as he said, promised so to do. I sent the next Morning to have a Note for two, by Mr. *Cranburne* and he sent me a Note back again by *Cranburne*, that he had sent to Mr. *Lewis*, and Mr. *Lewis* said, he would help him to three Horses, with Saddles, Holsters and Pistols, and desired the List of my Men, which I sent him, and he sent it me back again with the List of his own, and then I shewed it to Mr. *De la Rue*, and we were preparing all Things for the Execution of this Design, and presently after News came, that the King did not go out that Day neither; upon which I said I would go out of Town, and I asked *Cap. Pendergrafs* to go with me, and we sent *Keys* to bring Linnen unto us, but he did not come until the *Wednesday*, and upon the *Thursday* we were taken.

Mr. *Att. Gen.* Captain *Porter*, you mention several Consultations, at several Times and Places; who were present at any, and which of them? were any of the Prisoners at the Bar there, and which?

Capt. *Porter*. There was Mr. *Charnock*, and Mr. *King*, at all of them.

Mr. *Att. Gen.* What do you say about *Keys*? What was he?

Capt. *Porter*. He was my Servant a Year and a Half.

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Mr. *Sol. Gen.* Was he acquainted with the Assassination?

Capt. *Porter*. Yes he was, and was present at most of the Consultations. He hired Horses for me to be employed in the Business. On the first *Saturday* he hired two, I gave him Money for them, and did know upon what Account they were hired.

Mr. *Att. Gen.* Was he present when News was brought of the Disappointment?

Capt. *Porter*. Yes, he was both Times.

Mr. *Att. Gen.* You are sure he was present then?

Capt. *Porter*. Yes, the second Time he said, that he met the King's Guards that were come back all in a Foam, and that he had spoke to one of my Lord of *Oxford's* Regiment, and that something was mutter'd upon which he feared a Discovery.

Mr. *Att. Gen.* Did *Keyes* agree to be one of the Men, that should be concerned and Act in this Business?

Capt. *Porter*. Yes, He did.

Mr. *Att. Gen.* What Quality is he of? What is his Profession?

Capt. *Porter*. He used formerly to help to dress me, and he was to look after my Linnen and Equipage.

Mr. *Sol. Gen.* Had he not been a Trumpeter? Was not that his Profession?

Capt. *Porter*. He was a Trumpeter, and used sometimes to entertain us with his Trumpet.

Mr. *Conyers*. You speak of a Meeting at the *Sun Tavern* in the *Strand* upon *Friday*, the 21 of *February*, where it was resolved to execute this Attempt upon the next Day.

Capt. *Porter*. Yes, there was such a Meeting.

Mr. *Conyers*. Was *Keys* there at that Time.

Capt. *Porter*. He was not in the Room where we were, but he was in another Room in the same House, where I went out to him, and there was he, *Cranbourn*, and *Kenrick*.

Mr. *Conyers*. Pray what did you go to them for?

Capt. *Porter*. I went to acquaint them what was resolved upon; and I told them they were resolved to do it the next Day, to which they agreed, but that I thought my Horse's would not be ready, but I hoped I should get some other.

Mr. *Conyers*. Pray, what other Discourse had you in that Company: With whom and about what?

Capt. *Porter*. Mr. *Kenrick* came to me with his Arm in a String; either he had broke his Arm, or pretended so to have done. I then asked him for Mr. *Sherbourn*, whom he had mentioned before to me, as one that was likely to be concerned: He told me Mr. *Sherbourn* asked a great many Questions about the Design, which he did not think fit to Answer; I thanked him for telling me so, and said I would not send to him.

Mr. *Cooper*. Pray Captain *Porter* give me leave to ask you one Question, can you remember what Number of Men *Charnock* was to provide for this Enterprize?

Capt. *Porter*. He promised seven or eight Men; some of which should bring their Horse's out of the Country; others he would borrow or hire for them.

Mr. *Att. Gen.* Pray, Sir, was there any Body sent to take an Account of the Inns about the Place where this Assassination was to have been Executed?

Capt. *Porter*. Yes, Mr. *Durant* was, and he did bring us an Account of the several Inns about

Brentford and Turnham Green.

Mr. Att. Gen. As to the List of Men, which you say you sent to Charnock, and he sent you back with a List of his Men, pray can you tell whose Hand that List of his Men was in.

Capt. Porter. I know Captain Charnock's Hand very well, and to the best of my Knowledge, it was his own Hand, and subscribed, R C.

Mr. Att. Gen. Sir you have given an Account of the Meeting the 22d at your Lodging.

Charnock. I was not there he says.

Mr. Att. Gen. First let me ask you, how came it that it was not put in Execution the 15th, for that you did not tell us before?

Capt. Porter. I tell you, Sir, it was because the King did not go out that Day, according as we had Notice, that he intended to do: Durant wrote first Word that the Guards were gone before, upon which I went for my Men, and about Noon I received a Note from Mr. Charnock that the King did not go out that Day.

Mr. Att. Gen. Pray what Name was subscribed to that Note?

Capt. Porter. R. Robinson, which was a Name he used to go by sometimes.

Mr. Att. Gen. And pray in whose Hand was that Note?

Capt. Porter. To the best of my Knowledge it was Captain Charnock's, I know his hand very well.

Mr. Att. Gen. My Lord, if the Prisoners will ask him any Questions they may.

L. C. J. Will you ask him any Questions?

Char. My Lord, in the first Place I desire the Judgment of the Court, whether he be a legal Evidence or no. I conceive he is not, and I hope your Lordships will think so too: For he makes himself a Criminal by his own Confession, and that of a very hainous Crime, and it is equal in my Judgment, (and as I have been advised, who I must still say am ignorant in these Matters) as if he had confest it upon an Indictment, and then the Law can take no Notice of him as a good Witness. And if he were no legal Witness then, I take it by the same Reason he is no legal Witness now: For the Crime is the same, and it is an Acknowledgment in open Court.

L. C. J. Look you, Mr. Charnock, if it had been a Confession upon an Indictment, it would have been a Conviction, which would have had quite another Operation, but it not being upon an Indictment, it is no Conviction, and therefore he is a legal Witness, tho' he does acknowledge himself to be guilty of the Crime.

Char. Then, my Lord, he is looked upon as no good Evidence, in my Judgment, because he is a Criminal.

L. C. J. He is a legal Evidence, tho' he does confess himself guilty of the Crime.

Char. He owns himself a Partner in a bloody Design, and to convict me he swears, to take away my Life, to save his own. I cannot imagine why he should be accounted a legal Witness, that is a Party by his own Confession in such a Matter.

L. C. J. Pray, who can tell better what was intended and done in such a Conspiracy than he that was a Party in it?

Char. My Lord, he has forfeited his Life by his own Confession, and now he would by Swearing against me take away my Life to save his own.

L. C. J. Whatsoever Objections you have against the Credit of his Testimony you may make what Use of them you can in the proper Time; but for any Thing that yet appears he is a legal Witness.

Charnock. My Lord, I know not how far he is a Legal Witness, therein I must be governed by the Judgment of the Court; but sure it will take away from the Credibility of his Testimony, his own Acknowledgement of his being guilty of such a Crime. Tho' he may be a Legal Witness, he cannot be a good one. And I hope the Gentlemen of the Jury will consider of it, when a Man comes to take away other Mens Lives to save his own, by accusing them of Crimes which he acknowledgeth himself to be guilty of.

L. C. J. Look you, Mr. Charnock, for that matter, it is so in all Cases of this nature, not only in Cases of High-Treason, but of Robberies and Burglaries, and the like, where the Parties concern'd are and always have been allow'd to be good Witnesses against their Accomplices in those Crimes. Will you ask him any Questions, Mr. Charnock?

Charnock. My Lord, here is another Thing, which, I apprehend, I have Reason to object against the Testimony of this Witness; he does not only swear to save his own Life, and take away another's to deserve the saving of his own, but there is in this Case Swearing to get a Reward, for there is a Reward of 1000 l. a Piece promised by Proclamation, for the Apprehension of this Man and others. And not only a Pardon but the 1000 l. to any of those in the Proclamation who shall discover and take any of the proscribed Persons. Now, where a Man stands accused by Proclamation, and his own Life is thereby concerned, and a Reward is propos'd for any of the Conspirators discovering and apprehending the others, it is a hard Matter to admit any one that acknowledgeth himself guilty of such a Crime, to prove a Prisoner guilty of that Crime under those Circumstances. Besides, my Lord, I have known this Gentleman, and tho' he may have had an Estate, yet since I have Reason to suspect, and perhaps it may be very well known, that the Fortune he had is lavished away; to make up that Damage, he may be tempted to undertake this Way of Swearing. So I think he cannot be a good Evidence, and I hope your Lordship will think so too, and that he is to receive no Credit or Countenance before an honest Jury, as I doubt not these Gentlemen are that are to try us.

L. C. J. Mr. Charnock, do not mistake your self, he is to have no Reward by the Proclamation unless he had come in voluntarily, and apprehended one of the others; for only those that apprehend any of the Persons named in the Proclamation, are to receive any Part of the Reward, not any of the Witnesses against any of them; the Reward is for the Apprehension, whether they be found guilty or not guilty.

Char. But still, my Lord, he cannot be a good Witness, for it looks as if he was a Man that was willing to have become an Evidence, because we, whom he has accused, particularly my self, were permitted to be taken, and then in the mean while he seems to withdraw, only that he might be taken as a Colour. For my Part, I know not, but that it may be a Contrivance of his own, to be colourably taken up, because he is so willingly an Evidence, as the Jury may perceive he is.

L. C. J. It is certainly a very hard Matter, if not impossible, to discover Crimes of this Nature, if the Accomplices in those Crimes shall not be allowed to be good Witnesses against their Fellow-Conspirators.

Char-

Charnock. My Lord, I must submit to the Judgment of the Court that he is a legal Witness. But tho' I shall not press upon the Legality, yet I must say he is not a good Witness for all the Reasons that I have urged.

L. C. J. Nay, he is a very good Witness, if he be a legal Witness; but the Credit of what he says, as in all other Cases, must be left to the Jury, who are Judges of the Matter of Fact, and the Credibility of the Witnesses.

Char. My Lord, when Persons will own themselves guilty of joyning in so barbarous a Crime as we stand indicted for, and accused of, sure there will be little Credit due to their Testimony.

L. C. J. His Credit must be left to the Jury, who are the Judges of it; now if you will ask no Questions, I must speak to the rest; Mr. King will you ask him any Questions?

Char. I speak this only in general; but I have some Remarks that I have made upon the Evidence that has been given, out of which, when I have told you of them, Questions may arise, which it may be fit for me to propose, and I shall desire your Lordships Leave accordingly.

L. C. J. Look you Mr. Charnock, you shall be heard all that you have to say, when your Time comes for your Defence, and to make what Observations upon the Evidence you please. But the Matter is now, whether you will think fit to cross-examine the Witnesses that are produced for the King, or to ask them any Questions.

Char. My Lord, I have taken some Notes of what has been said, and I desire I may make the best Use of them that I can.

L. C. J. You may make what use you will of your Notes, and make what Observation you will to make any Question you ask intelligible.

Char. My Lord, Capt. Porter in his Evidence hath said, That this Conspiracy was in the latter End of February. Now I apprehend his Oath is not valuable upon this Indictment, because the Offence is laid the Tenth of February, and so his Conspiracy that he talks of, was after the Time laid in the Indictment.

L. C. J. I believe you mistake him, Sir.

Mr. Att. Gen. If he pleases to ask him, I suppose he will find himself mistaken.

Capt. Porter. My Lord, I say the latter End of January; if I said February I mistook.

L. C. J. And so it must be; for the two and Twentieth of February, was to have been the second Time for the Execution of the Design, and several of the Conspirators were taken the next Day.

Char. My Lord, I desire Capt. Porter may be asked, where it was, and when, that I brought Sir George Barclay and Mr. Holmes into his Company?

Capt. Porter. It was the Beginning of February, at my Chamber in the same House where Mr. Charnock lodged, and I was then Sick of the Gout.

Char. My Lord, I declare it, I know nothing of it. Then he says we had several Meetings, particularly at three several Taverns; by what I can observe, there is no Time at all, nor at any of those three Places that there was any Sort of Conspiracy for the Assassinating of the King.

L. C. J. Yes, He says, that you met at those Places, where you did consult about Assassinating of the King, and the Ways and Methods how it should be carried on, and that you was at those Consults; for Mr. Attorney asked him particularly, Whether you that are the Prisoners were there? and he says, ay.

Char. He says, that we met at the Naggs-head Tavern in St. James's Street, where it was agreed that he and *Knightly* should go and view the Ground, to see which would be the most convenient Place; and that they came the next Night to give an Account according to our Desire. Now, my Lord, I was there at Dinner, and Capt. Porter did come in at Night; and if you do remember, Captain, you could not pull off your Boots well, and complained of the Gout, and was very peevish; and said you had been at *Mortlack*, and had met with a Friend there; that is all that I know. There was Capt. King and Mr. *Knightly* indeed; who sent for some other Cloaths, but it cannot be pretended that there was any Crime transacted at that Time; for you cannot imagine, that I would have to do in any such Matter amongst Porters and Messengers that were to go on common Errands.

L. C. J. I will only put you in a right Method; You may ask what Questions you will now; but you are not to make your Observations upon the Witnesses to the Jury till the King's Evidence be given, for then your Time will come for your Defence.

Char. My Lord, It may be I may forget then what may be proper for me to insist upon. If your Lordship would please to allow me a Solicitor to put me in Mind, I should be the better able to manage my self.

L. C. J. You may be helped by your Notes; but you have been told over and over, we can allow no Solicitor.

Char. My Lord, Captain Porter says, I told him there was such a Commission brought by Sir George Barclay from King James; he says indeed, I told him I never saw it; and I do not know how I could, because I do not believe there ever was any such, and it is improbable there should be any such.

L. C. J. Mr. Charnock, I would not hinder you from saying any Thing that would be proper for your Defence, nor will interrupt you when your proper Time comes.

Char. My Lord, what I say is as to what Captain Porter has evidenced, and I would make Observations upon one Part of the Evidence after another, as it is given.

L. C. J. But that is not regular, according to the Course of Evidence, and will introduce a Confusion. You may ask any Questions of the particular Witnesses, as they are in order, if you will; but your Observations, as to your own Defence, you must defer, till the Witnesses are heard, that so the Evidence may be entire, and your Defence entire; therefore if you will ask him any Questions, say so.

Char. No, my Lord.

L. C. J. Then Mr. King, will you ask him any Questions?

King. Captain Porter, Did I mention any Thing, or was there any Discourse when you and I, and Mr. *Knightly*, as you say, went out to view the Ground about killing the King?

Capt. Porter. The Day before we went, we dined together, and it was at the Naggs-head, and he asked if I was to meet *Knightly*, and go and view the Ground, in order to settling the Design, which was then talked of, and consulted about; and Captain King desired to go with us, and we lay at *Knights-Bridge*; and when we were about it, we discoursed several Times of the Nature of the Place; and Captain King did not approve of the Place on this Side the Water, but liked the

Ambuscade better which was to have been on the other side the Water.

L. C. J. Will you ask him any more Questions?

King. No, my Lord.

L. C. J. Well then, What says the other Man, *Keys*? Will he ask him any Questions?

Keys. My Lord I have had no Body to advise me, no Council; I was only a Servant to Captain *Porter*.

Mr. Att. Gen. If then they have done with him, before he goes, I desire to ask him one Question. What Discourse, or Treaty, or Consultation about this, or such like a Matter, there was the last Winter, and between whom?

Capt. Porter. There were several Meetings and Consultations the last Winter between *Capt. Charnock*, *Sir William Perkins*, and my self, about such a Thing; and we Thought that the quickest Way to bring in the King, and restore him to his Crown, was by knocking *King William* on the Head; and there were several Meetings about the Ways of doing it.

Mr. Att. Gen. Who else were there at those Meetings?

Capt. Port. There were several others in Company.

Mr. Att. Gen. But the Meaning of my Question is, who of the Prisoners.

Capt. Porter. I cannot remember any but *Capt. Charnock*.

Mr. Att. Gen. Pray will you acquaint us with the Reason why it was not done at that time.

Capt. Porter. We wanted a Commission from *France*, which we thought was a necessary Authority for us to act by.

Mr. Att. Gen. You speak of a List that was brought you again from *Charnock*, with the addition of those Names that were his Men; pray at that time was there no Discourse about a particular Gun that was somebody's, and that one in the Company was to have, to be employed in this Service?

Capt. Porter. My Lord, I said, I had a Musketoon that carried 6 or 8 Bullets, that *Capt. Pendergrafs*, who was one of the Four out of my *Quota*, that was to go with *Sir George Barclay*, should have if he pleased.

Mr. Att. Gen. *Capt. Porter*, I would not lead you, but were there any particular Directions given? and what touching the particular Employment of that Gun?

Capt. Porter. I remember I told *Capt. Pendergrafs*, if the Coach made any great haste to get away, he might easily hinder that by killing, or laming one of the Horses with that Gun.

Mr. Att. Gen. Pray recollect your self, *Sir*, was *King*, the Prisoner at the Bar, present at that Discourse?

Capt. Porter. *Capt. King* was then in my Room at *Maiden-lane*, where I then lay, being removed from my Lodging at *Norfolk-street*.

King. Do you say that I heard any such Discourse?

Capt. Porter. I cannot say you heard it, but you was present then.

Mr. Att. Gen. Was there not some Discourse about a Defect of the Numbers that were appointed, and expected to join in this Thing.

Capt. Porter. My Lord, I told you I wanted a Man, and that was *Kenrick*, who had his Arm in a String; and *Mr. De la Rue* brought one that I knew not, and some of the Company went to the *Blue-Posts* to larry there whilst I came to them,

and *Capt. King* was present when the News was brought us of the Disappointment, and then I resolved to go out of Town.

Mr. At. Gen. The next Witness, My Lord, that we call is *Mr. De la Rue*, and we desire he may be sworn. Which was done.

Mr. Sol. Gen. *Mr. De la Rue*, we would desire you to acquaint the Court and the Jury, what you know of any Design or Conspiracy to Assassinate the King, when it began, how it was carry'd on, and by whom, and by what Methods.

Mr. De la Rue. My Lord, this Conspiracy hath been carrying on a great while, for some Years. And it originally came from *Col. Parker*, especially as to my Knowledge of it; and that was 5 or 6 Years ago, at *St. Germain's*, when I was there: He propos'd it to me, and said he would propose it to my Lord *Melfort*, who was *King James's* Secretary in *France*. Two Years after, he came over into *England*, it was a little before the Business of *La Hogue*, and he would have had me come over into *England* with him; upon which I apply'd my self to my Lord *Melfort*, to know whether I should come over hither yea or no: My Lord *Melfort* advis'd me to stay there a while, for, said he, you will find there is something a doing which will please you. But nothing being done, after that I came to *England*, and suffer'd a very tedious Confinement here. I became acquainted with *Mr. Charnock* and *Capt. King* abroad; I have been with *Mr. Charnock*, *Mr. King*, *Mr. Porter*, *Mr. Goodman* and *Col. Parker*, here in Town several Times, and at several Places. And now I come to what was a doing the last Year. In the Months of *January*, *February*, and *March*, till the King's going to *Flanders*, there were several Conferences, and Consultations about this Matter, between *Sir William Perkins*, *Capt. Porter*, and others; I cannot say that ever I was in Company with *Goodman* at that Time, when we talk'd of any Thing of this Nature. But *Capt. Charnock* carried me to *Sir William Perkins*, whom I had never seen before, to the *Mitre-Tavern* in *St. James's Market*, and there I was ask'd if I would be concern'd in the Easing us from the Yoke that then lay upon us. I ask'd which way it was to be done, for I could not understand what was meant, but the taking off the King, and therefore I ask'd which Way it was to be done. Then they ask'd me, whether I knew where *Capt. Som* liv'd; and they employ'd me to go to his Lodgings, and appointed me to meet them at the *Star-Tavern* in *White-Fryars*. They were there before me, when I had met with the Captain, and brought him thither; but that they thought not a fit Place to consult in, and therefore they went to *Bromfield's* Coffee-house, and there they did talk something of it; but they took one another aside, and talk'd privately among themselves, which I took some Observation and Notice of; and upon Enquiry I was told it was because there was an Old Gentleman in the Company, whom they did not care to acquaint with any Thing of the Matter, because he was too Old to have any Hand in it, and they would acquaint none with their Resolutions, but those that were to be Actors in the Design. My Lord, I was not often in their Company after that, but I heard from Time to Time, how Matters went on, and I heard from *Capt. Porter* particularly, that they had been at *Turnham-Green* and lik'd the Place very well, and that the Design was to take the King off, or else to hurry him away to *Rumney-Marsh* alive, and carry him into *France*.

Char-

Charnock. Surely this is not any Evidence, because Captain *Porter* only spoke of it, and it is by Hearsay, and we are not concern'd what other People talk of.

Mr. At. Gen. Pray who was in the Room, when the Proposals were made?

De la Rue. What Proposals do you mean, Sir?

Mr. At. Gen. At the Tavern in *St. James's-street*.

De la Rue. At the Coffee-house there was a little Talk of it between themselves; but they would not talk much, they said, because there was an old Gentleman there, who was too old to engage, and they would have none but Actors; that I understood to be the Reason why they talked one with another so: But I taking Notice of their Privacy, whenever I asked *Charnock* of it, he referr'd me to Captain *Porter*. But withal he told me several Times, that he believed it would come to nothing. The Design was to carry the King alive into *France*, if they could; if they could not take him alive, then to assassinate him, and pretend it was done by a Random Shot. He told me also, they had sent to King *James* for a Commission to execute this Matter, and to authorize them to carry the King into *France*, if they could take him; and then if they could not, they agreed to excuse themselves, as I said, by pretending that he was killed by a Random Shot. It should seem (as I understood) the Commission was delay'd a long Time, and then they resolved to execute the Design without a Commission; and within a few Days before the King was to go to *Flanders*, I was told, all was ready. But then they wanted a Ship to carry him off when they had taken him; and there met at the *Rose* Tavern, as I remember, Captain *Porter* and Sir *William Perkins*; but I cannot tell whether Mr. *Charnock* was there or not. I asked them if they had concluded upon the Matter; they told me, it was concluded upon, and as I remember, they told me Captain *Charnock*, or *Robinson*, (for he went by both Names) was to have a Recommendation to some Body at *Deal*; and there they were to hire a Vessel, and I was asked whether I would go with him: I told them, I would. But then the King went a little after for *Flanders*; and they had no Time to compleat the whole Affair, and so the Business was put off, till the King's Return this last Winter.

Mr. At. Gen. Well, What say you to any Thing since?

De la Rue. This Year in the Months of *November* and *December*, Mr. *King*, the Prisoner at the Bar, told me, that there would a Major General come over from *France*, and that there was a Man of Quality about the Town, that offered to disburse two or three Thousand Pounds, if King *James* would give Order for it: And this was, as I suppose, to buy Horses to be engaged in this Matter, and he would tell me more a while after. A Month or two after, he told me he was out of Money about it, which could not be had: I was brought in by Captain *Porter*, and they communicated this to me, about the latter End of *January*, or the Beginning of the Month of *February*; they told me there was a Major-General come over from *France*, and there were a great many People come over besides; and there would be something speedily put in Execution, which would be for the King's Service.

L. C. J. Who told you this?

De la Rue. Captain *King*, the next Time I saw him, he told me he wanted a Saddle with Holsters, it was the 7th of *February*, on *Friday* Night, for he

was to go out of Town with some Friends, about something in Order to this Affair, he desired me to lend him one; but I had none, I told him, but I would write to Captain *Porter*, to procure one for him; and he told me he was to go with *Knighly*, *Durant*, and others, to see whether the King went to *Richmond* or to *Hounslow*; because they were told, the King had altered his Journey from *Richmond* to *Hounslow*. He afterwards told me, he went out with his Friends, and the *Sunday* Morning he comes to me, and told me, there was the rarest Place for the Execution of the Design against the King, that was possible to be thought of; if they should have studied never so long, and desired a convenient Place, they could not have had such another. It was within a Quarter of a Mile of the King's House at *Richmond*, in a Lane that leads to the House, and so narrow, that the Officers and the Guard could go but very few a-breast, hardly broad enough for a breast; and there was to be an Ambuscade behind the Park Pales, and the other Side was the River; and, says he, we will have all the Pales sawed so far, that when the King's Coach comes into the Place, the Pales shall be broke down, and we will have a Parcel of Horse ready, that shall be sure to do the Work with the Guards; and when we fire, they shall take Notice to make their Attack. *Durant* desires to command this Party; and they were to be dressed in Country-Men's Habit, that they might the less be taken Notice of: And he said 10 or 12 Men on the other Side would beat 100 of the Guards in that Consternation, especially we having the Park Pales before us to defend us. He asked me if I would be one of the Ambuscade. I told him, I had rather be one of those on Horseback to secure the Retreat, and I would rather attack the Guards. It was late, and so *King* and I went Home; and the next Day I went to see Captain *Porter*, when he was ill of the Gout. This was *Sunday*, the 9th of *February*; we did go to *Porter*, and he was in his Chamber, and two or three more, and they were talking of indifferent Things: He asked for Captain *Charnock*, and they said he was gone out; but he takes out Captain *Porter* into the Yard to talk with him by himself; and what he said to him, I suppose was to tell him what he had told me before: Says Captain *Porter* to him, I have taken care of a Horse for you; we will ride out on *Tuesday* next to see the Place. Mr. *Porter*, and Mr. *King*, and, as I was told, Mr. *Knighly*, went to *Knightsbridge*, and lay there all Night; and the next Day they went out of Town to view the Place. I was at *Porter's* Lodging on the *Monday*, but I was told there by *Keys* and his Landlady, that he lay that Night at the *Swan* at *Knightsbridge*, and was to go out the next Day. On the *Tuesday* Morning I was coming back from *Kensington*, which was the 11th of *February*, and when I was coming along the Street I met with *Keys*, and ask'd him where he was going? says he, I am going to Sir *William Perkins* with a Lorrying Trumpet; for it seems he was raising a Troop of Horse, as *Porter* told me afterwards; and within a little Time afterwards, I saw Captain *Porter* at the End of *Norfolk-street*, and he told me they would all be together at the *Nagg's-head* about 7 or 8 a Clock. I went, and expected to be admitted, and asked if Captain *Porter* was there; they told me he was above, but there were several other Persons with him; and there was a Coach at the Door which had brought two Scotch Gentlemen, of which I thought Sir *George Barclay* was one, whom I heard to be in Town.

Town. I desired to speak with Captain Porter; they told me he was busy above in Company, and could not be spoke with; by which I saw they were not willing that I should come there amongst them, which I took very ill. Captain King came out to me, and was talking with me at the Door, and Captain Charnock comes with another to the Door in a Coach: I saw him, but when, I suppose, he perceived me, he pulls himself back into the Coach, as if he had no Mind to be seen; but finding he could not avoid it, he comes out, and asks me if I would not go up stairs into the Company: I told him, No, I hear they are busy, and because I was not invited up at first, I would not trouble them. I was then thinking of going to my Lord Shrewsbury's Office immediately, to get some Messengers immediately to apprehend them; but then I thought I had not enough to discover their Intentions, and make it out against them, but I should have, one Time or another. I did not see Captain King till Saturday afterwards at 12 a Clock, and I was then at Charnock's Lodging, to see whether he was gone out, that I might be able to give the King the better Account; they told me, he was at the Blue Posts in Spring Garden: I would not go and dine there, but went home, and afterwards went thither; and King, told me, the King did not go out that Day; I told him that I heard so, and would come and see them after Dinner. At this Meeting at Spring Garden I saw Keys was one, and Kenrick, and Sherbourn, and Bryerly, and two that I did not know. This was Saturday the 15th. On Sunday the 16th, I met Mr. King at St. James's-street, and we went thence to the Dog Tavern, and there we supped together, and he told me Sir George Barclay had brought over Sixteen of the Guards, and two Officers, and a Brigadier, and a Sub-Brigadier; and he told me the Day before, that he knew some of them, and was going to meet them; for they were *en Cachet*, as he called it in French, and did not stir abroad without Leave, and were subsisted at the Rate of 4 s. a Day, as the Guards were here. He told me, he had been lately with them a Drinking. I asked him whither they went; he told me, to the Bear Tavern in the Strand; and he told me, Mr. Charnock and Captain Porter had several Conferences with them, to contrive how to take off his Majesty, to Murder and to Assassinate him. And he told me—

Charnock. My Lord, I desire he may be ask'd, whether he was at the Bear-Tavern with these Men.

L. C. J. What he says about this Matter, is what King told him.

Char. That is not Evidence, my Lord.

L. C. J. That is true, not to affect you, but only Mr. King.

De la Rue. Captain King told me besides, that Mr. Charnock did not argue like a Soldier, and reflected upon him for it; for he said, he seemed to desire to have his Post in as little Danger as was possible. And for Mr. Porter, he did not approve of him; for he told me he had as much Fat in his Brains, as he had in his Body. I remember those Words he said; and that what he and Durant had proposed, was rejected, that was about the Ambuscade: For it was said, that after all their Consideration, Sir George Barclay was not sure of Horse enough to carry them off afterwards; wherefore they resolved to Assassinate his Majesty in the Lane coming from Brentford to Turnham-Green; and Sir George Barclay was to command

Eight Persons to assault the King, and those that were in the Coach; and Mr. Charnock was to attack the Guards in the Rear; and one Rookwood, with a Party that came from France, and Captain Porter, in two Wings, were to attack the two Sides of the Guards. I remember on Sunday Night I asked him if he had a good Sword, for I wanted one; and I said to him, Where is your Sword-Cutler? He told me, On the other Side of the Way; and he was sent for to bring a good Sword, and I chose one that was but a little Blade, which he thought would do best, and was ridiculing Captain Charnock's Sword, as being too broad, and of three or four Finger's Breadth. I liked his Sword, and spake to the Man to get me one like his; and he said a Tuesday, that he had sent him to my Lodging, but I had not seen him. On Tuesday, the 18th of February, I went to him, and asked him, whether I should see him in the Afternoon? He told me, No; for he was to go out with *Knighly* to buy Arms. Shall I see you then at Night? said I. I cannot tell whether you can or no, said he. I cannot remember any Thing more that passed upon the 18th. But I spoke to Mr. Charnock, whom I met near his Lodging in Norfolk-street, and desired to have a Word with him towards the Water-Side: I asked him, how the Matter in hand went? Says he, I find People that were sanguine, and hot, and forward, are now grown cold: I believe the King has Notice of it, and the Thing has taken Air; for he has not been abroad a good while. He was not abroad on Saturday, as he usually does go; and I hear, that upon Friday Night it was agreed in Council, to take up several People. Said I, Does the Business go on? No, says he, I believe it is off, because we apprehend the Thing has taken Air; besides Things of such a Nature are not to be communicated to so many, nor delayed; both which are very dangerous; not above Three People should know of it. Said I, How then would they get enough for the Execution? If they be not acquainted with the Design, they will never engage. Well, said he, I believe they are quite off of the Thoughts of it; but you may depend upon the main Business, that will be very speedily, which was the Landing of King James. While I was talking, comes Bryerly from Captain Porter; and after him, came Captain King in a Coach, and asked me, if I would go Home with him? I told him, No, I was not going Home, but was going into White-Fryers, and I took my Leave of them; and nothing past more, that I remember, at that Time. On Wednesday Morning I went to Capt. Charnock's, thinking to learn something how Matters went on; but he was closer, and more reserv'd than before. I asked him to lend me a good Sword. He said, he had none, but Mr. Porter had a good broad flaming Sword, which I thought to be the Sword that Capt. King mentioned to be his: And we had little Talk that Day; for I had Business to do, and I left him pretty soon on the Wednesday. Next Day after, I went to Captain Porter's Lodging, who was removed from Norfolk-street into Maidenhead-lane, to one Brown a Surgeon's, and very few People knew where he was, but those that were of the Party in this Business; and I went into another Room, into the Dining-Room, because his Room had not a Fire, and he came in to us, and I told him what I had heard from Mr. Charnock, that the Thing was quite off. He told me, he heard nothing of it, but found all People that were

were concerned, as resolute for the Execution of it, as ever they were.

Char. My Lord, he speaks of what Capt. Porter told him; that is nothing to me.

L. C. J. No, it is not, nor will it ever be urged against you; it is but Hear-say from another. Go on, Sir.

De la Rue. I stay'd there but a short Time: But Captain Charnock, since you speak of this Matter, I only say, I told Captain Porter what you told me, that you thought they were off of the Business, and that it had taken Air; and I asked him what he thought. Says he, I know nothing of any Alteration; I believe they are as resolute as ever they were: For they fully purpose, that if the King goes abroad on Saturday Morning, we will have all ready. And he told me how it was to be done. He desired me to lie with him on Friday Night, that we might prepare every thing against the next Day: But I could not do that; and therefore he bid me send at Nine, or thereabouts. I told him I would be at my Lodging about that Time, if he would send to me, to be sure about Seven or Eight a Clock in the Morning. About that Time in the Morning Captain Porter sends to me again; a Servant-Maid came to me, for the Black that used to attend him, used only to go abroad at Nights, and was not seen to go in and out a Days, for Fear of being taken Notice of; because, as I said, none but those that were of the Party knew that he lodged there. I dress'd my self, and went to Captain Porter's Lodging. He was in Bed, but presently he rises, and told me in French, *Toutes Parties sont prests*, All things are ready: And when he was up, he put on his Boots; and by and by, in comes Mr. Kenrick; and after him, in comes Mr. Keys; and after him, Mr. King and Mr. Pendergrafs: And Captain King takes Mr. Porter into another Room, and there they were whispering a while, but I did not hear what they said; but King told me afterwards, he did not observe that I was in the other Room. The Question then was asked of Cranbourne, When he saw Sir George Barclay? He said, he just came from him: And then Captain Porter takes a Pen and Ink, and writes down a List of the Persons that he was sure of, and puts me down first. What, says Mr. Pendergrafs, are you the Captain? I told him, I believed I was in before the rest of the Company that were there. Then Captain Porter sends Mr. Cranbourne with the List to Captain Charnock's Lodgings; and in the mean Time, when Mr. Cranbourne was gone, Capt. Porter told me, that Mr. Pendergrafs was to be one of the Eight under Sir George Barclay, that were to Assassinate the King; and now, says he, I am going to lend him a Gun that will carry six or eight Bullets. Says Captain King thereupon to him, I hope you will not fear to break the Glass Windows. No, says he, I will have a Hand or a Finger in the Business. By and by came in News, that Chambers, one of the orderly Men, as they called them that lay at Kensington to give Intelligence, had sent Word that the King was to go abroad, and the Guards were gone out. Durant was to stay last, to see when the King went out. Chambers had been there all the Week. Mr. Cranbourne came back, and told Captain Porter, that Chambers had sent to Captain Charnock, that the King would go out that Day. At which all the Company seemed joyful. Captain Porter told me likewise of several Disappointments that they had, both as to Time, and as to Men; particularly

that one Major Lowick had engaged to bring two Men, and that one of them had told his Wife, that he was to mount for King James's Service; and she went and cried after him when he went to the Coffee-house; and so he was forced to abscond, and so we lost three: And also told me, that Kenrick said he had broke his Arm; and when Captain Porter asked for Sherbourne whom Kenrick had talked of, he said he asked so many Questions that he durst not trust him; so that they had lost Five or Six in the whole: And there was one Plowden that they were disappointed of besides, whom they had very much reckon'd upon. When Mr. Cranbourne brought back the List that Captain Porter sent to Captain Charnock, there were added to it several Names, which Captain Porter said were the Names of the Men that were to be under Captain Charnock, and that it was his Hand; and at the Bottom there were the Letters R. C. which I thought stood for Robert Charnock. The Names made up about seventeen or eighteen: I told him, I thought there had been more. He told me, there would have been more, but that they were under some Disappointments, as I told you before. He asked me to get him some Men to supply the Defect, and I propos'd some Names, to make him believe I was hearty in the Business: We agreed to go to the Blue-Posts in Spring-Garden, and I went under Pretence to get the Men, and came and told them, I had got them, and I found Mr. Pendergrafs there, and I took Mr. Keys thither, and Mr. Porter sent Mr. Cranbourne to Captain Charnock several times; by and by Word was brought that Chambers had sent Word, the King would not go abroad that Day; upon which they all look'd very blank: And Keys came two or three Times in, and went out again; he was several Times up and down, at last he came and told us, the Guards were returned from Richmond foaming; and he went down again to learn further Intelligence, and within a little Time came and told us, the King's Coach was returned to the Mews Gate, and the People very much wondred what should be the Reason, that the King did not go a Hunting for two Saturdays together as he used to do. They seemed to be in a very great Consternation at this News, and Captain Porter said he resolved to go out of Town, and asked me if I would go: I told him, No; I had a Suit in Doctors Commons, and I would go to my Proctor and Lawyers to consult about it. Then he asked Mr. Pendergrafs to go with him, which he agreed to do; and Captain Porter sent Keyes up to give the rest of the Company an Account, that there was no Occasion for them then, and so they dispersed.

Charnock. Did I go out of Town can you tell?

Mr. De la Rue. Now you put me in mind, Mr. Cranbourne brought a Message from you about that Time to Captain Porter, that Sir George Barclay desired to speak with him at his Lodgings. Captain Porter was then apprehensive of Bayliffs meeting with him; and, says he, he knows this, I wonder he would not come to me: But he did not go to him, but resolved speedily to go out of Town; and Keys was to give an Account where he was in the Country, that if Occasion was he might be sent for. This is all I can at present recollect, only, I beg your Pardon, I remember, there were several disloyal Healths drunk in the Company, at several Times, as the restoring the late King, the Health of the Prince of Wales, the late Queen, and the French King; and particularly, I remem-

ber, when the News of the Disappointment was, Mr. Porter took an Orange in his Hand, and squeezed it, and gave it into the Hand of the next Person to him, whom he drank to, and began a Health to the Squeezing the rotten Orange; and said, Though we are disappointed one Day, I hope to have another! And Keys was at Dinner with them all the Time, and every Body drank it, I did not see any Body refuse it, but it went from one to another quite round.

Mr. Att. Gen. Pray, Who were there at that Time?

De la Rue. All the Company pledged the Health, and Mr. Keys was there.

Charnock. Pray was I there?

De la Rue. No.

King. Was I there?

De la Rue. No, there were none of the Prisoners, but Mr. Keys, who belonged to Mr. Porter's Party; Mr. King for his Part belong'd to Sir George Barclay's Party.

Mr. Att. Gen. My Lord, before we go to another Witness, I desire to know whether the Prisoners will ask this Witness any Questions

Char. You say, there was a Note of Names sent by me to Captain Porter, Pray do you know my Hand-writing.

De la Rue. I cannot say, I have seen you write, or that I saw you write that; but I have seen your Writing several Times, and I believe it to be your Hand.

Char. Why so, have you any of my Writing?

De la Rue. I have received several Notes from you, which I believe are your Writing.

Char. But you do not swear, that they were my Writing, or that this was my Writing.

De la Rue. I tell you, you have sent several Notes to me at several Times, and you have owned the Messages came from you, and I do believe it was your Hand-writing, because it was like the rest: And Captain Porter told me, it was your Hand-writing.

Mr. Att. Gen. Pray did Mr. Keys use to sit down at Table with Mr. Porter?

De la Rue. Yes, in all Companies he was treated as familiarly as a Companion, and no Ways as a Servant; and dined and supped at the same Table with the rest.

Mr. Att. Gen. What was done after that the News was brought of the King's not going abroad, and Captain Porter resolving to go into the Country?

De la Rue. When Captain Porter was gone, the Company broke up; and away goes I to Captain Charnock, to see him, about Four of the Clock in the Afternoon. When I came there, his Landlady told me there was a great deal of Company: But I desired her to go in, and tell him that I was there. She did so; and he sent and desired me to come in. I did so, and I saw several Persons there. There was one Douglas, and one Trevor, and four Troopers of my Lord of Oxford's Regiment, and a Trumpeter that was his Servant in Ireland, when he was a Captain in Parker's Regiment; I know Captain Charnock was a great Croney of Parker's, and he sent Letters by me to him: I have seen some of the Letters that Parker sent; and they were drinking the same Healths as were drunk before at the Blue Posts, to the Restoring King James, the Queen, the Prince of Wales, and the Grand Monarch (as they called him) the French King.

L. C. J. Who was in Company then?

De la Rue. Mr. Douglas, Mr. Trevor, four Troopers of my Lord of Oxford's Regiment, one White, one Lowthorp, and one Mason, whom I know when I see very well; Mr. Charnock, one Day in the Summer, asked me to go and drink a Bowl of Punch, which I was unwilling to do; but he must needs press me, and he carries me where Mason and Lowthorp were; at the George Inn in Piccadilly; whence we went to the Prince of Orange's Head; and Captain Charnock spent in Wine and other Liquors upon them a great deal of Money. This was half a Year ago in the Summer Time, but I do not remember that I saw those two, Lowthorp and Mason, afterwards, till the 22d of February.

Mr. Att. Gen. Is this all that you can say as to the Prisoners?

De la Rue. This is all at present that I can recollect.

Mr. Att. Gen. Then for the Satisfaction of the Court and Jury, give us an Account when you first made a Discovery of this Conspiracy, and in what Manner, and to whom.

De la Rue. The last Year I had discovered it if it had come to a Head, and been ripe enough to have been put in Execution; I did then design to acquaint the King with it; but it coming to no Head then, I deferr'd troubling the King with it: And now this Year I designed (had the King gone out the 15th of February) to have prevented any Mischief, but they had Notice that he was not to go: But my Way was, to have put them all into the King's Hands, by getting two or three General Officers to be acquainted with it; and dividing some of the Guards into several Parties in the Lanes between Brentford and Turnham-Green, and so have surprized them and their Horses in the several Inns that they were quartered in. But upon Monday the 17th of February, lest they should alter their Resolution, and I should happen not to be acquainted how it was to be done, I went to a General Officer of my Acquaintance, that is, Brigadier Lewson, to acquaint him with the Matter; but he was gone out of Town with Collonel Fitz Patrick and another: I went then to Durant's Lodgings for a Colour, and it was told me, he had been out all Night. I went again to Brigadier Lewson's, but he was not in Town, and I left Word for him, that the next Day I would wait upon him, and desired he would not go out till I came to him. I went, he was not then at home, but I afterwards met with him, and acquaints him with this Business, and begs of him to acquaint the King with it that Day, which he told me he would. He asked me which Way I purposed to put them into the King's Hands. I told him the best Way and safest for me, was for his Majesty to go out on the 22d, for the Party that was to execute this Design, were not to go out of Town till the Afternoon, to be at Brentford, when the King came back from Hunting, and that they should have two or three Troops of Horse by Parties to have seised them and their Horses in the several Inns and Publick-Houses, where they were dispersed. He said, it was not safe to run that Hazard, but he would offer it to the King, and let me know his Mind. He sent to me the next Day, and told me, he had acquainted the King with it, who desired to know who they were that were concerned in it; then I gave him the Names of those that I knew, and where they lived. I dined with him on Thursday, and told him what had passed on the Wednesday

Wednesday

Tuesday Morning between Captain *Charnock* and I, and what *Porter* said about it on *Wednesday* Night; and after Dinner he said he would go again to the King and acquaint him with it; and that I should come to him on *Friday* Night, which was the Reason I was not there with Captain *Porter*, where Sir *George Barclay* and they were together; for I went to the Play to pass away the Time. When I came home to my Lodging, I found there were a Couple of Letters from the Brigadier, to whom I went, and he told me, the King was desirous to see me: I told him I would wait on him to the King with all my Heart. I went with him to *Kensington*, and was introduced to the King by my Lord *Portland*, where I think I told the King what I have told the Court now.

Mr. Att. Gen. What Day do you say it was you discover'd it to the King?

De la Rue. Brigadier *Lewson* acquainted the King upon the *Tuesday* Night before, and that had been done the Day before, if I could have met with him; but it was *Friday* Night that I was with the King.

Mr. Att. Gen. Will they ask him any Questions?

Char. No, my Lord; I do not think that any Thing he says against me is material at all.

De la Rue. My Lord, I remember one thing more; that upon *Tuesday* Night Mr. King told me he had my blue Coat on.

Mr. Att. Gen. Have you any Thing more to say as to *Keys*.

De la Rue. *Keys* was the only Man that told me of the Meetings.

Char. Where was it that you say I pull'd my self back in the Coach?

De la Rue. It was at the *Nag's-Head* in *St. James's-street*, and he came out of the Coach, and asked me to go up; but I took it ill to be refused before, and because I was not invited up at first, I refused, and said, I had Business elsewhere, and went away.

L. C. J. Will you ask him any more Questions?

Char. No; yet I think I would ask him one Question more. You say, Sir, I carry'd you once to the *George* Inn in *Piccadilly*, where there were *Lowthorpe* and *Mason*: Are you sure it was the *George* Inn?

De la Rue. Yes, sure.

Char. Are you positive it was the *George* Inn?

De la Rue. I believe so, I took it to be that Inn.

Char. You did swear it positively, that it was the *George* Inn before.

De la Rue. I saw those two Men since, which was on *Sunday* the 23d, at *Kensington*, and they said they did quarter at the Inn in *Piccadilly*, where you carried me to them.

Char. Pray, whereabouts is the *George* Inn in *Piccadilly*?

De la Rue. The Inn that I speak of is about the Middle of *Piccadilly* upon the left hand.

Char. There is but one *George* Inn in all *Piccadilly* that ever I heard of, and that is at the further End, there is no such Sign in the Middle.

L. C. J. He is not so positive as to the Sign, but as to the Place.

Char. I appeal to every Body, if he did not swear before positively, that it was the *George* Inn in *Piccadilly*.

De la Rue. I do say, it was to an Inn in *Piccadilly*; and *Lowthorpe* told me on *Sunday* the 23d at *Kensington*, they were quarter'd at an Inn in *Piccadilly*, I take it to be the *George* Inn, if it be not the *George*,

I know not what Sign it is, but I think it is not very material what the Sign was.

Char. Yes, it is all material to us; and I think it is very material for every Man to take care how he forswears himself.

L. C. J. No, it is no forswearing himself, when he is not positive as to the Sign.

Char. But I hope every Body considers, that he did swear it was the *George* Inn, and there is no such Inn there.

De la Rue. This I did not think of, to take so much Notice of it then, as to mind what the Sign was; 'twas you carried me thither.

Char. It was your Interest to mind every Particular; for according to your own Words, you had been a *Trapanner* half a Year before.

De la Rue. I have told you already, I intended never to have been an Evidence; but to put you into the King's Hands, and prevent the Execution of the Design, and I beg'd of the Council to be excused from giving any Evidence, but I could not by any Means get my self excused.

L. C. J. Will Mr. King ask any Questions?

King. No.

L. C. J. Well, what say you *Keys*, will you ask him any Questions?

Keys. My Lord, he says I drank the Health to the Squeezing of the *Orange*, and the other Healths: I was not in the Room while any such Healths were drunk, nor did I sit down while I was there, nor do I know any thing of the *Horses* upon my Word, that he speaks of.

Mr. Att. Gen. Then if they have done with him, there is a noble Lord, whom he has mention'd, as being present when he discover'd this to the King, who we desire may be examined touching that Matter: We must humbly pray my Lord *Portland*, that he will please to be sworn.

L. C. J. Hold my Lord the Book, and swear him. Which was done.

Mr. Att. Gen. My Lord, I humbly ask your Lordship this one Question, Whether Mr. *De la Rue* did make any Discovery of this Matter in your Presence to his Majesty, on *Friday* the 21st of *February*.

E. of Portland. Yes he did.

Mr. Att. Gen. Your Lordship has heard what he said now: Was it to the same Purpose?

E. of Portl. Yes, to the very same Purpose, and he did it before he went in to the King to me, being brought to me by his own Desire: It was all the same in Substance as he has told you now; and afterwards he was brought to the King on *Friday* Night, and there he said the same Things.

Mr. Soll. Gen. This Gentleman did it not to save his own Life, but the King's. Our next Witness, my Lord, is Mr. *Pendergrafs*. (Who was sworn.)

Mr. At. Gen. But before we go on to another Evidence, I would ask Mr. *Porter* one Question, and that is, What is become of the List which you spoke of?

Capt. Porter. I burnt that List.

Mr. At. Gen. Why did you so?

Capt. Porter. Because I thought the Thing was discover'd, and it was not fit to have such a Paper remain.

Mr. Soll. Gen. Mr. *Pendergrafs*, pray will you tell my Lord and the Jury what you know about this Matter, how you came to be acquainted with it, who were concerned in it, and when and how it was to be done.

Capt. Pendergrafs. My Lord, about the 11th of February last, I was sent to by Capt. Porter, where I was in the Country, to come to Town; the 13th of February I met him at the *Blue Posts* in *Spring Garden*; we dined there, and he told me of a Design that was on foot, to take away the King's Life, and that Sir *George Barkley*, and other Officers, were come on purpose out of *France*, in order to execute the same. I was very uneasy when he told me of the thing, but I said nothing, till I had an Opportunity of waiting upon my Lord *Portland*, which I did as soon as I could, and acquainted him with the whole Matter of the Design, and desired him to acquaint the King: This was upon the Friday Night, which was the 14th, and he told me the King had a mind to speak with me; and afterwards my Lord *Portland* carried me into the Kings Closet, where the King ask'd me some Questions. I told him what I knew of the Design, but desir'd to be excus'd from naming any Persons, because my Intention was only to prevent such a barbarous Action, and I was resolv'd not to be a Witness. The King promised me I should be safe, and press'd me to name them, and assur'd me I should not be forc'd to come in as an Evidence; upon which I did tell all that I knew, and went out of Town with Mr. Porter, as resolving not to be an Evidence; but being satisfied, after we were taken, that Mr. Porter, who had engaged me in it, had himself discover'd, and accus'd me, I thought my self discharged from any Obligation of Honour in concealing it, and am willing to give an Account of any thing that I know.

Mr. Att. Gen. We know you do it voluntarily, as you did it at first honourably, and therefore, Sir, we desire you would please to give an Account of your Knowledge in the Matter.

Capt. Pendergrafs. My Lord, as I told you before, the 11th of February I was sent to by Capt. Porter into the Country, where I was with Mr. Bryerly, to come to Town; accordingly the 13th which was the Thursday, I came to Town with Mr. Bryerly, and found Capt. Porter at the *Blue Posts* in *Spring Garden*, and we dined there. There was Keys, and Bryerly, and Porter, and I in company, where he acquainted me with the Design. We had no further Discourse that Day; the next Day we dined at the *Rose Tavern* in *Covent Garden*, where there was King, Bryerly, *Cranbourne*, Porter, and I dined together.

King. Pray, was it by way of Rendezvous or set Meeting?

L. C. J. Holt. Look you, you must stay your time before you ask any Questions of the Witnesses; you shall be heard, when your time comes, as fully as you desire. Go on Sir.

Capt. Penderg. This was Friday the 14th of February, we had some Discourse about the Matter; Capt. King and Capt. Porter went away, and then I went to my Lord *Portland's*, and was by him introduced to the King. The 15th, I came to Capt. Porter's Lodgings, and he was getting ready, in expectation of notice whether they should execute the Design that Day or no. While he was getting ready, I goes to the *Blue Posts*, where was Kenrick and *Sherbourne*, and Mr. Bryerly, and there we were drinking a Glass of Wine, and in comes *Durants*, who was an orderly Man that lay at *Kensington* to give Intelligence; and Bryerly directed him to Capt. Porter's Lodgings to carry the Intelligence which he brought, that the King intended to go out that

Day; upon that he went away to his Lodging, and Capt. Porter came a little time after, booted, to the *Blue Posts*, and there he din'd; within an Hour or two after Capt. Porter came in; Mr. *Charnock* sent a Note to Capt. Porter, to tell him, the King did not go that Day, and so there must be Counter Orders; Capt. Porter told me it was his Hand; the Note was signed R. Robinson, and he shewed me the Note, and acquainted me and the rest of the Company, that they were disappointed that Day, since the King did not go; there we dined, and drank a Bottle of Wine. The next time we met there was Mr. King, and Mr. Keys, and Mr. de la Rue, at Mr. Porter's Lodgings; this was Saturday the 22d in the Morning, there we had some Discourse of the matter; and Capt. Porter, upon notice from Capt. Charnock of the King's intending to go abroad, had sent a List of his Men, and receiv'd back a List of Capt. Charnock's, and Capt. Porter, and De la Rue, and we went to the *Blue Posts* to dine, where we had an account afterwards, that the King did not go, and so there was another Disappointment; and a little after Keys came in, and said, the Guards were come home all in a foam, and the Kings Coaches come back to the *Mews*. Capt. Porter then thought all was discover'd, and says he, I will go into the Country, Mr. Pendergrafs, will you go with me? With all my Heart, said I, so we sent Keys to get our Horses ready; we lay at *Epsom* that Night, and from thence to another Place we went the next Day, where we lay till Thursday Morning, when Capt. Porter, Mr. Keys and I was taken together, the Place was called *Leatherhead*, in *Surrey*, whence we were brought up to Town, and have remained Prisoners ever since.

Mr. Att. Gen. Which of the Prisoners were there present upon the Saturday the 22d at Capt. Porter's Lodgings?

Capt. Pendergrafs. There was Capt. King and Mr. Keys.

Mr. Att. Gen. Pray was there any Discourse about a Gun, and who was to have it?

Capt. Pend. Capt. Porter told me there was a Musketoon that he had would carry 6 or 8 Bullets, and I should have it, being to joyn with Sir *George Barclay* to set upon the King's Coach, and directed me to be sure to shoot some of the Horses to stop their Course if they seem'd to drive furiously away; and Mr. *Cranbourn* was the Person that carried the Messages from Mr. Charnock to Mr. Porter.

Mr. Sol. Gen. Do you remember Sir, that Keys said the Guards were come back?

Capt. Pendergrafs. Yes, and that they were all in a Foam, and the Coaches were come back to the *Mews Gate*, and one of my Lord of *Oxford's* Regiment told him there was something extraordinary mutter'd among the People, upon which they concluded it was discovered.

Mr. Att. Gen. Will the Prisoners ask him any Questions?

Char. King, and Keys. No.

Mr. Att. Gen. Then I must beg the Favour of my Lord *Portland* to give himself the further trouble of acquainting the Court how this Gentleman behaved himself in reference to this Discovery.

E. of Portland. My Lord, it was, as he has acquainted you. This Gentleman came to me upon the Friday Night, and told me of it; and then upon the same Friday Night, which was the 14th, I think the Night before the first time that it was to have been executed, and declared his Abhorrence of such a barbarous Business: And he told

told me his Design of coming into it, and keeping Company with them was to save the King's Life by acquainting me with it, and discovering it, which he would do upon a Promise that he should not be used as an Evidence, nor pressed so much as to name Names, which Promise I made him; and the same Promises were made him that Day seven-night, when I carried him to the King. But the King pressing him to name their Names, assuring him he should be safe and not forced to be an Evidence, he did then name the Names under that Promise from the King.

Mr. Att. Gen. Pray my Lord, who was by then besides your Lordship?

E. of Portl. My Lord Cuts.

Mr. Att. Gen. We must desire my Lord Cuts will please to be sworn. [Which was done.]

Mr. Sol. Gen. Pray, my Lord, will you please to acquaint the Court and the jury what happen'd at that time.

L. Cuts. My Lords, I was in the King's Closet that same Friday Night when Mr. Pendergrafs was brought in there: 'Twas, as near as I can remember, between 12 and 1 a Clock at Night; no Body was present but my self, with the King, when my Lord Portland came in with this Gentleman: All that he said to the King at first was, that he had a Discovery to make of a Design to assassinate his Person; if that his Name might not be made use of, nor he forced to be an Accuser or a Witness. And therefore desired to be excused if he said no more; then desiring the King not to go out the next Day, but to take care of himself, because there were some Persons had resolved to assassinate him coming home; but beg'd to be excus'd from naming Names, for he said he would rather die than betray his Friend, and he thought it enough that he had saved his Majesty's Life. It was above half an Hour before the King could persuade him to name Names, and he would not, till the King had given him his Word and Honour that he should not be obliged to be a Witness, and then he did name the Names. Afterwards, when Captain Porter and Mr. Pendergrafs were taken, as my Station obliged me to give Orders, and require Intelligence, and assist at the securing and examination of the Conspirators, I happen'd to see them before they were carried into the Council, and presently knew Mr. Pendergrafs to be the Person that was with the King that Friday Night; I had a great Compassion to see Gentlemen and Officers, whom I had some Knowledge of before, in such a Condition, and I told them naturally what my Opinion was: Mr. Porter did seem sorry for what he had done, and inclin'd to make the King that Atonement for his Fault which he has now done. When I came out and told Mr. Pendergrafs this, and that Mr. Porter had named him, and owned the whole Matter, I only gave him my Opinion upon it, that I thought he was discharged from any Obligation of Friendship; and he seemed then inclined to do the same likewise that Mr. Porter had done.

Mr. Sol. Gen. Swear Thomas Berthram. [Which was done.] Pray do you give my Lord and the jury an Account how long you have known Mr. Charnock to be engaged in this Conspiracy: Tell your whole Knowledge as to him.

Mr. Berth. The 8th or 9th of February last I was crossing Covent-Garden, I light upon one Mr. Trevor, who is now in Newgate, and he told me he was going down to Mr. Charnock's Lodgings, and

that he heard him say he wanted to speak with me: I told him he had no Business with me nor I with him that I knew of: But he prevailed upon me to go with him, and when we came to Mr. Charnock's Lodgings, he met me in the Entry.

Mr. Sol. Gen. Who did?

Mr. Berth. Mr. Charnock did. He told me he wanted to speak with me, and took me into a back Room, because he had Company in his own; and he told me the King, that is, King James, was a coming, and there was a Piece of Service to be done before he could come, and if I would assist in it, it would answer my Expectation. I asked him what was to be done? He answered, you must only go abroad to take the Air, you will see several of your Acquaintance there. I desired to know what was to be done? He said it was to cut off this Spark, or to take off this Spark, I can't tell which, and then the King will come home quietly.

Mr. Att. Gen. Who were to cut him off?

Mr. Berth. The Party that I was to meet when we rode out to take the Air.

L. C. J. Who did they say they were to take off?

Mr. Berth. He said we must take off this Spark, or cut off this Spark, I can't tell which, which I understood to be the King.

Mr. Att. Gen. How long had you known Charnock?

Mr. Berth. By Times, seven Years.

Mr. Comper. How came you acquainted with him?

Mr. Berth. We were in the Army together; he was a Lieutenant in Col. Parker's Regiment, and I was a Trooper there then.

Mr. Sol. Gen. What Discourse was there between you and Charnock after you heard there were Warrants out?

Mr. Berth. Sir I have not yet done with what past at his Lodgings. He asked me if I would accept of being one in the Business? I told him I could not engage in it, for I had disposed of my self otherwise. So we came out of that little Room, and he desired me to come into his Room and drink a Glass of Wine: There were three or four Gentlemen that I did not know; and then there was one Mr. Chambers; and Mr. Trevor, and Mr. Lee which Mr. Chambers fetch'd afterwards in there.

Mr. Att. Gen. He would not be engaged there because he had otherwise disposed of himself: Indeed, he was engaged with Sir William Perkins.

Mr. Berth. After I came in I observed great Whisperings among the Company, and frequent calling out of Mr. Charnock for private Discourse; but there was no other particular Discourse about this matter that Night.

Mr. Sol. Gen. Pray when did you see Mr. Charnock again, and where?

Mr. Berth. At another time, which was the 22d of February, I met him at Lincolns-Inn back Gate; and meeting me there, he called me aside, and took me within the Inn upon the Pav'd-stones, we took a Turn there: He told me Warrants were out against us as he heard, and we had as good, if I would come to his Lodging, go out to Kensington and do the Work at once and take him off, and then we shall be quiet, and have the King peaceably here. I am sure he cannot say that I do him a word of wrong in what I have said, he knows it all to be true.

Mr. Comper. Has any Body else engaged you in this Matter? Do you know one Lowick?

Mr.

Mr. Berth. If that be necessary I will tell it. But this is all that I know of any thing of the Prisoners; only *Mr. Charnock* did ask me as to *Mr. Trevor*, what I thought of him, whether he might trust him? I told him he might do what he pleased.

L. C. J. H. *Mr. Charnock* will you ask him any Questions? for his Evidence relates only to you.

Char. No, I think not. Pray did I send for you.

Mr. Berth. I met *Mr. Trevor*, and he told me, he was coming to your Lodgings, and that you desired to speak with me: And when I came, you told me your self you wanted to speak with me: Indeed I knew no Business you had with me, or I with you.

Mr. Att. Gen. We have one more Witness, and that is one *Mr. Boyse*. [who was Sworn.]

Mr. Sol. Gen. Pray *Mr. Boyse* will you give an Account when you were spoke to about this Design, and by whom.

Mr. Boyse. On Friday the 14th of February I went to visit *Mr. King*, and he was the first that ever told me of the Business; it was in his own Chamber, he told me there was a great Undertaking in Hand, and he had put my Name into the List, and if I would make one, I should have a Horse; and he asked me if I had any Boots? I said no. He desired me to see if I could get any, and to meet him in the Afternoon at the *Rose Tavern* in *Covent Garden*; but in the mean time he bid me go to *Mr. Knightley* and he would inform me further. I went to *Mr. Knightley*, and I came to *Mr. King* again in the Afternoon at the *Rose Tavern*, and he desired me not to be out of the way the next Day, but to be at my Lodging, and he would come or send for me; and I had Twenty Shillings of him to buy Boots, and he still refer'd me to *Mr. Knightley*. When I came to *Mr. Knightley* I was told there was Nothing to be done that Day: But I was desired to be always in the way, for the Business would soon be over. This is all the Discourse that Day. After that I met *Mr. King* several times, who still refer'd me to *Mr. Knightley*, and when I asked him for my Horse, he told me I should have one allotted for me time enough; and when this thing was done we should be happy: But he never told me it was to take off the King.

Mr. Att. Gen. Pray what did you understand was to be done?

Mr. Boyse. I did believe I should know further of it; for I would not have engaged till I did know. But he did not tell me it was to take off the King, or what it was. This to the best of my Memory, is what I know of the matter.

Mr. Att. Gen. Pray when did you come from France?

Mr. Boyse. He told me indeed several were come from France, and that the King would land very speedily.

Mr. Att. Gen. But when did you come?

Mr. Boyse. I came the beginning of June last.

Mr. Att. Gen. Do you remember nothing about *Sir George Barclay*?

Mr. Boyse. Yes, he told me *Sir George Barclay* would Command the Party, and that there were about 40, or 45, that were concerned in the Design.

Mr. Sol. Gen. Do you remember nothing else?

Mr. Boyse. No truly, I do not remember any thing more concerning *Mr. King*.

L. C. J. H. *Mr. King* will you ask him any Questions? for what he says relates only to you.

King. No my Lord.

Mr. Att. Gen. Then we have done my Lord; we rest it here till we hear what they can say.

L. C. J. H. *Mr. Charnock*, The King's Council have done all the Evidence they design to give, and now is your time to make your Defence.

Charnock. My Lord, I have taken some Notes of the Evidence, and made some Remarks, which must be my Defence; and I shall take them in Order of Time as they were given: The first is *Capt. Porter*; and the main Evidence he hath given against me, is my informing him that *Sir George Barclay* was come from France, with a Commission all written with King James's own Hand, thereby authorizing us to raise War against the Person of King William. But then he says at the same time, I told him I never saw it; and I know not how I should; for it is impossible to see a Thing that is invisible, a Thing that never was in being, and to suppose that ever there should be such a Commission under the King's own Hand, and writ with his own Hand, is such a Contradiction to all Sense and Reason, that no rational Man can be guilty of; and therefore I hope the Court and the Jury will consider of it, and reject it all as a foolish, idle, nonsensical Fiction and Story. It is very well known that King James has always had, and still has, notwithstanding his present Sufferings and Circumstances, his Ministers of State about him, in how slender a Condition soever they may be, or be represented to be. He has my Lord Middleton as his Secretary of State, he has been all along with him, and it is not supposable that he should put himself to the Trouble of Writing any Commissions with his own Hand, when there were others enough to do it for him, and he need only sign the Top of it James R. much less is it supposable, that he should give any such Commission as this that they speak of, and Write it all with his own Hand, and that *Sir George Barclay* should bring it over. This is such a nonsensical ridiculous Story as ought to be rejected with Scorn and Contempt, and is only fit to be laughed at: I hope every Body will look upon it as such, and think that such Evidence is very incredible.

My Lord, Another Thing that I observe out of *Capt. Porter's* Evidence is this, he says, he and I was to command a Party; he knows what he himself intended to do, but I am sure I know of no Party that I was to command. It is all a Dream a meer Dream and a Fiction. He thinks fit to acknowledge his own Guilt of a very bad Crime, and he may accuse himself as long as he will, but I think that will not make me Guilty of any such Thing, only because he says so: He does not say what Men they were, or who they were; and it cannot be an Overt-Act, unless he can tell who they were. He says *Sir George Barclay* and I met at the *Sun Tavern* in the Strand, and at several other Places where this Matter was discoursed of, and a great many were supposed to be in the Assassination, to the Number of Forty; but he does not mention any thing then of its being discoursed who they were to be: And is it supposable when the Design he talks of was so near being put in Execution, it should not be known who should engage in it? For my part, I deny that ever I was with him at any Place where *Sir George Barclay*, or any Body else, talked of any such thing. When I was examined before the Council, my Lord Keeper asked me when I saw the Duke of Berwick? I thought it not fit to answer

answer that Question, because I knew the Duke of *Bermick* was out-lawed here, and I might accuse my self if I acknowledged having been in his Company, tho' it were at *St. Germain's*. But I said I never believed he was in *London*, and I do not believe he was. I heard that Colonel *Parker* was in *England*, but I did not see him; and as to the Major-General and other Officers, they talk of, it is all a Jest to me, and it is no way at all to be believed or credited; that because other Men have Notions of Castles in the Air, I must be so foolish as to believe such Impertinencies too. He says I sent him a List of Men, and written with my own Hand, and subscribed with the two Letters of my Name; he does not swear he saw me write it, and Similitude of Hands was never thought good in Criminal Causes; and I believe it was never look'd upon for Law, that it should be a good Evidence for a Man to swear such a Writing was another Man's own Hand, unless he says he saw him write it, and kept it in his own Custody till it should be produced as Evidence, and produce it in open Court, and not let it go out of his Custody till then. All these things, I apprehend, the Law judges necessary to make a good Proof of a Writing to be of a Man's own Hand; but here is nothing of that here: Here is nothing produced, nor does he say he saw me write it; and so I think it all goes for nothing, a meer idle Invention of his own. My Lord, upon this Evidence there is not any positive Proof of my doing an Overt Act; by buying of Arms or Horses, or writing Letters, or any thing of that Nature; and I hope if I speak irregularly, your Lordship will pardon me; I am no Lawyer, and I have no Assistance but my own nonsensical Notes to depend upon for my Defence. My Lord, he speaks about Horses that were to be provided, but there is no Proof of that; I never bought any Horses, or borrowed any; nay, nor is there any Proof, that while this bloody Assassination that he owns himself to have contrived and carried on, was on foot, I had so much as a Horse any where, and that I should be so vain to get Men to engage in such an Expedition with me, and have never a Horse my self, is very strange. The Conspiracy he says was depending a long while, and whenever it was to be put in Execution, we were to go expeditionally to work, least it should be discover'd; and 'tis very strange then that I should never have provided the least thing in the World to do it with! neither Arms, nor Horse, nor any thing: For there is no Proof of any such thing against me, but only Talk, as he is pleas'd to swear, to take my Life to save his own: And I hope your Lordship and the Court will declare to the Jury, that here is no Evidence of any Overt Act against me.

My Lord, there is another Thing he says against me: He says he had a Note from me by the Name of *Robinson*, to countermand the Orders upon the 15th: My Lord, the Truth of that would depend very much upon the producing of that Note, then it would be seen whether it was my Hand, and what it contained, and what it related to: For my part I utterly deny I ever sent any such Note wherein there was a Word of the King, or of any Fact of this Nature that was to be committed, or any thing relating to it, if it were true that I had written any Note to him at all; and I hope the Jury will consider, and the Court will direct them so to do: For I

know not that they are any more skill'd in the Law than my self, and therefore I hope your Lordship will give them ample and true Directions, what is Law and what is not Law, and what is Evidence and what is not Evidence; and this cannot be Evidence to affect me at all, there being nothing that doth appear or is produced.

My Lord, he says, there were Four that were to go with Sir *George Barclay*, that were to be appointed out of each Party; he does not say I nam'd any, nor does he name any himself; but it seems they knew what was to be done; and truly if any Thing was to be done, they knew it themselves (and no Body else that I know of) who swear to save their Lives; and get a Reward. If the Four were to be out of the Party, which he calls his own, he knows them best, and I believe the Party was his own, and the Plot his own too, and no Body's else; he does not say that I appointed any one, he only says there were Four to be appointed out of a Party, which Party was in *Nubibus*, and so is the whole Design, unless it be in his Head, fram'd there by his own Invention, for it only exists there that I know of.

My Lord, these Observations I make upon Captain *Porter's* Evidence: The next Witness is Mr. *de la Rue*, and he is a very good Evidence indeed, if Hearsay be to be believ'd; he says I was very shie of Discoursing with him about it, that I told him it would come to Nothing, without saying what would come to Nothing, not that the Plot would come to Nothing, for there was nothing at all spoken of any Plot, much less of a Design to assassinate the King. This is all that he says, as to me of his own Knowledge, all the rest relating to me is but what Captain *Porter* told him. But to begin with the Beginning of his Evidence, he says one Thing which is very Odd, that at the *Rose-Tavern*, the last Year, there was a Consultation about carrying King *William* away into *France*, in a Vessel alive, and that Sir *William Perkins* ask'd him whether he would go along with me to *Deale*, to procure a Vessel to carry the King over; he might as well have ask'd him to go with me to *Constantinople*, or any other Place in the World, as to *Deale*, and about any other Employment, as that. A pretty Sort of Thing, that I should go to *Deale* to hire a Vessel to carry the King over into *France*; I that know no Sea-Man, or any Master of a Vessel at *Deale*, that I should be employ'd to hire a Ship before the Design was form'd, as he says, it was not come to an Head. If we had got the Prince of *Orange* into our Power: If we had King *William* in our Power, how was it possible we should ever have carry'd him to *Deale*, I cannot but think any one would believe us Mad-men to entertain such a Chimera in our Heads. What nonsensical Stories are all these; that we should carry King *William* to *Deale*, and I hire a Ship to transport him to *France*; I hope the Jury, and all that hear it, will consider what ridiculous Stuff, these Men talk of, as Evidence against Men for their Lives. Then he talks of my coming in a Coach to the *Nagg's-Head* Door, where I was very shie of letting him see me, and afterwards when I came out ask'd him to go into the Company; but he was angry that they had deny'd to admit him before, and so would not go up: What a strange Sort of a contradictory Story is all this? here was a Conference it seems appointed the Night before to be at that Place, when Captain *Porter*, and Captain *King*, and Mr. *Knighly* were just come from view.

viewing the Ground, and were to make their Report, and *Porter* told him of it, and yet they would not admit him, and I was shie of him, and yet ask'd him to go up: What contradictory Non-sense is this? it must needs be look'd upon as improbable or impossible to be True, that I should ask him to go up into such a Company, where such a mighty Conference was to be had about such a great Transaction, when I had shewn my self apparently shie of him, by falling back in the Coach, as being unwilling to let him see me; I hope the Jury will consider the self Contradictoriness and Improbability of such Evidence. Then there is another Thing, and that is, what he says Captain *King* said, he did not believe it would come to any Thing, because he did not like me as being no Soldier, for I was for keeping out of Danger, and having an easie Post: If he means I had no Mind to be in a Plot, he was in the Right of it, for no Man in his Senses would ever be engaged in any such desperate Designs, where there is such apparent Destruction in view; so I cannot apprehend what there is in that of any Objection against me, or any Proof that I had a Hand in this Plot, because I desired to keep out of Danger. It was said that I was to have attacked the King, with Sir *George Barclay*, but Captain *Porter* says, we were to be together, to attack the Guards; and both can't be True, nor indeed is either of them True, but a Figment and Invention of their own: Then he says he ask'd *Keys* for a good Sword. and he told me I had a very good one: 'Tis true, I had a Sword, I always wore one, but it does not follow that that was to be employ'd upon such an Enterprize as this. And then he tells you a Story again of Captain *Porter's* having a broad flaming Two-edg'd Sword. But what is all this to the Purpose? Does this prove any Thing against me, that I consented to, or was engaged in any such bloody Design as this. He saith that on *Wednesday* he came to me, and ask'd me of the Affair, how it went on; he doth not say what the Affair was, nor he doth not say it was about killing the King; nor indeed is it probable it should be, for he says I was always shie of him, and that he could never get any Intelligence but from Captain *Porter*. He saith I told him it was a Thing would not admit of being delay'd, and that only Three People should know such a Thing, but still he doth not tell you what this Thing was, and therefore I do not apprehend how this should affect me, as Evidence of my intending to assassinate the King. He saith he had it from Capt. *Porter*, that Mr. *Chambers* was an orderly Man, a Word I do not understand, to convey Intelligence to me; and that *Durant* was an orderly Man, to convey Intelligence elsewhere: Still this is all but what Captain *Porter* told him, and there is no Proof that I sent Mr. *Chambers* any where; *Chambers*, I acknowledge I know, he is a poor Man, and my Lord Chief Justice *Treby*, I suppose, cannot but Remember that he was in Prison, and try'd before him, upon the Account of Piracy; I must needs say, I thought him an honest Man, because he had serv'd with me in *Ireland*: I knew he was in great want, and therefore I gave him his Diet and Lodging; there is no Proof that I furnished him with Money, but I acknowledge I did with Bread and Drink, to keep him from Starving; that I think was an Act of Charity, but it cannot be interpreted, nor is there any Proof to warrant it, that it was with any ill Design, or that I gave it him to hire him or engage him to any such Purpose. My Lord,

they would make it as if the Persons that were intended to be employ'd in this pretended Plot, were to be regular Troops, and to have Courts of Guard, and to be dispos'd of into Quarters, and this was to be done by these orderly Men: I profess I know not what to make of it, it is such a Medley, a Fancy, and a Chimera, that it is perfectly Unintelligible, whether these were to be general Officers, or private Centinels, or what. Then my Lord, he saith *Cranbourne* brought a List from me to Captain *Porter*, with R. C. at the Bottom: First, that does not prove that it was my List, nor doth that R. C. being at the Bottom of the List, make me a Partner in this Conspiracy. Then he saith that *Cranbourne* came to the *Blue-Posts*, as from me, to acquaint them of the Disappointment, because the King did not go out that Day: Surely, my Lord, I need not trouble you with saying any Thing to this, for it is all, as to me, but Hearsay; and what am I concern'd in that which other People talk amongst themselves? tho' they do use my Name, how can I help that? My Lord, he saith himself that he intended to discover this Conspiracy a Year ago, but the Thing failing then, which how ridiculous it was I observed before, he let it alone for that Time; but when I met him at the *Nag's-Head* Door, and he was so angry for their not admitting him into their Company, which was three Weeks before this Design they talk of was to be executed, he had a Mind to go to the Secretaries, and get Warrants and Messengers to apprehend us; and he saith he hath often come to me, to ask about the Affair, as he calls it, but I was still reserv'd and shye, and told him nothing would come of it. From all this I would observe that I have very good Reason to look upon him to be no Evidence, not only for the same Reason that I objected against Mr. *Porter*, that by his own Acknowledgment he is *Particeps Criminis*, but his coming to me after he resolv'd to discover, plainly declares, that he set himself to be a Trappanner, and no Trappanner can in the Judgment of any honest or understanding Man, be a credible Person as an Evidence to take away any Man's Life: I am sure what he saith of my Shyness to converse with him, and his own frequent Attempts to converse with me, shews plainly, he was willing to Trapan me, for so he himself saith. He came to me several Times, and took me aside, to ask how the Affair went on, but he did it only to enable himself, to make the better Discovery, which makes him Ten thousand Times worse, than if he had only gone at First and told what he pretends he knew, and afterwards forbore the Company. Besides, my Lord, as to Trapping, I have read in a Book of Sir *Robert Atkins*, that to be *Particeps Criminis*, proves a Person to be a bad Man, and consequently not so Credible, especially if it can appear the Witness has Trapan'd the Prisoner into the committing the Crime; then the Witness will appear to be guilty of a far more higher Crime than the Prisoner, and therefore ought not to be believ'd as a credible Witness against the Prisoner, for he is a credible Witness that has the Credit of being a good and honest Man, which a Trappanner cannot have; and this Trapping proves withal that the Trappanner did bear a Spight, and Malice against the Person Trapped, and intended to do him a Mischief, and design'd to take away his Life: Shall such a one, says he, be a credible Witness, and be believed against him? *God forbid!*

My Lord, as to Mr. *Pendergrafs*, who is the next Witness, I do not take my self to be much concerned in all he saith. I think I have seen him but once of a great while, and that was on the *Wednesday* or *Thursday* before I was taken up; but, my Lord, I have this to say to his Evidence, I desire your Lordship to observe I was not in the Proclamation, though he was: They took Occasion to have me secured as a Colour, or to save Expences, I suppose, while they themselves went out of the Way, to have their Names put into the Proclamation; that some Body might colourably take them, and get the King's Money. All that he saith of me, is, that *Cranbourne* brought Messages from me: One Time I writ a Note, sign'd *R. Robinson*; another Time I sent a List subscribed *R. C.* and that *Porter* shew'd him them both; but all this is but Hear-say, still out of the Mouth of *Porter*, and can be no Proof at all against me. He saith, upon the Disappointment he and they went to *Epsom*, which to me seems a very remarkable Thing; for if he say true, it is plain, this was before by him discover'd at Court; and to me it shews, that he had a strong Design of getting Money, and taking away Peoples Lives upon that Account; and that Captain *Porter* was in the same Design: For *De la Rue* saith, Captain *Porter* ask'd him to go with them, as well as *Pendergrafs*. Now can it be supposed, that these three should agree to go together, unless they were in a Combination, as it appears they now are? And I cannot but think, the Court and the Jury will think it reasonable to believe: For if I was in a Plot of such a Nature as this, and should hurry out of Town after I had discover'd it, with three or four of the People that were concern'd in it, and some of them afterwards pretend to be Discoverers too, no Body in the World can believe but they contriv'd the Thing amongst themselves, and went out of Town only for a Colour, that they might be put in the Proclamation, and pretend to be taken, to entitle themselves to the Reward.

L. C. J. Really, Mr. *Charnock*, I am loth to interrupt you in any Part of your Defence, but I do not understand what you mean by this, and I very willingly would understand you if I could.

Char. My Lord, I say, I look upon it, that they were all combin'd together in a Design to get the King's Money, and take away our Lives; that *Porter* should desire them to go with him, into the Country, and particularly Mr. *Pendergrafs*, who discover'd this to the King, and then that he should agree to go with him.

L. C. J. Truly, I do not understand the Force of your Argument; that because upon the supposed Discovery, Captain *Porter* went to *Epsom*, and Mr. *Pendergrafs* went with him, therefore this must be a Design between them to get the King's Money, I cannot any Way see how that must follow.

Char. Pray, my Lord, to what End should he run out of Town, upon the Apprehension of the Discovery, and with Captain *Porter* too, when he actually had got the King's Promise that he should be safe, and not be a Witness, unless it were a Combination between them, in order to set up as Witnesses against us, to get the King's Money?

L. C. J. I'll tell you, why he was willing to go with Captain *Porter*, because he had not a Mind that the Discovery he had made, should be any Way known to have come from him; for you see how unwilling he was to name Names, and so kept Captain *Porter* Company still, as his Friend, resolving not to be an Evidence against him.

Char. Well, my Lord, after all, I hope, what he saith cannot be look'd upon as any Evidence against me; because whatsoever he saith relating to me, is about the Notes and Messages that he saith were brought to Captain *Porter*, and all of it can amount at the utmost to Hearsay, from other People's Mouths. My Lord, the last Evidence that I apprehend relates any Way to me, is that of Mr. *Bertram*, and he talks of what I should say to him upon the ninth of *February*, that I should take him into a back Room into my Lodgings, and there tell him, That there was something in Hand for the Restoring King *James*, but there was somewhat to be done first to take off the Spark, or I do not know what, nor do I believe any Body else doth know how to make any thing of it. It is a very improbable Thing, that this Matter which was to be so great a Secret, and which I should say, was not fit to be communicated to above Three People at once, I should send for a private Trooper, for he was no otherwise, to communicate so great a Matter to him; besides that, I cannot, nor, I believe, can any Body else tell what to make of the Words, *Taking off the Spark*, how to construe that to make it an Evidence of an Intention to kill the King. It might be probable I might say, there was a Noise that King *James* would come, for it hath been in the *Gazettes* and the publick Prints, that there was such an Expectation, and Preparation for it on the Coast of *France*; but it is not probable, I am sure it is not true, that I should say there was something to be done first, for the *taking off the Spark*. Evidence of a Thing of this Nature ought to be plain and clear, and distinct: He doth say nothing that I talk'd to him of Killing the King, or of Assassinating him, or of my asking him to be one in any such Thing, and that I furnish'd him with Arms, and an Horse on any such Design, but only that he might ride out, and take the Air, and there he should meet with some of his Acquaintance: What unaccountable loose Stuff, is all this? It is very strange, my Lord, that if I liked the Man so well, as I must do if I would send for him to communicate a Thing of this Nature to him, that I should not put it into a Method, that he might be one with us in the Execution of it: But there cannot be any Thing inferred of that Nature, for which we stand accused, from any Words that he saith were spoken. My Lord, he doth say indeed that he told me, that he had disposed of himself otherwise; but that is no more certain, nor can be referred to any particular Thing, than the rest. He might dispose of himself to a Friend, he might dispose of himself to his Wife; but what is all that to this Purpose? And he might indeed, if King *James* came, dispose of himself to assist him, or to oppose him, or to let it alone; but all this is nothing to the Business for which we are here to be try'd, it's all loose, idle, impertinent Talk, and not at all to the Purpose. And then he saith, that afterwards I met him at *Lincoln's-Inn* back Gate, and took him into *Lincoln's-Inn*, and told him, there were Warrants out, and we had as good do the Business presently. My Lord, I do remember I met him at *Lincoln's-Inn* Gate, and it was upon *Saturday* the Day before I was taken up, and it was about Twelve a Clock at Noon, and I did hear there were Warrants out, but there never was that Intimacy between him and me, that I should desire him to come to my Lodging, or that I should support him in any Sort. My Lord, I have made

a few Remarks to your Lordship and the Jury, upon the Evidence; I am sensible I have given the Court a great deal of Trouble, but I hope you will consider it is for my Life, and my All, and I hope you will be of Opinion, that the Evidence produced against me is frivolous and weak, and that the Witnesses have a very bad Cause of it, since all that they talk of, if it were true, is only Discourse, and they are forced to supply in Words, what they want in Fact.

L. C. J. Have you any more to say, Sir?

Char. Yes, my Lord, I desire to take Notice to the Court and the Jury, that the Business of bare Words was never look'd upon in Law as an Overt Act to prove a Man guilty of High Treason, nor that several Persons met together doth prove a Conspiracy. These Persons proving that I met with them doth not prove that I was concerned in the Assassination, nor that I consented to any such Thing; besides, my Lord, I am taxed in the Indictment with buying Arms and Horses for this Business; but there is not one Word of it proved, or of my riding out to view the Ground, nor any thing, that I was to be concern'd about this villanous Act. My Lord, if I had bought any Arms, that had not been an Overt Act of it self; it must be proved first that I bought them with such an Intent to employ them about such a Business; and it neither is, nor can be proved, that I furnish'd any Body with Horses or Arms: And therefore the bare Buying of Arms of it self, as far as I am informed of the Law, would be no Proof of an Overt Act. To prove an Overt Act of Treason by the buying of Arms, it must be prov'd that I declar'd some way that I bought them with such an Intent, or else it is no Proof at all; but now if you have no Evidence that I bought any Arms at all, I look upon it that there is no Possibility to make that an Overt Act. If you please, my Lord, to bear with me to give you the Trouble of Reading some short Notes, which I have taken out of some Law-Books about Overt Acts.

L. C. J. No, the Court won't think it any Trouble: Make your Defence as well as you can, and take your own Way.

Char. By Lord, I hope you will allow what hath been collected out of the Books of Law as to Overt Acts: There is *Hale's Pleas of the Crown* is positive in it, That an Overt Act must be alledged in every Indictment, and proved; That Compassing the Death of the King by bare Words, is no Overt Act. Now if bare Words be no Overt Act, why then all the Conspiracy that is here proved, supposing all to be true that is said, it is no Overt Act; for it is all but Words still. And bare Conspiring is no Overt Act, according to my Lord *Coke's* Opinion in his *Third Institutes*; and the utmost of all that any of them prove against me is, that I did say so, and so, which is but bare Conspiring. Pray, my Lord, let me know upon what Law it is that I am Indicted and Try'd, I suppose it is upon 25 *Edw. 3.*

L. C. J. Yes, you are, and only upon that Statute.

Char. My Lord, *Coke*, in his *Third Institutes*, saith, The Open Act must be manifestly proved. If divers conspire the Death of the King, and the Manner how, and thereupon provide Weapons, Powder, Poison, send Letters, or the like, for the Execution of the Conspiracy, or Preparation be made by some Overt Act, to depose the King, or take him by Force, or by strong Hand, or imprison him; these are sufficient Overt Acts, to prove the Compassing the King's Death. But by

this it is plain, that bare Conspiring is not Treason, as wanting a sufficient Overt Act to declare the Intention. Now, my Lord, I say, that in all this Evidence that hath been given against me, there is not one Overt Act proved of my Providing Arms, or sending Letters, or the like. And the same Page of the same Book, the *Third Institutes*, Chap. *High-Treason*, upon the Words *provable Attain*, it must be by Overt Act, it must be upon direct and manifest Proof, not upon conjectural Presumptions or Inferences, or Strains of Wit: So that the strongest Presumptions upon the whole Earth will never be able to make an Overt Act, without plain and manifest Proof. And, my Lord, I do insist; here is not plain and manifest Proof, or any Overt Act, but only Presumptions in the whole Scene of the Thing. I must beg the Favour of the Court as to one particular Thing. Your Lordship, no doubt, knows the Law very well. I am here an ignorant Man, unable to defend my self by the Forms of Law; but I hope your Lordship and the Court will not let me suffer any Damage upon that Account. You are always presumed to be of Council for the Prisoners; and I look upon it as assured, that you will do that Justice to Persons in our Circumstances, as truly to instruct the Jury how they shall behave themselves in Relation to this Matter that is now upon Enquiry before them. Particularly, my Lord, I desire they may be told plainly and truly, what is Proof of an Overt Act, and what is not; and when your Lordship sums up the Evidence, you will tell the Jury directly and plainly, what is Legal Evidence, and what is not; and then what is sufficient Proof of any one Overt Act or Species of Treason; and that you would not leave it to the Apprehension of the Jury, what they do believe, but inform them really and truly what is Legal Evidence, and what of that Sort hath been given to Day. My Lord, here is a strange Sort of Thing, a Conspiracy, which consider'd in the general hath neither Head nor Tail; how many there were to be is uncertain. In the Indictment is said, there were Forty Men to do this Fact upon the King in his Coach, and for Attacking the Guards. Can it be supposed, that any Man in his Senses would do such an Act as this, without Respect to have Security for himself and his Family, or those he is concerned for? I know not how great Wits these People be in other Things, but I am sure they shew no Wit in this, I look upon it to be so desperate a Thing. The Guards are at least treble the Number, and better appointed; and that Forty should go to assault treble the Number, and in divided Bodies too, that were only to mix Fury and Malice with Resolution, to be torn in Pieces by the Mob upon an apparent visible Disappointment. And when we had done this, and made this Attempt, where were we to go? We had no *Asylum* that we can hear of, nor Castle or Fort to retire to, nor none that were to back or assist us; and I am sure no Man in his Wits would undertake a desperate Attempt without Assurance of a Retreat. If I was resolved to kill any Man, I would propose to my self some Place, to which I might repair for Shelter and Safety when I had done. If then we were in our Senses, it cannot be imagined we should ever engage in so apparently destructive a Design. We ought rather to have been confin'd to *Bedlam*, than any other Place, if we could be thought guilty of so much Rashness and Folly. My Lord, I pretend not to make any particular

Reflections

Reflections upon these Gentlemen that have given Evidence here; but only I must take leave to say in general, That there are none of them, but that if they have had any Fortunes in the World, their Circumstances as to that Matter are now much altered; and if any Persons will be Evidence against others for their Lives in Hopes to repair those Fortunes, and concerning Matters in which they were engaged themselves in, as they do acknowledge, and if it be true, it must be thro' the Desperateness of their Fortunes, it is the most barbarous and inhumane Sort of Evidence that ever was given by any that ever had any Sense of Honour, and must be a base Reflection upon any who pretend themselves to be Gentlemen: And I hope the King will think them upon that Account very little deserving Credit. My Lord, I hope your Lordship will please to consider, that what I have offer'd is but what my own sudden Thoughts could suggest to me out of the confused little Remarks I have been able to make upon the Evidence; and it is the more confused and immethodical, because I could have no Council to assist me. I would only put your Lordship in Mind once more, of what I earnestly desire and insist upon from your Lordship, that you would tell the Jury plainly and truly what Evidence it is the Law requires to convict any Person of the Crime, for which I stand accused; what Things are necessary to make up that Evidence, what is a Legal Proof of an Overt Act, and what Overt Acts have been plainly and manifestly proved against me in this Case, and not leave the Construction of the Evidence to the Apprehension or Inclination of the Jury. This is all the Favour that I have to beg of the Court, and I hope I need not doubt the Justice of the Jury.

L. C. J. Have you done, Sir?

Char. Yes, my Lord.

L. C. J. Then what say you, Mr. King?

King. My Lord, I must insist upon a great many Things that Mr. Charnock hath said. But as to what relates to my self, Captain Porter saith, I went with him and Mr. Knightley to view the Ground where this Design was to be executed. Truly, my Lord, I did go abroad with Captain Porter and Mr. Knightley; but it was merely to take the Air, and no other Thing. Truly, my Lord, I have not taken any Notes of the Evidence, nor have I had any Council to assist me, and so I am not very capable of making my Defence.

L. C. J. Well, have you any more to say?

King. As to Mr. De la Rue, he doth not pretend to say, I did ever tell him of any Thing of a Design of destroying the King: And as to the Sword he speaks of, he knows I always wore one, and ever had one.

L. C. J. Well, is this all you have to say?

King. And as to Mr. Pendergrass, he saith, he saw me at the Rose Tavern in Covent Garden, where we discoursed something of the Matter; but he tells you not what that Matter was, nor what the Discourse was. And as to Mr. Boyse, he doth not tax me with any Design of killing the King: Nay, he saith, I did not mention any such Thing to him. And as to the Matter of an Overt Act, what is an Overt Act and what not, and what is good Proof of it, and what not, I must refer to your Lordship and the Court.

Char. My Lord, I beg your Pardon, there is one Thing I forgot to offer to your Lordship, There is no Place laid in the Indictment, nor no Set Number of Men ascertained.

L. C. J. At present you are out of Time, for that you might have spoke to it before the Evidence was given, or you may speak to it after the Verdict is brought in, if there be Occasion.

Char. My Lord, I am ignorant in the Forms of Law.

L. C. J. If you will observe any Thing out of the Evidence, you may, now is the Time.

Char. My Lord, I think the Evidence is inconsistent with the Indictment: For the Indictment doth say positively, that there were Horses and Arms bought and provided. Now if this be an essential Overt Act, as I apprehend it is, according to my Lord Coke, to prove the Compassing the King's Death, then there hath been no Evidence to support this Indictment; for there is no Proof of the Buying of any Horses or Arms.

L. C. J. They tell you there were Forty provided.

Char. My Lord, I have taken some Notes, as well as I could, upon reading of the Indictment; and in the first place it is said, That it was agreed there should be Forty Horse-men armed of us, Robert Charnock, Edward King, and Thomas Keys; which I take to be Nonsense and impossible.

Mr. Att. Gen. But there is, and others in the Indictment too.

Char. It is *Quadragesim' Homines equestres de ipso Roberto Charnock*.

L. C. J. And divers others, to the Jurors unknown. May not they make Forty? Thirty seven and you Three will make Forty.

Char. That *divers others* is so uncertain, that no one can tell whether it be five or five thousand; and I know not what will make an Indictment void, if Uncertainty will not.

L. C. J. But your Time of Exceptions to the Validity of the Indictment is not now, we are now only upon the Tryal of the Fact.

Char. My Lord, I was advis'd by my Council that if I could find a Flaw in the Indictment, I must mention it, and take the Advantage of it before the Summing up.

L. C. J. You were not well advis'd; for after the Jury is sworn, we are only to have Regard to the Fact, and we are now upon the Tryal of the Fact; and the only Thing we have under Consideration upon the Fact and the Evidence is, Whether upon this Evidence that hath been given, you are guilty or not of the Fact that's charg'd upon you in the Indictment?

Char. My Lord, I crave your Pardon, and I hope you will take no Advantage of my Ignorance, not being used to these Proceedings.

L. C. J. As to what you said at first, that there was no Overt Act proved, because there is no Proof of buying Horses or Arms; it is true, that is one Overt Act laid in the Indictment; and there is some Evidence given of it; but what that Evidence will amount unto will be a farther Consideration by and by.

Char. There was another Observation, my Lord, that I have made upon the Indictment, that it is uncertain upon the Word *tunc*; there is no Time assigned, nor no Place: Pray what Time doth this *tunc* refer too?

Mr. Att. Gen. When the King went out.

L. C. J. But these Things are not proper now, I tell you we are upon the Fact. Mr. King, have you any more to say? because Mr. Charnock interrupted you.

King. My Lord, if there be any Objection that Mr. *Charnock* hath made, would be of any Advantage to me, I hope you will let me be heard by my Council, that I may have the Benefit of it.

L. C. J. I tell you, that is not proper now; you may have the Benefit of any Objection of that Nature, if there be an Occasion, after the Verdict: Now we are only considering the Evidence upon the Issue, Guilty or not Guilty; and you are now to apply your selves to that.

King. My Lord, I think I have answered all the Evidence.

L. C. J. Well then, Mr. *Keys*, What have you to say for your self?

Keys. My Lord, all that I have to say is, I was a Servant to Captain *Porter*, and I did nothing but by his Order.

L. C. J. Is that all you have to say?

Keys. Yes, my Lord.

L. C. J. Then I must tell you, no Man is such a Servant that the Commands of his Master can excuse him for committing High-Treason.

Keys. I did but obey his Commands.

L. C. J. But I tell you again, no Man is so much under the Command of his Master, as that he ought to obey him, if he command him to commit High-Treason. It is proved you bought Horses, and he told you upon what Design, and you engaged in it.

Keys. I did not hear any Thing of it, my Lord. My Master was pleased to jest with me several Times, and he might say a great many Things that I did not much regard.

L. C. J. You were by when your Master, as you call him, promised Mr. *Pendergrafs* his Musketoone, and Mr. *King* told *Pendergrafs*, he hoped he would not fear breaking the Glass Windows.

Keys. Indeed I do not remember any such Thing.

L. C. J. And there are several other Particulars sworn against you: But have you any Thing more to say?

Keys. Nothing, but that I did what my Master order'd me to do.

L. C. J. Have you all done then? If you have any more to say, you must speak it now, because you cannot speak after the King's Council have summed up; they must have the last Word: Have you any Witnesses to call, or any Thing more to say?

Char. No, my Lord, we have nothing more to say, but leave it to your Lordship entirely.

Mr. Soll. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the King against the Prisoners at the Bar, and I think the Matter hath been fully proved as Mr. Attorney at first opened it; That there was a Design of an Invasion on this Kingdom from France, and of an Insurrection within this Kingdom, to abet that Invasion, and as an Inducement to both, of a barbarous and abominable Assassination upon the Person of the King, and that the Prisoners at the Bar had an Hand in this Conspiracy.

Now, Gentlemen, I must tell you, That for the two first Parts of this Design, the Invasion and the Insurrection, we have given you no other Evidence now, but some short Hints, that such a Thing was intended; and we did it purposely for this Reason, because the Prisoners, tho' they were concerned too in those other Parts of this Plot,

yet they are not now indicted for that Matter, but only for a direct Conspiracy to murder and assassinate the King: We have Abundance of Witnesses to prove the other Parts at several Times against a great many as well as them; but we confine our selves now to this Particular, as it stands charged against these Persons in the Indictment.

Gentlemen, There is an Overt Act alledged in the Indictment, as it by Law is necessary to do, to prove the Treason, which is Compassing the Death of the King; and it is by Law a good Overt Act, That they did at such a Place, that is to say, the Parish of St. Clements in the County of Middlesex, on the 10th of February last, consult and agree to carry on such a Design; now it is not material, as my Lords the Judges will tell you, in Point of Law, to prove all the several Consultations to be in that Parish, nor to have been upon the Day alledged in the Indictment; for if it be any Day before or after the Times specified in the Indictment, so it be before the Indictment prefer'd, and if it be at any Place within the County wherein the Indictment is laid, it is sufficient; the Thing that is material to be proved, is, Whether they did meet upon such a Design before the Indictment, within this County.

This Design, Gentlemen, we in Law call High-Treason; the highest Crime that our Law, or the Law of any other Government, takes Notice of, and it very well deserves to go under that Name; for it tends to subvert the very Foundations of the Government, without which no Subject is safe; and to bring all into Confusion and Desolation, by taking away the Life of the King, who is the Head of this Government; which Life the Law makes sacred above all others, because without that be safe, there can be no Safety to any particular Person.

Gentlemen, We have proved this bloody Conspiracy most fully against all the Prisoners at the Bar: I will not take up so much of your Time, as to repeat every Particular of the Evidence that hath been given; but only shortly remind you of what hath been materially said against each of them by the Witnesses that have been produced.

Against Mr. *Charnock*, there is first Mr. *Porter*, who hath sworn, That he and others met, and consulted about this Design, agreed upon it, and on the Ways and Methods for carrying it on; and he names the Places where, and the Times when those Consultations were had: Then there is Mr. *De la Rue*, who saith, he ask'd Mr. *Charnock*, how the Affair went on? and he answered, he was afraid it would come to nothing; that shews he was willing it should come to something, though perhaps he might be fearful whether it would take Place or no. Mr. *Pendergrafs* saith, Mr. *Charnock* sent a Note to Mr. *Porter* to countermand the Orders for the 15th, subscribed by the Name of *Robinson*; but that is only a concurring Evidence to that of Captain *Porter*, who said before, he had such a Note; but *Bertram* tells you, That he ask'd him if he would be one in the Design to take off the Spark? And that after he heard Warrants were out, he would have had him joined in the putting it in immediate Execution, and assured him there would be Safety in so doing.

Against Mr. *King*, there are the same Witnesses, Mr. *Porter*, and Mr. *De la Rue*, who tell you of the Discourses at Captain *Porter's* Lodgings, where
Mr.

Mr. *Pendergrafs* was likewise, who tells you the Times, viz. the 15th and 22d of *February* last, the Days when this wicked Design was to have been put in Execution, and there they consulted about Carrying it on. Mr. *Boyse* likewise tells you of the Discourse he had with *King*; he would not indeed directly tell him, what the Design was, but Mr. *Boyse* did suspect what it might be; for Mr. *King* told him Sir *George Barclay* was come, and Mr. *Boyse* should have a Horse, and make one, and it would soon be over.

Then for *Keys*, there are three positive Witnesses against him; there's his Master, as he calls him, Captain *Porter*, who swears, That *Keys* knew of it, and consented to it. Mr. *Pendergrafs* saith, *Keys* was one that met at Captain *Porter's* the 15th of *February*, to put the Design in Execution that Day. *De la Rue* tells you, *Keys* was in the Chamber at that Time, and in other Places, consulting about it, and so must needs know of it, and consent to it. So that Gentlemen, if you believe these Witnesses, as I see no Reason offered to the contrary, we have most manifestly proved upon them all three, the Matters charged in the Indictment.

As to what they speak of the Witnesses being Trepanners, and swearing them out of their Lives to save their own; it is plain, the Prisoners designed to trepan the King out of his Life, and some the Prisoners would have trepan'd to have join'd with them in that Design, who honestly and honourably discover'd it, and now the Prisoners Danger is a Safety to the Nation.

Gentlemen, They argue against the Belief of this Conspiracy, from the Improbability that any Person should be so desperate to engage in so wicked a Design. Truly had this been a Matter that had been only talked and discours'd of once, that might have been the better alledg'd; but when there have been so many Meetings at several Times and Places, and such Methods taken for the putting this Conspiracy in Execution, and after a Disappointment one Day, put off to another; nay, and as it hath been prov'd, it hath been a Project that hath been transacting for several Years, from one Year to another, and all this made as manifestly evident, as Proof by Testimony can make it; the Objection of Improbability will soon vanish into nothing; and I hope you will think, as I believe all the World doth, or will after this Tryal, That there hath been such a barbarous, bloody Conspiracy, as in the Indictment is alledg'd, and that these Persons are guilty of it, and that you will give your Verdict accordingly.

Mr. *Conyers*. My Lord, I would only add to what Mr. Solicitor hath said, some few Observations that have been omitted of the Evidence that hath been given against the Prisoners.

The Treason charged, is a Design of Assassinating the King's Person, the Overt Acts laid in the Indictment are several Meetings and Consultations in order to the bringing it to Effect, and the providing Men and Horses to put it in Execution.

This Charge we have fully proved against the several Prisoners at the Bar, by two Witnesses at the least, and it is manifest that they were all concern'd in the several Meetings and Consultations for the Carrying on this Design.

As for Mr. *Charnock*, Mr. *Porter's* Evidence is very full as to his providing Arms and Horses; and there is besides, Mr. *De la Rue*, who though he met him at the Tavern, and not being admit-

ted at first, took it ill, yet afterwards at two Meetings he did discourse with him about it; and *Bertram* gives an Account, how he would engage him in it.

As to Mr. *King*, there is not only Captain *Porter*, who testifies, that he dined with him the 14th of *February*, where they did discourse of this intended Assassination, but *De la Rue* likewise, that said, there was a Meeting appointed for *Porter*, and *King*, and another, to go and take a View of the Ground; and the Prisoner himself owns he did ride out with them, but he would have it only to take the Air: Captain *Porter* tells you, it was to see which was the most convenient Place, and that the Place pitched upon was the Lane between *Brentford* and *Turnham-Green*.

And for *Keys*, there are two positive Witnesses, Capt. *Porter* and Mr. *De la Rue*, that he was at the *Blue Posts*, and at Mr. *Porter's* Lodgings when this Matter was consulted of, and particularly that he came and gave an Account of the Disappointment the second Day, upon the Guards coming back.

Besides, Mr. *Porter* gives an Account in general, of several that were to provide Arms, Horses, and Men; and Mr. *Bertram* proves that Mr. *Charnock* told him, the Design was to take off the Spark, and then the Time would come, that King *James* would come back quietly. Mr. *Boyse* swears, *King* told him on the 14th of *February*, that he was to go out upon a Design the next Day, and that he should have a Horse provided, which next Day, the 15th, is by all the Witnesses agreed to be the first Time appointed for the Assassination; and Mr. *Bertram* adds, that he met with *Charnock* the 22d, who told him Warrants were out, and it was best to go and do the Business presently, and desired him to come to his Lodgings, and he went to his Lodgings, and found several Persons there—

Charnock. He does say no such Thing, Sir.

Mr. *At. Gen.* He does say, that Mr. *Charnock* desired him to come to his Lodgings.

Mr. *Conyers*. As I apprehend him, he says, he went thither in the Evening on the 22d.

Mr. *At. Gen.* He says, Mr. *Charnock* would have had him come, but he did not, the Time that he was at his Lodging, was before.

Mr. *Conyers*. My Lord, if I mistake, I beg Pardon of the Court, and of the Prisoner too.

L. C. J. As I take it, there is no coming to his Lodging at all, but the 9th or 10th of *February*.

Mr. *Att. Gen.* He says, the 9th of *February* he met with *Trevor*, who carry'd him to *Charnock's* Lodgings, and then he would have engaged him in the Design of Taking off the Spark; the Meeting of the 22d was afterwards in *Lincoln's-Inn*, and there was no going to the Lodging that Day.

Mr. *Comper*. My Lord, I am very loth to take up any of your Time; but I would beg the Favour to observe two or three Passages relating to this Matter, which have not been observed yet; and shall only mention so much as I think has been omitted.

The Defence that has been made, has been principally by Mr. *Charnock*; and upon his Defence, it seems, the Rest do depend; therefore I would beg Leave to make some few Remarks upon the Defence that he has made. He says, That all the Evidence is but Hearsay, as to him, and no Overt Act of his own proved; but, my Lord, I question not, if the Evidence be looked into, it will appear

appear sufficient not only to prove him guilty beyond Contradiction, of all that is charg'd upon him in the Indictment; but particularly, that he was the principal Agent (under Sir George Barclay) in carrying on this whole Conspiracy.

For Captain Porter tells you, That Charnock first acquainted him with Sir George Barclay's Coming over with the Commission; that Charnock brought Sir George Barclay to the Lodgings, where they both lay; that they had several Meetings, at which he was always present, and a main Promoter of the Design; That he agreed to find a principal Quota of the Persons that were to be concerned; particularly, That he was to find Eight Men, and seem'd always most zealous for the Execution of it.

Then as to Mr. King, it is plain, That Knightley, and Captain Porter, and he, went to view the Ground; and Mr. De la Rue tells you, what Report King made of that View; That with great Joy King acquainted him, they had found the rarest Place in the World for the Execution of their Design, a Wood hard by the King's House at Richmond; and then he opens the whole Manner of the Ambuscade, and the Design.

Charnock. It is at the Liberty of any Body to swear what they please; but I hope the Jury will consider the Nature of the Evidence.

Mr. Comp. Mr. De la Rue tells you further, something more than Hearsay, as to Mr. Charnock; That he ask'd Mr. Charnock about the Matter, what was like to come of it? And he answered him, That he feared the Success of it; for that a Thing of such a Nature was not to be trusted to above Three. Which could not refer to the intended Invasion, and the Insurrection; for as to that, it is plain from the Nature of the Thing it self, that it must be communicated to a great many, or else they could not be ready to assist in it: And therefore it is evident, it was the Assassination which he was in haste to have executed, saying, it had been delay'd too long, and that was as dangerous as communicating it to too many.

My Lord, I shall make my Words good to you, and rather than take up your Time in making Repetition of what has been said, I will chuse to break my Method, and omit what might be further observed: It is true, it was a Mistake of the Day as to Bertram's Evidence of his Going to Charnock's Lodging, but that is not material; for it is in Proof, he did go to his Lodgings the 8th or 9th of February, and there Charnock told him that King James was a coming; but there was a Service to be done first, to take off the Spark, and then the King would come in quietly; if that Design took Effect, it would answer his Expectation: He was to ride out to take the Air, and meet some of his Acquaintance, and after all was over, we should be very happy. The Words indeed were something dark, but yet the Intent and Meaning of them are pretty manifest, not only from the Words to take off the Spark, but because this Action, whatever it was, was to precede the Invasion of King James with the French Forces, and was to be done in Order to it, and therefore could not be meant of it, nor of joining with it.

My Lord, I shall trouble you no further, but submit to your Direction.

L. C. J. Gentlemen of the Jury, These Three Prisoners at the Bar, (viz.) Robert Charnock, Ed-

ward King, and Thomas Keys stand indicted of High-Treason, for conspiring, compassing, and imagining the Death and Destruction of the King, and that in a very bloody and barbarous Manner, by Way of Assassination; and the Indictment charges them, that they did meet and consult with divers other Traitors unknown to the Jurors, and there did resolve upon this Assassination, and Horfes and Arms were prepared and provided for the Execution of it.

The Question, Gentlemen, that you are to try is; Whether these Persons who stand now thus accused, are guilty of this Crime or not? And you have heard a very long Evidence; Five Witnesses have been produced, and they have given upon this Occasion a very large Account of the whole Transaction, which I will observe to you as briefly as I can.

In the first Place, Gentlemen, you are told, how there had been a Design forming, even for some Years, for the Restoring of the late King James, and the Depriving and Deposing of this King. It seems it was a Design before the Business of Cape la Hogue, which you remember very well was in the Year 1692. about the Time of the Burning a great Part of the French Fleet by Admiral Russell; but this Design, though it met with several Disappointments, yet did not die, it had its Ebbings and its Flowings, sometimes it was higher, and at other Times lower; and in Winter was Twelve Months it began to be more vigorously prosecuted than at any Time before, since the La Hogue Business; and then there was a Resolution fram'd of attempting the Person and Life of the King, which appears by Capt. Porter's and Mr. De la Rue's Testimony. And great Hopes were conceiv'd amongst them, that it might be effected before the King went over into Flanders; but it seems they wanted a Commission from Abroad, (which they thought necessary as an Authority for them to act under) which not coming in Time, the King went over to Flanders, and so for that Time the Execution of it was deferred.

Gentlemen, after the King's Return from Flanders, the Prosecution of this Design was resumed, and Intimation was given, that a Commission was brought over by Sir George Barclay from King James; which was to make War upon the Person of King William, who was called therein, as you may suppose, the Prince of Orange: And you are told by Captain Porter, that at that Time, he and Mr. Charnock lodged together in one House in Norfolk-street; and that Mr. Charnock told him Sir George Barclay was come with such a Commission from King James, and imparted to him the Design of Assassinating and Murdering the King, and that would be the readiest Way to bring home King James: He asked Captain Porter, whether he would engage himself in the Matter. It seems Mr. Porter did freely and readily engage in it, and was in good earnest; and therefore there were several Meetings at several Places, in order to consult and contrive how they might bring it to pass.

Gentlemen, you are further informed, that there were several Meetings at the Globe-Tavern in Hatton-Garden, another at the Naggs-Head in St. James's-Street in Covent-Garden, and at the Sun-Tavern in the Strand, and that Two of the Prisoners at the Bar, Mr. Charnock and Mr. King with divers others, were at those Meetings, and Keys was at several

several of them, and there it was agreed and resolved, that the King should be Murthered as the best Way to bring in the late King.

This being settled and resolved upon as fit to be done, the next Consideration was in what manner it might be effected, and two Ways were proposed, one by way of Ambuscade on the other Side of the Water near the King's House at *Richmond*, the other in the Lane that leads from *Brentford* to *Turnham-Green*, upon the King's Return from *Richmond*, some Evening; for it seems it is usual for the King to go to a House he has on the other Side of the Water, to divert himself once a Week upon the *Saturday*, and to return in the Evening.

These two Places being proposed, the one on this, the other on the other Side of the Water, there was a Difference in Opinion among the Conspirators, which of the Places would be the best and most proper: And in order to settle that Matter, it was resolved upon, that some Persons should be sent to view the Ground in both Places, and make their Report to the rest; and the Men agreed upon, were Captain *Porter* and Mr. *Knightley*, to whom Mr. *King* added himself, and accordingly they did go out of Town together to take a View of these Places.

Here the Court was interrupted by Mrs King, the Prisoner's Mother, who in a very outrageous violent Manner, got into the Court; but being removed, the Lord Chief Justice proceeded.

L. C. J. Gentlemen, I was saying that this View was taken by those Persons that undertook it; and the Night of that Day they had viewed the Places, upon their Return, they made a Report to their Accomplices, and thereupon it was resolved to relinquish the Ambuscade, and that the Attack should be made in the Lane that leads from *Brentford* to *Turnham-Green*.

The Time that was fixt upon for this Execution was *Saturday* the 15th of *February*: There were two Men that were appointed to lodge at *Kensington*, whom they called orderly Men, a Title that they gave them: These were to give Notice at what Time the King and the Guards went out, the one was to give Notice first of the Guards going, the other was to give Notice when the King went: When Notice was brought them that the King was gone abroad, the Conspirators were to be ready to go after in small Numbers, and were to be quartered and dispersed in the several Inns about *Brentford* and *Turnham-Green*, to be gathered into the several Bodys, upon Notice of the King's Return, when the King came over, then they were to make the Attack in this Manner. Captain *Porter* and Mr. *Charnock*, with one *Rookwood* were to attack the Guards, and Sir *George Barclay*, and his Party, were to come up to the King's Coach, and fire into it, and kill the King, and every one that was in it; and of that Party Mr. *Pendergrafs* was designed to be one, and he was to have had a *Muskatoon* from Captain *Porter*, that would carry seven or eight Bullets: These Conspirators, and the Persons that were to be concerned, were in all Forty, or some few more in Number.

But, by great Providence, this bloody Design was discovered, as was told you, by one of the Witnesses Mr. *Pendergrafs*, a Day or two before it should have been put in Execution; and so His

Majesty did forbear going out that *Saturday* the 15th. But they having Notice that the Guards were gone, and after that receiving an Account that the King did not go, it very much alarm'd these Conspirators; but notwithstanding this, as you have been told, they were resolved not to lay aside the Prosecution of this Design, but were rather bent upon executing it the next Opportunity that should offer itself, for which purpose Diverse of the Conspirators did meet together; and did consult whether it was fit further to proceed, particularly upon the *Friday* the 21st Day of *February* at the *Sun-Tavern* in the *Strand*, divers of them met, and there they had Discourse of the Matter, and were troubl'd at the Disappointment, and were resolved to pursue it, and for that purpose, agreed to be in a Readiness upon the next Day, and as soon as they should have Notice, that the King was gone from *Kensington*, they would prosecute it in the same Manner, in which they had formerly agreed.

It should seem, some of the Men that they had engaged were gone off, and others were provided in their stead, but there was an other full Discovery made, before that, by Mr. *De la Rue*, by which their wicked Purpose was a second Time disappointed.

Gentlemen, upon the Discovery of this Design, it was thought very fitting to take all possible Care, for preventing such a dismal Stroke, and for punishing such hainous Offenders, there was a Proclamation issued for the Apprehension of a great many of them that absconded, which had a very good Effect, by the taking of several of them, besides those that were taken up by Warrants before, and these three Prisoners now at the Bar, are indicted for this horrid and traitorous Conspiracy, and for pursuing this wicked Design, and are now upon their Tryal for it.

Now Gentlemen, you have heard the Evidence, which you are to consider of in Relation to these Prisoners, and how far they are affected by it. I must tell you, that Captain *Porter*, gives a very full Evidence against all Three, he tells you how and in what manner they were all engaged, and what Parts they had all in the Prosecution of this bloody Enterprize. As for Mr. *Charnock*, he seems to have been a remarkable Person in almost all the Parts of it, a great Carrier on and Promoter of it, was to be an Actor in it, and provide his Number of Men: and it seems he was a Person much trusted by Sir *George Barclay*, and he spoke to Mr. *Porter*, of a Commission that Sir *George Barclay* brought with him from King *James*, which was to levy War upon the Person of King *William*, which it seems was understood, to authorize them to Assassinate the King. Mr. *King* went to view the Ground, and *Charnock* and he were at the several Consultations, and *Keys* was at *Porter's* Lodgings, and at divers other Consults, when the carrying on of this Design of assassinating the King, was debated and resolved upon. Mr. *Porter's* Evidence you have heard at large, and I doubt not you take good Notice of it, and the King's Council have repeated the most material Parts of it, therefore I need not do it again. And as to Mr. *Charnock*, you have heard what Evidence is given by *De la Rue* and *Bertram*; for tho' Mr. *Charnock*, says all that is testified by the other Witnesses, is only Talk and Discourse, and that bare Words are not High Treason, but there must be some Overt-Act; therefore you are here to consider particularly

cularly what the other Witnesses say against him, and whether another Overt-Act is not proved. *De la Rue*, (who was one of the Discoverers, and (as he tells you) he resolved so to be so soon as he could get a perfect Knowledge of the whole Design) does inform you, that between the 15th. and 22d. of February, he met Mr. *Charnock*, and enquired of him, how the Business went, to which *Charnock* returned answer, That the Design did languish, saying, that People were not so warm as formerly, and did believe the King had Notice, for that he had not been abroad on Saturday; that too many were acquainted with it, and therefore Thought it might come to Nothing: But the main Business, which was the Landing of King *James*, would be speedy; and though the Discourse may be reckon'd only Words, yet they do import, at least acknowledge, to the carrying on this Design before that Time.

But then consider what you are told by *Berthram*, another of the Witnesses, that he being inform'd by *Trevor*, that Mr. *Charnock* would speak with him, he thereupon went to Mr. *Charnock's* Lodgings, where *Charnock* took him aside into a Back-Room, and told him that King *James* was a coming, and there was great Hopes of restoring him; but there was something to be done to facilitate it, which he would do well to joyn in: And when he asked what it was, *Charnock* told him, he must go abroad and take the Air, where he would meet with some of his Acquaintance; and there was no way to effect it, but by taking off the Spark; and by doing that Thing, it would most probably be brought about, that King *James* should be restored. Now, though it was not directly said, they were to kill the King; yet it is manifest what was meant by it: For the Taking of no one Person in *England*, besides King *William*, could conduce to the Return of the late King. And for his Encouragement, he told him further, that if *Berthram* would undertake the Doing of it, it would answer his Expectations. And then you are told again by *Berthram*, that he met *Charnock*, at *Lincolns-Inn-Gate*, upon that very Day that it was last to have been executed, which was the 22d of February, where *Charnock* told him he suspected a Discovery was made, and that there were Warrants out against them; and that therefore the best Way was, to go immediately and take him off, and then all would be well.

Now I must tell you, Gentlemen, that what he says, that bare Words are not Treason, is very true in some Cases: For loose Words spoken, without Relation to any Act or Design, are not Treason, or an Overt-Act; but Arguments, and Words of Persuasion, to engage in such a Design or Resolution, and directing or proposing the best Way for effecting it, are Overt-Acts of High Treason, as much as if two agree together to Kill the King, tho' the Agreement be Verbal only, and not reduced to Writing: Likewise, consulting together for such a Purpose, is an Overt-Act of Treason. For it is the Imagination, the Compassing and Designing the Death of the King, that is the Treason. For the Law is very careful of the Person of the King, and hath fully provided for his Safety; and this Treason is the first Species mention'd in the Statute. But there is no Way of discovering those Compassings or Imaginations, in order to punish a Traitor, but by some external Act, that may be sufficient to manifest such an Intention and Purpose; and that which is a sufficient Manifestation of such a Design, is an other

Overt-Act: But there have been proved several Meetings, and Consultations and Proposals at those Meetings, about the Ways and Methods for bringing about the Design of Assassination. And it was never yet doubted, but to meet and consult how to kill the King, was an Overt-Act of high Treason. Besides, Mr. *Charnock's* endeavouring to engage *Berthram* in this Enterprize, and the Argument he used to persuade him to it, that it was a Means to restore the late King, and telling him it would answer his Expectation, is another Overt-Act. And therefore, how far Mr. *Charnock* is Guilty of the Charge in the Indictment, you are to determine when you have well consider'd the Nature of the Evidence, and what Answer Mr. *Charnock* hath made to it; which shall be open'd to you by and by.

Then, Gentlemen, concerning Mr. *King*, who is the next Man, he has these Witnesses against him: Captain *Porter* says, that he was very frequently at the Meetings and Consultations, and that he came to him when he and *Knightley* were to view the Ground, and desir'd to be one of them, and they went together, and did view the Ground; this was some Time before the 15th of February, in the same Week.

And you may also remember the Evidence given by Mr. *De la Rue*, That Mr. *King* told him about November or December, that a Major-General would come from *France*, and that Money was to be advanced; and that after Captain *Porter* and Mr. *King* told him, that the Major-General was come. On Friday the 7th. of February, *King* said he was to go out of Town with *Knightley* and *Durant*, to know whether the King went to *Richmond* or *Hounslow*. Being inform'd the King had a Design to go to *Hounslow*; and being return'd, on the Sunday following, Mr. *King* did say they had found out the rarest Place, and the fittest that could be for that purpose, within a Quarter of a Mile of the King's House at *Richmond*; and that there was to be an Ambuscade, and asked the Witness whether he would be one in the Ambuscade; but he liked it not, but had rather attack the Guards. He had been at the *Dog-Tavern* with Mr. *King*, and discoursing about this Undertaking, Mr. *King* the Prisoner had told this Witness, that several of the Guards were come from *France*, and that several Conferences were had about Taking off the King; and he did not approve of Mr. *Charnock*, in regard he did not talk like a Soldier, and was for an easie Post without Danger; and as for Captain *Porter*, he had another Objection against him, he had as much Fat in his Brains as he had in his Body; and so the one wanted Skill, and the other Wit. But still Mr. *King* owned his being concerned in the carrying on of this Design of Assassination; for after the Design of the Ambuscade was disapproved of, and agreed that the Guards should be Attack'd, and the King in his Coach, at *Turnham Green*; he, by Discourse with *De la Rue*, expresses his Consent to it: besides, he told *Pendergrafs*, who was to be one, and to have *Porter's* Gun to shoot the King, he hoped *Pendergrafs* would not be afraid to break the Glass Windows.

Mr. *Keys* stands upon it, for his Part, that he was only a Servant to Captain *Porter*, and if he had done any Thing amiss, it was no more than what his Master bid him do; and that he knew of no Design; and that it was a hard Thing that he should be troubled in this Matter; for if a Master send his Servant to buy Horses or Arms,

if he does not know how they are to be employed, afterwards it doth appear they are to be employed in Assassinating the King, that the Servant should be punished for obeying his Master. But the Question is, whether *Keys* knew what the Design was, Captain *Porter* says he did know when he hired the *Horses*, for what Purpose they were to be used. And he says further, that he was with them at many of the Consults at the *Globe-Tavern* and other Places, where he did Eat and Drink with them, and was privy to the Design, and concerned in it.

Then Gentlemen, by the other Evidence it is proved, that he was in Company several Times when the Design was discoursed of, and that he was used as a Companion to Captain *Porter*, and used to sit and eat and drink with him and the rest of them at the same Table; and when they drank to the Restoration of the late King, and to the Squeezing of the rotten Orange, *Keys* was there, and pledged the Health, which shews the Intention of the Man; and this was upon *Saturday* the 22d. And when News was brought that the Design was disappointed by the King's not going abroad that Day, he went out to get Intelligence, and brought in Word that the Guards were come home, and that all their *Horses* were in a Foam, and the King's Coaches returned to the *Mews*; all which is Evidence that he knew of the Design and consented to it. So that I must leave it to you upon the whole, though there be a great deal more Evidence than I have mentioned, you are the Judges how far it amounts to prove them Guilty.

But then, Gentlemen, as to what they say, that the Witnesses do testify by Hear-say, that's not Evidence; but what they know themselves, or heard from the Prisoners; and so Mr. *Charnock* insists upon it, that what Mr. *De la Rue* says against him, is mostly what Captain *Porter* told him, and therefore cannot make a Proof by two: It is true, and therefore I did omit repeating a great Part of what *De la Rue* said, because as to him it was for the most part Hear-say: But whatsoever Evidence has been given of any Fact done within the Witnesses own Knowledge, or of any Consult or Discourse of the Prisoners themselves, that you are to take Notice of as good Evidence, and consider of it.

But then there is another Thing that is objected against the Evidence, and that is, as to the Fairness and Credibility of it, because the Witnesses, especially Mr. *Porter*, by their own Acknowledgment, are involved in the same Crime, and therefore cannot be good Witnesses against others. Now as to that Objection, I must tell you first, that Prisoners under those Circumstances are good legal Witnesses, but their Credits, as in all other Cases, are left to your Consideration. But Secondly, As to the Weight of this Objection against their Credit, you may consider that Trayterous Conspiracies are Deeds of Darkness as well as Wickedness, the Discovery whereof can properly come only from the Conspirators themselves; such Evidence has always been allowed as good Proof in all Ages; and they are the most proper Witnesses, for otherwise 'tis hardly possible, if not altogether impossible, to have a full Proof of such secret Contrivances; such Discoveries are to be encouraged in all Governments, without which there can be no Safety: And though Men have been guilty of such Hainous Offences, in being Partakers or Promoters in such

Designs, yet if they come in and repent, and give Testimonies thereof by discovering the Truth great Credit ought to be given to them, for such Evidence was ever accounted good. Besides, as to two of them, *De la Rue* and *Pendergrafs*, which were the first that discovered, before they were apprehended, or suspected themselves to be in Danger, and therefore do not swear to save their own Lives, but resolved upon it to save the Life of the King. And Mr. *Pendergrafs* had not any Design to be an Evidence, who, though he discover'd it almost as early as he knew it, yet refused to tell the Names, upon a Principle of Honour, till he had the King's Word that he should not be press'd to come in as a Witness; and he tells you himself the Reason why he refused then, and why he comes in now, because Capt. *Porter* was his Friend, to whom he was obliged, and he never intended at first to discover his Name, nor afterwards to be Evidence against him; but upon Capt. *Porter*'s being taken, and discovering himself and his Witness, he thought then he was absolved from all that Obligation, and therefore resolved to appear as a Witness against the rest: And this doth not depend only upon the Credit of *Pendergrafs*, but also upon the Testimony of my Lord *Portland*, and my Lord *Cutts*, who have given you a full Account of the Manner of it.

And Mr. *De la Rue* tells you, That it was his Design at first, even a Year ago, if the Conspiracy had so far proceeded, as to be ready to be put in Execution, he would have endeavoured to have prevented the Mischief, by acquainting the King with it; And he gives you an Account how he revealed it to Brigadier *Lewson*, and to my Lord *Portland*, and after to the King, which is confirmed by my Lord *Portland*; so that these are Witnesses beyond all Exception, and if such Evidence as this be not allowed to be good, the Government can never be Secure against such Villainous Enterprises and Wicked Machinations.

Gentlemen, This is not Trepanning, for it doth not appear by any Evidence, nor have I heard the Prisoners pretend that these Persons did go about to seduce them into the Design, but indeed were endeavoured to be seduced into it themselves; and though they kept them Company afterwards, yet it was only with a Purpose to acquaint themselves with the real Intentions of these Wicked Men, which is Lawful and Just in order to the making a full Discovery of their so Dangerous a Villany; and therefore they ought to receive all Countenance for doing so great a Service to the Government, without Undergoing the Imputation of being Trepanners.

Gentlemen, there is no more occurs to me at present, that is material to be observed or taken Notice of, I leave it to you, you have heard what the Witnesses say against the Prisoners, you have heard what the Prisoners have said for themselves, you are the Judges of this Fact; If you are not satisfied that here has been sufficient Evidence given to prove them Guilty, you will acquit them; but if you are satisfied, that upon the Evidence and all the Circumstances of this Case, that they are Guilty, I suppose you will discharge your Consciences, and give your Verdict accordingly.

Then the Jury withdrew to consider of the Evidence, and in less than half an Hour returned, and found all the three Prisoners Guilty of the High-Treason

Treason for which they were Indicted, and the Court Adjourned till six a Clock that Evening.

Post Meridiem eodem Die.

ABout Seven a Clock the Lord Mayor, and the Common Serjeant, with as many of the Court as would make a *Quorum*, came upon the Bench, and by Proclamation in usual Form, the Court was resumed, and the Prisoners called to the Bar to their Judgment.

Cl. of Arraignments. Robert Charnock, hold up thy Hand. (which he did) You stand convicted of High Treason, for Conspiring the Death of our Sovereign Lord the King by Assassination, What can you say for your self, why the Court should not give Judgment upon you to die according to the Law?

The Tylor first made him to kneel; and then, when he rose up, he spoke as follows.

Charnock. Sir, I have a great deal to say, if I knew when was the proper Time to apply myself to the saying what I have to say.

Mr. Com. Serj. You are now called to, to know what you have to say.

Charnock. Sir, I would put this Question, because I am ignorant in Forms of Law, Whether it be practicable for me to say any Thing before Judgment, or not? For I have no Pardon to plead to hinder the Judgment; and therefore I would know, if it be practicable to say any Thing before Judgment.

Mr. Com. Serj. Yes, Sir, it must be before Judgment; because what you are called to, and asked now, is what you have to say in Arrest of Judgment.

Charnock. I have many Things to say as to Observations I made out of the Indictment, and upon my Tryal, if this be my Time to offer them.

Mr. C. Serj. Yes, Sir, it is your only Time.

Char. Then, Sir, I think the Fact is ill laid: We are indicted here for High Treason, in Conspiring the Death of the King, and no Overt Act is proved against me; I speak for my self, I suppose these Gentlemen will speak for themselves.

Mr. C. Serj. At present you are the only Person that is asked the Question; therefore pray go on, and say what you have to say in Arrest of Judgment. You say the Indictment is ill laid, wherein is it so.

Char. I do find fault with the Indictment, because it is laid for Assassinating the King; and all that is proved against me, was, That I was in Company where such a Thing was discours'd of: Now I am adviſed, and my own Reason tells me, that being in Company is no Proof of my giving my Consent to the Thing; and without my Consenting, there can be no Overt Act to make me guilty of the Treason. It is said, that I and my Accomplices, though there are none named but us Three, did meet together, and consult of this Matter, and that we bought and provided Horses and Arms: Which I take to be the only Overt Act. And of all these Things, there is not one Tittle proved; and therefore, with Submission to the

Court, the Indictment is naught in that Respect. And this I think I may speak, not only for my own Sake, but for the Sake of these Gentlemen that stand by me; if there be nothing proved against us of an Overt Act, as laid in the Indictment, we ought not to be condemned.

Mr. Com. Serj. Look you, Mr. Charnock, you move nothing against the Indictments, but only run into the Proof: That Matter is quite at an End, and we cannot enter into any Debate about it; you have had a fair and a legal Tryal, and upon that Tryal the Jury has found you Guilty.

Charnock. I have not had a fair, and an equal Tryal, Sir.

Mr. C. Serj. Yes, you have had both a fair and a legal, and an equal Tryal.

Char. If you please to leave out the Word *Legal*, because it perhaps may be according to the strict Forms of Law: But I say it was not a fair and an equal Tryal, because in the last Act of Parliament, which was made for regulating Tryals in Cases of Treason, the Equity and Reasonableness of a Prisoner's having that which was denied me; that is, a Copy of the Indictment, and Council, is laid down as the Ground and Reason of making the Act; and without that it had never been made: It is in the Preamble of the Act, which I have looked upon since I went out of Court; and though as to the Time of the Commencement, there is a certain Day prefix'd, yet the Equity of the Act is always the same, and that Equity I take my self to be entitled unto; and therefore being denied the Benefit of it, I think I had not an equal and a fair Tryal.

Mr. Com. Serj. Sir, you have very unreasonably objected this Matter of this Act of Parliament at your Arraignment, and upon your Tryal, and now; but your Objection is of no Moment or Validity in the World: For the Act is to commence *in futuro*, and you are tryed according to the Course of Common Law before that Act can take place; and it is the Common Law only that this Court can proceed by, and you be tryed by.

Char. Sir, I insist not upon the Law itself, but only upon the Equality of it, and the Reasonableness of the Thing.

Mr. Com. Serj. Courts of Justice are to go according to Rules of Law, and that is equal that is according to those Rules: I say again, Sir, you have had a fair, a legal, and an equal Tryal, and have been treated with all the Candor and Temper, that I believe was ever shewn to any Persons in your Condition.

Char. I had not Council allowed me to assist me.

Mr. C. Serj. The Law allows it you not; if it had, you should have had it.

Char. Then my Council were ignorant People, to instruct and advise me, that by the Equity of this Act I ought to have it.

Mr. Com. Serj. It was never practicable before, nor can be, till the Time that this Act takes Place.

Char. Sir, I cannot argue with the Court in Matters of Law; but as to the Evidence, I say, it did not come up to the Indictment.

Mr. C. Serj. If you have any Thing to except against the Indictment, that is very proper for you to do, and if you will propose it, we will hear you.

Char. Sir, I find fault with the Indictment in several Particulars; all the Facts are laid in the Parish of *St. Clements Danes*, and there is not one Fact proved to be done there.

Mr. C. Serj. It is not material that the Facts should be proved to be done in the particular Parish laid in the Indictment; it is sufficient, if they be proved to be done in the County.

Char. There is not one Fact proved to be done in that Parish.

Mr. C. Serj. All that is against the Evidence, which we cannot at all take Notice of after the Verdict.

Char. I insisted upon several Things, whereby it was impossible that the Evidence could be true, and mentioned several Things, wherein the Indictment was erroneous, and the Evidence not consistent with it, or at least not of such Validity as to affect me; all which Things if I might have had Council to argue for me in Point of Law, (and I look upon it as a very great Hardship that it was denied me,) as likewise that my Lord Chief Justice over-ruled what I offered about Trepanners, as I take these Witnesses to be, out of Sir *Robert Atkins's* Book, and what I quoted out of my Lord *Hales's* Pleas of the Crown, and *Coke's* Institutes.

Mr. C. Serj. Mr. *Charnock*, If you please to offer any Point of Law to the Court to stop Judgment, we are ready to hear it; but you ought not to reflect upon the Court.

Char. Where a Man is dying, sure he may have Leave to take Notice of what Hardships he has lain under.

Mr. C. Serj. Pray, Sir, hear me; No Men that ever stood in your Place have had more Indulgence and Favour shew'd them, nor, I believe, so much neither. Those of us that are here, and were at your Tryal, do think you do very much amiss, to make any Reflections upon the Court after you were so fairly dealt with. If you have any Thing that is material to offer in Arrest of Judgment, pray let us hear it: But we must over-rule all Discourses of this Nature, it is a vain Sort of Discourse, and will be of no Use or Service to you at all.

Char. Truly I know not what it is possible for me to urge which you will think to be material, if I cannot urge false Latin and Inconsistencies. There have been heretofore Arrests of Judgment, and that must sure have been upon some Error or other.

Mr. C. Serj. It is true, but you assign none; you abound in Words, but will not offer any Thing that is fit for you to offer.

Char. Sir, I assign this particularly as an Error, and if it be not I cannot tell what is: I am upon my last Legs, and stand here for my Life, and ought to be allowed all legal Advantages. One particular Thing is this, Whether the Scene of the Fact being laid to be at the Parish of *St. Clement Danes* there ought not to be Proof that such Facts were done there; and if so, Whether it be not an Error, that there was no Proof of any one Fact done there? And then the next Thing is, we are charged to have bought Horses and Arms in the Indictment, and there was no Proof of any Horses or Arms bought, I am sure as to me there was not.

Mr. C. Serj. I told you before, all this is to no Purpose, you enter into the Evidence, which is Matter of Fact, which is all over, and we can-

not enter into any Consideration of it, therefore pray do not spend our Time, but if you have any Thing that is an Objection to the Frame of the Indictment let us hear it.

Char. Then I think that the Indictment is uncertain; it says, *quadraginta Homines equestres aut circiter de ipsis Roberto Charnock, Edwardo King, & Thoma Keys*; this is either not true, or it is Nonsense: For if there be forty Horsemen, or thereabouts, of *Robert Charnock, Edward King, and Thomas Keys*, that cannot be true, for they can't make forty; and if you take in the *alii Proditoribus ignotis*, that will make it uncertain, and that Uncertainty will make the Indictment void.

Mr. C. Serj. I thought my Lord Chief Justice had satisfied you as to that Objection; you repeat but Part of the Sentence: It is said, *de ipsis Roberto Charnock, & predictis aliis Proditoribus ignotis, ac aliis*, that is certain enough, I thought we should have heard no more of that frivolous Objection, but you had been satisfied with the Judge's Answer to it.

Char. I am satisfied in Point of Fact that they construed it so; but these are the Words of the Indictment as they were read to me.

Mr. C. Serj. You shall have the Words read to you again. Read them.

C. of Arraignments. *Quod quadraginta homines equestres aut eo circiter de ipsis Roberto Charnock, Edwardo King, & Thoma Keys, & predictis aliis Proditoribus ignotis ac aliis.*

Mr. C. Serj. You took but Part of the Sentence, or else you could never have made that Objection.

Char. Then, Sir, here is *tunc & ibidem*, what is that?

Mr. C. Serj. You can easily tell that sure; it is *then and there*.

Char. What, *ibidem*? What Word is that?

Mr. C. Serj. It is the best Word that could be used, what Word would you have had?

Char. *Tunc & ibi* is *then and there*.

Mr. C. Serj. No, *ibidem* is a better Word, and is always used in our Pleadings at Law.

Char. Then I have only this in general to say; Whether it be possible for a Man that is ignorant in Forms of Law to defend himself without Council? I must desire Council to look into the Indictment and to assist me.

Mr. C. Serj. That is what we cannot allow by Law, unless you offer something that may be such an Objection, as the Court shall think fit to have argued by Council.

Char. But how shall I, that am ignorant in the Law, know how to offer you that which you will think fit to hear Council to?

Mr. C. Serj. You may offer any Thing that you think is an Exception, and the Court will consider of it; for I think it is my Duty, and every Man's that has the Honour to sit here by the King's Commission, to lay as much Weight upon any Objection that a Prisoner does offer, as it will bear; but if nothing be offer'd that is of the least Weight or Moment, we being to do our Duty equally between the King and the Prisoner, we cannot allow Council when there is nothing before us to allow it upon.

Char. You will not, it seems, let me have such Assistance as I may offer you something material.

Mr. C. Serj. You know well enough we cannot do it, pray do not spend our Time to no Purpose.

Char. Nay, Sir, if you be in Haste, I will not trouble you any longer.

Mr. C. Serj. You have no Reason to say we are in Haste; I am sure you have had all the Indulgence and Patience that could be; you are at Liberty to offer any Thing that you can, but to spend the Time of the Court in bare Words is not reasonable.

Char. The Law was never my Practice, Sir, nor Study: I perceive whatsoever I offer signifies nothing; therefore I beg your Pardon for the Trouble I have given you; I shall not attempt to offer any thing further.

Mr. C. Serj. You may offer what you will, we will hear you.

Char. Sir, I perceive whatsoever I say is unacceptable, and so I had as good let it alone.

Mr. C. Serj. You shall be heard to say whatever you think is for your Interest to say.

Char. I thought these Things were for my Interest to offer; but I see it is to no Purpose; therefore I have no more to say, I have done.

Mr. C. Serj. You may offer what you will, and you shall be heard with all the Patience and Candour imaginable.

Char. I see it is impossible for me to offer any Thing that the Court will think material; therefore it is in vain for me to speak, and trouble my self and the Court with what will be of no Use to me.

Cl. of Arraignments. *Edward King*, hold up thy Hand, (which he did.) You stand convicted of the same High-Treason; What can you say for your self, why the Court should not give Judgment upon you to die according to Law?

Then he was made to kneel and rise up again.

King. What *Mr. Charnock* has said, all of it I do imagine to be material; and since he is not to be heard, I have done; I can say no more.

Cl. of Ar. *Thomas Keys*, hold up your Hand; you are in the same Case with the Prisoner that went last before you: What can you say for your self why the Court should not give Judgment upon you to die according to the Law?

He was made to kneel and rise again.

Keys. Sir, I have had no Council, nor no Assistance, since I have been in Prison.

Mr. C. Serj. That you alledged upon your Tryal, and you were then told you might have had Council if you had thought fit; for you had an Order for it, and you come too late to offer any Thing of that Nature now. But the Question that is now ask'd you is, what you have to say for your self, why Judgment should not pass upon you?

Keys. I was only a Servant.

Mr. C. Serj. You have been told that will not excuse a Man in such a Case.

Keys. I cannot help it, Sir, I have done; I hope you will take care of my Wife and Children when I am gone.

Then Proclamation was made for Silence, whilst Judgment was in giving; which the Common Serjeant, sitting down upon the Bench, pronounced thus:

Mr. C. Serj. *Robert Charnock*, *Edward King*, and *Thomas Keys*, the Prisoners at the Bar; You have been severally indicted for High-Treason; you have pleaded Not Guilty, and put your selves, for your Tryal, upon the Country, which Country have found you Guilty: You have had the Benefit of a fair, lawful, indifferent, and equal Tryal, according to the Laws of this Land; those very Laws, which you are charged in this Indictment to have conspired to subvert. It is a Crime of the highest Nature that the Law knows: You are Gentlemen of liberal Education, and I hope this will bring you to some Reflection, both upon the State of your own Case, and the Blackness of your Offence, in the Time you have to live, which I fear is but short: It is certainly the hainoufpest Crime that any Persons can be guilty of; the Murdering of a Prince in cold Blood, and Involving your Country in Slaughter and Confusion. I have nothing more to do, but to pronounce the Judgment that the Law has provided for such Offenders, and which the Court doth award:

That you go from hence to the Place from whence you came; and that from thence you be drawn upon a Hardle to the Place of Execution, where you are severally to be Hanged by the Neck, and cut down alive; your Bowels and Privy-Members to be cut from your Bodies, and to be Burnt in your View; your Heads to be cut off, your Bodies respectively to be divided into Four Parts; which Heads and Quarters are to be at the King's Disposal: And God have Mercy upon your Souls.

Char. Sir, I desire we may have the Favour to have our Friends and Relations come to us while we are in Prison.

Mr. C. Serj. You shall have all the Liberty of your Friends and Relations coming to you, that you can reasonably desire.

Char. And I hope we shall have no hard Usage in Prison.

Mr. C. Serj. No, God forbid you should; you may assure your self you shall have none.

Then the Sessions of Peace for London, and of Goal-delivery of Newgate for London and Middlesex were adjourn'd unto Saturday the 21st of March instant.

And Charnock, King, and Keys, were Executed according to the Sentence, on Wednesday the 18th of March, 169². at Tyburn.

The TRYAL of Sir JOHN FREIND, Knight.

Publish'd by AUTHORITY.

*Die Lunæ vicesimo tertio Martii, 1695. Anno Regni Regis
Gulielmi Tertii Octavo.*

At the Sessions-House in the Old-Baily, this Day came on the Tryal of Sir John Freind, Knight, for High-Treason, in Compassing and Imagining the Death and Destruction of his present Majesty King William, upon an Indictment found by the Grand-Jury for the City of London, upon the Sessions of Oyer and Terminer and Gaol-Delivery of Newgate, on Saturday the 21st instant.

Clerk of Arraignments.

R Y E R, make Proclamation.

Cryer. Oyez, Oyez, Oyez. All Manner of Persons that have any Thing more to do at this General Sessions of the Peace, Sessions of Oyer and Terminer, holden for the City of London, and Gaol-Delivery of Newgate, holden for the City of London, and County of Middlesex, adjourned over to this Day; Draw near, and give your Attendance, for now they will proceed to the Pleas of the Crown for the said City, and County; and God save King William.

Cl. of Arr. Make Proclamation again.

Cryer. Oyez. You good Men of the City of London, summoned to appear here this Day, to try between our Sovereign Lord the King, and the Prisoner that is to be at the Bar; answer to your Names as you shall be called every Man at the first Call, upon Pain and Peril that will fall thereon.

Then the Petty Jury were all called over, and the Appearances of those that answered to the Call were recorded.

About Ten a Clock the Lord Chief Justice Holt, the Lord Chief Justice Treby, Mr. Justice Nevill, and Mr. Justice Rokeby, came into the Court; and there being a great Confluence of the Nobility and Gentry there present, the Prisoner was order'd to be brought to the Bar: Which was done accordingly.

Cl. of Arr. Sir, John Freind, hold up thy Hand.

Freind. My Lord, I humbly move that I may have one William Courtney (who is to be a principal Witness for me at my Tryal, and is now a Prisoner in the Gatehouse) sent for.

* Lord Chief Justice Holt. * **L. C. Just.** Is he your Witness, Sir John?

Freind. Yes, my Lord, William Courtney is his Name.

L. C. J. Sir John, why did not you send, and desire this before?

Freind. My Lord, I did not hear of him, while last Night; and I humbly beseech your Lordship, that you will please to let him be sent for.

The Judges consulted among themselves.

L. C. J. Look ye, Sir John Freind, I'll tell you, if you'll appoint your Agent to come hither, you shall have an *Habeas Corpus ad testificandum*: But indeed you might have sent this Morning, and then the Writ might have been got ready.

Freind. My Lord, I did not know so much; for it was last Night before I understood that he was to be a Witness.

L. C. J. You might have sent last Night, or this Morning, and you should have had a Warrant for the Writ.

Freind. I assure your Lordship, I did not know so much.

L. C. J. Well, send your Agent, or your Solicitor, and you shall have a Warrant for the Writ.

Freind. I beseech your Lordship, that he may be sent for, and that the Messenger may make haste.

L. C. J. Let your Solicitor come to my Clerk, and he shall have it.

Freind. My Lord, if you please to give a Rule of Court for it, I suppose it may be done presently.

L. C. J. No, no, Sir John, it must be by Writ, the Keeper of the Gatehouse else cannot bring him.

Fr. My Lord, that will be a long Time before it can be done, I desire nothing but that I may have him here to give his Evidence for me.

L. C. J. It will be got ready presently; I believe he will be here Time enough for you to make use of his Testimony.

Fr. But, my Lord, suppose he should not be here: It would be a great Hindrance to me, and a greater Injury to my Tryal.

L. C. J. No, no, Sir John, you need not fear any Thing of that Nature, we are not in such Haste; we will not spur you on: But the Warrant shall be made; and do you make what Haste you can to get the Writ, and your Witness brought.

The Lord Chief Justice gave Order to Mr. Mason his Clerk, to prepare a Warrant for an Habeas Corpus, directed for the Keeper of the Gatehouse, to bring William Courtney immediately hither to give Evidence.

Cl. of Arr. Sir John Freind, hold up thy Hand. (which he did.)

You

You stand Indicted in *London* by the Name of Sir *John Freind*, late of *London*, Kt. for that, Whereas there had been for a long time, and yet is, an open, and notoriously publick, and most sharp, and cruel War by Land, and by Sea, had, carried on, and prosecuted by *Lewis* the *French* King, against the most Serene, most Illustrious, and most Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. All which time the said *Lewis* the *French* King, and his Subjects were, and yet are Enemies of our said Lord the King, that now is, and his Subjects. You the said Sir *John Freind*, a Subject of our said Sovereign Lord the King, that now is, of this Kingdom of *England*, well knowing the Premises, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traytor against the said most Serene, most Clement, and most Excellent Prince, our said Sovereign Lord *William* the Third, now King of *England*, &c. your Supreme, True, Natural, Rightful, Lawful, and Undoubted Sovereign Lord; the cordial Love, and the true, and due Obedience, Fidelity and Allegiance, which every Subject of our said Sovereign Lord the King, that now is, towards him our said Sovereign Lord the King, should and of right ought to bear, withdrawing, and intending utterly to extinguish, and contriving, and with all your Strength, purposing, designing, and endeavouring the Government of this Kingdom of *England*, under our said Sovereign Lord the King that now is of Right, duly, happily, and very well Established, altogether to Subvert, Change, and Alter, and his Faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable, and most miserable Slavery, to the aforesaid *French* King, to Subdue, and bring, the first Day of *July*, in the Seventh Year of the Reign of our said Sovereign Lord the King that now is; and divers other Days and Times, as well before as after, at *London*, in the Parish of *St. Peter Cornhill*, in the Ward of *Limestreet*, falsely, maliciously, devilishly, and traiterously, did compass, imagine, contrive, purpose, and intend, our said Sovereign, the Lord the King that now is, then your Supreme, True, Natural, Rightful, and Lawful Sovereign Lord, of and from the Regal State, Title, Honour, Power, Crown, Command, and Government of this Kingdom of *England*, to Depose, cast Down, and utterly to Deprive; and our said Sovereign Lord the King to Death, and final Destruction to put, and bring, and the aforesaid *Lewis* the *French* King, by his Armies, Soldiers, Legions, and Subjects, this Kingdom of *England* to Invade, Fight with, Overcome, and Subdue, to move, incite, procure, and help, and a miserable Slaughter among the Faithful Subjects of him, our said Sovereign Lord the King, throughout this whole Kingdom of *England*, to make and cause; and that you the said Sir *John Freind* to the aforesaid Enemies of our said Lord the King, that now is, then, and there during the War aforesaid, Traiterously were adhering and assisting; and the same your most impious, wicked and devilish Treasons, and traiterous Compassings, Intentions, and Purposes aforesaid, to fulfil, perfect, and bring to effect; and in prosecution, performance, and execution of that trait-

rous Adhesion, you the said Sir *John Freind*, as such a false Traitor, during the War aforesaid, to wit, the same First Day of *July*, in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, and divers other Days and times, as well before as after, there and elsewhere in *London* aforesaid, falsely, maliciously, advisedly, secretly, and traiterously, and with Force and Arms, &c. with one *Robert Charnock* (late of High-Treason, in contriving, and conspiring the Death of our said Sovereign Lord the King, that now is, duly convicted and attainted) and with divers other false Traitors, to the Jurors unknown, did meet, propose, treat, consult, consent, and agree, to procure from the aforesaid *Lewis* the *French* King, of his Subjects, Forces, and Soldiers, then and yet Enemies of our said Sovereign Lord the King that now is, great Numbers of Soldiers and Armed Men, this Kingdom of *England* to Invade and Fight with, and to levy, procure, and prepare great Numbers of Armed Men, and Troops and Legions against our said Lord the King that now is, to rise up and be formed, and with those Enemies at and upon such their Invasion and Entry into this Kingdom of *England*, to join and unite, Rebellion and War against him our said Lord the King, within this Kingdom of *England*, to make, levy, and wage, him our said Lord the King so as aforesaid to Depose, and him to Kill and Murder; and moreover with the said false Traitors, the same First Day of *July*, in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, Traiterously you did consult, consent, and agree to send the aforesaid *Robert Charnock* as a Messenger from you the said Sir *John Freind*, and the same other Traitors unknown, unto and into the Kingdom of *France*, in Parts beyond the Seas, unto *James* the Second, late King of *England*, to propose to him, and desire of him to obtain of the aforesaid *French* King, the Soldiers and Armed Men aforesaid, for the Invasion aforesaid to be made; and Intelligence and Notice of such their Traiterous Intentions, and Adhesions, and all the Premises unto the said late King *James* the Second, and the said other Enemies and their Adherents, to give and exhibit; and them to inform of other particular Things and Circumstances thereunto relating; as also Intelligence from them of the said intended Invasion, and other Things and Circumstances concerning the Premises, to receive, and the same to you the said Sir *John Freind*, and the said other Traitors in this Kingdom of *England*, to signify, report and declare, in Assistance, Animation, and Aid of the said Enemies of our said Lord the King that now is, in the War aforesaid, and to incite and procure those Enemies the more readily and boldly to Invade this Kingdom of *England*; and the Treasons and Traitorous Contrivances, Compassings, Imaginations, and Purposes of you the said Sir *John Freind* aforesaid, to perfect and fulfil, and all the Premises the sooner to execute, manage and perform, you the said Sir *John Freind*, during the War aforesaid, so as aforesaid continued, to wit, the same First Day of *July*, in the aforesaid Seventh Year of the Reign of our said Lord the King that now is, at *London* aforesaid, in the Parish and Ward aforesaid, falsely and traiterously did procure and obtain to your self, and did receive and accept of a certain Commission or Writing, purporting it self to be a Commission, under
and

and from the aforesaid *James* the Second, late King of *England*, to constitute you the said *Sir John Freind* to be a Collonel of Horse in the Army by you and the other false Traytors against our said Lord the King that now is, within this Kingdom of *England* to be levied and formed; and in pursuance of the said pretended Commission by you the said *Sir John Freind* so obtained and accepted of, and your Treasons and all your Traiterous Intentions aforesaid, the sooner to execute, perform, fulfil, and perfect, You the said *Sir John Freind* afterwards, (to wit) the same First Day of *July*, in the Seventh Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, Falsely, Maliciously, Advisedly, Secretly, and Traiterously, Divers Soldiers, and Armed Men, and ready to be Armed, with Force and Arms, &c. To Raise, and Lift, and War and Rebellion against our said Lord the King, within this Kingdom of *England* to make and wage; And to and with the said Enemies of our said Lord the King, Foreigners and Strangers, Subjects and Soldiers of the said *Lewis* the *French* King, being about to invade this Kingdom of *England*, at and upon their Invasion, and Entry into this same Kingdom, then shortly expected to be made, Themselves together with You the said *Sir John Freind* to join and unite, and in Troops and Legions to form, did Raise, Lift, and Retain, and did procure to be Raised, Listed, and Retained; And divers Sums of Money, in and about the Raising, Lifting, and Retaining of the aforesaid Soldiers, and Men Armed, and ready to be Armed upon the Account aforesaid, upon the aforesaid First Day of *July* in the Seventh Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, Falsely, Maliciously, and Traiterously, did give and pay, and cause to be paid; and those Soldiers and Men, for the Treasons, Intentions, and Purposes aforesaid, then and there, and long after, you had in readiness. As also the same First Day of *July*, in the Seventh Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, Divers Horses, and very many Arms, Guns, Carbines, Pistols, Swords, and other Weapons, Ammunition, and Warlike Things, and Military Instruments, Falsely, Maliciously, Secretly, and Traiterously You did Obtain, Buy, Gather, and Procure, and cause to be Bought, Gathered, Obtained and Procured, and in Your Custody had and detained, to that Intent to use the same in the said Invasion, War and Rebellion, against our said Sovereign Lord the King that now is, Him our said Lord the King of, and from the Regal State, Crown and Command of this Kingdom of *England* to Depose, Cast Down, and Deprive, and him to Kill and Murder, and all the Treasons, Intentions, Contrivances and Purposes of You the said *Sir John Freind*, as aforesaid, to fulfil, perfect, and fully to bring to Effect; against the Duty of Your Allegiance, and against the Peace of our said Sovereign Lord the King that now is, His Crown and Dignity; as also against the Form of the Statute in this Case made and provided.

What say'st thou, *Sir John Freind*, Art thou Guilty of this High-Treason whereof thou standest Indicted, or Not Guilty?

Freind. Not Guilty, my Lord.

Cl. of Arr. Culpritt, How wilt thou be Tried?

Freind. By God and my Country.

Cl. of Arr. God send thee good Deliverance.

Freind. I don't know any thing of it, I am as Innocent as the Child unborn.

The Warrant for the Habeas Corpus was Signed by the Lord Chief-Justice Holt, and delivered to the Prisoner, who sent it away to the Crown-Office by his Solicitor, to get the Writ sealed.

Freind. My Lord, I have something to move, if your Lordship please to hear me, and the rest of my Lords the Judges; That if any Matter of Law do arise upon my Trial, I may be heard by my Council, that you may not destroy me without Law.

L. C. Just. Look you, *Sir John Freind*, if any Matter of Law do arise at your Trial, and you will tell us what that Matter of Law is, and the Court see that it is a Matter of Doubt, we can, and ought, and no Question shall assign you Council; but that is time enough when such Matter does arise.

Freind. My Lord, It is well known to your Lordship, and all the Court, that I am not a Lawyer; but, I hope, as you are of Council for the King as Judges of Law, so you will be of Council for me; for I am not a Lawyer, and cannot know, whether any Matter that arises be Law or no; and therefore I humbly beseech your Lordship to be so just and kind, as to tell me whether it be Law or not Law, and I submit my self to your Lordship's Direction.

L. C. Just. *Sir John Freind*, We are bound to tell you when any Thing of that Nature appears before us, and to let you have all the Benefit of the Law that possibly you can have; for we are obliged to be indifferent between the King and you.

Freind. My Lord, I don't question it. I desire also I may have Pen, Ink, and Paper.

L. C. Just. Yes, yes, by all means. (*And he had them.*)

Cl. of Arr. Cryer, Make Proclamation.

Cryer. Oyez: You Good Men of the City of *London*, summoned to appear here this Day, to Try between our Sovereign Lord the King, and the Prisoner that is at the Bar, who have been called, and made Default, answer to your Names, and save your Issues.

Then the Defaulters were call'd over.

Cl. of Arr. You the Prisoner at the Bar, these Men that you shall hear call'd, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; If therefore you will challenge them, or any of them, your time is to speak unto them as they come to the Book to be sworn, before they be sworn.

Cryer. Call *Thomas Clerk*.

Freind. Pray, Sir, how many may I challenge?

L. Ch. J. Look you, *Sir John*, you may challenge, that is, except against 35, without shewing any Cause: If you don't like them to be of the Jury, you may refuse them; and as many others, as you have Cause to except against.

Fr. My Lord, I humbly beseech you, that because perhaps I may mistake in numbring, that I may have timely Notice before the 35 be excepted against, or else it may occasion me a great deal of Prejudice.

L. C. J. Sir, the Clerk shall take Care of that, he shall inform you how many you challenge, and you shall receive no Prejudice of that Kind, or by any Slip in point of Form.

Cl. of Arr. Cryer, call *Thomas Clark*. (*who appeared.*)

Fr. Pray Sir, must I not see the Gentleman?

L. C. J. Yes, yes, by all Means. (*He was shewn to him.*)

Fr. You may swear Mr. Clark; I do not except against him. I desire but honest Gentlemen, and I shall come off I warrant you: I am as innocent as the Child unborn.

L. C. J. Swear Mr. Clark,

Cl. of Ar. Hold him the Book; (*which was done*) look upon the Prisoner, you shall well and truly try, and true Deliverance make between our Sovereign Lord the King, and Prisoner at the Bar, whom you shall have in Charge, according to your Evidence. So help you God.

Cl. of Ar. Nathan Green.

Fr. I except against him.

Cl. of Ar. Thomas Emms.

Fr. I accept of him for a Juryman, I have nothing to object against him. (*He was sworn.*)

Cl. of Ar. Francis Byer.

Fr. Pray let me see him, (*he was shewn to him*) I do except against him, I challenge him.

Cl. of Ar. Benjamin Dry.

Fr. I except against him.

Cl. of Ar. James Demew.

Fr. I accept him, I have nothing to say against him, I would have him to be a Juryman.

Mr. Demew. My Lord, I am not a Freeholder.

L. C. J. Sir John, Do you challenge him peremptorily, or do you challenge him for Cause?

Fr. My Lord, I do not challenge him at all, I accept of him.

* Sir Thomas Trevor. * Mr. Attorn. Gen. If he have no Freehold, we that are for the King will except against him; for I would not have any Body that is not a Freeholder serve upon the Jury.

Cl. of Ar. Henry Hunter.

Fr. Pray, my Lord, is this Gentleman that was called before laid aside? He is not one that I challenge.

L. C. J. No, no, he is challeng'd by the King's Council, as no Freeholder.

Fr. Then he is only set aside, I suppose, I speak it for this Reason, I would not be mistaken in my Number.

L. C. J. Care shall be taken of all that, he is not to be reckoned as one that you challenged, he is challenged for want of Freehold by the King's Council.

Cl. of Ar. What say you to Mr. Hunter?

Fr. I accept of Mr. Hunter, let him be sworn. (*which was done.*)

Cl. of Ar. John Cox.

Mr. Cox. My Lord, I have no Freehold in London.

Mr. Att. Gen. Then let him be set aside.

Cl. of Ar. George Bodington.

Fr. I except against him.

Cl. of Ar. John Hedges.

Fr. I except against him.

Cl. of Ar. You challenge him Sir, do you?

Fr. Yes, yes, I do.

Cl. of Ar. John James.

Fr. I challenge him.

Cl. of Ar. Thomas Poole.

Fr. I accept of him. (*He was sworn.*)

Cl. of Ar. Peter Parker.

Fr. I accept of him. (*He was sworn.*)

Cl. of Ar. George Grove.

Fr. I except against him, for I have him not in my Pannel.

L. C. J. How comes that?

Fr. I can't tell, my Lord, I have been kept alone while Saturday last, only that worthy Gentleman (*bowing to Mr. Baker, the Prosecutor for the King*) was with me to give me Notice of my Tryal before.

Cl. of Ar. Nathaniel Wyersdale.

Fr. I challenge him.

Cl. of Ar. Samuel Blewitt.

Fr. I challenge him.

Cl. of Ar. James Bodington.

Fr. I challenge him.

Cl. of Ar. John Wolfe.

Fr. Sir, I do assure you I have him not in my Pannel, upon my Word. I challenge him.

Cl. of Ar. Samuel Jackson.

Fr. I accept of him. (*He was sworn.*)

Cl. of Ar. Nathaniel Long.

Fr. I accept of him. (*He was sworn.*)

Cl. of Ar. Richard Chiswell.

Fr. I challenge him.

Cl. of Ar. George Child.

Fr. I accept of him. (*He was sworn.*)

Cl. of Ar. William Walker.

Fr. I accept of him. (*He was sworn.*)

Cl. of Ar. John Wills.

Fr. I challenge him.

Cl. of Ar. John Hibbert.

Fr. I challenge him.

Cl. of Ar. John Pettit.

Fr. I challenge him.

Cl. of Ar. James Robinson.

Fr. Sir, he is not in my Pannel upon my Word.

Cl. of Ar. He is in the Original Pannel.

Mr. Sheriff Buckingham. My Lord, here is the Original Pannel, and here's his Name here; and there is not a Person in this Pannel, but what was originally put in, except it be about five or six at the End, and this is none of them.

Fr. I challenge him.

Cl. of Ar. Thomas Hollis. (*He did not appear.*)

L. C. J. Pray, Sir John, who had you that Copy from? Who gave it you?

Fr. My Solicitor.

Mr. Trotman. My Lord, he had none from me I am sure: I received the Pannel from the Sheriff, but no Body, from Sir John, was ever with me for a Copy.

Fr. My Lord, my Solicitor brought it to me on Saturday Night.

L. C. J. Who is your Solicitor, that gave you that Copy?

Fr. His Name is Mr. Burleigh, my Lord.

L. C. J. Where is he? Let's see this Mr. Burleigh.

Fr. My Lord, he is gone to the Crown Office it seems, for the Habeas Corpus.

Mr. Justice Rokeby. It is your own Solicitor that has put the Abuse on you, if it be so.

Cl. of Ar. Thomas Hollis. (*He did not appear.*)

L. C. J. Pray, Sir John Freind, how many have you in all?

Fr. In Number my Lord, would you have me tell you how many I have in Number?

L. C. J. Aye, in Number, in your Copy of the Pannel.

Mr. Sh. Buckingham. In the Pannel there are above Fourcore.

Fr. I have seventy one, my Lord.

Then Thomas Hollis appeared.

Cl. of Ar. Do you challenge him, Sir?

Mr. Sh. Buckingham. Pray let the Secondary produce his Pannel that he had from my Brother and me,

me, and I am sure the Court will find they were all named in that Pannel.

Mr. Trotman. My Lord, I have the Pannel, but they never came to me for a Copy, as I expected: I had got one ready; if Sir John Freind, or any Person for him, had sent to me, they might have had it.

Mr. Sh. Buckingham. And these People that are not in Sir John Freind's Pannel, are none of the half dozen that were added, when we came to the Knowledge of them, that they were Freeholders.

L. C. J. When were they added Sir?

Mr. Sh. Buck. They were added on Friday in the Afternoon, and it seems he never came for the Pannel to the proper Officer, and those that he objects against were not added, but are in the original Pannel.

L. C. J. Truly I can't see any Body is to blame in this Matter but your own Solicitor.

Mr. Trotman. My Lord, I assure you I had made a Copy, and I wondered I did not hear of them: I do not know where he got this Copy.

L. C. J. Treby. In truth if you would not send to the proper Officer for a Copy, when you might have had it, you must be content with what you have; for no Body is bound to give you a Copy unless you ask for it.

L. C. J. Well, what say you to Thomas Hollis?

Fr. I challenge him, my Lord, for he is not in my Pannel.

Cl. of Ar. John Sherbrook.

Fr. I accept of him. (He was sworn.)

Cl. of Ar. James Blackwell.

Fr. He is not in my Pannel, upon my Word, my Lord.

L. C. J. I can't help it, he is in the Sheriff's Pannel that is returned here.

Fr. I challenge him.

Cl. of Ar. Thomas Gardner.

Fr. I accept of him.

Mr. Gardner. My Lord, I am no Freeholder in the City.

Mr. Justice Rokeby. Mr. Gardner, have you not lately convey'd away your Freehold?

Mr. Gard. No, indeed, my Lord, I never had any.

Cl. of Ar. William Prince.

Fr. I accept of him. (He was sworn.)

Cl. of Ar. John Simons.

Fr. I challenge him.

Cl. of Ar. Robert White.

Fr. I challenge him.

Cl. of Ar. Joseph Morewood.

Fr. I accept him; his Name is John I suppose, for so it is in my Pannel.

Cl. of Ar. No, it is Joseph.

Mr. Morewood. My Name is Joseph.

Fr. Well, Sir, I accept of you, I don't question but you are an honest Man. (He was sworn.)

Cl. of Ar. Cryer, countez. Thomas Clark.

Cryer. One, &c. (So of the rest to the last.)

Cl. of Ar. Joseph Morewood.

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Jury were these.

Thomas Clark,	} Jur.	Nathaniel Long,
Thomas Emms,		George Child,
Henry Hunter,		William Walker,
Thomas Poole,		John Sherbrook,
Peter Parker,		William Prince, and
Samuel Jackson,		Joseph Morewood.

Cl. of Ar. Cryer, make Proclamation.

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Cryer. O yes. If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney General, or this Inquest now to be taken, of the High-Treason whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard; for now the Prisoner stands at the Bar upon his Deliverance: And all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence or else they forfeit their Recognizance; and all Jury-men of London, that have been called, and have appeared, and are not sworn may depart the Court.

Cl. of Ar. Sir John Freind, hold up thy Hand, (which he did.) You that are sworn, look upon the Prisoner, and hearken to his Charge: He stands indicted by the Name of Sir John Freind, late of London, Knight, (prout in the Indictment, *mutatis mutandis*.) And against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his Tryal hath put himself upon God, and the Country, which Country you are; your Charge is to enquire, Whether he be guilty of the High-Treason whereof he stands indicted, or not guilty; if you find him guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the Time of the High-Treason committed, or at any Time since; if you find him not guilty, you are to enquire if he fled for it? if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. Mountague. May it please your Lordship, and you Gentlemen of the Jury; This is an Indictment of High-Treason, that is brought against Sir John Freind, the Prisoner at the Bar, for associating with, and aiding the King's Enemies, with a Design to procure an Invasion from France, and to raise a Rebellion within this Kingdom, and this was to depose the King, and to restore the late K. James; and in order to the Effecting these his wicked Purposes, the Indictment sets forth, That the first of July last, he did meet, and consult, and agree with one Mr. Charnock, (a Gentleman since tried, convicted and attainted of High-Treason) how they should procure an Army from France, to come and invade this Kingdom: And should raise a sufficient Number of Men, to facilitate the Landing of the French; and the Indictment particularly charges the Prisoner at the Bar, with sending Mr. Charnock into France, to the late King James, to acquaint him with the Design, and to desire him to procure a great Number of Forces from the French King, to come here, and land within this Kingdom: And the Indictment does likewise charge him with procuring, and receiving a Commission from the late King James to constitute him, the Prisoner at the Bar, a Colonel of Horse; and likewise with laying out and expending, and paying several Sums of Money in listing and keeping Soldiers, and Men in pay under him, which were to be in his Regiment; and with laying out several Sums of Money in buying Arms, and Horses for this Invasion and Rebellion that was thus designed to be made, and raised within this Kingdom. To this, Gentlemen, he has pleaded not Guilty; we shall call our Witnesses, and prove the Fact, and we do not doubt but you will find him so.

Freind. Prove this if you can, it cannot be.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury; the Prisoner at the Bar,

Sir *John Freind*, stands Indicted of High-Treason, in Compelling, and Imagining the Death of the King, and likewise in Adhering to the King's Enemies.

Gentlemen, the Overt-Acts laid in the Indictment to prove this Treason, are these.

That the Prisoner at the Bar, did accept a Commission from the late King *James*, to raise a Regiment of Horse in this Kingdom, in order to joyn with the *French*, when they Invaded it; and there were several Meetings, and Consultations between him, and several others whom you will hear named by the Witnesses, upon which it was Resolved to send a Messenger, one *Charnock*, into *France*, to desire the late King *James*, to prevail with the *French* King to get a Number of Men, in all 10000, with an Assurance, that they would Assist him with a Number of Horse when he came: And in Pursuance of this Design, the Prisoner at the Bar did raise Men, and pay some Sums of Money for their Subsistence, and List'd, and had them in Readiness; and provided Horses and Arms: These are the Overt-Acts laid in the Indictment; the Evidence that will be produc'd to you, to prove this Treason, and these Overt-Acts, will be in this Manner.

Gentlemen you will see by the Evidence, that there has been a Design and Conspiracy on Foot for several Years, to Assassinate the King's Person, and to have an Invasion from *France* at that Time, by armed Force here to subdue this Kingdom. The Prisoner at the Bar, Sir *John Freind*, I think about two Years ago had a Commission sent him from the late King *James*, to raise a Regiment of Horse: There were several other Commissions sent likewise, but one was sent to the Prisoner, which he accepted of; and in pursuance of it, he appointed several Officers, and List'd several Men for that Purpose, and expended several Sums of Money for the raising, and subsisting of them.

Gentlemen, you will hear that his Lieutenant-Colonel was to be one *Blaire*, and his Major was to be one *Slater*; and this *Slater's* Father was a Clergy-Man, and he undertook to bring in a Troop of Clergy-Men that had refused to take the Oaths. One of his Captains was one *Evans*; one *Richardson* was another; and there were several other Officers whom you will hear named by the Witnesses, that were appointed and engag'd to make up the Regiment.

Gentlemen, you will hear further by the Witnesses, that about *May*, or *June* last, they having rais'd a considerable Number of Men, there were several Meetings had between the Prisoner at the Bar, and several other Persons, in order to send some Person over to get Forces from *France*, to Invade this Kingdom. The first Meeting, that you will hear of, was at the *Old King's Head-Tavern* in *Leaden-Hall-Street*, and there were present the Prisoner at the Bar, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Perkins*, Mr. *Charnock*, (who was lately Condemned and Executed for the Design of Murdering the King) Mr. *Porter*, and one *Cook*. At that Meeting you will hear what their Debates were, and what their Resolutions: After several Debates, who they should send, they resolv'd to send Mr. *Charnock*, to go into *France*, to desire the late King *James* to get 10000 Men of the *French* Troops, to land upon our Coasts, about 8000 Foot and the rest Horse and Dragoons: And they did Impower him in their Names, to assure the late King *James*, that they would, when ever he Landed

with his *French* Troops, be ready to assist him with near two Thousand Horse among them.

Upon this, Gentlemen, Mr. *Charnock* undertook to go upon this Message: But about a Week after they met again, for he was unwilling to go upon such an Errand, without having a full Resolution and Assurance from these Gentlemen that were thus Engag'd, that he might satisfy the late King what they would certainly do. So they met again about a Week after, and that was at a Tavern in *St. James's-Street*, near Sir *John Fenwick's* Lodgings, one Mrs. *Montjoyes*, there was the Prisoner at the Bar, my Lord of *Aylesbury*, and most of the same Company that were at the Meeting before: And Mr. *Charnock* desired to know, if they did agree to what had been Propos'd and Resolv'd on before; for he was unwilling, and did not care to go without a full Assurance of the Performance. They did all agree, and desir'd that he would go with all Speed, and that he should assure King *James*, they would be ready to meet him, if they had Notice where he would Land.

Pray, Gentlemen, observe the Time when these Meetings were. It was in *May* or *June* last soon after the King was gone to *Flanders*; and they thought this a fit Opportunity, when the King's Forces were drawn out of *England* into *Flanders*, for carrying on the Campaign, then was the proper Time, according as they discours'd the Matter, the People being as they said, generally Dissatisfied, and but few Forces in *England* to oppose them.

Mr. *Charnock* accordingly went over into *France*, and about a Month after return'd again, and acquainted them that he had told King *James* their Resolution, and how they would assist him, and what they desired of him, and, in short, had delivered his Message: But that King *James* told him, he thank'd them very much for their Kindness and Readiness to assist him; but at that Time the *French* King could not spare any Forces, nor could it be all that Summer, and so there was nothing to be done; and thereupon it rested till the last Winter.

Then, Gentlemen, you will hear that the last Winter the Design was renewed again, about *January* last: For Sir *George Barclay* came over from the late King, being a Lieutenant in his Guards there, and then they entered into a Conspiracy to assassinate the King; and that was to be done first, to facilitate the Invasion, which was to follow immediately upon the Execution of the Assassination: For they thought they cou'd have no Assurance of Success in their Invasion, as long as the King lived; and I hope every one will take Notice, how precious that Life is to us, when it is so apparent to all the World, that our Enemies cannot hope for any Success to their Enterprizes and Designs to destroy us, but by taking that Life away.

Gentlemen, this very Conspiracy, you will hear the Prisoner at the Bar was acquainted with, and privy to, even this Assassination; tho' indeed you will hear he did not much approve of it, because he thought it would be a Disservice to the late King's Affairs; but he was at several Meetings with Mr. *Porter*, and Mr. *Charnock*, and Sir *William Perkins*, and several others that were Conspirators in that Design, and was acquainted with it, as you will hear by the Evidence.

Gentlemen, you will hear further, that about *January* last, the Invasion being intended to be quickly made, the Prisoner at the Bar, Sir *John Freind*

Freind, had frequent Meetings with *Blair*, that was Lieutenant-Colonel, and other Officers, to consider and prepare how to be in a Readiness. About that Time the Prisoner at the Bar, Captain *Blair*, and one Captain *Ridley*, met at a Place in *Exchange-Ally*, and there they discoursed among one another; and there *Ridley* said there was a considerable *Roman-Catholick* that was sent to King *James*, and he wou'd bring the last Orders; and Sir *John Freind* said he knew of it very well, it was so, and he hoped he shou'd have them brought very quickly.

At another Time, the Prisoner at the Bar, and *Blair* his Lieutenant-Colonel, met at *Jonathan's* Coffee-House, and the Prisoner took him up in his Coach, and carried him along with him, and there they had a great Discourse of the Affairs of the Regiment. The Prisoner at the Bar, Sir *John Freind*, told *Blair* they must be very good Husbands of their Money: For if the Invasion should miscarry, he shou'd not have Money enough to carry on his Trade, but he would take Care about some Officers that had not Money to mount themselves; but a great many were to prepare for themselves at their own Charges, and for those that were to be under them. They had likewise then some Discourse about the *Thoulon* Fleet coming about, and that he thought it not adviseable till the *Thoulon* Fleet came round. He said he wou'd not put a Foot in the Stirrop till that were done; and that he wou'd keep out of the Way till all was in a Readiness, and advised Captain *Blair* to do so too.

Gentlemen, you will find it further proved, that about *May* last, the Prisoner at the Bar paid 20*l.* to this Captain *Blair*, who had laid out Moneys in the Affairs of the Regiment, and this was to Re-imburse him what he had so laid out; and it was in this Manner. You have all heard, I suppose, of one Colonel *Parker*, who being taken upon his coming over from *France*, was a Prisoner in the *Tower*, but made his Escape from thence, to which Escape the Prisoner at the Bar was privy. This Escape cost 300 *l.* as you will hear, and the Prisoner laid down 100 *l.* of it. But this was to be repay'd him again: But how was it? There was one *Johnson* a Priest, a Conspirator likewise in this Design of Assassinating the King, and he undertook and promised, that the late King should pay this 100 *l.* And accordingly one *Piggot* went over into *France*, and had this 100 *l.* paid him by King *James*, to repay it to Sir *John Freind*: But he thought fit to keep the Money, and Sir *John Freind* cou'd not get it of him, and he durst not ask it, because he knew the Consideration was not fit to be made Publick. But he told Captain *Blair* I cannot pay you the Money out of my own Pocket; but *Piggot* ought to pay me, who has received this Money of mine. If you will prevail with *Johnson*, who got this Money from the late King to be paid to *Piggot*, to persuade *Piggot* to pay 20 *l.* I will allow it in Part of the Money he is to pay me, and you shall have it. Captain *Blair* did prevail with *Johnson* to persuade *Piggot* to pay this 20 *l.* and Captain *Blair* did receive it, and Sir *John Freind* did agree to allow it to *Piggot* out of the 100 *l.* due to him.

Gentlemen, at another Time, about *Christmas* last, there was another 20 *l.* paid by Sir *John Freind's* Order and Direction, by *Piggot* to *Blair* upon the same Account, by the Mediation of *Johnson* the Priest; and this was paid and allow'd as being laid out in the Affairs of the Regiment

before, he being intrusted as Lieutenant-Colonel, to look after the Regiment.

Gentlemen, I have now open'd the Substance of the Evidence; the Particulars you will hear from the Witnesses themselves. If I have open'd it amiss, you will take Care, when the Witnesses are produc'd, to observe what they say, who will tell you what really was done, and will rectifie any Mistake of mine: For I wou'd have no such Mistake do the Prisoner at the Bar any Prejudice.

Mr. Sol. Gen. Gentlemen, Mr. Attorney has open'd the Nature and Course of our Evidence so fully, that I shall make no Repetition of any of the Particulars; but call our Witnesses and prove it in Order as it hath been open'd. And first, we call Captain *George Porter*, (who came in.)

Freind. My Lord, before Mr. *Porter* is sworn, I desire to know whether he is a Roman Catholick, or a Protestant?

L. C. J. Why do you desire that? Is not a Roman Catholick a Witness? Though he be a Roman Catholick, that's no Objection to his being a Witness.

Freind. My Lord, I desire to ask him the Question, whether he be a Roman Catholick or no?

L. C. J. Sir *John Freind*, it is not a proper Question.

Freind. My Lord, a Man ought to know what Profession they are of, that are Witnesses against him for his Life.

L. C. J. Will you ask him whether he be a Christian or no?

Freind. My Lord, I desire to know whether he be a Papist or a Protestant.

Mr. At. Gen. If Mr. *Porter* be willing to tell you he may; but it is not a proper Question.

L. C. J. Especially before he is Sworn; he is not Entitled to ask any Questions whatsoever, till he be Sworn.

Freind. My Lord, I beseech you let me have the Question answered.

Mr. Sol. Gen. Sure you don't consider, that the Answer to that Question is to accuse himself; you don't consider the Consequences of it.

Freind. Pray, my Lord, let me have my Right.

L. C. J. The Question is whether it is your Right or no.

Freind. My Lord, I would not trouble the Court if I cou'd help it, but my Life and All is at Stake, and I must make the best Defence I can.

L. C. J. Indeed your Question is improper in itself; but if he have a Mind to tell you, and answer voluntarily, he may.

Freind. I humbly beg your Lordship that he may answer the Question.

L. C. J. I cannot see you have a Right to have this Question answered you.

Freind. Mr. *Porter*, you are a Gentleman, and I desire you will answer whether you be a Roman Catholick or not.

Mr. Sol. Gen. Before he does answer, I desire he may be acquainted with the Danger: He was born a Protestant, no doubt, and then turning Roman Catholick, he subjects himself to a very severe Penalty.

L. C. J. Sir *John Freind*, I told you your Question was not proper to be ask'd.

Freind. Pray, my Lord, let him answer the Question, it will be of great Use to me in my Tryal; pray let me have my Right.

L. C. J. You shall have all the Right done you that can be; but in the first Place, if a Man be a Roman Catholick, notwithstanding his Religion, he

is a good Witness: And besides that, it may be his answering the Question may subject him to several Penalties; at least he is liable to Prosecution upon several Acts of Parliament that are very penal; and therefore it is by no Means to be ask'd.

Freind. My Lord, I pray only that he may answer the Question.

L. C. J. No Man is bound to answer any Question that tends to make him accuse himself, or subject him to any Penalties.

Fr. My Lord, I do with Submission desire it, and it is no great Matter for him to say whether he be Papist or Protestant.

L. C. J. If it be no great Matter, then why do you insist upon it? But perhaps it may be a great Matter in the Consequence of it to him; a Man therefore is not obliged to answer any such Questions.

Fr. I beseech your Lordship, let him answer the Question.

L. C. J. You have my Opinion; if you will, you shall have the Opinions of the rest of the Judges: My Opinion is, That the Question ought not to be answer'd.

L. C. J. Treby. Since your Lordship's Pleasure is, That we should deliver our Opinions upon this Point, I must declare, I am of the same Opinion, That no Man is bound to answer any Questions that will subject him to a Penalty, or to Infamy. If you should ask him, whether he were a Deer-stealer, or whether he were a Vagabond, or any other Thing that will subject him to Punishment, either by Statute or by Common-Law, as whether he be guilty of a Petty Larceny, or the like, the Law does not oblige him to answer any such Questions.

Fr. Well, I hope the Jury will consider it, that he will not answer the Question; and therefore they are to take it for granted that he is so.

L. C. J. Treby. And now to this present Purpose, to ask a Man whether he be a *Popish* Recusant, is to subject him to Danger: For when you ask him that Question, if he were not bred up in that Religion, then for him to own himself of that Religion now, is to own as great a Crime as that you are charged with. If it were not so, but he was always bred in that Religion, yet there are very great Penalties that he is subject to, as, the Confiscation of two third Parts of his Estate, and several other Things that he may be liable to, if he should disclose that upon his Answer to the Question, which without this Discovery could not be prov'd perhaps. We must keep the Law steady and even between the Prisoner and the Witness.

Mr. Justice Nevil. I am of the same Opinion, it does subject him to a Penalty; and unless he will voluntarily answer it of himself, I think it cannot be demanded of him: For he may subject himself to a Prosecution by it.

Mr. Just. Rokeby. I think, it is not a Question that can of Right be imposed upon him; he may answer it, if he will; but he is under no Obligation to answer it, because it may tend to accuse himself of a Crime for which he may be prosecuted, and likewise will subject him to other Penalties, which the Law cannot compel him to subject himself to.

Then Captain Porter was sworn.

Freind. I hope, Gentlemen of the Jury, you'll consider this.

Mr. Soll. Gen. Mr. Porter, do you know Sir John Freind, the Prisoner at the Bar?

Capt. Porter. Yes, Sir.

Mr. Sol. Gen. Pray then will you give my Lords and the Jury an Account what Meetings you have had with him, where those Meetings were, and when, and what pass'd between you, about inviting the *French* over hither, or for a Rising here.

Capt. Porter. My Lord, about the latter End of May last, or the Beginning of June, we had two Meetings, one was at the *King's-Head* in *Leadenhall-street*, the other at Mrs. *Mountjoy's* in *St. James's street*. At the first Meeting there were present my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *William Perkins*, Sir *John Fenwick*, Mr. *Cook*, Captain *Charnock*, and my self; after Dinner Mr. *Goodman* came in: Now at both those Meetings it was consult'd of, and agreed, to send Captain *Charnock* into *France* to King *James*, to desire him to borrow of the *French King* 10000 Men to come over hither, 8000 Foot, 1000 Horse, and 1000 Dragoons. Captain *Charnock* said, He did not care to go upon a foolish Message, and therefore desir'd to know what they would have him to acquaint King *James* with, and assure him of. They all agreed to meet the King, whenever they had Notice of his Landing, with a Body of 2000 Horse; of which every one in particular was to bring their *Quota* where-ever he would appoint.

Mr. Attorn. Gen. When was the second Meeting?

Capt. Porter. That was at Mrs. *Mountjoy's*.

Mr. Att. Gen. But I ask you when it was? how long after the first?

Capt. Port. I believe it was about a Fortnight after, or so.

Mr. Att. Gen. What was that Meeting for?

Capt. Port. The second Meeting was to confirm the first. *Capt. Charnock* inform'd me, that he was to go within 3 or 4 Days, and therefore desir'd to have a Meeting before he went.

Mr. Att. Gen. What Discourse was there at that second Meeting? What Occasion was there for it?

Capt. Port. *Capt. Charnock* desired the Meeting once more before he went, to see whether we all kept our Resolution.

Mr. Soll. Gen. Pray, what do you know of Sir *John Freind's* Agreeing to raise a Regiment of Horse?

Capt. Port. I know nothing of that Matter, but what I have heard several People talk; but I have heard him say he would be as ready as any Man, whenever the King came: And I have heard from Captain *Charnock*, and from Sir *William Perkins*, that he had a Commission to be a Colonel of Horse.

Mr. Att. Gen. Pray, Sir, upon that second Meeting, who were present?

Capt. Port. I told you, Sir, the Prisoner at the Bar was present at both Meetings.

Mr. Sol. Gen. Who else were there?

Capt. Port. My Lord of *Ailesbury*, Sir *William Perkins*, *Capt. Charnock*, and I cannot tell whether my Lord *Montgomery* and Mr. *Goodman* were there; Mr. *Cook* and my self were there, but the Prisoner at the Bar I am sure was there.

Mr. Soll. Gen. Pray *Capt. Porter*, will you remember and recollect your self, who were at the first Meeting?

Capt. Port. I have named them already, Sir.

Mr. Soll. Gen. Name them again then.

Capt. Port. My Lord of *Ailesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *William Perkins*, Sir *John Fenwick*, Captain *Charnock*, Mr. *Cook*, and my self; we dined there, and after Dinner Mr. *Goodman* came in.

Mr.

Mr. *Att. Gen.* Pray, Sir, when did you see Mr. *Charnock* after this, and what Discourse had you with him about his Journey and the Success of it?

Capt. *Port.* I never saw him till three or four Days after our Riot Business in *Drury-lane*, upon the Account of which I had been a Prisoner in *Newgate*.

Mr. *Att. Gen.* Well, and what did he say to you?

Capt. *Port.* He told me that he had been in *France*, but that King *James* told him, the *French King* could not spare so many Men that Year; and withal, that he had been with Sir *John Freind*, and the several other Persons, with Messages from the King, but I do not know whether he had been there or no, only as he told me, that he had been, and brought that Answer.

Mr. *Att. Gen.* Pray now tell us, what other Meetings you have had about this Matter this Winter.

Capt. *Port.* I was once with Sir *George Barclay* and Sir *John Freind*, at the *Nag's Head* in *St. James's Street*; I cannot tell what Discourse they had, they whispered among themselves.

Mr. *Att. Gen.* Who else was there?

Capt. *Port.* There was Sir *George Barclay*, Sir *William Perkins*, my self, Mr. *Ferguson*, and one *Humes*.

L. C. J. Where was that do you say?

Capt. *Port.* At the *Nag's Head* in *St. James's Street*.

Mr. *At. Gen.* Was there any Body else there that you can remember?

Capt. *Port.* Captain *Charnock* came in after Dinner, but I cannot say he din'd there.

Mr. *Att. Gen.* And who else do you remember?

Capt. *Port.* There came in one *Harrison* after Dinner; he is a reputed *Romish Priest*, and goes by the Name of *Johnson*.

Mr. *Mountague*. Pray, Capt. *Porter*, what was that Meeting for?

Capt. *Port.* They had several Whisperings among themselves, but what they discoursed of I cannot tell.

Mr. *Mountague*. Pray, did Sir *John Freind* say any Thing that you heard at that Meeting.

Capt. *Port.* Sir *George Barclay* did say, That some People that were not so violent had written over into *France* to stop this Business; upon which said I, I hope you will have no Letter to Night. Upon which Sir *John Freind* said, Is there any Thing that is hid behind the Curtain? If there be, I am not fairly dealt withal; I will proceed no further.

Mr. *At. Gen.* If Sir *John Freind* has a Mind to ask him any Questions, he may.

L. C. J. Pray, Capt. *Porter*, let me ask you this Question, Did all that were present at the first Meeting, at the *King's-head* in *Leadenhall-street*, agree to send Mr. *Charnock* into *France* to the late King?

Capt. *Port.* Yes, my Lord.

L. C. J. All of them?

Capt. *Port.* Yes; we desir'd Capt. *Charnock* to answer to the King for us that we would meet him at the Head of 2000 Horse.

L. C. J. Did Sir *John Freind* agree to it?

Capt. *Port.* Yes, I do positively affirm he did.

L. C. J. Then at the second Meeting, which, you say, was at Mrs. *Mountjoy's*, what was said then?

Capt. *Port.* We did agree all, That Capt. *Charnock* should go on with the Message that was resolved upon at the first Meeting; and we would go on with the Business, and he said he would go away in two or three Days.

Mr. *Att. Gen.* Will Sir *John Freind* ask him any Questions?

Fr. I will only ask him if they have done, whether he has any Thing more to say.

Capt. *Port.* No, Sir.

L. C. J. The King's Council have done with him.

Fr. Then, my Lord, I will hear all they can say, and when I have heard the whole Evidence, I shall know how to answer to it.

L. C. J. Before you go, Captain *Porter*, I would ask you, What Answer Mr. *Charnock* brought back from *France*?

Capt. *Port.* I say, I did not meet with Captain *Charnock*, till after I came out of *Newgate* for the Riot Business, and then he told me, he had been there, and he had acquainted the several Gentlemen with the Messages he had brought from King *James*, who thank'd them for their Kindnesses, but the *French King* could not spare so many Men that Year.

Mr. *Soll. Gen.* Then the next that we call is *Brice Blair*, (who was sworn.) Pray, Sir, do you know the Prisoner at the Bar, Sir *John Freind*?

Capt. *Blair.* Yes, my Lord; and I am very sorry to come on such an Account as I do now against him. I am sorry for it with all my Heart—

Mr. *Att. Gen.* Well, Sir, pray will you give an Account, what you know of Sir *John Freind's* having a Commission from the late King to be a Colonel of Horse, and when it was, and how; pray tell my Lord, and the Jury the whole Matter.

Capt. *Blair.* All that I can say to this Business is written in my Paper, and I refer to my Paper.

Mr. *At. Gen.* You must not refer to your Paper, Sir, you must tell all what you know.

L. C. J. He may look upon any Paper to refresh his Memory.

Capt. *Bl.* I did see the Commission, Sir, and I read it.

Mr. *At. Gen.* What Commission was it, Sir?

Capt. *Bl.* It was a Commission from King *James*, to Sir *John Freind*.

Mr. *At. Gen.* Where did you see it, Sir?

Capt. *Bl.* I saw it in his Lodgings at the *Strand*; when he lived near the *Strand* in *Surry-street*.

Mr. *At. Gen.* Who shew'd it you?

Capt. *Bl.* He shew'd it me himself.

Mr. *At. Gen.* What was it for?

Capt. *Bl.* It was for Raising a Regiment of Horse.

Mr. *At. Gen.* When was it that you did see it? How long ago was it?

Capt. *Bl.* It is well near two Years ago, or thereabouts, as I remember.

Mr. *At. Gen.* Who was to have been Colonel of that Regiment.

Capt. *Bl.* He was nominated to be Colonel of it himself in the Commission.

L. C. J. Who was the Commission directed to?

Capt. *Bl.* It was directed to him, to Sir *John Freind*.

L. C. J. Well, and what was done upon it? who were to be the Officers?

Capt. *Bl.* He promised me to be his Lieutenant Colonel; and I had the same from Mr. *Harrison*, and there were several Letters that I saw, that came from my Lord *Melford* and Secretary *Carroll*, who were with King *James*.

Mr. *At. Gen.* What other Officers were there appointed?

Capt. *Blair.* There was one *Richardson* was to be one of his Captains, and there was one Mr. *Fisher* was to be another, and one *Hall* another; *Fisher* was to be his eldest Captain, and one Capt. *Evans* was to be his Captain Lieutenant, and one Captain *Vernatti* was to be another.

Mr. *At. Gen.* Do you remember who was to be his Major?

Capt. *Bl.* No, Sir, I think I cannot be positive as to that. I spoke to Capt. *Barnesly*, that had been a Lieutenant in King *James's* Service, to be a Lieutenant, and sometimes he accepted, and sometimes he refused it.

Mr. *At. Gen.* Pray, what did you do as Lieutenant Colonel upon this Matter?

Capt. *Bl.* I endeavour'd all I could to get Officers for them; and to raise Troops. I endeavour'd to get what Men I could my self.

Mr. *Soll. Gen.* Pray what did you do? what Officers did you procure for him?

Capt. *Bl.* I told you *Vernatti* and *Fisher*, and one Mr. *Hall* that lives at *Deal*.

Mr. *At. Gen.* What Troops did you get under you? Did you engage any to serve under you?

Capt. *Bl.* What? I my self, Sir, Do you mean?

Mr. *At. Gen.* Yes, I do.

Capt. *Bl.* Yes, Sir, I did.

Mr. *At. Gen.* Can you name any of them?

Capt. *Bl.* Yes, Sir, if I make use of my Paper.

Mr. *Soll. Gen.* You may make use of your Paper to refresh your Memory.

Capt. *Bl.* There is a Paper of Names that I gave in before the Council.

L. C. J. Mr. *Baker*, have you his Paper there? let him see it to refresh his Memory.

Mr. *Baker.* I have none of the Papers, my Lord, they are all sent before the Council.

Mr. *At. Gen.* Pray, Sir, can you tell who was to have been your Lieutenant in your Troop?

Capt. *Bl.* One Mr. *Bertram*.

Mr. *Mountague.* You say, Sir, you were constituted Lieutenant Colonel; pray, who constituted you, and made you so?

Capt. *Bl.* I had only a Promise of it from Sir *John Freind*.

Mr. *At. Gen.* Pray did you lay out any Monies for Sir *John Freind*? or did he ever pay you any Money afterwards?

Capt. *Bl.* Yes, I have had several small Sums of Money from Sir *John Freind*.

Mr. *At. Gen.* Pray, what was it for?

Capt. *Bl.* It was to drink with the Men that belonged to the Regiment, and encourage them.

Mr. *At. Gen.* Pray did Mr. *Piggott* pay you any Sums of Money? and by whose Order?

Capt. *Bl.* Yes, he paid me first 20 *l.* and afterwards he paid me another 20 *l.*

Mr. *At. Gen.* By whose Order was that, Sir?

Capt. *Bl.* It was by the Order of Sir *John Freind*.

Mr. *At. Gen.* Pray, Sir, how do you know that Sir *John Freind* order'd him to pay it you?

Capt. *Bl.* Because it was the Money that *Piggott* had received to repay Sir *John Freind*, what he had advanced for the furthering of *Parker's* Escape out of the Tower.

Mr. *At. Gen.* How do you know that he advanced any Money for procuring *Parker's* Escape?

Capt. *Bl.* He told me so himself.

Mr. *At. Gen.* How much did Sir *John Freind* say he had advanced for that Purpose?

Capt. *Bl.* He told me 100 *l.*

Mr. *At. Gen.* How did he tell you he was to be paid it again?

Capt. *Bl.* He told me, that King *James* ordered the Payment of it at *France*, when *Piggott* went over, which was immediately afterwards: and I had of that, first 20 *l.* and afterwards 20 *l.* by the Order of Sir *John Freind*.

Mr. *Soll. Gen.* Pray, Sir, did Sir *John Freind* tell you what *Piggott* had received in *France*?

Capt. *Bl.* Yes, he said *Piggott* had received, 100 *l.* in *France*; and he did not pay it him, but if I could get 20 *l.* of him, he would allow it.

Mr. *At. Gen.* Pray about what Time was it that the first 20 *l.* was received?

Capt. *Bl.* I have set it down in my Paper; there it is.

Mr. *At. Gen.* But can't you tell about what Time it was?

Capt. *Bl.* It was about last *May*, or *June*, the first 20 *l.* was paid.

Mr. *At. Gen.* When was the last 20 *l.* paid?

Capt. *Bl.* It was after I was sick, about *Michaelmas*.

Mr. *Cowper.* Pray, Sir, who was by when the last 20 *l.* was paid.

Capt. *Bl.* Mr. *Piggott* paid me the last 5 *l.* of it, (for I received it at several Payments from Mr. *Piggott*) but the last 5 *l.* was before Sir *John Freind* at *Jonathan's* Coffee-House.

Mr. *Soll. Gen.* Pray do you know any Thing of Sir *John Freind's* Receiving any Letter from King *James*?

Capt. *Bl.* Yes, he told me he had a Letter from King *James*.

Mr. *Soll. Gen.* How long ago was that?

Capt. *Bl.* Truly, I cannot tell.

Mr. *Soll. Gen.* I don't ask you the precise Day, but was it within a Twelve Month?

Capt. *Bl.* Yes, I believe it might be thereabouts.

Freind. My Lord, I desire he may speak out; for I don't hear half he says.

L. C. J. Repeat it to him again.

Capt. *Bl.* Sir, you told me you had received a Letter from King *James*.

Freind. My Lord, I shall answer to this all afterwards.

Mr. *Soll. Gen.* Pray, had you at any Time any Discourse with Sir *John Freind* about one *Slater*?

Capt. *Bl.* Yes, I had.

Mr. *Soll. Gen.* Pray tell what that was

Capt. *Bl.* He told me he was to bring him, in several Officers; and that he had intended to make two Lieutenant-Colonels, whereof Captain *Slater* was to be one; but when he saw I was not satisfy'd with that, he said he should command a Troop of Non-swearing Parsons, and they should be an independent Troop.

Mr. *Soll. Gen.* You say that *Slater* was to command that Troop.

Capt. *Bl.* Yes, and it was to be an independent Troop.

Mr. *At. Gen.* I think you say that he and you met at *Jonathan's* Coffee-house.

Capt. *Bl.* Yes, we did so.

Mr. *At. Gen.* Pray what Discourse had you there?

Capt.

Capt. Bl. I called him aside and desired to speak to him; and it was when Mr. Fisher told me of this Plot, and desired me to speak to him, a little before this horrible Conspiracy broke out. And I told him what I heard from Fisher, and from Harrison the Priest about it; and he told me that he had heard of it, and he was afraid it would ruin King James, and his Affairs.

Mr. At. Gen. What was it that you told him you had heard.

Capt. Bl. This last horrid Thing, the Conspiracy against the King's Life.

Mr. Comper. Was it before it broke out that he told you he knew of it?

Capt. Bl. Yes, it was shortly before it broke out.

Mr. At. Gen. Pray, did you meet with him again? and did he carry you in his Coach at any Time?

Capt. Bl. Yes, he did, Sir.

Mr. At. Gen. What Discourse had you then, when you was with him in the Coach?

Capt. Bl. He took me in his Coach to St. Martin's le grand, and, says he, I will do nothing till the Thoulon Fleet meet with the Brest Fleet; at that Time perhaps we shall be all taken up; but, says he, you may sculk about the Town better than I can; and therefore I'll keep my self private; and we must be as good Husbands of our Money as we can; for Money will be very scarce. What do you think you shall need, says he? Truly, Sir, says I, I can't tell; that must be according as I am mounted. For I found I had a few indigent Officers at that Time.

Mr. At. Gen. Pray, what were you to do?

Capt. Bl. We were to sculk up and down; and when he asked me, what Money I should need, I told him I could not tell; for there were several indigent Officers, most of which begg'd at that Time; and here is a Letter that I had from Sir John Freind, to confirm my Receiving Money from him.

Mr. Att. Gen. Is that Sir John Friend's own Hand?

Capt. Bl. Yes, Sir, it is.

Mr. At. Gen. Then put it in, give it hither.

(It was delivered in to the Attorney General.)

Mr. Soll. Gen. Pray, what have you heard Sir John Freind say of Sir John Fenwick's being concerned in this Matter?

Capt. Bl. I heard him say, that he believed, that he should command the Party that he was engaged in, and that Sir John Fenwick had Four Troops of Horse, that lay near Reading to be employ'd.

Mr. Soll. Gen. For what Purpose?

Capt. Bl. To be in Readiness upon the Descent.

Freind. Gentlemen of the Jury, I can't bear a Word, I hope you hear.

Mr. At. Gen. Pray, Sir, look upon that Letter; you say you had that Letter from Sir John Freind, pray who is that H that is mentioned in it?

Capt. Bl. It means Harrison, alias Johnson, the Priest.

Mr. At. Gen. Pray, what was that Letter written for?

Capt. Bl. It was about the last 20 l. that I was to receive from Piggott.

Mr. At. Gen. Is that Sir John Freind's Hand?

Capt. Bl. Yes, I think so.

Mr. At. Gen. Have you seen Sir John Freind write?

Capt. Bl. Yes, I have seen him write, and I think it is the same Hand.

Mr. At. Gen. Then we desire it may be read.

Then a Jury-man desired he might be asked, Whether he saw Sir John Freind write that Letter?

L. C. J. What say you, did you see him write that Letter?

Capt. Bl. No, my Lord; it came to my Lodging.

Mr. At. Gen. Did ever he own to you he had writ you such a Letter?

Capt. Bl. Yes, he did.

Mr. At. Gen. Pray, let it be read; read it all, for it is but short.

Cl. of Ar. (Reads.)

For Captain Blair, These.

S I R,

Tuesday Morning.

YOU may much wonder you have not received an Answer of yours before now: I have been afflicted with the Gout in my Hand and Foot, that I have not been able to put Pen to Paper; (I thank God) I am somewhat better, and do hope to be in London a Thursday next, about the Hour of Twelve, at Jonathan's Coffee-House, if the Weather do not prevent me; if it do, I shall not come before Monday following: I do desire you for to meet me about that Hour; for it is not convenient for to write a Note to Mr. H. for some Reasons I shall give you, when I see you. I wish you good Health. I am,

S I R,

Your Affectionate Friend, and Servant;

John Freind.

Jury-man. Pray, Sir, what Date is it of?

Cl. of Arr. It has no Date but Tuesday Morning.

Mr. At. Gen. Did Sir John Freind meet you on the Thursday, according to this Letter?

Jury-man. My Lord, I desire he may be asked, How this Letter came to him, whether by the Penny Post, or how?

Capt. Bl. I don't know, I believe it was by a Porter: It came first to me when I was in Bed, and my Wife brought it up to me.

Mr. At. Gen. Pray, Sir, answer my Question. Did Sir John Freind afterwards meet you at Jonathan's Coffee-House, according to this Letter?

Capt. Bl. Yes, Sir, he did.

Mr. At. Gen. And did you there speak about the Business that's contained in that Letter?

Capt. Bl. Yes, Sir, and accordingly I had the Order.

Mr. At. Gen. What Order?

Capt. Bl. An Order for the 20 l.

Mr. Soll. Gen. Capt. Blair, do you remember that you dined with Sir John Freind, near the Exchange, in January last?

Capt. Bl. Yes, I think I did, Sir.

Mr. Soll. Gen. What Discourse was there between you then? Who was with you besides you Two?

Capt. Bl. I must refer that to my Paper.

Mr. Soll. Gen. Well then, what Discourse was between you and Sir John Freind there?

Capt. Bl. It is down in my Paper.

Mr. Sol. Gen. Do you know one Captain Ridley?

Capt.

Capt. Bl. Yes, Sir.

Mr. Sol. Gen. Was he at any Time present, when you and the Prisoner at the Bar were together?

Freind. My Lord, I cannot hear a Word he says.

L. C. J. Here is a great Noise indeed, and he it seems is not well, and speaks but low; pray, order Silence in the Court. (*Which was done by Proclamation.*)

L. C. J. Look ye, Sir John Freind, he speaks of a Letter that you sent to him that bears Date some Tuesday Morning, that you would be in Town, and meet him at Jonathan's Coffee-House upon Thursday following, at Twelve a Clock; and that Letter was read, and he says he met you accordingly, and there was Order taken for the Payment of the last 20 l. This is that he says; Did you hear it?

Freind. No, my Lord, I did not.

L. C. J. That is what he said. Then go on: You say he met you at Jonathan's Coffee-House according to that Letter.

Capt. Bl. Yes, my Lord.

L. C. J. What was done there, when you met?

Capt. Bl. Nothing but the Order.

L. C. J. Who did he give the Order to?

Capt. Bl. He gave the Order to Harrison.

L. C. J. Why, was Harrison there?

Capt. Bl. Yes, he came there before I came away.

L. C. J. But you say he gave the Order to Harrison?

Capt. Bl. Yes, my Lord.

L. C. J. What was the Order for?

Capt. Bl. It was to pay me that Money.

L. C. J. What Money was that?

Capt. Bl. It was the last 20 l.

Mr. Att. Gen. Was the 20 l. paid you afterwards?

Capt. Bl. Yes, Sir.

Mr. At. Gen. Who paid it?

Capt. Bl. Mr. Piggott; he paid me the last 5 l. of of it before Sir John Freind's Face.

L. C. J. Was this the first 20 l. or the last, do you say?

Capt. Bl. It was the last.

L. C. J. What was this Money paid for?

Capt. Bl. I believe it was to support me to go about the Business of the Regiment.

L. C. J. You believe; that's not enough: But are you sure it was so?

Capt. Bl. Yes, I am sure it was for that.

L. C. J. Had you ever demanded Money of him before?

Capt. Bl. Yes, I had.

L. C. J. For what was that Money that you demanded?

Capt. Bl. It was to drink with the Men that were brought in; to cherish, and keep them together.

L. C. J. To what Purpose were those Men kept together?

Capt. Bl. They were for his Regiment.

Mr. Sol. Gen. Pray, had Sir John Freind any Occasion to pay you any Money upon any other Account?

Capt. Bl. No, Sir, not out of that 100 l.

Mr. Comper. You do not understand the Question: Had you any Dealings with Sir John Freind, but about this Matter concerning the Regiment?

Capt. Bl. No, never in all my Life.

Mr. At. Gen. Well, Sir, do you remember your Meeting with Sir John Freind when one Ridley was there?

Capt. Bl. Yes, it was at the Chop-house.

Mr. At. Gen. Give an Account what pass'd there.

Capt. Bl. Mr. Ridley said, A Gentleman was lately gone over to France, about Ten Days before; and Mr. Ridley said, he was a very sensible Gentleman, a Roman Catholick, an ancient Man, about Threescore Years of Age; what he was, I can't tell: He said, he believed he should bring the last Orders.

Mr. At. Gen. What did Sir John Freind say?

Capt. Bl. Sir John Freind said, He knew of it; but he named no more.

Mr. Sol. Gen. What was the Effect of those Orders, as you understood?

Capt. Bl. I cannot tell that, Sir, indeed.

Mr. Sol. Gen. Did you know Mr. Charnock?

Capt. Bl. Yes, Sir, I did.

Mr. Sol. Gen. What do you know of his going to France.

Capt. Bl. I met him upon the Exchange the last Summer, and I told him, I expected not to have seen him here at that Time, I thought he had been abroad; he told me he was come from France, but who sent him I cannot tell, I do not know upon my Life.

Mr. Sol. Gen. Pray, what has Sir John Freind said to you about Ferguson? Whether was not he to have been an Officer in his Regiment?

Capt. Bl. No; but Sir John Freind said, he would join, and Mr. Ferguson himself has told me so.

Mr. At. Gen. When did he tell you so?

Capt. Bl. A good while ago.

Mr. At. Gen. How long ago?

Capt. Bl. Two Years ago and above.

Mr. Sol. Gen. Did Sir John Freind, tell you any Thing about Ferguson, that he would bring in any Men?

Capt. Bl. Yes, he said he would bring in a great many.

Mr. At. Gen. Will the Prisoner ask him any Questions?

L. C. J. Sir John Freind, will you ask this Witness any Questions?

Freind. Yes, my Lord, I shall by and by, if they have done with him.

L. C. J. Yes, they have done with him.

Then he paused, and perused his Papers.

Freind. First, as to the Commission you charge me with, that I should receive a Commission from King James; I desire to know, whether it was signed, or sealed, and what Date it was.

Capt. Bl. I cannot tell the Date indeed, Sir John; for I never thought to come here upon such an Account as this: But I think it was in Paper, signed above James Rex, and below, By his Majesty's Command, Melford; and a little Seal upon the Margin.

Freind. This is the hardest Thing in the World upon a Man; here you have charg'd me with Money to subsist and encourage Soldiers.

Capt. Bl. Yes, Sir.

Freind. I would only say this; you were recommended to me for a very honest Man, and you have come to me several Times, and told me, Sir, my Necessities are very great, I am ready to starve, I have a great Charge; for God's sake will you be pleased to bestow something upon me, to relieve my Necessities: It's true, I have given you Money several Times, but I never gave it for any other

other Use but Charity; God knows my Heart. I desire you, to consider with your self and answer it. There is a God above where you must give an Account as well as I, and I hope you will consider of it. Pray declare the Truth, Whether you have not writ those Lines to me several Times, that you were ready to starve, and beg'd of me to relieve your Necessities?

Capt. B. I have so, Sir, I acknowledge it.

Freind. Pray take me Right, and was not that Money I gave You, only upon pure Charity?

Capt. B. Yes, you did give me Charity, but I had expended so much Money in your Business, that reduced me to that, God knows my Heart. I have laid out many a Pound upon this Affair.

Freind. It is the hardest Thing in the World, this is a Roman Catholick too.

Capt. B. I am sure it cost me many a Pound more than ever I had of you.

Freind. You say you Lifted a great many Men, who where the Men? What are their Names? what were they For?

Capt. B. I have given a List in of them to the Council.

Freind. Who are they? For God knows I know nothing of them.

L. C. J. If you have a List there, let it be produced.

Capt. B. I gave it in to the Council; and Sir John I brought in several Officers to you.

Mr. At. Gen. Remember, and name as many as you can.

Capt. B. I have named the Officers already.

Mr. At. Gen. Name them again.

Capt. B. Did not I bring Captain Fisher to you, and did not you promise to make him your Eldest Captain?

Freind. No, you never did.

L. C. J. These are Questions of your own asking, so you must hear him.

Capt. B. I brought Captain Fisher to you, and accordingly we Dined at Captain Simons's, and there was Captain Ridley, Mr. Richardson, and Mr. Fisher and you talked together, and you listned to him, and in my own hearing you promised he should be eldest Captain, upon Condition, that he would bring in a Troop; and this is true so help me God.

Freind. Pray, where are your Men? and what are your Men that you Lifted?

Capt. B. I never spoke of Lifting, I only spoke of Encouraging.

Freind. Did not you say you had Lifted a great many Men for to be of my Regiment?

Capt. B. No, Sir, I did not.

Mr. At. Gen. I think you do mistake, Sir John he did not say Lift.

Capt. B. I had Money from you upon the Account of Encouraging, and Treating, and Drinking with a great many of the Men: And you said it was impossible to keep them together, but that I must have Money to Treat them, and Drink with them; but you desired me to be as good a Husband as I could.

Freind. I never said so, these are very hard Things upon me.

Capt. B. Did not I bring Captain Cole and Captain Neale to you, and his Brother-in-Law Mr. Robinson, and Mr. Gellibrand? and did not we Dine together?

Freind. I know nothing of all this I declare to you.

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L. C. J. If you will ask him any more Questions, do.

Capt. B. I brought those three Gentlemen, and we Dined together.

L. C. J. Where did you Dine then?

Capt. B. At Hackney, when Sir John lived there, at his own House.

Freind. When was it?

Capt. B. It is above a Year ago. Pray, Sir John, don't think to dash me out of Countenance, tho' I am very ill; I speak nothing but the Truth, and therefore I will not be dasht out of Countenance. You know what I say to be true; you then drank a Glass of Wine to Captain Cole: And did not you promise him, because he was one of your Mother's Name, that he should have a Place in the Excise next one of the Commissioners. says I, Sir John, what will you give me? O, says he you shall have the Regiment, Man. This was before Robinson, his Mother-in-Law, and Mr. Gellibrand.

L. C. J. Who was to have the Place in the Excise.

Capt. B. Captain Cole.

Freind. I know not a Word of all this.

Mr. J. Rokeby. Captain Blair, be not dashed, but speak the Truth, and you need fear Nothing.

Capt. B. This I say, was before Mr. Robinson and Mr. Gellibrand.

Freind. I don't know Gellibrand, nor none of them.

L. C. J. Was that Cole to be any Thing in the Regiment.

Capt. B. Yes, he was to have been a Captain, and to bring in a Troop.

Mr. At. Gen. Sir John, will you ask him any more Questions.

Freind. No, I must depend upon the Jury, for I cannot remember half what he has said.

Mr. Sol. Gen. Do you remember any Discourse between you and him, about some brisk Men that were to follow him;

L. C. J. But before you ask him, Mr. Solicitor, we must know whether he will ask him any more Questions, for he is now his Witness. Do you ask him any more Questions, Sir John?

Freind. I can ask about no more than what I hear.

L. C. J. But ask him what you will.

Freind. My Lord, I have not heard half what he has said, I hope the Jury will take Care in it.

L. C. J. Some Part of it was twice repeated to you.

Freind. As to that my Lord, I would ask him a Question or Two. Was that my Letter?

Capt. B. Yes, it was.

Freind. did you see me Write it?

Capt. B. No, it came to my Hands by a Porter, as I believe, when I was in Bed, my Wife brought it up to me.

Freind. What was that Letter for?

Capt. B. In order to pay the last 20 £ and I did see a Return of a Letter that you Writ to King James.

Mr. At. Gen. Who shewed you that Letter to King James?

Capt. B. He shew'd it me himself.

L. C. J. How long ago is that?

Capt. B. A Year, and a half ago, as near as I can Remember.

L. C. J. Did he say any Thing of an Answer he had to it.

Capt. B. Yes, but I cannot Remember what it was Directly.

Juryman. He was pleased to say he saw a Letter from King James.

L. C. J. No, No, Sir, it was a Letter to King James.

Juryman. My Lord, I desire he may be asked, if he knows the Contents of that Letter.

L. C. J. Did you see him write the Letter, or did he shew you the Letter he had Writ?

Capt. B. I did not see him write the Letter, I see his Hand to the Letter, and he shew'd me the Letter, that he said he had written to King James; and there is this particular Passage to confirm it, it was at Mr. Piggot's Mother's House; I dined with him there that Day, and when he shew'd me the Letter, I told him I was so well pleased with the Penning it, that I believed Mr. Ferguson had a Hand in it; and he was very angry, that I should think, he was not able to write, and did not write the Letter himself.

Juryman. My Lord, since it seems, he perused the Letter, I desire he may be asked, whether he can Remember the Contents of that Letter, or any of it?

Capt. B. Really, my Lord, I cannot tell that particularly: But I am apt to think it was about the Business of the King, and about the Regiment.

L. C. J. Can you tell truly any the Contents of it?

Capt. B. That it was about the Affairs of the Regiment, I am positive.

Mr. Comper. My Lord, before he goes away (that the Jury may not go away with a Mistake,) I desire it may be Observed, he does not say, he saw Sir John Friend, write the Letter.

L. C. J. No, No, but that he shew'd it him himself.

Freind. When was that Letter writ that I shew'd to you?

Capt. B. It was about a Year and a Half ago.

Freind. I declare in the Presence of God, I never Writ one.

Juryman. He says you shew'd him the Letter, therefore it is very fit we should see it.

L. C. J. Nay, Sir, you must not talk to the Prisoner; if you have any Questions to ask, you must propose them to the Court.

Freind. I declare in the Presence of God, I never writ any such Letter, as this he now charges me with.

Capt. B. And I declare in the Presence of God you shew'd me such a Letter.

Freind. Yes, you may, but I am a Protestant, you are a Papist, you may do any Thing.

Mr. At. Gen. You may ask any Questions of him, Sir John, but you must not rail at the Witness.

Freind. But when you charge me with the writing of a Letter to King James, I ought to speak to it. It seems I am not to ask whether he is a Papist.

Mr. At. Gen. He says you shew'd him a Letter, that you said you had Written to King James, which he Read, and liked the Penning of it so well, that he Thought Ferguson had a Hand in it; at which you were offended that he should think you could not write such a Letter yourself.

Freind. I declare in the Presence of God I never writ any such Letter.

Mr. At. Gen. I suppose you'll disprove him by and by.

Freind. I can have no Witnesses to this Matter.

Mr. At. Gen. And you can't expect your own Denyal should go for Proof. If you will ask him no more Questions, let him go down, and ease himself.

Freind. He must not be askt whether he is a Papist, but I hope you will take Notice, Countrymen, that these Witnesses are Papists, and they think they merit Heaven by swearing against Protestants, whom they call Hereticks.

L. C. J. Indeed, Sir John, I don't hear you: Pray speak so loud that the Court may hear what you say.

Freind. I will, my Lord; I say he is a Roman Catholick, and I have Witnesses to swear he is so, and Desire I may prove that he is a Roman Catholick, and therefore he is not to be heard against a Protestant.

Mr. At. Gen. Then the next Witness we call is Mr. Bertram, (who was Sworn.)

Friend. But I have not done with Mr. Porter.

L. C. J. Well you shall have him by and by, let the King's Council go on in their Method.

Mr. At. Gen. Pray, Mr. Bertram do you know Captain Blair that was here just now?

Bertram. Yes.

Mr. At. Gen. How long have you Known him.

Bertram. About Eight or Nine Years.

Mr. At. Gen. What Discourse have you had with him about any Regiment that was to be raised for the late King James.

Bertram. Captain Blair had told me for two Years last past that Sir John Friend was to have a Regiment of Horse, that were to be raised, and lye posted about the Town, and Captain Blair was to be Lieutenant-Colonel to the Regiment, and I was to be Lieutenant to Captain Blair in his Troop.

Mr. At. Gen. My Lord, we only call him to Confirm what Captain Blair has said that he was to be his Lieutenant, and that this was talked of two Years before. Did he tell you Sir John Friend was to have a Regiment of Horse?

Bertram. Yes Sir, and he obliged me to bring in as many Men, and Horses as I could into this Regiment, and he told me Captain Fisher, Captain Varnatti, and Captain Cole were to be Captains in the Regiment.

L. C. J. And what were you to be?

Bertram. A Lieutenant.

L. C. J. To whom?

Bertram. To Captain Blair; he has told me so several Times, and talked to me about the Affairs of the Regiment; a great deal that I cannot now Remember, relating to that Purpose.

L. C. J. This is no Evidence against Sir John Friend; he is only called to confirm the Testimony of Captain Blair; that Blair spoke of it long before he gave his Evidence, and so it is not a new Thing now invented by him.

Mr. Sol. Gen. Sir John Friend did ask what Men he had Ingaged, and among others he named this Mr. Bertram to be his own Lieutenant, and he now tells you Blair promised him so to be two Years ago, and then told him Sir John Friend was to have a Regiment.

Friend. Do you know me Sir?

Bertram. No, Sir, I never was in your Company in my Life, I only tell you what I have heard from Captain Blair, I do not know that ever I saw your Face.

L. C. J. His Evidence Sir John Friend hurts you not, as to any particular Thing that he knowt against you, he is only brought to confirm whas
Captain

Captain *Blair* said, that he was to be his Lieutenant in his Troop.

Mr. *At. Gen.* Then, my Lord, we leave it here.

L. C. J. Look ye Sir *John Freind*, the King's Council have done, and now you may speak, and say what you have a Mind to say in your own Defence.

Mr. *J. Rokeby*. And call what Witnesses you have a Mind to call.

Freind. My Lord, in the first Place, I desire to know whether Mr. *Courtney* is come.

L. C. J. Your Solicitor can best tell that.

Freind. I perceive he is not come.

L. C. J. Well go on: I suppose he will not be long before he comes, we will stay for him.

Freind. My Lord, I must wait for my Witness: But in the mean Time, as to Mr. *Porter's* Evidence. I own I was at the Meeting at the King's Head in *Leaden-Hall Street*; I declare I was at that Place, and there were some Gentlemen there, but how many or whom I cannot say; but I declare there was not one Word spoken there of any Raising of Men, nor any Thing of that Nature, that he speaks of, but only we were drinking a Glass of Wine, and eating a Dish of Meat together, and Sir *John Fennick* at that Time coming in said to us, I desire you to come to our End of the Town, and take a Dish of Meat with us. And there was nothing spoke of any Thing relating to the Government. Gentlemen these are Papists, and I am a Protestant, they don't care what they say, for they think they merit Heaven by destroying Protestants; and they are not to be believed, and that is the Reason that I was not to ask them the Question, for by Law they are not Witnesses, and for that I appeal to your Lordship.

L. C. J. H. Why are they not Witnesses?

Freind. Nay I appeal to your Lordship.

L. C. J. H. Truly I think they are Witnesses, I know nothing to the Contrary.

Freind. My Lord, Papists are not good Witnesses against Protestants for this Reason, that I shall tell you; I am advised, my Lord, that a Papist is not a good Witness to prove a Protestant a Traytor within the Stat. of 25. of Ed. 3.

L. C. J. H. Who says so?

Freind. My Lord, I desire to know whether there is such a Statute?

L. C. J. H. Yes no doubt of it, there is such a Statute as that of the 25 Ed. 3. about Treasons.

Freind. Pray, my Lord, does not that make it so?

L. C. J. H. No indeed, I know no such Thing.

Mr. *Sol. Gen.* That cannot be, my Lord, that any such thing should be, for all were Papists then, there was no such Thing as a Protestant in the time of Ed. 3.

Freind. My Lord, there is the Statute of the Third of *James the First*, Cap. 4th. and other Statutes made in the Time of King *Charles the Second*, particularly in the 30th Year of his Reign Cap. 2d. Whereby it is plain they are not to be believed against Protestants, because they believe them Guilty of Damnable *Heresia*; and by those Statutes they are reputed Infamous.

L. C. J. Where is your Statute.

Freind. My Lord, I have no Statute-Book, I desire it may be Inquired into, this Advice was given me by my Lawyer, I am no Lawyer my self, there is the Statute of 3. *James the First*, Cap. 4 and the next is 30. *Car. 2.* Cap. 2.

L. C. J. Well the Statute-Book shall be looked into.

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Freind. My Lord, the Person is not come, who is to give Evidence against Captain *Blair*, the principal Witness, he is a Prisoner at the *Gate-house*, and your Lordship was pleased to say you would have Patience till he came.

L. C. J. Yes, yes, we will stay a while.

Freind. I pray my Lord do, for it will be very material for me.

L. C. J. Treby Have you any Thing to fill up the Time with in the mean Time.

Then *William Courtney* appeared.

L. C. J. Is your Solicitor returned with this *Habeas Corpus*.

Freind. I believe he is in or about the Court, but I cannot get him to me the Croud is so great.

After much adoe *Courtney* came in.

L. C. J. Is this the Witness you would have?

Freind. Yes, my Lord, it is.

L. C. J. Then what do you say to him?

Freind. My Lord, must I ask him the Questions?

L. C. J. Yes, you must propose your Questions to the Court, and they will ask them of the Witnesses. If this be the Person you speak of you had best examine him.

Freind. Mr. *Courtney* I desire you would speak what you know of Captain *Blair*.

Courtney. Gentlemen, I have been a Prisoner in the *Gate-house* about a Month, and while I was there Captain *Blair* at the same Time came in as a Prisoner, as mentioned in the Proclamation; being my old Acquaintance, (I was in Bed being in upon some other Accounts,) and when they told me Captain *Blair* was brought in, I desired him to come into my Chamber. I told him I was sorry to see him there, I told him I hoped he was none of those concerned in this Plot; he said he was in the Proclamation, but that he was innocent, and knew nothing of the Plot, nor of the Assassination, nor any Thing like it; there were several other Persons in that Place at the same Time, and he said he was as innocent as the Child unborn.

Freind. Did he mention any Thing of me then?

Courtney. At that Time he said nothing of you.

Freind. Pray Sir, do you believe he is a *Roman Catholick*?

Courtney. I do not know his Religion indeed.

Freind. But don't you know him to be a *Roman Catholick*?

Courtney. He bore the Character of one, but I never saw him at any Church.

Mr. *J. Rokeby*. Pray Sir how long have you known Captain *Blair*?

Courtney. By sight, I have known him 6 or 7 Years.

Mr. *J. Rokeby*. Pray, upon what Account did you call him Captain?

Courtney. It was a common Name among all the Company: He was called so.

L. C. J. What all the Time that you knew him?

Courtney. Yes, all the Time that I knew him, I knew no other Name that he had.

Freind. But did not you hear that he was reputed to be a *Roman Catholick*?

Courtney. I have heard that Character of him, among those that I have known, but I have very little Knowledge of his Religion.

L. C. J. Is this what you can say?

Courtney. There are several others that were Witnesses of this, as well as I; I never saw you Sir *John Freind*, before in my Life, to my Knowledge, nor ever spoke to you.

Freind. Sir, a Note was sent to me, that you could do me some Service, and that was the Reason I sent for you. I desire Mr *Carpenter*, Mr *King*, and Mr *Payne* may be called.

L. C. J. Have you done with this Man then?

Freind. Do you know Captain *Porter*, Sir?

Courtney. Yes, I do, Sir.

Fr. Sir, do you know him to be a Roman Catholick?

Courtney. Sir, I have heard that he has such a Character.

L. C. J. What Character has he?

Courtney. That he is a Roman Catholick.

L. C. J. That's only by Hear-say.

Freind. My Lord, I have done with this Man.

L. C. J. If you have done with him, then the Keeper may carry him back again.

Courtney. Sir, I have something else to say.

Fr. My Lord, he says he has something else to say.

L. C. J. Then set him up again: (*which was done.*) Well, Sir, what is it you have more to say?

Courtney. Two or three Days after that Time, there was a Prisoner then in the Gate-house, who was an Ensign in the Army, was reading the Flying Post in my Chamber, and in that Flying Post there was News that Capt. *Blair* was making a great Discovery, and that he had accus'd Sir *John Freind*, for having receiv'd a Commission for a Regiment in which he was to be Lieutenant Colonel, and said a great deal about that Regiment, how he had received Subsistence Money for them from Sir *John Freind*. A little after Captain *Blair* came into the Room, and ask'd me if I had got the News; I told him yes; and Captain *Blair* then ask'd what was the Import of it? I told him it was there, that he was making a great Discovery, and particularly, that he was to be Lieutenant Colonel to Sir *John Freind*, and had received Subsistence Money from Sir *John Freind* for the Men of the Regiment. Captain *Blair* answer'd, that they might put what they would in the News, but he knew nothing of it, nor did not receive any Money; and this was a great Surprize upon me, and upon those others that heard him, when we were told he was to be the main Evidence against Sir *John Freind*.

Freind. Well, Sir, do you know any Thing else?

Courtney. Captain *Blair* was bemoaning himself afterwards, that he went against his Conscience in this Thing, and his Wife told me that he was very much concern'd, because he was going to do this against his Conscience, and she was sure it would break his Heart.

Fr. Do you know any Thing more?

Courtney. And he told me in his Chamber upon Friday Night last, about Nine a Clock I came to see him, he lay upon his Bed very ill, and his Wife was with him; I asked him how he did, and he clapt his Hands, and said he was very ill. Pray, said I, what ails you? Sure you have gotten some very great Cold. Oh! no, says he, Life is sweet, I don't know what it is I ail, but were it not for Life, I should never do what I do.

L. C. J. Did he tell you, he went against his Conscience?

Courtney. His Wife and he spoke at first, that he went against his Conscience, and he believed his Conscience was in a miserable State, and this I spoke innocently among some of the Prisoners, and I did not know that it was taken Notice of,

but it seems some Body has acquainted Sir *John Freind*, and so I am brought here, I know nothing of being a Witness, I assure you.

Mr. Just. Rokeby. Pray, who were present when this Discourse was between you and *Blair*? You say there were two other Persons present, when this Discourse was between you, and Captain *Blair* and his Wife, who were those two Persons?

Courtney. What Discourse do you speak of, my Lord?

L. C. J. You said there were two Persons in your Chamber.

Courtney. Does your Lordship mean at the Reading of the Flying Post?

L. C. J. Yes.

Courtney. My Lord, this Gentleman that I was speaking of was lying down upon the Bed, and Captain *Blair* came into my Room just after the News was read, and ask'd me if I had got the News, I told him yes, he ask'd what was the Import of it? I told him, they said he was making a great Discovery, and particularly against Sir *John Freind*.

L. C. J. Well, and who were there then?

Courtney. This Ensign that is now a Prisoner in the Gate-house, who I suppose can say the same Thing.

Mr. At. Gen. Pray, my Lord, let Mr *Blair* be call'd while he is here, and let him know what this Witness says, that the Court and Jury may know what he has to say to it.

L. C. J. Yes, pray let Mr. *Blair* be brought in again; (*which was done.*)

L. C. J. Treby. Now, let Mr. *Courtney* repeat what he said now before about Capt. *Blair*'s Declarations to him.

Courtney. My Lord, I tell your Lordship, there was one *Tooley* a Prisoner in the Gatehouse; when he heard the Flying Post cry'd, bought it, or it was order'd to be bought, and it being brought into my Chamber, I desir'd him to read it, and I was walking about the Room: In the mean Time Capt. *Blair* came in, and ask'd if we had got the News? we said yes; and he ask'd what News there was in it? I reply'd, it is said that you are making a great Discovery, that you were to be Lieutenant Colonel to Sir *John Freind*, and had received a great deal of Subsistence Money for the Regiment: Says he, They may put what they will in their News, but I know of no Regiment, nor any Subsistence, nor of any Commission. The Man that read the Book, will say the same that I do.

Mr. At. Gen. When was this?

Courtney. This was one Day when the Flying Post came out, the last Saturday but one I think.

L. C. J. But you talk'd of something he should say to you of going against his Conscience?

Courtney. That was upon Friday Night last, I came to see Capt. *Blair*, and his Wife was with him, and Captain *Blair* was very ill, and clapping his Hands, and groaning, and moving himself, and in a very miserable Condition, truly I thought he was giving up the Ghost. I ask'd him upon what Account he was so sad, and told him I thought he had got some great Cold; he told me No. Well, said I, Captain *Blair*, I understand you are going to morrow to *Hicks's-Hall*, and I pray God direct you. (*Says he several Times*) I pray God direct us all; Life is sweet. Oh! says his Wife, dear Sir, he would never do it, but to save his Life; but it goes against his Conscience: So said I to him, you

You have had the Character of an honest Gentleman; I hope you will shew your self such, and I pray God direct you: I wish no Man's Blood may lie at your Door. Says he, I am an unfortunate Man, that is the Thing that troubles me, or something to that Purpose; which shew'd all the Remorse of Conscience which could be in the World. I spoke of this innocently among the Prisoners, and it seems, it was communicated to Sir John Freind, and so I am brought here to testifie it.

Mr. At. Gen. Pray what say you to this Captain Blair? you hear what he says, do you give an Account what you know of it.

L. C. J. You hear what Discourse he says he had with you, what say you to it?

Capt. Bl. My Lord, this Gentleman crouded himself in upon me, my Wife was with me, and he told me he had a Cup of Brandy, which would be good for me if I had a Cold. God knows my Heart, I desired no Company might come to me. Says he, Captain Blair, I have heard you have been an honest Gentleman all along, and you are going to Hicks's Hall to morrow, and a great deal of such Discourse as that, and I pray God Almighty direct you: That's all that I know pass'd. I was very ill, very sick, as I am far from being well now; but as for any Thing of Remorse of Conscience, as I hope for Mercy and Salvation, I never express'd any such Thing to him.

L. C. J. Did your Wife say, that you were troubled, that you were going to do that which went against Conscience, and you would not do it but to save your Life?

Capt. Bl. No, I am sure she did not.

L. C. J. Did that Gentleman thrust himself into your Company, or did you desire him for to come to you?

Capt. Bl. No, he thrust himself into the Room.

Courtney. The Sink was hard by, and I heard Captain Blair groan, and so I went in to see him; every Body had Access to him.

Capt. Bl. Pray, where is the Keeper?

Keeper. Here I am, Sir.

Capt. Bl. Did not I beg of you for God's sake, that no one should come to me but my Wife?

Mr. At. Gen. If the Keeper of the Gate-house be there pray swear him.

The Keeper of the Gatehouse was sworn.

Mr. Sol. Gen. What do you say as to Captain Blair's desiring that no Body should come to him, but his Wife?

Keeper. No Body was to come to him unless they forced themselves upon him.

Mr. Sol. Gen. Do you know of that Man's coming to him?

Keeper. No, Sir, I know nothing of it.

Capt. Bl. I always desir'd to have the Door lockt with the Key on the Inside, that no Body might come to me but whom I had a Mind to.

Keeper. He did so, because he was ill; and no Body did come to him that I know of.

Capt. Bl. My Wife being with me came to me to the Bedside, while this man was with me, and I was lying upon my Back; and said she, for Christ Jesus's Sake, dear Blair, do not speak any Thing.

L. C. J. When was this?

Capt. Bl. When this Gentleman was with me, she desired me not to say any Thing before him; because said she, I do not know but he may be a Trepan.

Courtney. Upon the Word of an honest Man, and my Reputation is as dear to me, as yours

is to you, she said nothing of that. She told me, you were going to do that which was against your Conscience, and you would not do it but to save your Life.

Mr. At. Gen. Pray, what is this Man committed for, you Keeper?

Keeper. He is committed for Suspicion of Treason.

Courtney. I have been taken up Five Times upon Suspicion, and this last Time I was committed to the Gatehouse.

Mr At. Gen. Where do you live, Sir?

Courtney. In Old Southampton Buildings.

Mr At. Gen. How long have you lived there?

Courtney. I have lodged there about Four Years and an half; there are several Persons can come and give a Testimony of me.

Mr Sol. Gen. How come you, Sir, to be brought as a Witness here?

Courtney. I was surprized at it: for my Part what I did was by Way of Pity, seeing him in such a Condition; I pitied your Soul, because you and your Wife both shewed so much Trouble and Remorse of Conscience: As for Sir John Freind, I never saw him till to Day in all my Life, that I know of.

Mr At. Gen. What Countryman are you, Sir?

Courtney. I am an Irish Man born.

Mr At. Gen. Have you any Estate in Ireland?

Courtney. No, Sir, I have not.

Mr Sol. Gen. Pray, how came you to go to Mr Blair?

Courtney. I have known him a long Time; I have been often in his Company at the Coffee-house; I cannot say I am intimately acquainted with Captain Blair, but only as I have seen him in the Coffee-house a great many Times.

Mr. Sol. Gen. But I ask you how you came to go to him; because it seems he desir'd no Body should come to him, but his Wife.

Courtney. He may say what he pleases; for he lay first in one Room, and then in another, and he could never go to the necessary House, but he must go thorow my Room; but if you please to send for Mr. Tooley and Capt. Courtney, they will say and swear that these Things pass'd in their Presence, or to the same Purpose, except what pass'd between him and me in his own Chamber. Ensign Tooley did read the Paper of the Flying Post; and as for what he said of his knowing nothing of the Plot, it was talk'd of up and down in the Prison, and so it came to me; and I invited him into my Chamber, as my old Acquaintance; though I was not very familiar with him; and as he declared, he knew nothing of the Matter.

L. C. J. You hear what he says; Captain Blair, did you tell him you knew nothing of the Plot.

Capt. Bl. Yes, I believe I might at first; as we were talking when I first came in, and I told him the Truth: For I was innocent as to the Assassination, for indeed I was so. And as to the Invasion there was only some general Discourse, and I was not willing to explain my self among such People as they were, when they ask'd me any Questions about it, I had to do with the King and Council.

L. C. J. Sir John Freind, have you any more Witnesses to examine?

Freind. Yes, my Lord, I desire Mr. King may be called. *(Which was done, and he appeared.)*

L. C. J. There he is, Sir, what would you ask him?

Fr. I desire to know of him, whether he does not know Captain *Blair* and Captain *Porter* to be Roman Catholics, and whether he does not know me to be a Protestant.

King. I am of Opinion Mr *Porter* is a Papist; he was always taken to be so at *Epsom*, where I used to go, and where he used to go, and he was never look'd upon as a Protestant.

L. C. J. And what do you take Sir *John Freind* to be;

King. I take Sir *John Freind* to be a Protestant; so he is, and so he ever was.

Fr. But when you have been in my Company, and they have been speaking of the Government, what have I said or done?

King. When ever they started any reflecting Words upon the Government, he was used to say, Forbear, I do not admit of any such Discourse.

Mr. At. Gen. How long have you known him?

King. He has been my Acquaintance this Fifteen Years, and married a Relation of my Wife's Husband.

At which there was very great Laughing.

King. I mean her former Husband.

L. C. J. He has reconcil'd the Matter very well for this Point; for he tells you he meant her first Husband.

Freind. Ay, my Lord, no doubt of it, he will recover it; it was her former Husband. Mr *King*, don't you mean it was her former Husband?

King. Yes, Sir, I have told you it was so; her former Husband's Name was *Thomas Case*.

L. C. J. Mr *Tanner*, you are to look upon two Statutes, the one is 3 Jac. 1. Cap. 4. and the 30th Car. 2. Cap. 2.

King. My Lord, I have heard him say, If I had not taken the Oaths to *R. James*, which Oaths are binding to my Conscience, I could as freely take the Oaths to the present Government, as any Man in England; but I will live peaceably and quietly under the Government, but because I do not take the Oaths, I am double taxed, and I will pay it.

Freind. My Lord, I desire Capt. *Kaines* may be call'd. *(Who appeared.)*

L. C. J. What do you ask him, Sir?

Fr. Capt. *Kaines*, I desire to know of you, whether Mr *Porter* and Mr *Blair* are Roman Catholics; and I desire you to speak as to my self, what I am.

Kaines. They are so reputed to be at *Epsom*; it was always so reported there; and I have been acquainted with Sir *John Freind* several Years, being concern'd together in the Train'd-Bands of the Tower-Hamlets, and I have been in his Company several Times since the King came in, and never heard him give any reflecting Language against the Government in my Life.

L. C. J. Have you done with him, Sir?

Fr. My Lord, I did not hear him; but I suppose he has declar'd, as to Capt. *Porter* and Capt. *Blair*, that they are Catholics.

L. C. J. He says, *Porter* and *Blair* are reputed Papists; and he has known you a long Time, and been concern'd with you in the Train'd-Bands, and never heard you reflect upon the Government since the King came in.

Fr. My Lord, I desire to know, whether he believes me to be a Protestant?

Kaines. I did always take Sir *John Freind* to be a Protestant?

Fr. Then, next, I desire Mr *Carpenter* may be call'd. *(Who appeared.)*

L. C. J. What do you ask him, Sir?

Fr. I desire, Mr *Carpenter*, that you will acquaint the Court, whether you know Captain *Porter* to be a Roman Catholick, and what you know of me.

Carpenter. I have been at *Epsom* several Summers, and usually am there in Summer-time, and he was so reputed there: But as to Sir *John Freind*, I have known him above these Twenty Years; I keep a Brew-house, as he does, and we have been concern'd together, and have had several Occasions, upon the Account of Trade, to meet him, upon Particulars of Appraisement, when any Partners came in, and I never knew him but very orderly and civil; I never heard him reflect any Thing upon the Government, but was always peaceable and quiet: He was always looked upon as a Protestant, and went to Church. That's all that I can say.

Freind. My Lord, as to the Statute-Book, will your Lordship please that the Statute-Book be sent for?

L. C. J. Yes, yes, we do not forget it. Have you any more Witnesses? Call all your Witnesses, and we will consider of that afterwards.

Fr. I desire Mr *Hawkins* may be called. *(Who appeared.)*

L. C. J. What say you to this Gentleman?

Freind. I desire you, Mr *Hawkins*, to give an Account what I am; whether you know me to be a Roman Catholick or a Protestant.

Hawkins. I have known Sir *John Freind* these Twenty odd Years, and have had Dealings with him many Times before the Change of Government, and since, and I never heard him reflect upon the Government; nor never heard him to speak slightly of it: And as to his being of the Protestant Religion, I do know as much as any Man, as much as another; I always believed him to be a Protestant of the Church of England, as good as any Man alive; he always went to Church.

L. C. J. What, since the Revolution?

Hawkins. I have not been so conversant with him since that, because I went out of Town, and liv'd out of Town; but I believe there are those at *Hackney*, that can give an Account of that Matter.

Fr. I desire Major *Mould* may be call'd.

L. C. J. Then, I suppose, you have done with Mr *Hawkins*.

Fr. Yes.

Then Major Mould stood up.

L. C. J. Well, what say you, Sir;

Mould. My Lord, I have known Sir *John Freind* many Years, above these Twenty Years, and I always look'd upon him as a sincere Protestant; and I have often been in his Company since the Revolution, and I never heard him speak diminishingly of the Government. I believe him to be as good a Protestant as any in England.

L. C. J. How! as any in England? That's a great Character.

Fr. Then I desire Dr *Hollingsworth* may be called; *(but he did not appear.)*

Fr. Then, my Lord, I desire Mr *Luston* may be call'd.

L. C. J. There is Mr *Luston*, what would you have with him?

Fr. I desire he will give an Account what he knows of me, what Religion I am of.

Luston. My Lord, as to Sir *John Freind*, I have known him this Ten Years; he was pleas'd to employ me as a Chaplain in his House a considerable Time, both before and after the Revolution; and after

after the Revolution we always used the Prayers according to the Church of *England*, and we did always pray for the present King, and the late Queen *Mary*, at which Sir *John* was many Times present.

Mr At. Gen. How long is it since you left him?

Lufon, About four or Five Years, as I remember: Then Sir *John's* Family lessen'd; he was pleas'd to say to me, Mr *Lufon*, I am going to *Tunbridge*, and my Family lessens, (this is about Five or Six Years ago,) and I shall have no Occasion for you at present; but if ever I make use of a Chaplain again, I will make use of you: This he was pleas'd to say.

L. C. J. How long is it, do you say, that you have left him?

Lufon, About five Years; and as to any Objection of his being a Papist, I have often discours'd with Sir *John Freind* about the Popish Religion, and he has often spoken with Detestation of the Principles of the Papists.

Freind, What have you heard me speak of the *French*; and about any Thing of an Invasion, how I would venture my Life for the Protestant Religion, or any Thing of that.

Luf. I have often heard you say, as to the present Government, that though you could not comply with it, yet you would live peaceably under it. When we have been talking of these Things, you said you never would be in a Plot; and though you could not comply with the present Government; yet you would never concern your self in any Design against it. For my Part, my Lord, I know nothing by him, but that he is an honest and a worthy Gentleman, tho' he be so unfortunate to be under this Accusation.

Fr. I desire Mr *Hontely* may be called, (who appear'd.)

L. C. J. Well, what say you, Sir?

Freind, Pray, Mr *Hontely*, will you give an Account to the Court what you know of my being a Protestant, and of my Life and Conversation.

Hontely, I believe Sir *John Freind* is a very settled Protestant of the Church of *England*; and I have Reason to believe so, because I have frequently discours'd with him, because I have had a Couple of Children that were his Nephews, upon whose Account I have been forced several times to wait upon him; and he has often said he never would be in any Plot, and his Words that he us'd to me were really very remarkable. *Catch me in the Corn, and put me in the Pound.*

L. C. J. What were his Words, Sir?

Hontely, He us'd to say he would never be in any Plot, for says he, *Catch me in the Corn, and put me in the Pound*; and I have heard him express himself with a great deal of Detestation of King-killing, and those Principles of the Papists; the Assassinating of any Crown'd Head.

Mr. At. Gen. Pray, Sir, how came you to discourse with Sir *John Freind* about King-Killing and Plots? You are a Schoolmaster it seems, how happen'd this Sort of Discourse between you?

Hontely, There will be Discourses about these Things sometimes.

Mr At. Gen. But, pray, how was the Discourse introduced? What was the Occasion of the Discourse? Sure there was some Occasion extraordinary for him so to express himself to you.

Hontely, I cannot remember the particular Occasion, but such Discourse there was.

Mr At. Gen. Pray, how long ago is this Time that this Discourse was?

Hontely, I believe it was five or six Times within these two Years.

Mr At. Gen. What, have you had the same Discourse five or six Times one after another?

Hontely, I cannot say that; but those us'd to be his Words.

Mr At. Gen. What, in common Discourse?

Hontely, He said he would never be in any Plot.

Freind, My Lord, I can bring a great many more Witnesses of this Kind, and I believe I could have a Thousand to prove me a Protestant.

L. C. J. Call whom you will, Sir *John*, we will hear them.

Freind, My Lord, I am very loth to trouble you.

Mr Justice Rokely, No, it will not be reckon'd any Trouble, we will hear all your Evidence.

Freind, There is one Mr *Willis* and one Mr *Hemings*; but I desire it may not be forgotten as to the Acts of Parliament, for they are very material for me, as I shall shew by and by,

Mr. Willis appeared.

L. C. J. Well, what say you to this Gentleman?

Freind, Mr *Willis*, I desire you'd give an Account to their Lordships, what you think of me, as to my being a Protestant, and how I have behaved my self in every Respect all along.

Willis, My Lord, I have always taken it for granted, that those that come to Church are Protestants; and I did always take Sir *John Freind* to be a Protestant. The Acquaintance I had with him was since he lived in the Parish of *Hackney*, and we have had some Converse together, and there have past friendly Visits between us; and I do not remember any Discourse while I was there that tended to the Government one Way or another. I was never very often with him, but his Discourse was always very obliging, discreet, and prudent, whenever I was there.

L. C. J. Pray, Sir, when did you see him at Church?

Willis, Truly, my Lord, I cannot call to Mind when it was.

L. C. J. Cannot you name any Time?

Willis, He may be at Church sometimes, and I not see him; our Seats are at a distance from one another, and there are Pillars between, that one can't see every Body; and I cannot call to mind when I did see him last at Church.

L. C. J. Has he been there within this Year or two?

Willis, He has been gone from *Hackney* a Year and above.

Mr Mountague, Pray can you say you have seen him at Church within these Four Years?

Willis, Truly I cannot call to mind whether I have or no.

Freind, I desire Mr *Hemings* may be called. I could call a great many more, but they are much to the same Effect as these are.

L. C. J. Call whom you will, Sir *John*, if you think fit to call them, we will hear them.

Fr. Being they are not here, I will not trouble you farther; it is all to the same Purpose.

L. C. J. Well, take your own Course; if you'll call them, the Court will be sure to hear them.

Fr. But my Lord, here is one Thing that I must desire your Lordship's Direction in: If these Gentlemen, my Lord, Captain *Porter* and Captain *Blair*, who

who are the two Witnesses, and none but those two, against me, if they are Papists, they are not good Witnesses against a Protestant, to prove him a Traitor within the Statute of the 25th of *Edward the Third*. For that Statute says, He that is indicted must be proveably attainted; which cannot be by the Evidence of Papists, and those that refuse to take the Oaths of Obedience, which are requir'd to be taken: And therefore I humbly beseech you, that you will please to tender them the Oaths, for there is a Statute in the 3. *Jac. I. Cap. 4.* which appoints the Tendering of the Oaths to them.

L. C. J. That is not our Business at this Time.

Fr. Then I must beg your Pardon that they are not substantial Witnesses; for this is the Law, as I am inform'd. I humbly submit to your Lordship, whether this be not the Law. I only speak it to know whether it be convenient for me to rehearse it. I ask'd the Question before they were sworn. I know not whether it be convenient for me to move it now.

L. C. J. Ay, ay, it is very convenient now, now is the proper Time.

Freind. Before ever they were sworn I would have ask'd them the Question, whether they were Papists or not; but it was not allowed, it was over-ruled: Now, my Lord, there is such a Statute, and I humbly beseech you to tender them the Oaths, and that would be a Demonstration, that they were Papists, and then they could be no good Witnesses.

L. C. J. You say well, if we could find such a Statute, that no Papist should be a Witness, but there is no such.

Freind. My Lord, I beg your Pardon, and I hope you will not take it amiss; I offer what I am advis'd to offer.

L. C. J. No, no, by no means, there will be nothing taken amiss.

Freind. For the Statute of the 25th of *Edward the Third*, and that of the 30th of *King Charles the Second*, and that of the 3d of *King James the First, Cap. 4.* here it is plainly demonstrable, that Papists are not to be believ'd against any Protestant, who is with them esteem'd a damnable Heretick; and then they believe the Pope and their Priests can absolve them from all Oaths, and they are declar'd to be given to Evasions, and Equivocations, and mental Reservations, and can have Dispensations for all their Villanies; and therefore they are not be credited: Their Evidence is of no Value, unless they will in this Manner upon their Oaths renounce these Principles: Therefore I humbly beg they may have the Oaths tender'd them.

L. C. J. That is not our Business now.

Freind. And, my Lord, your Lordship was pleas'd to promise me that if any Matter of Law did arise, my Council should be heard.

L. C. J. First let us know, whether there be any such Law as this you mention, or to any such Purpose.

Freind. My Lord, I desire my Council may come in, and speak to it: For my Life is in Danger, and so is every honest Gentleman's Life every Day. I am as clear as the Child unborn, I have no Witnesses to prove any Thing, and therefore I desire my Council may be heard.

L. C. J. If the Court did think there were any Colour in this Objection that you make, we would let you have Council, we would do it; nay, we are desirous to do it if it could.

Freind. What, my Lord?

L. C. J. To allow you Council, if there were any Colour in this Objection in Relation to Papists not being Witnesses. I would be glad to see the Council that would own this Objection; but indeed, I see no Colour in it: The Statute shall be produced that you quote, and then we shall see, whether there be any Thing like it in that Statute. Pray will you read those Words that you say are in that Statute to that Purpose.

Freind. I am not so expert to know the Words before and after; and therefore I think it is requisite I should have Council.

L. C. J. It is supposed you have had Council, and I suppose your Council that have advis'd you to make this Objection, have instructed you whereabouts in the Statute it is.

Fr. My Lord, I desire my Council may be call'd in and heard to it.

L. C. J. I tell you, that by Law we cannot hear Council to any such Matter that has no Colour of Objection in Law in it; tho' for my Part, I wish we could, because I would fain hear what any Council can say to make out such an Objection, that Papists are not good Witnesses.

Fr. My Lord, I wish you would hear my Council to it.

L. C. J. Look ye, Sir *John Freind*, you have desir'd that this Statute may be turned to, and you desire to have them read, and they shall be all read from the Beginning to the End.

Fr. I desire the Statutes of the 25th of *Edward the Third*, the 3d of *K. James the First, Chap. 4.* and the 30th of *K. Charles the Second*, may be read.

L. C. J. What Chapter is that of the 30th of *K. Charles the second*?

Fr. Really it is not put down in my Paper.

L. C. J. Then look out the Chapter, while he is reading the other. Look ye, Gentlemen of the Jury, Sir *John Freind* does desire the Statute of the 25th of *Edward 3.* may be read, which is the Statute about Treasons, and the Statute upon which he is indicted, and it shall be read, therefore pray hearken to it.

Cl. of Ar. (Reads it.) This is made in the 25th Year of *King Edward the Third.* A Declaration which Offences shall be judged Treason. Item, Whereas divers Opinions have been before this Time, in what Cases Treasons shall be laid, and what not.

Fr. My Lord, I beg the Favour I may speak one Word before it go on to be read.

L. C. J. Yes, with all my Heart.

Fr. I speak it my Lord, because it will be to the very Thing now in Question, I am advis'd that Consultation to levy War is no Treason, without Rebellion and Insurrection; and inviting Men to come from beyond Sea is no Treason, unless a Foreign Prince be invited to come with his own Subjects; for *English, Scotch, and Irish* are not Enemies, but Rebels, and to be dealt with otherwise; therefore I leave it to your Lordships, for I am no Lawyer, only I am advis'd to insist upon these Things.

Then the Statute of the 25th of *Edward 3.* about Treasons was read throughout, only about the middle the Prisoner made some Interruption.

Fr. I believe this Statute is not the Statute I go upon, that which I mainly insist upon, is the Statute of the Third of *King James the First, Cap. 4.*

Mr Just. *Rokeby*. This is the same Statute you are indicted upon, the great Statute for Treasons; and as to your Objection last mentioned, what is Treason and what is not, he is not yet come to that Part.

Fr. Well then, let him go on with it.

(It was read to the End.)

L. C. J. Now it has been read, is this the Statute you would have?

Freind. There must needs be a Mistake as to the Chapter, it is set down the 25th of Edward 3d. but there is no Chapter.

L. C. J. Yes, this must be the Statute, it relates to Treasons, and it has those Words in it, that what you read out of your Papers relates to. Well, that we may go on in Order of Time, what Statute of King James is it that you mention?

Fr. It is the 3d of King James 1. Cap. 5. it is upon Account of tendering the Oaths appointed to be taken by that Statute, and— (reading out of a Paper) to tell the Court that they ought to have the Oaths tendered them.

L. C. J. That is the Business of another Time, read the Statute.

Cl. of Ar. An Act for the Discovering and Representing Popish Recusants. What Part is it.

Fr. Truly my Lord I can't tell.

L. C. J. It is a long Statute, but if he'll have it read, it must be read all.

Fr. My Lord I would not give the Court any Trouble, but it is about having the Oaths tender'd to them.

Cl. of Ar. I believe this is the Paragraph, And for the better Trial how his Majesty's Subjects stand affected in Point of their Loyalty and due Obedience, &c.

(A great Part of the Statute was read, relating to that Matter.)

L. C. J. What else would you have read, Sir John Freind?

Fr. I only gather from thence, that no Roman Catholick is capable of Swearing against a Protestant, because the Pope and the Priests can absolve them from their Oaths.

L. C. J. Well, what have you more to say?

Fr. My Lord, I only speak this as to Roman Catholics, they do not regard an Oath against a Protestant, because they have their Priests that can absolve them, and therefore how such a Man's Oath can weigh any Thing, I cannot apprehend; therefore if I have omitted any Thing, I hope your Lordship will supply it, as you are my Council, for you are a Council for me, as well as the King.

L. C. J. Yes, yes, I would help you in any Thing I could.

Fr. My Lord, I thank you, I desire you to help me, for I am as innocent as the Child unborn, whatsoever these Men have sworn: These are hard Things that are laid upon a Gentleman, and no Man is safe at this rate, they being sworn by two Papists, who will swear any Thing against Protestants.

L. C. J. Look ye, Sir John Freind, have you any Witnesses to produce, that these two Men have any Displeasure or Malice against you, that they should accuse you falsely?

Fr. My Lord, I am sorry I have not my Witnesses; I have been so kept up, that I had not Time for People to come to me; I had not my Council come to me before Saturday.

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L. C. J. How happen'd that?

Fr. My Lord, there was a Mistake in that, I think it was Friday, either Friday or Saturday; I had them not till Friday in the Afternoon; I was kept so close that none were permitted to come at me: On Thursday I had an Order, but there was a Mistake in the Order, and I desired to get another Order, but I could not get any Body to get another Order for me, to have my Friends to go and enquire into Things, or else I should have found out enough Witnesses.

Mr Ar. Gen. I am sure he had an Order for Council, at the same Time that Notice was given him of his Trial.

L. C. J. When was that?

Mr. Att. Gen. On Tuesday, my Lord.

L. C. J. What say you to it, Mr. Baker?

Mr. Baker. My Lord, I did attend Sir John Freind on Tuesday last, to give him Notice of his Tryal as this Day; and I at the same Time told him if he would name his Council to me, I would procure an Order for them to come to him. The next Morning he was pleased to name to me Sir Bartholomew Shower; I took the Liberty to tell him, that he being so concern'd at the House of Lords, and at the Committee about Parliamentary Business, some other Persons that had named him of their Council, notwithstanding Orders were procured for him to go to them as their Council, yet by that Means they were disappointed of him, and great Delay was given to the Prisoners; and therefore I desir'd him to consider of it, and to send to Sir Bartholomew Shower, and any other Council that he had a Mind to, and know their Pleasures, whether they would attend him; and if he would send me Word, I would procure an Order for him. But not hearing from him, I went on Wednesday to him again, and he said he had sent to Mr. Northey, but he would not come to him till he had spoke with Sir Bartholomew Shower, but he would send me Word that Night, yet he did not. But the next Day came Mr. Burleigh to me to the Duke of Shrewsbury's Office, and brought me the Names of the Persons that he would have assign'd him of Council, and immediately I procured an Order for it, and away he went with it. This was upon the Thursday; Mr. Welden, and Mr. Cresset, or one of them were named in the Order, I am not positive which, and Mr. Underhill, and Mr. Burleigh were to be admitted to him. Mr. Burleigh had the Order, if he did not carry it to him I can't help that.

L. C. J. When was that Order for the Council?

Mr. Barker. It was upon Thursday, my Lord.

Fr. My Lord, may I speak?

L. C. J. Yes, yes, what you will.

Fr. My Lord, the Reason why I had not my Witnesses was this: There was a Gentleman, one Colonel Cash, Lieutenant to my Lord Lucas, he undertook to go, and put in his Name, and three more; one John Neale, and one Phillips to have an Order to go about to look after my Witnesses; but they did not put in any one of these Names, but they took up and secured my Kinsman Cash, and put him into the Messenger's Hands, and would not suffer me to have any of his Assistance; therefore I saw what a Design there was upon me.

Mr. Att. Gen. As for Mr. Cash, there was very good Reason for it, he was secured for Suspicion of Treason.

L.C.J. If you had wanted any Witnesses, and had not been so fully prepared as you expected to be, you should have moved before the Tryal came on to put it off.

Mr. Just. Rokeby. But my Lord put a Question to you before, Can you shew any Reason why these Persons should have any Malice against you?

Freind. My Lord, I was not so much a Lawyer, as to know these Things; but it's a hard Thing, that a Man that's innocent must suffer at this rate: I have been disappointed in every Thing; for these Gentlemen have not been permitted to answer, whether they are Roman Catholicks or no.

Mr. J. Rokeby. Nor have your Witnesses proved that they are Roman Catholicks, but only that they are reputed so.

L.C.J. Well, I can't tell what Avail that would have been of, if they had been proved so. Have you any more to say, Sir *John Freind*?

Fr. No, my Lord, I leave it to God, and you, and the Jury to consider of it.

Mr. Soll. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the King, against Sir *John Freind*, the Prisoner at the Bar; and it comes to my Turn to sum up the Evidence that has been given. Sir *John Freind* the Prisoner at the Bar, cannot but own, that he hath hitherto had a very fair Tryal, and he shall have no Reason to complain, that I do him any Injury in my part. I am sure both he, and you, and all of us, very well remember, when Persons of as good Quality as he is, or better, had not the same Usage or Liberty of Defence, in such Cases as this Gentleman has had: And though all Things are very well now, yet the Time was, within all our Memories, when Innocency was no Safety for a Man's Life, much less for his Liberty; and when those two are taken away, and are invaded, Property signifies nothing. The Time was, when the Protestant Religion, and the Church of *England* of which the Prisoner boasts himself to be, (and for a very good Reason, because it is the best of Religions,) I say, the Time was, when that was in Danger; and when Popery (for which he now reflects upon the Witnesses) was like to have over-run both us and it; And if his Majesty, with the Hazard of his Life, and at a great Expence, had not rescued us, there is no Body doubts, but that all that we feared at that Time, would have been made good upon us 'ere now. And it is a melancholy Thing to consider, that there should be a Sort of People amongst us, so in Love with what we then dreaded, as to be continually endeavouring to bring it about again. And it is an ungrateful Thing, when his Majesty ventured his Life then, and has done it several Times since to defend us, and does all that he can to keep our Enemies at a Distance, there should be a Party of Men, that do what they can to invade their Country, to destroy his Majesty's Subjects, and to fall upon himself, when he is present amongst us. I will not accuse the Prisoner at the Bar particularly, tho' it is plain he knew of it.

Fr. Know of it? I declare before God, and the World, I know nothing of it.

Mr. Soll. Gen. This, if it were among Equals, were certainly a most ungrateful Thing, when another Person is fighting in my Defence, that I should design against his Life, or when he does what he can to protect my Estate, I should be invading and spoiling his.

Gentlemen, if the Prisoner at the Bar is not Guilty of what he is accused of, and what you

have heard the Witness give Evidence of; then nothing of this does relate to him: But if what has been given in Evidence against him is true, then the Prisoner at the Bar is one of those Persons, that has done all he can to make this Country, which has been the Place of Retreat for all Protestants to fly to, from Persecution in their own Countries; I say, to make it as unsafe for them, as that from which they came.

Gentlemen, The Evidence against him, is first *Mr. Porter*, and he gives it in Evidence, that at the Old King's Head in *Leadenhall-street*, there was a Meeting of the Prisoner, and *Porter*, and several others, in order to consider the best Means, how to bring back the late King *James*; and they concluded at last, that the best Means would be to send some Body into *France*, to advise the late King *James* to borrow of the French King 10000 Men, 1000 Horse, 1000 Dragoons, and 8000 Foot, and that he should make what speed he could to land with them here; and to encourage and invite him to do so, they promised him their Assistance, and they did not doubt, but to be ready to meet him with 2000 Horse at his Landing.

Gentlemen, The Person that was pitched upon to go upon this Errand, was *Mr. Charnock*, a Person lately executed for the Treasons of which he was attainted. *Mr. Charnock* was diffident whether this were the Effect of sober Consideration, and therefore would not undertake to carry this Message, till there had been another Meeting of the same Persons; to see whether they continued in the same Mind. Another Meeting accordingly was appointed, and agreed upon, and that was at *Mrs. Mountjoy's Tavern* at *St. James's*, and there, he says, there were almost all the Persons that were in *Leadenhall-street*; and at that Meeting the Question being ask'd, whether they were of the same Opinion, that *Mr. Charnock* should go to *France* to the late King upon that Message, that I told you of before, they did all agree to abide by the old Resolution; that he should go, and make as speedy a Return as he could, and bring back the late King's Answer.

Captain Porter tells you, that *Mr. Charnock* did go to *France*, and comes and brings word back, that the French King could not at that Time spare that Force that was then desir'd; and so it was delay'd at that Time, because the French King was not at Leisure then to employ his Men in this Service; but it was likely to have taken Place, but very lately, if the Providence of God had not prevented it.

Gentlemen, our next Witness is *Captain Blair*, and he tells you, That about Two Years ago, Sir *John Freind* the Prisoner at the Bar, shew'd him a Commission that he had received from the late King *James*, to raise a Regiment of Horse, of which he was to be Colonel; that this was signed *James Rex* at the Top, and countersigned by my Lord *Melford*, and it was in Paper. And that there was a great many Consultations between Sir *John Freind*, himself, and others about the raising of this Regiment, and providing Officers for it. He tells you he was to have been Lieutenant Colonel, and was to procure as many Officers and Troopers as he could; and he tells you he did procure several Officers; and he names them; one *Fisher* was to be eldest Captain, one *Vernatte*, and one *Hall*, and one *Bertram*, and that *Bertram* was to be Lieutenant to *Blair* in his own Troop.

Gentlemen, a great deal of the Evidence which Captain Blair has given, is indeed out of Sir John Freind's own Mouth, and that is as strong an Evidence as possibly can be given; and he does for that purpose tell ye, that he said one Evans was to be a Captain of Horse, and one Collonel Slater was grown so much in Sir John Freind's Favour, that he rivalled Captain Blair, in the Opinion of Sir John Freind; and Sir John Freind for that Reason would have two Lieutenant Collonels, whereof Slater was to be one. Captain Blair says, he took that amiss, that any one besides himself should be in that Post, and Resented it to Sir John Freind, and therefore Sir John Freind found out another Office for Slater; and that was to be a Captain of a Troop of Horse, that should consist of Non-swearing Parsons, and which were to be an Independent Troop.

Gentlemen, He tells you that he did list several Men, but the particular Persons, tho' he has named the Officers, he did not so distinctly remember, but they are in the Paper that he delivered to the Council, which he has not about him: He tells you, that Sir John Freind told him that one Richardson was another Captain of Horse, and the like of one Mr. Cole, that he was to be a Captain likewise.

He also acquainted you, Gentlemen, that he did receive from Sir John Freind several Sums of Money, and he acquaints you in particular with the Manner how; he says that Sir John Freind had expended 100*l.* towards the 300*l.* that was paid for the escape of Coll. Parker out of the Tower; and that Sir John Freind was to be re-imburfed by Monies that were to be transmitted from King James at St. Germaine. He tells you that Piggot had received the Money, but did not deal with Sir John Freind so fairly as to pay it to him; but when Captain Blair was pressing on Sir John Freind for some Money, Sir John Freind was contented that he should have 20*l.* provided he got it from Piggot out of this 100*l.* Captain Blair had not Interest enough it seems to get it himself from Piggot, but he applies himself to one Harrison or Johnson, (for it seems he goes by both those Names) a Priest, who had an interest in Piggot, by which means he got 20*l.* of Piggot, and this he says was in June or July last.

Then, Gentlemen, he tells you afterwards, he was pressing upon Sir John Freind to have another 20*l.* and Sir John Freind was contented he should have it, provided he had it from Piggot, and he produces ye a Letter that was from that very Person the Prisoner at the Bar, which is to that purpose; excusing himself that Captain Blair had not heard from him, but that he would meet him at such a time, and at such a Coffee-house. The Matter indeed is not directly express'd in Words, but at the Time and Place the Prisoner did meet Blair, and there was Harrison and this Piggot, and there 5*l.* of the last 20*l.* was paid him; and the other 15*l.* was paid him afterwards; and he swears these two Twenty Pounds were paid to him by Sir John Freind, upon Account of the Charge that Blair had been at in drinking with and treating those Men who were to be engaged with Sir John Freind in his Regiment.

Gentlemen, he tells you likewise, that Sir John Freind told him he had written a Letter to King James, and he shewed him this Letter, and this was at that Piggot's Mother's House; and when Blair read it, he tells you he thought it was so well penned, that he did apprehend Fergusen must

have a hand in it, and that it was none of Sir John Freind's own; and that upon this Sir John Freind was angry, that he should suspect that Sir John was not the Writer of this Letter; all this shews an Intelligence with King James, and makes out all the rest of the intended Invasion by King James, and a French Force here.

Captain Blair likewise tells you, Gentlemen, that Sir John Fenwick had Four Troops of Horse, as Sir John Freind told him, by way of encouragement, which were all ready for the service; and that Fergusen undertook to bring a Number of Men, and was to be one himself in that Party; and all this was to be put in practice when the *Thoulon* Fleet came about, and join'd the *Brest* Fleet. And lastly he tells you, when he went in the Coach with Sir John Freind, Sir John told him they must act very warily, and be very good Husbands, for in truth it had cost him so much, that if the Fleet did not come soon, or the Design should miscarry, he should want Money to carry on his Trade. All this positive Evidence is of the Witnesses own knowledge, from the Prisoner's own Mouth.

Against this Evidence, Gentlemen, he takes Exception; that the Two Witnesses are Roman Catholicks; but this is no Exception to their Evidence at all; for it was never yet allowed, or indeed objected, that I know of, before, that Roman Catholicks were not good Witnesses. A Roman Catholick may be an honest Man, notwithstanding his Religion: But, I think, that every Body knows that Men who have been ill in other Things, tho' Roman Catholicks, may as to those particular Things be good Witnesses. Nay, not long ago, but on Wednesday last we produced some Witnesses, who were Roman Catholicks, and yet allowed for good Evidence, tho' ingaged in that Horrid Conspiracy against the Life of the King; and if any thing would have taken off their Evidence, certainly the Guilt of such a Crime would do it, more than the Pretence of any particular Perswasion of Religion. Nay, I must crave leave to say farther, that this Argument is so far from making him no Witness, that it makes it the more likely he does speak the Truth, and therefore is a good Witness. For tho' Roman Catholicks may be honest Men, yet they are more likely to engage in such a Design than any other Men. And I think I may very safely add, Sir John Freind would not have found so many that he could ingage in such a Business as this, that were of any Religion but the Roman Catholick, and therefore he applied himself to these Persons, as most likely to imbark with him on such a Bottom.

Gentlemen, as to what Courtney, that was brought from the Gate-house says about his Discourse with Captain Blair in the Prison; Captain Blair has upon his Oath declared, that he did not go so far as to say, he did any Thing against his Conscience, but only Courtney bid him take care what he swore, and prest him no further. He pretends he came casually into Blair's Chamber, but it is plain he intruded into his Room; for it is sworn by the Jaylor, and Blair himself, that he had given Directions none should come into his Room but his Wife, so that does not discountenance the Evidence of Blair at all, and if you do believe what our Witnesses have said; Captain Porter and Captain Blair, then Sir John Freind is guilty of all the Crimes that are charged upon him in this Indictment, and I hope you'll be

be so just to your Prince, to your Country, and to your Selves, as to find him guilty accordingly.

Mr *Comper*. If your Lordship pleases, spare me a Word on the same Side. My Lord, I do not trouble your Lordship out of an Apprehension that there is any thing necessary to be said to the Court in this matter, or for the Satisfaction of the Jury, but if possible, that we might convince the Prisoner at the Bar, that he has had no hard Measure in this Prosecution meeted to him, but that he is proved Guilty of the Crime of which he stands accused, and that really there is no Weight at all, in the Defence which he has made.

The first Part of it goes to discredit one of our Evidences, Captain *Blair*, from some Discourse that he would object to have pass'd between him and the Person here produced, in the Prison of the *Gatehouse*. And the first Part of that Discourse was, upon *Blair's* first coming into the Prison; and as to that Time, the Objection amounts to no more than this; that Captain *Blair* would not confess, when he was pump'd by a Fellow Prisoner, that he was engaged in so horrid a Design: What Weight there is in such an Objection, truly I cannot see, but will leave it to any Man's Judgment to consider, That a Man, when he is freshly taken upon such an Occasion, does not immediately confess his Guilt to every Body that meets him, nay, to Persons that would not have lik'd him for making such a Confession, but perhaps would have destroy'd him in Prison for so doing.

The other Discourse was upon *Friday*, the next Day, I think, before Captain *Blair* went to *Hicks's Hall*, to his Examination; and then he intrudes himself into *Blair's* Chamber, when he lay very ill upon the Bed, accosts him with a Cup of Brandy in his Hand, and with good Advice at the same Time, that he should take great Care in what he should say at *Hicks's Hall*, and the like: And then Captain *Blair*, it seems, did express some Reluctancy in the Thing he was going about, as if it were against his Mind and Inclination. If that were true, (though Captain *Blair* denies it positively upon his Oath) yet it was no more than, I am willing to observe for the Prisoner, Captain *Blair* did express here, when he first came into Court; and it is no more than what is natural, since the Prisoner had been his Friend and Intimate, and he was going to depose that against him, which was likely to prove fatal to him.

My Lord, As to another Part of his Defence, it consists chiefly in this: The Evidence brought to prove, that the King's Witnesses are reputed Roman Catholicks, and that the Prisoner is a reputed Protestant of the Church of *England*. If that be true too, all that can be rationally and fairly collected from thence is this, that they (the Witnesses I mean) when they engaged in such a black and execrable Design, might be very good Papists; but I am sure it will be agreed, That the Prisoner in so doing was a very bad Protestant.

My Lord, he objects to their Evidence this likewise, That, if they be Papists, they may be absolv'd by the Pope, or their Priests, though they should swear falsely. Possibly that may be so, for ought I know; I confess, I am not very well acquainted with the Principles of that Religion: But this I dare say, that every one, who has heard what has been sworn by them, will think it so

great a Disservice to the Popish Cause and Interest, that it will be one of the last Things their Priests will ever absolve them of.

My Lord, there's another Matter the Prisoner has thought fit to insist upon; he has brought two or three Clergy-men to depose, that when ever he discoursed with them (it seems at all times) he was talking about being in a Plot, and very readily told his Resolution not to be in any. It seems it still swom uppermost; his Professions were made very causelessly: For they all say nothing introduc'd them; but of his own meer Motion he was always declaring he was not then in a Plot, nor ever would be. I have heard, that one Way, weak Men and Children often discover their Knowledge of a Secret intrusted to them, is, by a repeated and unnecessary declaring, that they know nothing of the Matter.

My Lord, in the next Place for his Defence, he just offered a Point of Law; but the Court so well satisfied him in that, that I think he waved it. He alledged, that a bare Conspiracy to levy War is not Treason; and the Court did him right in declaring (as God forbid but they should) that it is not Treason: But I desire the Gentlemen of the Jury would consider that the Prisoner at the Bar is not accus'd barely of a Conspiracy to levy War, but you are told to what End that War was to be levied, to join the late King upon his Descent into this Kingdom with a *French* Power, in order to drive his Majesty out of the Kingdom, and to depose him from the Crown; which is a Killing him in the Eye of the Law: and that is High Treason by whatever Means they intended to effect it; whether by War or a Stab, or any other Manner, it is indifferent.

In the next Place, my Lord, I would take Notice of another Part of his Defence, which had been better let alone, wherein he admits that he was present at the Two Meetings he is accused to have been at by *Porter*; but he only differs in one Point, that there was nothing talked then but general and indifferent Discourse. The Witnesses have sworn what the Discourse was, and you will weigh the one against the other; his Affirmation of a thing unlikely in Defence of himself, and what is deposed upon Oath by the King's Witnesses to the contrary.

My Lord, there is one Thing more I would take Notice of, and that is the Evidence of Mr. *Bertram*, which we do not produce as a direct Evidence against the Prisoner at the Bar, but as a Confirmation of what was sworn by *Blair*. And it does shew that the Matter sworn by *Blair*, was not of late devised out of Malice, or otherwise, to destroy the Prisoner; for that *Blair* acquainted *Bertram* with, and discoursed him about, the principal Matters of Fact, that are now sworn, at least Two Years ago; and besides his Evidence and the Evidence of *Blair* concur in this Particular, that he was to be Lieutenant in *Blair's* Troop.

My Lord, such a Concurrence of Evidence and other Circumstances in this Matter, greatly increase the Weight of the Proof against the Prisoner, especially when there is nothing material alledged by him in his Defence, and therefore I shall trouble your Lordship no further.

L. C. J. Look ye Gentlemen of the Jury, Sir *John Freind*, the Prisoner at the Bar, is Indicted for High Treason. The Treason that is mentioned in the Indictment is Conspiring, Compassing, and Imagining the Death and Destruction of the King

King. To prove the Conspiracy and Design of the King's Death, there are two principal Overt-Acts that are mainly insisted upon. The one is the Consulting and Agreeing with diverse others to send Mr. *Charnock* into *France* to King *James*, to desire him to persuade the *French* King to send over Forces here to assist them; who were to furnish other Forces for the raising of a War within this Kingdom, in order to depose the King; and accordingly Mr. *Charnock* was sent upon that Design. The other Overt-Act is the Prisoner's having a Commission from the late King, and preparing and directing Men to be levied, and to be ready to be in a Regiment, of which Sir *John Freind* was by that Commission to be Colonel, and this was also to assist in the Restitution of King *James*, and in order thereunto in the Deposing and Expulsion of King *William*.

These, Gentlemen, I tell you are the two Overt Acts that are principally insisted upon; and to prove Sir *John Freind* Guilty of these there are two Witnesses that have been produced, the one is Captain *Porter*, who speaks to the first, the other is Captain *Blair*, who speaks to the second.

Captain *Porter* tells you, that the latter End of *May*, or the Beginning of *June* last, that he and Sir *John Freind*, and others that he mentioned, were at the *Kings-head Tavern* in *Leaden-hall-street*, and there they entered into a Discourse about the Returning of the late King *James*; and they did consider among themselves which was the most effectual Way, and what were the most probable Means to have him Restored: And thereupon it was agreed among them, that they would send a Messenger into *France* to him, to desire him that he would solicit the *French* King to furnish him with 10000 Men, to be sent into *England*, 8000 Foot, 1000 Horse, and 1000 Dragoons; and they did agree, that when these Forces were sent, consisting of this Number of Men, then they would be ready to meet and joyn them with 2000 Horse, every one of them was to furnish his Quota; to which Sir *John Freind* did expressly agree. The Messenger that they agreed to send was with them in Company, and heard the Consult, which was Mr. *Charnock*, who was lately Tried and since Executed.

This being at that Time determined, Mr. *Charnock* intended to go upon the Execution of that Design, and made ready for his Journey: But before he went, he had a Desire to meet with the Company again, and have a further Discourse upon this Matter, to see whether they did persevere in the Resolution they had so taken. There was another Meeting about a Week or a Fortnight after, which was at Mr. *Montjoy's*, a Tavern in *St. James's-street*, where met Sir *John Freind*, Captain *Porter*, and divers others of the Company that were before at the *Kings-Head*. And there they enter'd into a Debate of the Matter again; the Question there was, whether Mr. *Charnock* should be sent into *France*, as it was formerly agreed, and there it was again determined he should go, to which he agreed, and Capt. *Porter* says, that he did go about two or three Days after.

Mr. *Porter* tells you farther, that about the Time that Mr. *Charnock* came back, Mr. *Porter* was in Prison, and he did not see him upon his first Return, but afterwards he met and spoke with him, and ask'd him what was the Effect of his Negotiation, and Mr. *Charnock* told him, that he had done as he was directed; that he had been with King *James*, and he had spoke to the *French*

King, but the Answer returned was this, That the *French* King had Occasion for his Forces that Year to be otherwise imploy'd, and therefore he could not furnish such a Number of Men that Year; and Mr. *Porter* ask'd him whether he had been with the rest of the Gentlemen, and acquainted them therewith; and he said he had. This is the Substance of Mr. *Porter's* Evidence; whereby you may perceive what the Meetings were for, what Resolutions were there taken, and what was the Issue and Effect of them.

The next Witness is Captain *Blair*, and his Evidence goes to the other Part, that is, to Sir *John Freind's* having a Commission from the late King *James*, and engaging him and others to be in his Regiment; whereof Sir *John* was to be Colonel, and the providing of Officers. And for that the Evidence stands thus.

Captain *Blair* tells ye, that about two or three Years ago, he was with Sir *John Freind* at his Lodgings in *Surrey-street*, and there he did produce a Commission that he had from King *James* to be Colonel of a Regiment of Horse; he was to raise it himself, and was to appoint, and provide what Officers he thought fit. He says, he read the Commission, and it was signed at the Top *James Rex*, and countersigned at the Bottom *Melfort*; this he is positive in, and farther, that Sir *John Freind* did promise that he should be Lieutenant-Colonel of this Regiment, and also desir'd that Captain *Blair* would get as many Men as he could, and that there were other Officers that were appointed in that Regiment, and particularly one *Fisher* was brought to Sir *John Freind* by Captain *Blair*, to be his first Captain, and one Colonel *Slater*, who was much in Favour with Sir *John Freind*, was to have been another Lieutenant Colonel; for said Sir *John Freind*, I have a Mind to him to be my Lieutenant Colonel, and though you are so too, yet it is no Matter, if we have two in this Regiment; at which *Blair* took very great Offence, and express'd as much to Sir *John Freind*, whereupon Sir *John Freind* told him, it should not be so, but said he would make another Provision for Mr. *Slater*; that he should be a Captain of an independant Troop, that shall be composed of Non-Swearing Parsons, and that shall satisfy him.

And Sir *John Freind* did intrust Captain *Blair* with the providing of Men and managing of them. And Captain *Blair* tells you, he was at a great deal of Charge, and laid out diverse Sums to caress them, and keep them together, and wanting Money to proceed in that Affair, he came to Sir *John Freind*, and made great Complaints, that he wanted Money to carry on the Design, by obliging the Men to keep together, and therefore pressed to Sir *John Freind* to furnish him with some Money; says Sir *John*, there is 100*l.* due to me, because I laid down 100*l.* to further the Escape of Colonel *Parker*, and *Piggott* has received it, and had Directions to pay it me, but I cannot yet get it. You shall have 20*l.* out of that 100*l.* if you can get it. Well, but how is that 20*l.* to be had? It seems there was one *Harrison* or *Johnson* a Priest, who had some Interest in this *Piggott*, and he was to help him to it; and thereupon the 20*l.* was actually paid the latter End of *June* or the Beginning of *July* last. This 20*l.* he swears he did receive upon that Account, by the Direction of Sir *John Freind*, to be so imploy'd as you have been told.

Then Captain *Blair* had Occasion for more Money, which was sometime after *Michaelmas* last, which was to be employ'd as the former was : and he was very importunate to obtain it of Sir *John Freind* ; at length he did obtain it, as he tells you, and the Manner how. He produces a Letter under Sir *John Freind*'s own Hand, which seems to be an Answer to a Letter that Captain *Blair* had sent to him before, he thinks it to be his own Hand, for he is acquainted with his Hand-writing. But that is not all to prove it his Hand, for the Contents of the Letter are remarkable, which are about the Payment of Money to *Blair* : The Letter bears Date of a *Tuesday* Morning, and is directed to Captain *Blair* ; and a Porter brought it, as he thinks, to his House ; and thereby it was appointed they should meet on *Thursday* next at *Jonathan*'s Coffee-house about the Hour of Twelve. And accordingly Captain *Blair* came to *Jonathan*'s Coffee-house, where he accordingly met with Sir *John Freind*, and there was *Harrison* the Priest and *Piggott*, and there he does receive a Sum of Money upon the same Account : So that now the Proof of this Letter does not depend barely upon the Knowledge of the Hand, but the Contents of it, and the subsequent Meeting at the Time and Place mentioned in the Letter is a great Evidence that it was Sir *John Freind*'s Hand-writing, and more Money is prov'd to be actually paid in the Presence of Sir *John Freind*, which is the most material Part of the Evidence. And you are told further, that as Sir *John Freind* and Captain *Blair* were going together in a Coach, from *Jonathan*'s Coffee-house, to *St. Martins le grand*, there was a Discourse between them ; and Sir *John Freind* said, for his Part he would not stir till such Time as the *Thoulon* Fleet was come about, and joyned with the *Brest* Fleet. That he did think he was in Danger of being apprehended when it came about, and therefore Captain *Blair* was to sculk till then, as he himself told him he would do, but yet he should get what Men he could. And this is a great Argument of his being concerned in the intended Invasion, and that his making Preparation for his Regiment, had Relation to the *French* Invasion which was expected.

It seems two Years ago, there being a great Intimacy between *Blair* and Sir *John Freind*, as appears by all the Evidence, *Blair* was acquainted with this Design. For you are told of the Letter that was writ by him to King *James*, which he shew'd to Captain *Blair*, and it was concerning his Regiment ; he says, that Sir *John Freind* own'd he writ that Letter himself, that *Blair* did read the Letter, and finding it so well penn'd, he said, that he thought *Ferguson* had a Hand in it, at which Sir *John Freind* was angry ; but *Blair* says, the Letter was concerning the Regiment of which Sir *John Freind* was Colonel.

Then, Gentlemen, you have *Bertram* called to prove, that *Blair* did tell him, that he was to be his Lieutenant Colonel, which was long before there was any Thoughts of any Discovery of this intended Invasion, and before the Discovery of the Plot of Assassination, which Sir *John Freind* did own he had some Knowledge of, but he disliked it, and said it would ruine King *James*'s Affairs. So that, Gentlemen, I think this is the Sum and Substance of the Evidence that has been given upon this Occasion against Sir *John Freind*, to induce you to believe him to be guilty of this Crime with which he now stands charged.

But now you are to consider what Sir *John Freind* says on behalf of himself. In the first place, he makes an Objection against the Credit of all these Witnesses, that they are not to be believed, because, says he, they are known or reputed to be Roman Catholicks and Papists, and their Consciences, and their Oaths are large, especially when they think they can do an Injury to any Protestant ; and therefore they are not to be allow'd as Witnesses, at least their Credit is not sufficient to induce a Jury to believe them. At first indeed, he urged there was a Statute and a Law that did disable them from being Witnesses ; but I must tell you there is no such Statute, nor indeed is their being Papists any Diminution at all to the Credit of their Testimony : For Papists are legal Witnesses, and though there are severe Laws to punish them for their Non-Conformity to the Church of *England*, and for other their Popish Practices ; yet I know of no Law that renders them infamous, or incapable of being Witnesses. For you are to consider, Papists are Christians, and swear by the same Evangelists that Protestants do ; and as for that Supposition, that they look upon Protestants as Hereticks, and can have a Dispensation for any Oaths that they take against them ; you are to consider, as it has been very well observed by the King's Council, that they are never like to obtain any Dispensation or Pardon, if they should forswear themselves to defeat the Designs of the Popish Party ; and therefore it is a very inconsiderable Objection, and in this Case hath no Weight.

But then he does insist upon it, that Captain *Blair* is not to be believed ; and there are Two Objections he makes against him. First, That he did deny that he knew any Thing of the Plot. For *Blair* being upon this Occasion brought Prisoner to the *Gate-house*, and afterwards upon a Discourse of some News in the Flying Post, wherein it was mentioned, that Captain *Blair* had confess'd all, and made a full Discovery, that thereupon he should say, He was innocent of the Plot, and knew nothing of it. You, Gentlemen, are to consider the Weight of this Objection. First, Suppose he had said so, it might be, he was not willing (as he was not oblig'd to own it), and would not confess it at that Time, and to those Persons. It was not his Interest and Prudence to be too open ; and therefore it does not follow, that because a Man would not trust others with his Confession, but deny'd his Knowledge of a Plot when there was no Occasion for him to own it, that now he swears it positively, therefore he should swear falsely.

But Secondly, Captain *Blair*, who was called for the Vindication of himself, and his Testimony, has upon his Oath declar'd to you, that he did not say he knew not any Thing of the Plot, but did deny any Concern in, or Knowledge of the Assassination. Now this Business, for which Sir *John Freind* is tried, is not for being a Party in the designed Assassination, but of a Design with Force to Depose the King, and restore King *James*.

Then as to the other Matter that was upon *Friday* Night last ; *Courtney* the Witness says, That he came to Captain *Blair*'s Chamber, and took Notice of his being to be a Witness at *Hicks*'s Hall the next Day, and said, I pray God direct you ; and he says his Wife, then present, said it was against his Conscience, and he seem'd to be

in very great Trouble about it, and owned as much. But now Captain *Blair* himself, being examined upon his Oath does deny positively, that either he or she said any such Thing, as that it was against his Conscience: He says, that *Courtney* got in to him on Purpose to surprize him, and he was aware of it, and his Design being to keep himself free from all Company, he gave Directions to the Keeper (as the Keeper himself swears) to let no Body come to him but his Wife; and Mr. *Courtney* intruded himself upon him.

Besides, Gentlemen, you are to consider the Probability of that which Mr. *Courtney* saith: When a Man is to be a Witness the next Day upon Bill of Indictment before a Grand Jury that he should be so indiscreet, as to tell any Body he was going to swear against his Conscience, is strange and very unaccountable. You are therefore to consider of this whole Matter, what Evidence Captain *Blair* has given, and the Import of it, and the Weight and Credibility of that Evidence which is given against him.

Then Sir *John Freind* insists upon another Matter: Says he, I am a Protestant, and it is not likely, that I that am a Protestant should conspire with Papists against Protestants; and for that he has called eight Witnesses, who tell you they have known him, some twenty Years, some more, others ten, and that they have frequently conversed with him, and never knew that he was ever popishly affected, and they have been frequently in his Company since the Revolution, and they never knew that at any Time he reflected upon the Government; nay, I think one said, that once he did reprove a Man for talking undecently of the Government; that he used constantly to go to Church four or five Years ago (though there is no Account of that since). And particularly there is one Mr. *Luston* that was his Chaplain, and he tells you he was in his House, and there he read the Common-Prayer in the Family since the Revolution, and pray'd for the King and the late Queen, and Sir *John Freind* was often present at the Prayers, and particularly when he pray'd for the present King, and the late Queen; but he says he himself has been gone thence Five Years, and has been little conversant with him since.

There is another Witness tells you, he has been in Sir *John Freind*'s Company divers Times, whom he believes to be a Protestant of the Church of England, and hath had Discourse concerning the present Government; and that Sir *John Freind* said, that though he could not take the Oaths, and thereby conform to the Government, yet he was resolved to live quietly under it; and would not engage in any Manner of Plot; for he that caught him in the Corn, should put him in the Pound.

This is the Sum and Substance of the Evidence on both Sides; and you, Gentlemen, are to consider, the Weight of this Part of his Defence too; whether it be a sufficient Answer to the Evidence given against him, and has Weight enough to out-balance what the Witnesses for the King have Sworn? For altho' he was a Protestant, yet it is plain he had no great Liking to the Government; and therefore would not take the Oaths; and though he was present at the Common-Prayer, when the King and Queen were pray'd for, yet whether he join'd in those Prayers is very uncertain. There are a great many, who are not very

well affected to the present Government, that come to Church, and are present at the publick Prayers; but it may be a very great Doubt whether they join in their Prayers for the present Government, or no; his Conscience that scruples the Taking the Oaths, might scruple that too. But whether Sir *John Freind*'s being a Protestant, and his Declaring he would never be in a Plot, be a sufficient Proof, that therefore he never was in one; and that his former Discourse of that Kind should discredit these Witnesses, that have sworn he has been so much concern'd in a Plot, you are to consider; and comparing the Weight and Nature of the Evidence on the one Side, and the other, it must be left to your Determination.

Then there is another Thing that he did insist upon, and that is Matter of Law. The Statute of the 25th Ed. 3. was read, which is the great Statute about Treasons; and that does contain divers Species of Treason, and declares what shall be Treason. One Treason is the Compassing, and Imagining the Death of the King; another is the Levying of War: Now, says he, here is no War actually levied; and a bare Conspiracy or Design to levy War, does not come within this Law against Treason. Now for that, I must tell you, if there be only a Conspiracy to levy War, it is not Treason: But if the Design and Conspiracy be either to kill the King, or to depose him, or imprison him, or put any Force or Restraint upon him, and the Way and Method of effecting of these, is by Levying a War, there the Consultation, and the Conspiracy to levy a War for that Purpose, is High Treason, tho' no War be levied: For such Consultation and Conspiracy is an Overt-Act, proving the Compassing the Death of the King, which is the first Treason, mentioned in the Statute of the 25th of Ed. 3. For the Words of that Statute are; *That if any Man shall compass, or imagine the Death of the King.* Now because a Man designs the Death, Deposition, or Destruction of the King, and to that Design, agrees and consults to levy War, that this should not be High-Treason, if a War be not actually levied, is very strange Doctrine, and the Contrary has always been held to be Law. There may a War be levied without any Design upon the King's Person, or endangering of it; which, if actually levied, is High-Treason; but a bare Designing to levy War, without more, will not be Treason. As for Example*; If Persons do assemble themselves, and act with Force in Opposition to some Law, which they think inconvenient, and hope thereby to get it repealed; this is Levying a War and Treason, though Purposing and Designing it is not so: So when they endeavour in great Numbers with Force to make some Reformation of their own Heads, without pursuing the Methods of the Law, that is a Levying of War, and Treason, but the Purposing and Designing it is not so.

But if there be, as I told you, a Purpose and Design to destroy the King, and to depose him from his Throne, or to restrain him, or have any Power over him, which is proposed or designed to be effected by War that is to be levied, such

* Rising with Force to pull down all Inclosures, to expell Strangers, to pull down Bawdy-Houses, is Levying of War, and Treason; but a bare Purposing and Designing to raise such a Force, for such a Purpose, is not Treason.

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a Conspiracy and Consultation to levy War for the bringing this to pass, is an Overt Act of High Treason. So that, Gentlemen, as to that Objection, that he makes in Point of Law, it is of no Force, if there be Evidence sufficient to convince you, that he did conspire to levy War for such an End.

Gentlemen, the Evidence you have heard what it is, you may consider the Weight of it, and the Circumstances that do attend it; and likewise the Answers that have been given by the Prisoner to invalidate that Evidence, and to prove the Improbability of what they have testified against him. You have heard, I say, the Evidence on the one Side, and the other; if you are not satisfied, that what the Witnesses have Sworn is true, that Sir John Freind did engage in such a Design for such a Purpose, then you are to acquit him; but on the other Side, if you believe that Sir John Freind is guilty of what the Witnesses have deposed against him, then you are to find him Guilty.

Juryman. My Lord, we desire we may have that Letter with us that was produced here.

L. C. J. No, no, you cannot have it by Law.

Juryman. May it not be left with the Foreman, my Lord?

L. C. J. No; but you may look upon it in Court before you go away, if you will.

Then the Letter was handed to the Jury, and one of them handed it to the Prisoner.

L. C. J. Why do you do so? You should not give the Prisoner the Letter.

Juryman. It was done to see whether it was his Hand; and we desire, if there be any Body here that knows his Hand-writing, or that saw him write it, may be produced.

L. C. J. Why? Did not he own the Letter to the Witness afterwards? It was sworn to you he did; and that he met according to the Appointment in the Letter, and that Money was paid.

Then the Jury withdrew to Consider of their Verdict, and an Officer was sworn to keep them according to Law, till agreed; and about a Quarter of an Hour afterwards they returned into Court, and the Prisoner was brought to the Bar.

Cl. of Arr. Gentlemen, Answer to your Names.
Thomas Clark—

Mr. Clark, Here.

(And so did all the Rest of the Twelve.)

Cl. of Arr. Gentlemen, are you agreed of your Verdict.

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Sir John Freind, hold up thy Hand, *(which he did,)* Look upon the Prisoner: How say ye, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty, my Lord.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the Time of the High-Treason committed, or at any Time since?

Foreman. None to our Knowledge.

L. C. J. Jaylor, look to him, he is found Guilty of High-Treason.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it. You say that Sir John Freind is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, nor Chattels, Lands, nor Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge.

L. C. J. Discharge the Jury.

Cl. of Arr. Gentlemen, the Court discharges you, and thanks you for your Service.

L. C. J. Then we had best to adjourn the Court till to morrow Morning.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes: All Manner of Persons that have any Thing more to do, at this General Sessions of the Peace, Sessions of Oyer and Terminer, holden for the City of London; and Goal-Delivery of Newgate, holden for the City of London, and County of Middlesex, may depart hence for this Time, and give their Attendance here again, to morrow Morning at seven of the Clock, and God save the King.

Then the Prisoner was carried back to Newgate, and was brought the next Day to the Bar to offer what he had to say for Stay of Judgment; and afterwards received Sentence of Death, as a Traytor.

The TRYAL of Sir WILLIAM PARKINS, Knight,

Publish'd by AUTHORITY.

*Die Martis vicesimo quarto Martii, Anno Dom. 1695. Anno Regni
Regis Gulielmi Tertii Octavo.*

*This Day the Tryal of Sir William Parkins, Kt. came on at the Sessions-House
in the Old-Baily, for High-Treason, in Conspiring the Death of the
King, and Promoting a French Invasion for the Restoring the late King
James.*

Clerk of Arraignments.

Ryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez. All Manner of Persons that have any Thing more to do at this General Sessions of the Peace, Sessions of Oyer and Terminer, holden for the City of London; and Goal-Delivery of Newgate, holden for the City of London, and County of Middlesex, and were adjourned over to this Day, draw near and give your Attendance, for now they will proceed to the Pleas of the Crown for the same City, and County; and *God save the King.*

Cl. of Ar. Middlesex. Cryer, make Proclamation.

Cryer. Oyez. You good Men of the County of Middlesex, summoned to appear here this Day, to try between our Sovereign Lord the King, and the Prisoner that shall be at the Bar; answer to your Names as you shall be called, every Man at the first Call, upon Pain and Peril shall fall thereupon.

Then the Jury that were returned in the Panel, were all called over and the Appearances of those who answered to the Call, were recorded.

About Ten of the Clock the Judges (to wit) the Lord Chief Justice Holt, the Lord Chief Justice Treby, and Mr. Justice Rokeby, came into the Court.

Cl. of Arr. Set Sir William Parkins to the Bar. *(which was done.)* Sir William Parkins, hold up thy Hand.

Parkins. My Lord, if you please, I humbly beg the Favour of one Word before I am arraigned. My Wife coming to see me in my Distress, sent up a Trunk of Linnen for our Use, and the Sheriffs of London have seized it, and do detain it. It has Linnen in it, and all her necessary Things, and all Things have been torn from me, since I was apprehended, but what is there, I have nothing to subsist upon but what is there; for no Money can I get from any Body, no Body will pay us a Farthing.

Mr Sheriff Buckingham. My Lord, we were sent for to Mr Secretary Trumball's Office, and when we came there, there was a Trunk that had been seized, as belonging to Sir William Parkins;

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and when we came thither it was opened, and there was in it some household Linnen, and some Plate; and Mr Secretary Trumball was pleased, after having searched the Trunk, to seal it up, and deliver it to my Brother and me, to be kept; and this is all we know of it.

* L. C. J. Where was this Trunk seized? * Lord Chief Justice Holt.

Mr Sh. Buckingham. We found it in the Secretary's Office, and it was delivered to us there, and we gave a Receipt for it to bring it down again when called for; we did not seize it.

L. C. J. Look ye see Sir William Parkins, your Trunk was seiz'd I suppose in order to search for Papers.

Parkins. Yes, I believe it was; but I hope it shall be delivered back now, they have found nothing in it, and I have nothing else to subsist upon but what is there.

L. C. J. Is there any Plate there? What is there in the Trunk?

Mr Sh. Buckingham. There is some Diaper and Damask Linnen, a Carpet, and some Pieces of Plate, two or three hundred Ounces of Plate, for ought I know. We had it from the Secretary's Office; we did not seize it.

Then the Judges consulted among themselves.

L. C. J. He ought to have his Plate to sell, to support him that he may have Bread.

Parkins. Will your Lordship please to direct the Sheriff to deliver it back.

L. C. J. Well, some Care or other shall be taken in it.

Parkins. My Lord, I have nothing to subsist upon, unless I can make something of what is there; I have a Wife, and four Children, and nothing to subsist upon.

L. C. J. Let your Wife make Application for it at the Secretary's, it cannot now be done here. Why did you not make Complaint of it before? If you had, Care had been taken in it.

Park. I was told there was a Petition; for, my Lord, I was a close Prisoner, and they told me there was a Petition; but my Wife never mentioned any Thing of it to me while afterwards; and they talk'd of an Order of Council that they had for the Sheriff's seizing it; but when I came to enquire into it, there was no Order about it, but only to search and examine it.

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L. C. J. Well, some Order shall be taken about it.

Mr Sh. Buckingham. My Lord, we have given a Receipt to the Secretary for it.

L. C. J. But he must have wherewithal to subsist and buy him Bread while he is in Prison.

Mr Sh. Buckingham. My Lord, I see Mr *Burleigh* there, who was Sir *John Freind's* Solicitor; I would humbly move your Lordship, that it may be inquir'd into, how he came by the Pannel of the Jury yesterday? For it seems to reflect upon us, as if we had given the Prisoner a wrong Pannel.

Mr Just. Rokeby. No, I think there can be no Reflection upon you; but I think it would be very proper to have the Matter examin'd.

L. C. J. Ay, let *Burleigh* come in; (which he did.) Pray, how came you by the Pannel which you gave to Sir *John Freind*?

Burleigh. My Lord, I had Three several Copies sent me by Sir *John Freind's* Friends, to the *Horn Tavern* about three or four a Clock, and I deliver'd one of them to Sir *John Freind*; but he had one before I deliver'd mine.

L. C. J. Who sent them to you, or brought them to you?

Burleigh. I had them brought to me by a Porter.

Mr Baker. You know you might have had it from the proper Officer for asking.

Burl. I had them brought me from Sir *John Freind's* Friends.

L. C. J. Can you tell who had it from the Sheriff?

Burl. My Lord, I know not: I had three Copies sent me in a Quarter of an Hour's Time; whence they came, I know not; the Sheriff knows me, and every Body else.

Mr Sh. Buck. I do know you, and would have you be fair in your Practice.

Mr Baker. The Inquiry is made, because a false Copy is put upon him; you might have had a true Copy, if you had applied your self right.

Burl. I sent to Mr. *Farrington* for it.

L. C. J. The Sheriff deliver'd it the Secondary, who is the proper Officer.

Mr J. Rokeby. Sir *John Freind* said he had it from him yesterday.

Burl. But he had one before; how he came by it, I can't tell; nor whence those came that were brought to me.

Mr J. Rokeby. If you will not take care to go to the right Place, it is no Body's Fault but your own, if you suffer by it.

Burleigh. I was with my Lady, and delivered a Petition for this Trunk.

L. C. J. But it seems it was under the Conu- zance of the Secretary, and Direction was given to go thither; some Care or other must be taken in it, and shall; but go on now to Arraign the Prisoner.

Cl. of Arr. Hold up thy Hand, (which he did;) thou standest Indicted in *Middlesex*, by the Name of Sir *William Parkyns*, late of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Kt. For that, Whereas an open, and notoriously publick, and most sharp, and cruel War, for a long Time hath been, and yet is, by Sea and by Land had, carried on, and prosecuted by *Lewis the French King*, against the most Serene, most Illustrious, and most Excellent Prince, our Sovereign Lord *William the Third*, by the Grace of

God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. During all which Time, the said *Lewis the French King*, and his Subjects were, and yet are Enemies of our said Lord the King that now is, and his Subjects, You the said Sir *William Parkyns*, a Subject of our said Sovereign Lord the King, that now is, of this Kingdom of *England*, well knowing the Premises, not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traytor against the said most Serene, most Clement, and most Excellent Prince, our said Sovereign Lord *William the Third*, now King of *England, &c.* your Supreme, True, Natural, Rightful, Lawful, and Undoubted Sovereign Lord; the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King, should bear, and of Right ought to bear, withdrawing, and utterly to extinguish intending, and contriving, and with all your Strength purposing, designing, and endeavouring the Government of this Kingdom of *England*, under him our said Lord the King that now is, of Right, duly, happily, and very well Established, altogether to Subvert, Change, and Alter; as also the same our Sovereign Lord the King to Death and final Destruction to put and bring; and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Slavery, to the aforesaid *French King*, to Subdue and bring; the first Day of *July*, in the seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of *St. Paul Covent-Garden*, aforesaid, in the County aforesaid, falsely, maliciously, divilishly, and traiterously, did compass, imagine, contrive, purpose, design and intend, our said Sovereign Lord the King that now is, then your Supreme, true, natural, rightful, and lawful Sovereign Lord, of and from the Regal State, Title, Honour, Power, Crown, Command, and Government of this Kingdom of *England*, to Depose cast Down, and utterly to Deprive; and the same our Sovereign Lord the King to Kill, Slay, and Murther; and the aforesaid *Lewis the French King*, by his Armies, Soldiers, Legions, and Subjects, this Kingdom of *England* to Invade, Fight with, Conquer, and Subdue, to move, stir up, procure, and Aid; and a miserable Slaughter among the faithful Subjects of our said Lord the King throughout all this whole Kingdom of *England*, to make and cause; and that you the said Sir *William Parkyns*, to the aforesaid Enemies of our said Lord the King that now is, then and there, during the War aforesaid, Traiterously were adhering and aiding; and the same most abominable, wicked and devilish Treasons, and traiterous Compassings, Contrivances, Intentions, and Purposes of yours aforesaid, to fulfil, perfect and bring to effect; and in prosecution, performance, and Execution of the traiterous Adhesion aforesaid, you the said Sir *William Parkyns*, as such a false Traytor, during the War aforesaid, to wit, the same first Day of *June*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, and

and traiterously, and with Force and Arms, with one *Robert Charnock* (late of High-Treason, in contriving, and conspiring the Death of our said Sovereign Lord the King, that now is, duly convicted and attainted) and with divers other false Traytors, to the Jurors unknown, did meet, propose, treat, consult, consent, and agree, to procure from the aforesaid *Lewis the French King*, of his Subjects, Forces, and Soldiers, then and yet Enemies of our said Lord the King that now is, great Numbers of Soldiers and armed Men, this Kingdom of *England* to Invade and Fight with, and to levy, procure, and prepare great Numbers of Armed Men, and Troops, and Legions against our said Sovereign Lord the King that now is, to rise up and be formed; and with those Enemies at and upon such their Invasion and Entrance into this Kingdom of *England*, to join and unite; Rebellion and War against him our said Sovereign Lord the King, within this Kingdom of *England*, to make, levy, and wage; and the same our Sovereign Lord the King so as aforesaid to Depose, and him to Kill and Murder. And further, with the said false Traytors, the same first Day of *July*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, Traiterously you did consult, consent, and agree to send the aforesaid *Robert Charnock* as a Messenger from you the said Sir *William Parkyns*, and the same other Traytors unknown, as far as, and into the Kingdom of *France*, in Parts beyond the Seas, to *James the Second*, late King of *England*, to propose to him, and desire of him to obtain of the aforesaid *French King*, the Soldiers and Armed Men aforesaid, for the Invasion aforesaid to be made; and Intelligence and Notice of such their Traiterous Intentions, and Adhesions, and all the Premises, to the said late King *James*, and the said other Enemies and their Adherents, to give and exhibit; and them to inform of other Things, Particulars, and Circumstances thereunto relating; as also Intelligence from them of the said intended Invasion, and other Things and Circumstances concerning the Premises, to receive, and them to you the said Sir *William Parkyns*, and the said other Traytors in this Kingdom of *England*, to signify, report, and declare, in Assistance, Animation, and Aid of the said Enemies of our said Sovereign Lord the King that now is, in the War aforesaid, and to stir up and procure those Enemies the more readily and boldly this Kingdom of *England* to Invade, the Treasons and Traytorous Contrivances, Compassings, Imaginations, and Purposes of you the said Sir *William Parkyns* aforesaid, to perfect and fulfil, and all the Premises the sooner to execute, manage and perform, and the Invasion aforesaid to render and make the more easie, you the said Sir *William Parkyns*, afterwards, to wit, the 10th Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, Falsely, Maliciously, Advisedly, Secretly, Traiterously, and with Force and Arms, with the aforesaid *Robert Charnock*, and very many other false Traytors, to the Jurors unknown, did Meet, Propose, Treat, Consult, Consent, and Agree, him our said Sovereign Lord the King that now is, by lying in wait, and Deceit, to Assassinate, Kill and Murder; and that execrable, abominable, and detestable Assassination, and Killing the sooner to execute, and perpetrate, afterwards, to wit, the same Day and Year, there Traiterously you did Treat, Propose, and Consult

with those Traytors, of the Ways, Methods, and Means, and the Time and Place where, when, which Way, and how our said Sovereign Lord the King, so by lying in wait, the sooner might be Killed, and Slain, and did Consent, Agree, and Assent with the same Traytors, that Forty Horsemen or thereabouts, of those Traytors, and others by them and you the said Sir *William Parkyns*, to be Hired, Procured, and Paid, with Guns, Carbines, and Pistols, with Gun-Powder and Lead-Bullets Charged, and with Swords, Rapiers, and other Weapons Armed, should lie in wait, and be in Ambush, our said Lord the King in his Coach being, when he should go abroad, to Attack, and that a certain, and competent Number of those Men so Armed, should set upon the Guards of our said Lord the King then, and there attending him, and being with him, and should Over-power and Fight with them, whilst others of the same Men so Armed, him our said Lord the King should Kill, Slay, and Murder; and that you the said Sir *William Parkyns*, then and there, did take upon you to provide Five Horses for those Men which should so Kill and Murder our said Sovereign Lord the King; and also that you the said Sir *William Parkyns*, your Treasons, and all your traiterous Intentions, Designs and Contrivances aforesaid, to execute, perpetrate, fulfil, and bring to effect afterwards, to wit, the Day and Year last aforesaid, at the Parish aforesaid in the County aforesaid, Divers Horses, and very many Arms, Guns, Carbines, Rapiers and Swords, and other Weapons, Ammunition and Warlike Things, and Military Instruments falsely, maliciously, secretly, and Traiterously did obtain, buy, gather, and procure, and to be bought, obtained, gathered, and procured did Cause, and in your Custody had and detained, with that Intention them in, and about the detestable, abominable, and execrable Assassination, Killing, and Murder of our said Lord the King, and the Invasion aforesaid, as aforesaid, to use, employ, and bestow; and also your Treasons, and all your Traiterous Intentions, Purposes, and Contrivances aforesaid, to execute, perpetrate, fulfill, and fully bring to Effect; you the said Sir *William Parkyns* afterwards, to wit, the Day and Year last aforesaid, at the Parish aforesaid, in the County aforesaid, Falsely, Maliciously, Advisedly, Secretly, and Traiterously, divers Soldiers, and Men Armed, and ready to be Armed, after the said detestable, abominable, and execrable Assassination, Killing, and Murder of our said Sovereign Lord the King, so as aforesaid should be done, perpetrated, and committed, to Rise, and Muster, and War, and Rebellion within this Kingdom of *England* to make, and wage, and with the Enemies of our said Lord the King, Foreigners and Strangers, Subjects and Soldiers of the said *Lewis the French King*, being about to Invade this Kingdom of *England*, at and upon their Invasion and Entrance into this Kingdom then expected to be shortly made, themselves, together with you the said Sir *William Parkyns*, to Joyn and Unite, and into Troops and Legions to form, you did Levy, List, and Retain, and did procure to be Levied, Listed and Retained, and those Soldiers and Men for the Treasons, Intentions, and Purposes aforesaid, then and there, and afterwards in Readiness you had; against the Duty of your Allegiance, and against the Peace of our said Sovereign Lord the King that now is, His Crown and Dignity; as also

against the Form of the Statute in this Case made and provided.

How say'st thou, Sir William Parkyns, Art thou Guilty of this High-Treason whereof thou standest Indicted, or Not Guilty?

Parkyns. Not Guilty.

Cl. of Arr. Culpritt. How wilt thou be Tried?

Parkyns. By God and my Country.

Cl. of Arr. God send thee good Deliverance.

Parkyns. My Lord, If your Lordship pleases to favour me with a Word or two.

L. C. J. Aye, What say you Sir?

Parkyns. My Lord, I have been kept in hard Prison ever since I was committed, no Body has been suffer'd to come to me till Friday last, then my Council came to me; and being charg'd with many Facts as I see in this Indictment, it will be necessary to have divers Witnesses to clear my self of these Particulars; they are dispers'd up and down, and I have had no Time to look after them, and therefore I beg your Lordship to put off my Tryal till another Day.

L. C. J. When had you first Notice of your Tryal?

Parkyns. The first Notice of my Tryal was on Wednesday last, in the Afternoon.

L. C. J. That is a sufficient Time of Notice, sure you might have provided your Witnesses, and prepar'd for it by this Time.

Parkyns. But, my Lord, being kept so close Prisoner, I had no Opportunity for it; for it was not possible for me to get any Body to come to me, till Friday Noon, not so much as my Council, and then there was but Two Days, Saturday and Monday, (for Sunday is no Day for any Business) and it is impossible for me to be ready in the Manner that I ought to be. It is a perfect Distress, and Hardship upon me, to be put so soon upon my Tryal, without my Witnesses, and what should enable me to make my Defence; therefore I humbly intreat your Lordship to put it off till another Day.

L. C. J. What Witness do you want, Sir William?

Parkyns. I have divers Witnesses, my Lord, that can give an Account where I was from Time to Time, but they are many of them out of Town, and I have sent about every way, but cannot get them together in so short a Time.

L. C. J. When had he Notice of his Tryal?

Mr Baker. On Wednesday I told him, that he must expect to be try'd this Day, and withal, that if he would name me any Council, that he would have come to him, he should have an Order next Morning for them.

L. C. J. You were told, it seems, on Wednesday that you might have what Council you would.

Mr Baker. And he had an Order upon Thursday Morning for his Council.

Parkyns. I could not have it without Application to the Court at White-Hall, and could have no Body come to me till Thursday, and it was Friday before I could get my Council to me.

L. C. J. You might have sent for your Witnesses on Thursday, and imploy'd some body about that Matter then.

Parkyns. The Solicitor that I employ'd, was imployed otherways, and I could not employ any Body else.

L. C. J. Yes, you might have employed any other about that Business.

Parkyns. I had no Body to send, I was kept close, and no Body permitted to come to me.

L. C. J. Your Solicitor you desir'd had Leave to come to you.

Mr Baker. You know that those you sent for, you had an Order for.

Parkyns. I cou'd not get him till Thursday to me, I had no Messengers to send till then.

Mr Baker. I gave the Keeper Direction, to let him have Persons come to him to send on any Errand.

L. C. J. The Keeper had Orders, it seems, to let any Messenger come to you, and he would have help'd you to some Body to send of this Errand to be sure.

Keeper. I always did it, as soon as I know they have Notice of their Tryal.

Parkyns. But the Keeper is not always in the Way, and besides, when I had Notice given me of my Tryal, it was Execution Day, and he was not at home that Day.

L. C. J. He names no Witnesses, only he says he has divers Witnesses, neither is there any Oath made of any Witnesses: Pray how long is it since you were committed?

Parkyns. I was committed this Day Fortnight.

L. C. J. Your Commitment charg'd you with High-Treason, and therefore you knew what you stood accus'd of, were you not committed for High-Treason.

Parkyns. Yes, my Lord, I believe I was.

Mr Sol. Gen. My Lord, he had a very fair Time to prepare for his Defence, for he saw his Name in the Proclamation a good while before he was taken, and there it is declar'd, what he stands charg'd with.

L. C. J. You might have had a Copy of your Commitment, you had a Right to have it, and thereby you might have seen what you were accused of.

Keeper. We never do deny it, if it be demanded.

L. C. J. You cannot deny it, you know what Penalty you are under if you do.

Parkyns. No Body was permitted to come to me.

L. C. J. You might have ask'd for a Copy, or any Body else, for you had Notice of your Tryal so long ago as Wednesday last.

Mr Baker. I gave him Notice of his Tryal on Wednesday, and then told him he must prepare for it against this Day; he said he would endeavour to petition for a longer Time, I told him it would be in Vain, for he must prepare for his Tryal to Day, and could have no longer Time.

L. C. J. Sir William, truly we do not see any Reason to put off the Tryal upon these Suggestions.

Parkyns. My Lord, it is very hard; then I humbly beg I may have the Favour, that I may have Council allow'd me, I have no Skill in Indictments.

L. C. J. We cannot allow Council.

Parkyns. My Lord, if I have no Council, I do not understand these Matters, nor what Advantage may be proper for me to take in these Cases.

L. C. J. You are not ignorant, Sir William, that Council has been always refused when desired in such Cases.

Parkyns. My Lord, there is a new Act of Parliament that is lately made, which allows Council.

L. C. J. But that does not commence yet, Sir William.

Parkyns. My Lord, it wants but one Day.

L. C. J. That is as much as if it were a much longer Time: for we are to proceed according to what the Law is, and not what it will be.

Parkyns.

Parkyns. But it is declarative of the Common Law, because it says it was always just and reasonable.

L. C. J. We cannot alter the Law till Law-makers do it.

Parkyns. Will your Lordship be pleased to let it be read?

L. C. J. Ay, if you have a Mind to it, it shall be read.

Parkyns. Yes, if your Lordship pleases.

L. C. J. Read it.

Cl. of Ar. Reads. An Act for Regulating of Tryals in Cases of Treason, and Misprison of Treason.

All the first Paragraph of the New Act was read.

L. C. J. Look ye, Sir William Parkyns, this Law has not taken any Effect as yet; but the Law stands as it did before the making of this Act.

Parkyns. But, My Lord, the Law says it's just and reasonable that it should be so.

L. C. J. We go according to the Law as we find it is.

Parkyns. And, My Lord, what is just and reasonable to Morrow, sure is just and reasonable to Day, and your Lordship may indulge me in this Case, especially when you see how streight Notice I have had, and what a little Time has been allowed me, that I am not able to make my Defence.

L. C. J. We cannot make a Law, we must go according to the Law, that must be our Rule and Direction.

Parkyns. Yes, my Lord, but what is just and reasonable, sure is Law: the Law is grounded upon Reason.

L. C. J. The Parliament has thought fit to make such a Law, which is to commence from the 25th of this Month: It is not a Law till the Time comes, that the Parliament hath appointed for its being a Law.

Parkyns. But, my Lord, if my Notice had been a convenient Notice, I had been within the Time limited by the Act of Parliament; and no one can want the Advantage of that Act from henceforward, nor suffer for such Want but my self, which is a particular Hardship upon me.

L. C. J. We cannot alter the Law, we are bound by our Oaths to proceed according to the Law, as it is at present.

Parkyns. Pray, my Lord, let the Tryal be put off till another Day then.

L. C. J. You shew no Reason for it; you name no Witnesses that you want, nor have we any Oath as we ought to have in such a Case.

Parkyns. I will do both if your Lordship will oblige me to it.

L. C. J. There ought to be an Oath certainly, but we think you have had fair and convenient Notice: For you have had as much Notice as Sir John Freind had, who was tryed Yesterday.

Parkyns. As I am informed he was charged with single Facts about the Town, but I am charged with many particular Things more than he was.

L. C. J. The Act of Parliament says nothing of Notice of Tryal; that still continues as it was before; and you have had very convenient Notice: Go on Mr Hardesty to swear the Jury.

Cl. of Ar. Sir William Parkins, you the Prisoner at the Bar, Those Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you upon Tryal of your Life and Death; if therefore you will chal-

lenge them or any of them, you are to speak unto them as they come to the Book to be sworn, and before they be sworn.

Parkins. I hope your Lordship will be of Council for me then.

L. C. J. So we will; we will do you all the Right we can. Look ye, you know you may challenge 35 without Cause, and as many as you will with Cause, but no more than 35 without Cause.

Cl. of Ar. Sir Goddard Nelthorpe.

Parkins. I except against him.

Cl. of Ar. Leonard Hancock, Esq;

Parkins. I except against him, he is the King's Servant.

Cl. of Ar. William Withers, Esq;

Park. I challenge him.

Cl. of Ar. Samuel Powell, Esq;

Park. I challenge him.

Cl. of Ar. William Northey, Esq;

Park. Well, I don't except against him.

Cl. of Ar. Hold Mr Northey a Book, (which was done.) Look upon the Prisoner. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, according to your Evidence; So help you God.

Cl. of Ar. Thomas Teuch.

Par. I challenge him.

Cl. of Ar. John Wolfe

Par. I challenge him.

Cl. of Ar. James Bodington.

Par. I challenge him.

Cl. of Ar. John Smith.

Par. I challenge him.

Cl. of Ar. Edward Gould.

Par. I have no Exception against him. (He was sworn.)

Cl. of Ar. John Raymond.

Par. I challenge him.

Cl. of Ar. Daniel Thomas.

Par. I have no Exceptions against him. (He was sworn.)

Cl. of Ar. Isaac Honeywood.

Par. I challenge him.

Cl. of Ar. William Underwood.

Par. I challenge him.

Cl. of Ar. Arthur Bayley.

Par. I challenge him.

Cl. of Ar. Nehemiah Erming.

Par. I challenge him.

Cl. of Ar. John Webber.

Par. I challenge him.

Cl. of Ar. John Cane.

Par. I have no Exception to him.

Mr At. Gen. We challenge him for the King.

Cl. of Ar. Thomas Glover.

Par. I challenge him.

Cl. of Ar. Henry Whitecott.

Par. I have no Objection against him. (He was sworn.)

Cl. of Ar. Timothy Thornbury.

Par. I challenge him.

Cl. of Ar. Dormer Sheppard.

Par. I challenge him.

Cl. of Ar. John Temple.

Par. I challenge him.

Cl. of Ar. Nathaniel Gold.

Par. I have no Exception against him.

Mr Gold. My Lord, I am no Freeholder in this County.

Mr Baker. Nor have you no Copyhold, Sir ?

Mr Gold, Yes, Sir, I have.

Mr At. Gen. However let him be set by.

Cl. of Ar. Robert Breedon.

Par. I challenge him.

Cl. of Ar. Thomas Taylor.

Par. I challenge him, he is the King's Servant.

Cl. of Ar. Joseph Blissett.

Par. I challenge him.

Cl. of Ar. John Billier.

Par. I challenge him.

Cl. of Ar. Francis Chapman.

Par. I challenge him.

Cl. of Ar. John Cleeve.

Par. I challenge him.

Cl. of Ar. Robert Bampton.

Par. I have no Exception to him. (He was sworn.)

Cl. of Ar. William Atlee.

Par. I challenge him.

Cl. of Ar. Thomas Sutton.

Par. I have no Exception to him. (He was sworn.)

Cl. of Ar. Thomas Edling.

Par. I have no Exception against him. (He was sworn.)

Cl. of Ar. Robert Sanderson.

Par. I have no Exception against him. (He was sworn.)

Cl. of Ar. Ralph Marsh.

Par. I have no Exception against him. (He was sworn.)

Cl. of Ar. Richard Bealing.

Par. Pray, Mr Hardesty, how many have I challeng'd ?

Mr Hardesty. I will tell you presently, Sir.— You have challenged 25.

Par. But there are two that I gave Reason for : Do you put them in among them ? that is, Mr Hancock and Mr Taylor, as the King's Servants.

Cl. of Ar. You may speak to my Lord about it ; but if that be allow'd, then there are but twenty three.

Par. Well Sir, Go on then.

Cl. of Ar. Richard Bealing.

Par. I challenge him.

Cl. of Ar. William Partridge.

Par. I challenge him.

Cl. of Ar. Nicholas Roberts.

Par. I challenge him.

Cl. of Ar. Peter Lavigne.

Par. I challenge him.

Cl. of Ar. Joseph Whiston.

Par. I have no Objection to him. (He was sworn.)

Cl. of Ar. Andrew Cook.

Par. I challenge him.

Cl. of Ar. Samuel Hooper.

Par. I challenge him.

Cl. of Ar. Thomas Heames.

Par. I have no Exception to him. (He was sworn.)

L. C. J. Sir William Parkins, you have challenged two, and have assign'd the Cause of your Challenge, that is, Hancock and another, and the Reason of your Challenge is, because they are the King's Servants. I am to acquaint you, that is no Cause of Challenge ; but however the King's Council do not intend to insist upon it, if there are enough besides. They are willing to go on

with the Pannel ; and I speak this, because I would not have it go for a Precedent, nor have it understood that the Cause you assign is a good Cause : But however they will not stand with you, if there be enough to serve.

Par. My Lord, I submit to it ; the Jury is full I think.

Cl. of Arr. No, there are but Eleven sworn yet.

Par. But how far have I gone in my Challenges ?

Cl. of Ar. There are four, which you may challenge more.

Par. There are two allow'd me, tho' it be not a Precedent : Are there four still ?

Cl. of Ar. Yes, you may challenge four more, and no more. Edward Townsend.

Par. I challenge him.

Cl. of Ar. Nicholas Rufford.

Par. I have no Exception of him. (He was sworn.)

Cl. of Ar. Cryer, countez. William Northey.

Cryer. One, &c. (and so the Rest till the Twelve.)

Cl. of Ar. Nicholas Rufford.

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez, If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney General, or this Inquest now to be taken, of the High Treason whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard ; for now the Prisoner stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance. And all Jury Men of Middlesex that have appear'd, and are not sworn, may depart the Court.

The Names of the Twelve Sworn were these.

William Northey, Esq;	Jury	Thomas Edling, Gent.
Edward Gold, Esq;		Robert Sanderson, Gent.
Daniel Thomas, Esq;		Ralph Marsh, Gent.
Henry Whitcheot, Esq;		John Whiston, Gent.
Robert Bampton, Gent.		Thomas Heams, Gt. and
Thomas Sutton, Gent.		Nicholas Rufford, Gent.

Cl. of Ar. Sir William Parkins, hold up thy Hand. (which he did.) You that are sworn look upon the Prisoner, and hearken to his Cause : He stands indicted by the Name of Sir William Parkins, late of the Parish of St Paul Covent Garden, in the County of Middlesex, Knight, that whereas (pro-ut in the Indictment, mutatis mutandis,) and against the Form of the Statute made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his Trial hath put himself upon God and his Country, which Country you are ; your Charge is to inquire, whether he be guilty of the High Treason whereof he stands indicted, or not guilty ; if you find that he is Guilty, you are to inquire what Goods, and Chattels, Lands, Tenements, he had at the Time of the High-Treason committed, or at any Time since : If you find him not guilty, ye are to inquire whether he fled for it ; if you find that he fled for it, you are to inquire of his Goods and Chattels,

tels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so and no more; and hear your Evidence.

Mr *Montague*. May it please your Lordship, and you Gentlemen of the Jury—

Parkins. My Lord, your Lordship was pleased to say, you would be my Council. I am ignorant in Matters of Indictments, I beg if there be any Fault in it, you will let me know it.

L. C. J. Truly, I have observ'd no Fault in it; I do not know of any.

Mr *Montague*. Gentlemen, this Indictment does contain as heavy an Accusation, as can be laid upon any Man, for it not only charges the Prisoner with a traiterous Design of subverting the Government, and raising War and Rebellion within this Kingdom; which was to be done by adhering to the King's Enemies, and promoting a Foreign Invasion, but likewise with a Conspiracy against the Life of the King, which was to have been taken away by a bloody Assassination.

Gentlemen, the Indictment sets forth, That Sir *William Parkins*, the Prisoner at the Bar, did meet several Times with *Charnock*, and other false Traytors; and there it was consulted, and agreed how they should procure French Forces to land within this Kingdom, and then they were to raise Rebellion amongst his Majesty's Subjects, to join with the Invaders. Mr *Charnock* was sent from the Prisoner at the Bar, and the Rest, as a Messenger into France, unto the late King *James* to acquaint him with this bloody Design; and to desire him to borrow of the French King as many Troops as he could spare to make a Descent upon this Kingdom, and they at the same Time were to facilitate the Descent, by getting as many Men as they could to make the Assassination; and the Number of Forty was pitched upon, who were to be provided for that Purpose, of which the Prisoner at the Bar was to find Five, who were to lie in wait with the Rest, and set upon the King as he came along in his Coach, upon his Return from Hunting. Some were to assault and attack the Guards, while others were barbarously to assassinate and murder the King in his Coach: and particularly it charges the Prisoner with undertaking to procure and provide Five Horses, and Arms that were to be employ'd in this bloody Assassination; and also with gathering together great Quantities of Arms and Ammunition that were to be used in the Insurrection. To this Indictment the Prisoner has pleaded not guilty; if he be not guilty, God forbid he should be convicted: But if he be guilty, and we prove the Fact, the Nation expects that you will do Justice to the King and Kingdom, and find him so.

Mr *At. Gen.* May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, Sir *William Parkins*, stands indicted of High-Treason, for Compassing the Death of his Majesty, and Adhering to his Majesty's Enemies; and the Overt Acts laid in the Indictment to prove this Treason are, That he with others had several Meetings and Consultations about this Design, and sent a Messenger over to France to the late King *James*, to procure French Forces to invade the Kingdom, to depose the King, and subject the Kingdom to a French Power: And likewise that he did enter into a Conspiracy with several Persons for the Assassination of his Majesty's Royal Person. These are the Overt Acts mentioned in

the Indictment, to prove this Charge of Treason against the Prisoner.

Gentlemen, the Evidence to prove these Overt Acts, and which we shall produce, will be in this Manner. It will appear that the Prisoner at the Bar, Sir *William Parkins*, has had a Commission from King *James* to raise a Regiment of Horse, and about May last, he with several others had a Meeting at the Old King's Head in Leadenhall-street, where were present my Lord of *Ailesbury*, my Lord *Montgomery*, Sir *William Parkins*, Sir *John Freind*, Sir *John Fenwick*, Mr *Charnock*, Mr *Porter*, and one Mr *Cook*; and *Goodman* came in to them after Dinner. And at that Meeting it was consulted and concerted among them, how they should bring back the late King *James*, and depose his present Majesty; and in Order to that they did resolve to send Mr *Charnock* as a Messenger to the late King *James*, to desire him to obtain from the French King 10000 Men to invade this Kingdom; 8000 Foot, 1000 Horse, and 1000 Dragoons: and to encourage the late King to this, they did assure him by the same Messenger, that they would meet him with 2000 Horse upon his Landing; and they did all undertake and agree that they would do it; and Mr *Charnock* undertook to go of this Message.

Gentlemen, about a Week after this Meeting, Mr *Charnock* not being willing to go upon this Errand without a good Assurance, that they intended to perform what they had resolved upon, they therefore had another Meeting of most of the same Persons that were at the former, and particularly the Prisoner at the Bar was one; and that was at Mrs *Mountjoy's* a Tavern in St. *James's-street*. And at that Meeting they did all agree, as formerly, and continued in their former Resolution, to send Mr *Charnock* to assure the late King, that they would meet him, according as they had promised, if he would give them Notice where he was to land, and he should not fail of their Assistance. And at these Meetings they did take Notice, that then was the most proper Time for such an Invasion: For the King was gone to *Flanders*, most of the Forces were drawn thither, and the People were dissatisfy'd, and so it would be the fittest Opportunity to accomplish their Design. And they desired Mr *Charnock* to make Haste to carry this Message, and to intreat King *James* that he would be speedy and expeditious in his Coming, that they might not lose this Season.

Gentlemen, after these Meetings, Mr *Charnock* did within a few Days go over into France, and did deliver his Message to the late King *James*, who took it very kindly, but said that the French King could not spare so many Forces that Year, having other Work to employ them about: Upon which, within a Month's Time, or less, he came back again, and brought an Account of his Message to those Gentlemen that sent him. This was in May or June last, and so the further Prosecution of the Design ceased at that Time.

But Gentlemen, the last Winter it was revived again, and attempted, and carried on very near to the obtaining a fatal Success. And you will hear that the Prisoner at the Bar, Sir *William Parkins*, has had too great a Hand, and been a very great Instrument in both the Parts of this wicked Conspiracy and Treason; not only in the Invasion, which he with others sent the Messenger over to procure; but also in the other Part, the blackest

blackest Part, even the Assassination of the King's Person.

About January last Sir George Barclay, a Lieutenant of the Guards to King James in France, was sent over into England to engage Persons to join in the Conspiracy and Assassination; and for his Assistance there were sent over with him, and before and after him, some 20 Troopers of the late King's, that were his Guards in France. And Sir George Barclay, to encourage the Persons that were to join, and whom he had brought over with him, pretended an Authority to justify it, that is, a Commission from the late King James, and he communicates this Design to Mr Charnock, Mr Porter, and several others, and amongst the Rest to the Prisoner at the Bar, Sir William Parkins, having a great Confidence in him, and did acquaint him he had such a Commission, and he shewed it him, and that Commission was to levy War against the King's Person; which they took to be a sufficient Authority for them to assassinate the King's Person.

Gentlemen, in order to the accomplishing this horrid Conspiracy, there were several Meetings, and Consultations had, at which the Prisoner at the Bar was present, and very active. Sometimes they met at Captain Porter's Lodgings, at another Time at the Nagg's Head in Covent-Garden, at another Time at the Sun in the Strand, and another Time at the Globe in Hatton-Garden, in order to accomplish this Design: And at these Meetings, you will hear, they did propose several Ways and Methods for the Execution of it; and several Persons, particularly one of them that have suffered the Punishment of the Law for this, were appointed to go and view the Ground, where the King's Person might most conveniently be assaulted. Mr King, that was executed for it, was one, Captain Porter was another, and one Knightley was the Third; and these did go to see the Ground. And the Day before they went there was a Meeting, at which was present the Prisoner at the Bar, and others, wherein 'twas concluded upon, that they should go; and they went accordingly to see the most convenient Place for it. They went to Brentford, and afterwards to the other Side of the Water to Richmond, and survey'd all the Ground, and the Place they pitched upon as the most proper for their Purpose was, when his Majesty should return from Hunting, to do it in the Lane betwixt Brentford and Turnham-Green. And accordingly, when they return'd in the Evening, they came by Appointment to the Place where the Rest of the Accomplices were to meet, at the Nagg's Head Tavern in St. James's, and gave an Account of their Proceedings; and at that Meeting likewise was Sir William Parkins the Prisoner at the Bar, Mr Charnock, and several others, and upon the Report of Capt. Porter and Mr King's Expedition, they did resolve the Thing should be done in that Place, and that it should be done in this Manner.

Sir George Barclay with about Eight or Ten in his Party, who were to be chosen out of all the other Parties, were to assault the King's Coach, and endeavour to kill the King, and all the Rest that were in the Coach with him, whilst the others in two Parties, were to attack the Guards; and the Number in all was to be about 40. This was fully agreed upon.

And, Gentlemen, the first Time that they resolved to put this traiterous Design in Execution,

was the Fifteenth of February, which was a Saturday, the usual Day that the King was wont to go a Hunting on; but it happened by great Providence that the King did not go abroad that Day.

They had contrived further to make the Thing sure, that there should be two Persons, whom they called orderly Men, who should be placed at Kensington, to give Notice when the King went abroad; and Chambers was one, and Durance that was a Fleming, was another; and Durance was likewise employed to view the Inns about Turnham-Green and Brentford, for the Lodging of their Men, who were to be placed Two or Three in an Inn, that they might not be observed.

Gentlemen, the first Day appointed for the accomplishing this Design, which was the 15th of February, being over, and they disappointed; yet they did afterwards resolve to go on and execute it. And the next Saturday, which was the 22d of February, was pitched upon for the Time of Execution; and accordingly on Friday the 21st of February, the Day before, there was a Meeting at the Nagg's-head in Covent-Garden; and there was present Sir George Barclay, Capt. Porter, and several others, and amongst the Rest the Prisoner at the Bar was there: They had at first some Discourse among them that they were in doubt, because of the first Disappointment, whether there had not been some Discovery, but that Doubt was soon over; for it was said, it could not be so, for then they should not have been there together. That seemed probable, and the Disappointment was imputed to some Accident, and that gave them new Assurance to go on, and they were resolved to do it in the same Manner, as they had formerly resolv'd, on the next Day, which was Saturday.

Gentlemen, at that Meeting Mr Porter acquainted them that he had the Misfortune to have some of his Horses fallen sick or lame, and he acquainted the Prisoner with it; and Sir William Parkins was careful to supply him with other Horses, and told him, he could get a Note from one Lewis, who I think is Major of the Horse to my Lord Feversham, to get three Horses, and accordingly he did send a Note for three Horses to Mr Lewis.

Upon the 22d of February in the Morning, which was the Time for the Execution of this bloody Conspiracy, they had met together, and resolved to go on with it, and put it in Execution; and that they had Notice from Chambers, that the King did go a Hunting that Day, and there was great Joy among them all, thinking themselves sure; and so they order'd all Things to be got ready. But afterwards, about One a Clock, there came other News, that the King did not go abroad, but the Guards were all come back in great Haste, their Horses being all of a Foam, and the King's Coaches were sent back to the Mews; then they began to be in a great Consternation, and they thought the Thing had taken Air, and was discovered. This, Gentlemen, is a short Account, how it will appear upon the Evidence, as to the Conspiracy of Assassinating the King, and the several Meetings and Consultations about it; at which the Prisoner at the Bar, Sir William Parkins, was present.

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But, Gentlemen, there will be a little more Evidence, if it be necessary, to confirm this former Evidence, and to shew the Part that the Prisoner at the Bar had in this treasonable, this barbarous Conspiracy: For it will appear, that, as the Prisoner had a Commission from the late King *James* to raise a Regiment of Horse, and had sent a Messenger into *France*, to invite the late King over, with 10000 *French*; so he had made great Preparation of Arms to be ready for that purpose. About *Michaelmas* last the Prisoner at the Bar sent a Parcel of Goods, as he called them, which were put into Cases, I think they were about Eight small Boxes, put into very large Cases, and sent down by his Order into the Country, unto one *Haywood*. It seems this *Haywood* had married Mr. *Charnock's* Sister, and *Charnock* writ a Letter to him, and desired that he would give Sir *William Parkyns* Leave to lodge some Goods there, which were of great Value, and he durst not trust them at his own House in *Warwickshire*, because his Servants were not there to look after them, and accordingly upon that Letter Mr. *Haywood* did give Leave that the Goods should be carried thither, and they were so, and there they were lock'd up privately, and kept till this barbarous Conspiracy was discovered; then you will find the Prisoner at the Bar sent his own Servant down, the *Tuesday* after the Discovery, and gave him Orders immediately (his Name is *Eubank*, and he is the Groom, and looks after his Horses) to go down to *Warwickshire* to one *Evans*, who carried the Goods, to desire him with all speed to remove those Goods, and to take Care to remove them privately, and to secure them, and to hide them. And accordingly on *Wednesday* he came there, which was *After-Wednesday*; and acquainted *Evans* with what Sir *William* had ordered him, and they went that very Night with a Cart to Mr. *Haywood's*; and though it was late, and they were desired to stay till the next Morning, they would not; they said they could stay no longer, but would remove the Goods immediately; and accordingly they were carried from thence that Night, to Sir *William Parkyns* own House in *Warwickshire*; and there they were buried in the Garden. These Goods that were of this great Value were put into the Ground to preserve them. But after this Discovery, Sir *William Parkyns* being accused, and his Name put in the Proclamation, and a Search being ordered to be made at his House, these Goods that lay hid at *Haywood's*, and upon the Removal thence were thus buried in the Ground, came to be discovered, and the Cases were broken open, and then they did appear to be Goods of an extraordinary Nature indeed, for you will find they were Horse Arms for Troopers; there were two and thirty Carbines, five and twenty Cases of Pistols, and about forty odd Swords without Hilts upon them, but the Hilts lay loose by them; so that this will make it apparent, without Dispute, how far the Prisoner at the Bar has engaged in this Conspiracy, and what Preparations he had made for the Execution of it.

Gentlemen it will appear further against the Prisoner at the Bar, that he hath had a considerable Number of Horses, that have frequently been brought up from his House in *Hartfordshire*, to the *George-Inn* in *Holbourn*.

But before we come to that, I would acquaint you with another particular Part of our Evidence, that is precedent in Point of Time. About *Christ-*
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mas last, the Prisoner did acquaint one *Sweet*, who is an Officer in the Excise, (and I am very sorry that we should have any such Officers, that should be thought fit to be intrusted with Secrets of this Nature) Sir *William Parkyns* acquainted this *Sweet*, and gave him an Account that he had long had an Assurance that King *James* would Land, but now he had it under his own Hand, that he would Land very speedily, and that he had made Preparations for that purpose to meet him. That great Things were expected from him; that his own Troop was ready, and it consisted chiefly of old Soldiers; and that several Persons who had been Officers would be Volunteers under him. He said he intended to go into *Leicestershire*, and there he was to meet several Gentlemen from the North, and from the West, to consider, and settle a Correspondence how to meet the late King upon his Landing; and accordingly Sir *William Parkyns* did go and you will have an Account that he came to *Leicester* on *Friday* night, one *Scudamore* went along with him, there he staid all *Saturday*, and a good Part of *Sunday*. There came several Persons to him while he was at *Leicester*, particularly one Captain *Tarborough*, the Son of Sir *Thomas Tarborough*, and a Parson, who, said they came as far as from *Tork* to meet Sir *William Parkyns* at *Leicester*; and their was great Resort thither at that Time, as you will hear from the Witnesses. Sir *William Parkyns* came back again from *Leicester* to *Brick-hill*, that Night, and returned to his own House on *Monday* Night; and after his return, he acquainted this *Sweet*, that he had been his Journey to *Leicester*; that he met with several Gentlemen there from the North, and other Places, and had settled a Correspondency, and had found them all fully Ingaged, and well Inclined, all went well, and there was no Danger of any Miscarriage at all; and this was about *January* last, that this Expedition was made by the Prisoner.

And now, Gentlemen, as to that Particular about the Horses, which were so frequently brought up this last Winter from his House in *Hartfordshire*, to the *George-Inn* in *Holbourn*, there is one very unfortunate Circumstance that attends this Matter; that is, that these Horses were brought to Town just the several Nights before the King was to be assassinated; for upon *Thursday* the 13th of *February*, he being in Town, sent Directions to his Groom, to bring up three of his Horses on *Friday*, which was the 14th in the Afternoon, and all these Horses were furnished with Pistols and Furniture for Troopers; according to those Directions his Servant brought up the three Horses, and he came and acquainted his Master that they were brought up according to his Order; Sir *William Parkyns* was then at his Lodgings, which were in the same House where Mr. *Charnock* did lodge; when his Man had told him the Horses were come, he pretended at first that he had had some Thoughts of going out of Town that Evening, but that he had changed his Mind, and would go in the Morning; and he would have the Horses ready against the next Morning, which was *Saturday* the 15th, the first Day upon which the Assassination was intended to be put in Execution.

The next Morning when his Man came to him again, he had changed his Mind, and he would not go out of Town in the Morning, but he would go in the Afternoon; and it will appear that he did not go out of Town that Day, nor
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the next Day, nor till *Monday*; and then the Design had miscarried by the King's not going abroad a *Saturday*, and the Horses were carried back; and when he went out of Town upon *Monday*, one *Holmes* went along with him, and he went with him to his House in *Hartfordshire*; and there he staid until *Friday* after, which was the Day before the next time that was appointed for the Execution of the Assassination. And upon the *Friday* they came up again, and then there were more Horses, four or five, that were brought up that Day; and all of them with Pistols, and Jack-Boots, and other Furniture and Accoutrements for Troopers; and these came to the *George Inn*, where Sir *William Parkins* gave his Man *Eubank* particular Orders, to be very early the next Morning at *Kensington*; that was the 22d; and he was to go, as he told him, to one *Brown*, that he said was concern'd in the King's Kitchen, and liv'd two Doors off the Gate that turns up to the King's House, and he was to tell him he was Sir *William Parkyns's* Servant, but that he came from a Man that lodg'd at a Confectioner's House overagainst *Gray's Inn*; in which Place by the Description of the Person, you will find Sir *George Barclay* lodg'd.

The Man went accordingly at Eight a Clock in the Morning to *Kensington*, and inquired out this *Brown*, and met with him, and told him he was Sir *William Parkyns's* Servant, but came from the Gentleman that lodg'd at the Confectioner's in *Holbourn*. *Brown* said he had nothing to say to him, but bid him give him his Almanack, and he writ in it, that he would be in Town in two Hours himself, and wait upon him: And bid him carry that to the Man that lodg'd at the Confectioner's, and this *Brown* by the Circumstances of the whole, must probably be one of the Orderly Men who lodg'd at *Kensington*, to give Notice when the King, and the Guards went out.

Sir *William Parkins's* Servant came back to the Confectioner's House, and there he met with a Man that went by the Name of *Rogers*; he'll tell you he was a *Scotch* Man, for he spoke broad *Scotch*, and he'll give you a particular Description of the Man, by which I believe it will appear that it was Sir *George Barclay*. Sir *William Parkins's* Servant after he had deliver'd his Message to this *Rogers*, came back to his Master, and told him he had done his Errand according as he was order'd, and Sir *William Parkins* ask'd him what *Rogers* said, and he told him that he bid him tell his Master, if he wou'd come to him he wou'd be ready at home for him. This was upon *Saturday* Morning the 22d of *February*.

About Eleven a Clock that Day Sir *William Parkyns*, and this *Lewis* that we spoke of before, came to the *George Inn*, and there Sir *William Parkins* ask'd his Servant whether he had receiv'd any more than two Saddles, for there were two Saddles sent in thither, according to an Order that had been given, to furnish two other Horses that stood there at the *George Inn*, and which Sir *William Parkins* told his Groom belonged to two Friends of his, and bid him be sure to take care of them, and to see them well fed, and order'd two Saddles to be bought for them. *Lewis* said he did think they had more than two, but you will see by the Evidence that this same *Lewis* had provided thirty Saddles for Sir *William Parkins*; but there seem'd to be a Controversy between them at that time how many had really been sent in, and *Lewis* affirm'd there was twenty four, but Sir

William Parkins said, I have had but twenty two of the thirty yet, for I have but two brought in here, and I had twenty before. This you will hear fully proved, and I think it is impossible for any Body to believe, but that all this Preparation of Saddles, Pistols, Boots, and other Things, must convince any Body of the Prisoner's being so far Engaged in this Design, that he can never answer it without giving you a very good Account, what this Preparation was for.

Gentlemen, a great Part of this will be prov'd to you by one that Acted in it, as a Servant to Sir *William Parkins*, that is, as to the coming up of the Horses, Jack-boots, Pistols, and other Arms at that time; and that when on the last *Saturday* it was disappointed, all the Horses, not only those Sir *William Parkins* brought, but the other two went away in a great Hurry, and Confusion, and nothing was ever heard of them more; and that will be prov'd by the Servants in the very *Inn*.

Gentlemen, I have now open'd to you the Nature and State of the Evidence, we will call our Witnesses, and make it out very undeniably, and substantially, and therefore I will not give you any further Trouble.

Mr. Sol. Gen. Call Mr. *Porter* (who was sworn.) Mr. *Porter*, pray will you give the Court and the Jury an Account of the Meeting at the King's Head in *Leaden-hall-street*, and who was there, and what Resolutions, and Agreements they came to.

Capt. *Porter*. About the latter End of *May* last, or the Beginning of *June*, there were two Meetings had, the one was at the King's Head in *Leaden-hall-street*, the other was at Mr. *Mountjoye's* near Sir *John Fenwick's*. At the first Meeting there was my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *William Parkyns* the prisoner at the Bar, Sir *John Fenwick*, Capt. *Charnock*, Mr. *Cook*, and my self. Mr. *Goodman* came in after Dinner, and there we consulted which was the best Way for King *James's* coming in, and we all resolv'd to send a Messenger to him, to invite him over, and to desire him to interpose with the *French* King for the getting 10000 Men, to come over with him, 8000 Foot, 1000 Horse, and 1000 Dragoons. It was then consider'd who should be sent, and all the Company agreed Mr. *Charnock* was the properest Person. Says Mr. *Charnock*, if you send me, pray tell me what Errand I shall go upon: We did likewise then agree, that he should assure the King, if he would come over, at such a time, we would meet Him with a Body of 2000 Horse.

Mr. Att. Gen. Did *Charnock* undertake to go upon that Message?

Capt. *Port*. Yes, he did, and to propose this Matter to him, that he might propose it to the *French* King for the getting of the Men.

Mr. Sol. Gen. Before you go away, I desire to ask of you one Thing, did Sir *William Parkins*, the Prisoner at the Bar agree to the Message?

Capt. *Porter*. Yes, he did.

Mr. Sol. Gen. Had you any other Meeting about this Business, and when was it, and who was there?

Capt. *Porter*. My Lord, Capt. *Charnock* said at first he would not go of a foolish Message, and thereupon we all agreed to be at the Head of 2000 Men to meet King *James* at His landing, and every one should bring his Quota.

Mr. Att. Gen. When was the second Meeting, and where was it, and who were there, and what was agreed upon?

Capt.

Capt. P. The second Meeting was at Mrs *Mounjoy's*, where Captain *Charnock* desired us once more to meet, before he went away, to know whether we kept to our First Resolution, and we did agree to what was resolv'd upon at First, and he said he would go in two or three Days Time.

Mr. At. Gen. Did the Company agree to it then?

Capt. P. Yes, they did, Sir, all that met at that Time.

Mr. Sol. Gen. Pray name them over again, who they were.

Capt. P. Sir *William Parkins* was actually there, and my Lord of *Ailesbury*, and Sir *John Freind*, and Capt. *Charnock*, Mr. *Cook*, and my self; I cannot tell whether my Lord *Montgomery* was there, or Mr. *Goodman*.

Mr. At. Gen. Pray when did you see Capt. *Charnock*, or speak with him after that?

Capt. P. It was when I was in Prison about the Riot, and he told me he had been there; but there would be nothing done in that Matter at present, for King *James* said, the French King could not then spare so many Men, though he thanked us for our kind Offer: And he said he had been with my Lord of *Ailesbury*, Sir *William Parkins*, and the several other People of Quality, which he did not name, and had carried them the particular Messages that he had in command from the King to carry to them.

Mr. At. Gen. Now, Pray tell us, what you know about the Design of Assassinating the King, and what Hand the Prisoner at the Bar was to have in it.

Capt. P. About some Weeks before I heard of the Assassination, I came to lodge in the House in *Norfolk-street*, where Captain *Charnock* lodged; and where Sir *William Parkins* lodged when he came to Town. Most commonly we used to go in the Evening to the Tavern, or drink a Bottle of Wine at our own Lodgings; and one Morning I ask'd Mr. *Charnock*, if I should see him at Night, he said he was engaged in private Company for that Night, and he could not go with me to the Tavern. For, says he, there are some Gentlemen that are lately come from *France*, and there is something to be done for the King's Service. If there be so, says I, pray let me be concern'd: Says he, they are but newly come, and they will see no Body else but me at present. A little after I fell sick of a Fit of the Gout, and Mr. *Charnock* came to visit me, and we fell into Discourse, and I ask'd him about those Gentlemen that were come from *France*, what they came about? he told me it was Sir *G. Barclay* that came from *France*, and several other Officers with him, and that he had a Commission from the late King *James* to levy War against the Person of King *William*, or the Prince of *Orange*, as I think it was named in the Commission.

L. C. J. Who told you this?

Capt. P. It was Capt. *Charnock*: He desir'd to know how many Men I could bring. I desir'd a little Time to consider, but I said there would be a great many would join if the King landed, whom I did not think fit to trust with a Thing of this Nature before-hand. Some few Days after, Captain *Charnock* came into my Chamber, and brought Sir *George Barclay* and Major *Holmes* that said he was come from *France*; and there we had little more but a general Discourse: But a little after

that I got well of the Gout, and we had several Meetings at several Places; at the *Globe Tavern* in *Hatton-Garden*, at the *Nagg's-head* in *Covent Garden*, and at the *Sun* in the *Strand*, where Sir *William Parkins* was always present. And there we did consult of the best Ways to assassinate the King, as he came from *Richmond* after Hunting. Sir *George Barclay* said, he had received 800 *l.* from King *James's* Secretary towards the Buying of Horses, and furnishing both Horses and Men for the Expedition; and it was consider'd of how many Men it would be necessary to bring. The Number agreed upon was about Forty, of which Sir *George Barclay* was to provide Twenty, I promised to bring Seven or Eight, Sir *William Parkins* engaged to bring Five, whereof Three should be mounted with his own Men, and the other Two my Men were to mount upon.

Mr. At. Gen. Do you know the Names of those People that he was to mount?

Capt. P. I never had the Names my self.

Mr. At. Gen. Well, what was done after these Consultations?

Capt. P. I ask'd Captain *Charnock* one Time, if I might not see the Commission that King *James* had given; he said he had never seen it himself, but Sir *William Parkins* had. I ask'd Sir *William Parkins*, one Evening as we were smoaking a Pipe by the Fire side, whether he had seen the Commission: He said, he had; and that because King *James* would not trust any of his Ministers, it was written and sign'd with the King's own Hand.

Mr. At. Gen. Pray did he tell you what it was for?

Capt. P. He said it was for Raising, and Levying War upon the Person of the King, but I do not know whether he called him King *William*, or the Prince of *Orange*; but I suppose it was the Prince of *Orange*.

Mr. At. Gen. Pray then give us an Account of your going to view the Ground, where it was most convenient to do the Business.

Capt. P. There were several Propositions about the Place where it was to be done, one was to be on the other side of the Water by Ambuscade in *Richmond Park*, the other was to be on this side of the Water after the King was landed. Sir *G. Barclay* was for that that was upon the other Side of the Water; I thought, that it would take up too much time to go over thither; that it was better to be done on this Side; but because there was Difference of Opinions, it was resolv'd upon that some Body should be appointed to view the Ground; and I was appointed for one, Mr. *Knightly* for another, and Mr. *King* would needs go with us for a Third, and we three did go. We lay all Night at *Knightsbridge*, and the next Day went, and view'd the Grounds on both Sides the River; and came back that Evening to the *Nagg's-head* according to Appointment, where was Sir *William Parkyns* the Prisoner, and Sir *George Barclay*, and Mr. *Charnock*, and we gave an Account that we had view'd both Places: And upon our Report it was resolv'd, that it should be done on this Side the Water, in the Lane between *Brentford* and *Turnham-Green*.

Mr. At. Gen. Are you sure Sir *William Parkins*, the Prisoner at the Bar, was there, at that Meeting at the *Nagg's-head*?

Capt. P. Yes, he was.

Mr. At. Gen. Did he agree to that Resolution?

Capt. P. It was in general agreed to by all that were there.

Mr. At. Gen. Pray Capt. Porter, then give us an Account of the Days that were fix'd for the Execution of this Design.

Capt. P. There was *Saturday*, the 15th, and *Saturday* the 22d, because *Saturday* was the Day the King used to go a Hunting, and Shooting.

Mr. At. Gen. Were there any Men at *Kensington*, to give you Notice when the King went abroad?

Capt. P. There were two Men that had a Lodging at *Kensington*, the one was one *Chambers*, who belonged to Captain *Charnock*, and the other was a *Fleming*, one *Durance*, who came over with Sir G. *Barclay*, and he went every Day, and thrust himself among the Guards to bring Intelligence.

Mr. Sol. Gen. What was the Reason the Design was not executed?

Capt. P. The first Day *Durance* brought Notice in the Morning, that the Guards were gone abroad; and afterwards there came Notice, that the King would not go abroad that Day, for which Reason we adjourn'd it to the next *Saturday*.

Mr. At. Gen. What was the Method you was to take in the Execution?

Capt. P. The Method agreed upon was this: There was one *Rookwood* that came from *France* upon this Expedition; he was to command one Party, and Captain *Charnock* and my self were to command another Party, to attack the Guards, and Sir *George Barclay* was to have Four Men out of each Party to attack the Coach, while we attack'd the Guards.

Mr. At. Gen. Well, you say the first Day you was disappointed by the King's not going, when was the next Meeting?

Capt. P. The next Meeting was upon *Friday* the Day before the 22d. I was sick all the Week, and I do not know whether I lay a-Bed all the Week, or no; but upon *Friday* they met, and it was at the *Sun Tavern* in the *Strand*: There was none but Sir *George Barclay*, Captain *Charnock*, Sir *William Parkins*, and my self.

Mr. At. Gen. What Discourse was there then?

Capt. P. Sir *George Barclay* came in, and said, he was afraid the Thing was discovered; I told him I fancied not, for if it had, we should not have been in that House at that Time. Then says he, let us go on, and try another Day. Sir *William Parkins* was ask'd if his Horses were come to Town: He said they were come to Town that Night. Said I, I have had a Misfortune with my Horses, two of them are fallen lame, and won't be fit for Service. Says he, If I had known that, I could have brought more Horses out of the Country: But, says he, I will send to Mr. *Lewis*, who was Gentleman of the Horse to my Lord *Feversham*, and I believe he can help us to more Horses; he will be with me to morrow Morning, and I'll get a Note from him for two more. In the Morning I sent to him, and he sent me a Note for two Horses to mount my Men, and he sent me Word Mr. *Lewis* could help me to two or three others, that they were all three saddled, and one was accoutred with Holsters and Pistols, but the other two had only Saddles. I did not see Sir *William Parkins* on *Saturday* the 22d, but I met some of my Friends, who were to go along with me upon this Enterprize, and we had first Notice that the Guards were gone abroad, and

that the King would go, at which all were very glad: But when we had Notice that the King did not go, we were afraid the Thing was discover'd, and I went out of Town, and I did not see any of them afterwards, till they were taken.

Mr. At. Gen. Pray Captain Porter, have you heard any Thing from Sir *William Parkins* of his having a Commission from King *James*?

Capt. P. I had heard Captain *Charnock* ask Sir *William Parkins*, why he did not go along with us in this Expedition? he said he did not go, because he could not go.

Mr. At. Gen. Was he not to be one in the Number that was to act in the Assassination?

Capt. P. No, he said he had other Business to do, he had a Regiment to look after.

L. C. J. How many Horses had you from *Lewis*?

Capt. P. I had never a one, only Sir *William Parkins* sent me Word, if I wanted I might have three, for I had told him I would not send for them, till I heard whether the King went abroad, and then I had Notice that the King did not go.

Mr. At. Gen. Had you a Note for them?

Capt. P. Not for those three Horses, but *Cranbourn* said he had a Note for two Horses.

Parkins. Did he say, he had a Note from me?

Capt. P. No, I don't say so, Sir *William*; *Cranbourn* told me, he had a Note whither to go for them.

L. C. J. Will you ask him any Questions, Sir *William*?

Par. No, my Lord.

Juryman. My Lord, I desire he may be asked, Whether at any of those Meetings there was any Discourse of the Assassination before Sir *William Parkins*?

L. C. J. What say you to that, Captain Porter?

Capt. P. Yes, he was at all the Meetings and Consultations.

Juryman. Pray my Lord, I desire to know, whether Sir *William Parkins* discoursed of it himself, and what he did say about it?

Capt. P. I cannot say exactly, what he did say in particular, only he agreed to it, and was to furnish Five Horses for it, and said it was necessary to be done; for it would bring the King in more easily, though he could not personally engage in it himself, because he had other Business, he was to look after his Regiment.

Mr. Sol. Gen. If Sir *William Parkins* will ask Capt. Porter no Questions, we will go on to our next Witness, which is one *Abraham Sweet* whom Mr. Attorney mentioned.

He was brought in and sworn.

Mr. Sol. Gen. Mr. *Sweet*, will you give the Court and Jury an Account, what Sir *William Parkins* said to you about King *James's* Landing?

Mr. At. Gen. Pray, will you give an Account what Discourse you had with Sir *William Parkins*, the Prisoner at the Bar, about King *James's* Returning, and Landing with *French* Forces.

Sweet. Sir *William Parkins* did tell me, that he did expect King *James's* Landing, and he said his own Troop was composed of old Soldiers.

Mr. At. Gen. How long have you known Sir *William Parkins*?

Sweet. This three Years.

Mr. *At. Gen.* Pray tell the Time when this Discourse was, about what Time was it?

Sweet. This was since *Christmas*, about *Christmas* last.

Mr. *At. Gen.* Where was it that you had this Discourse?

Sweet. It was about his own House.

L. C. J. What Discourse?

Sweet. We were talking about King *James's* coming.

L. C. J. Who told you, that King *James* was coming?

Sweet. Sir *William Parkins*.

Mr. *At. Gen.* What did he say?

Sweet. He said he had bought a great many Saddles, thirty Saddles; and that his own Troop was composed of all old Soldiers.

Mr. *At. Gen.* Did he tell you of any Assurance that he had of King *James's* Landing?

Sweet. Yes, he said he had the King's Word for it.

Mr. *At. Gen.* Was there any Discourse between you about any Journey that Sir *William* was to take?

Sweet. Yes, he did tell me he was to go into *Leicestershire*, and was to meet several Gentlemen in *Leicestershire*; and he did go, and after he came back again, he said he had met his Friends and all was well, and that the West was as much inclined to King *James's* Interest as the North, and that a Lord's Brother was concerned.

Mr. *At. Gen.* What other Discourse had you about this Matter?

Sweet. Nothing else, as to Particulars, that I can remember.

Mr. *At. Gen.* What Orders had you to come up to Town in *February*, and when, and from whom?

Sweet. Sir *William Parkins* sent for me, and he sent me a Letter about the 11th of *February*, that I should come to him the next Day, and I did come the next Day.

Mr. *At. Gen.* Whither did you come? Where did you find him?

Sweet. At his Lodgings in *Nonfolk-street*, at the House where Mr. *Charnock* lodged; and after I had spoken with Sir *William Parkins* about the Letter which he had sent me to come up, he told me, that the Business that he had designed for me, he did not think fit I should do, because of my Family.

Mr. *At. Gen.* Pray, what Directions had you from him, what you were to do when you went into the Country?

Sweet. When I went into the Country, he order'd me to go to his House, and send up three of the strongest Horses.

Mr. *At. Gen.* When was this, do you say?

Sweet. It was in *February*.

Mr. *At. Gen.* What Time in *February*?

Sweet. The Eleventh or Twelfth, which was *Wednesday*; and at my going away, he told me if I had not a Letter from him, the *Friday* following I should come to Town again. I did come to Town again, and then he asked me, if I had made Provision for my Family, I told him, no; then he asked me, why I came up to Town? he told me I might go into the Country again on the morrow Morning.

L. C. J. What did he tell you?

Sweet. He said I might go back again into the Country. I came upon the *Saturday* Morning to him.

Mr. *At. Gen.* Pray, what Day was that *Saturday*?

Sweet. I believe it was the 13th or 14th of *February*.

Mr. *At. Gen.* You say. *Wednesday* was the 12th.

Sweet. Yes, I believe *Wednesday* was the 12th, and I came to Town the *Friday* after that 12th, that was the 14th, and on the *Saturday* I went home again.

Mr. *At. Gen.* You say you came to him on the *Saturday* Morning, what passed between you then?

Sweet. I went the next Morning to Sir *William Parkins's* Lodgings, but he was gone out, and had left Word, that I must come again about Eleven of the Clock: I did go about that Time, and he was not come in, and there I met one Mr. *Chambers*, and one Mr. *Lee*, whom I had seen there the Night before.

Mr. *At. Gen.* And what Discourse had you then with them?

Sweet. We had little Discourse, for I had only seen them the Night before; but I think *Chambers* told me he had been at *Kensington*, and I desired to know what News there; and he told me *William* kept as close as a Fox; and he shew'd me his Wounds, and said those Wounds wanted Revenge.

Mr. *At. Gen.* Where did he say he received those Wounds?

Sweet. At the *Boyne*.

Mr. *Sol. Gen.* Pray, Mr. *Sweet*, did he tell you for what Use his Troop was?

Sweet. He did not tell me positively; but I understood it to be to join King *James* when he landed.

Mr. *Sol. Gen.* Pray, Sir, where did you dine that *Saturday*?

Sweet. With Sir *William Parkins*, and Mr. *Charnock*, and *Chambers*, and one or two more that I did not know.

Mr. *At. Gen.* Will you ask him any Questions, Sir *William*?

Parkins. Did I tell you, Mr. *Sweet*, that I had a Troop of Horse?

Sweet. I will tell you your own Words, and no other: You said, Your own Troop was compos'd of old Soldiers.

L. C. J. Pray let me ask you one Question: How many Horses were you to bid the Man to bring up to Town?

Sweet. Three, my Lord.

Mr. *At. Gen.* And were they not his strongest Horses?

Sweet. Yes, my Lord, they were.

Mr. *At. Gen.* Did he say any Thing to you about Volunteers?

Sweet. Yes, he said there were some Gentlemen that were Captains and old Officers, that would be Volunteers under him.

Parkins. Pray, where were those Words spoken?

Sweet. Either in your House or in the Garden, I can't tell directly which, but some where about your House it was.

Par. Where is that House?

Sweet. In *Hertfordshire*.

Parkins. Then I am in your Lordship's Judgment, whether Words spoken in *Hertfordshire* can be an Evidence of a Treason acted here in *Middlesex*?

L. C. J. Sir *William Parkyns*, if there be a Design to kill the King, and there are several Overt Acts to prove that Design, and one is in one County, and another is in another County, the Party may be indicted in either of the Counties, and Evidence may be given of both those Overt Acts, though in several Counties. It is true, you being indicted in *Middlesex*, makes it necessary that some Evidence should be given of some Things done in *Middlesex*, as there is; as your Meeting at Mrs *Mountjoy's*, and at the *Nag's Head* in *Covent-Garden*, and the *Sun* in the *Strand*, where were several Consults, which are Overt Acts of the same Treason; and if Treason be committed in several Counties, the Party may be indicted in any one, and the Evidence may be given of Facts done in all.

Par. Then, Mr *Sweet*, you do not say that I had raised a Troop, or would raise a Troop.

Sweet, I told you your own Words, That your Troop was made up of old Soldiers.

L. C. J. But yet I must tell you further, Sir *William Parkyns*, if I remember right there is Evidence given of a Discourse you had in *Norfolk-street*, where you lodg'd, and that is in *Middlesex*.

Par. My Lord, I did not observe that he said any Thing of me about *Norfolk-street*.

Mr At. Gen. Yes, this is what he says. You told him you had thought of a Business for him, but you would not engage him in it, because of his Family.

Par. Pray, Mr *Sweet*, did I tell you any Thing what you were to do?

Sweet. No, Sir, you did not.

Parkyns. I hope the Jury will take Notice of that: I did not tell him any Thing that he was to do.

L. C. J. Well, that was no great Matter. Will you ask him any more Questions, Sir?

Par. No, my Lord.

Mr Sol. Gen. Then our next Witness is *James Eubank*. (who was sworn.)

Mr At. Gen. Do you know Sir *William Parkyns*?

Eubank. Yes, he is my Master.

Mr At. Gen. What Servant was you to him?

Eubank. I was Groom to him.

Mr At. Gen. How long have you been his Groom?

Eub. Not a Twelvemonth yet.

Mr At. Gen. Pray, first give an Account what Journey you took with him.

Eub. I went into *Leicestershire* with him.

Mr At. Gen. Pray tell us what you know of that Matter.

Eub. Yes, my Lord. We went from our own House to *Stony-Stratford*, and there we lay all Night.

Mr At. Gen. What Time was this?

Eub. I cannot tell the Day of the Month, it was in *January*.

Mr At. Gen. What Day of the Week was it?

Eub. It was on a *Thursday*.

Mr At. Gen. And where did you go from *Stony-Stratford*?

Eub. We came the next Day to *Leicester*.

Mr At. Gen. Who went with him?

Eub. One Captain *Scudamore*.

Mr At. Gen. How long did you tarry at *Leicester*?

Eub. When we came the next Day to *Leicester*, we staid there till *Sunday Morning*.

Mr At. Gen. What Company came to your Master when he was at *Leicester*?

Eub. Sir, I am a Stranger, I know none of them, I was never there before.

Mr At. Gen. Can you remember whether there was one *Tarborough* there?

Eub. There was one that said his Name was *Tarborough*.

Mr At. Gen. Whence did he come?

Eub. He said he came out of *Yorkshire*.

Mr At. Gen. Who came with him?

Eub. There was a Gentleman in black Cloaths, that said he was a Minister.

Mr At. Gen. Did you observe any others that came thither to your Master?

Eub. It was Market Day, and I had my Horses to look after; there were a great many People went up and down Stairs, but whether they went to him, or no, I can't tell.

Mr At. Gen. When did you come back again?

Eub. We staid there till *Sunday Morning*, and then we came away.

Mr At. Gen. To what Place did you go that Night?

Eub. To a Town call'd *Brickhill*, and the Night following we came home.

Mr At. Gen. Who came back with him?

Eub. None but Captain *Scudamore*, who went with him.

Mr At. Gen. Wither did you go the next Day?

Eub. We came to *Bushy* about 8 a Clock a *Monday Night*.

Mr At. Gen. Well, after this, did you bring up any Horses to the *George Inn* to your Master, and when?

Eub. Yes, three Horses.

Mr At. Gen. Ay, when?

Eub. I cannot tell the Day.

Mr At. Gen. What Day of the Week was it?

Eub. Upon a *Friday*.

Mr At. Gen. What Month was it in?

Eub. Indeed, I can't say that.

Mr At. Gen. Do you remember *Valentine's Day*?

Eub. Yes, it was upon that Day.

Mr At. Gen. That is the 14th of *February*, a remarkable Day, and was then of a *Friday*, the Day before the Assassination was to have been executed. Whither did you bring them?

Eub. To the *George Inn*.

Mr At. Gen. How were they furnish'd? Were there Pistols upon them?

Eub. No, the Pistols were in Town, and the Horses were sent after my Master.

Mr At. Gen. Where were the Pistols left?

Eub. Indeed, I don't know.

Mr At. Gen. Pray, when you came to Town, did you go to your Master, and acquaint him with it?

Eub. Yes, Sir, I did.

Mr At. Gen. Pray, what did he then say to you?

Eub. He said he thought he should go home that Night.

Mr At. Gen. Did he change his Mind?

Eub. Yes, for he did not go till *Monday*.

Mr At. Gen. Did he tell you he should go a *Saturday*?

Eub. Yes, he said he thought he should.

Mr At. Gen. Did you come to him to know his Mind, and what did he say?

Eub. He said in the Morning, he would go in the Afternoon, but he did not.

Mr At. Gen. Afterwards when did he go?

Mr

Eub. Upon Monday.

Mr Att. Gen. Who went with him that Monday?

Eub. One *Holmes*, a fat, thick Man.

Mr Att. Gen. Well, pray when did you come to Town again?

Eub. Upon the Friday following.

Mr Att. Gen. How many Horses did you bring up then?

Eub. On the Friday following we brought up Four; my Master himself came up with them.

Mr Att. Gen. Who came with him?

Eub. Mr *Holmes*, and I, and another Servant.

Mr Att. Gen. How were the Horses furnish'd?

Eub. Every Horse had Pistols.

Mr Att. Gen. What did you bring beside? were there any Boots?

Eub. None but what we rid in.

Mr Att. Gen. Where did you leave those Horses?

Eub. At the *George* Inn in *Holbourn*.

Mr Att. Gen. What Directions did your Master give you that Night for going the next Morning upon an Errand, and whither?

Eub. I had no Message from him, but there was a Note that I was to carry to *Kensington* to one *Brown*, and I was ordered to go to the Gentleman that lives within a Door or two next the Going into the King's Gate, I forget his Name, but this Man where *Brown* lodged belonged to the Court, some Officer in the Kitchen to the King; either a Confectioner, or Cook, or something, and this Man lay there.

Mr Att. Gen. What was your Message to him?

Eub. I was to tell him, that I came to speak with one *Brown*, and that I came from a Gentleman that lay at the Confectioner's in *Holbourn* over-against *Grays-Inn*. I know the Gentleman by Face again if I see him.

Mr Att. Gen. Well, what did he say to you?

Eub. He bid me set up my Horse at the *Red Lion*, and he would come to me presently; and so he did. Says he, I have no Business that I need to send; but I'll write in your Almanack, and you may carry it back and shew it him, that I will come to Town betwixt nine and ten a Clock. I did go back and tell that Gentleman at the Confectioner's.

Mr Att. Gen. What Kind of Gentleman was it?

Eub. A lusty Man, with a great Nose, and a black Wig, he speaks broad *Scotch*, and he was a swarthy coloured Man, and he had a wide Mouth.

Mr Att. Gen. What Age was he of?

Eub. A middle-aged Man.

Mr Att. Gen. Pray what did he say to you?

Eubank. He ask'd me if I had seen the Gentleman. I told him, Yes. He ask'd me what the Gentleman return'd for Answer. I told him he had writ in my Almanack, which I had shewn him, that he would be in Town between nine and ten a Clock. He ask'd me then where I was going. I said, to my Master. Says he, tell your Master that I will be in my Chamber ready for him.

Mr Att. Gen. Did you go to your Master, and tell him so?

Eub. Yes, I did.

Mr Att. Gen. And what did he say to you?

Eub. He said he designed to go home in the Afternoon, and therefore bid me go to the Inn,

and make ready the Horses, and know what was to pay for them, and he would come by and by thither.

Mr Att. Gen. Did he afterwards come to the Inn?

Eub. Yes, Sir, about 3 or 4 a Clock in the Afternoon.

Mr Soll. Gen. Pray, who came with Sir *William Parkyns*?

Eub. One *Lewis*.

Mr Att. Gen. Do you know him?

Eub. I have seen him before with my Master.

Mr Att. Gen. What is he?

Eub. They say he is my Lord *Feversham's* Gentleman.

Mr Att. Gen. What did he say to you about any Saddles?

Eubank. They ask'd me what Saddles, and how many had been sent in there; and I said but two.

Mr Att. Gen. What said Mr *Lewis*?

Eub. Mr *Lewis* said there must be a Mistake, because my Master said he had but Twenty two, for he reckoned he had more, there should be Twenty four in all.

Mr Att. Gen. Did he say so, or Sir *William Parkyns*?

Eub. It was Mr *Lewis* that said there were twenty four, to the best of my Remembrance.

Mr Att. Gen. Where were they sent?

Eub. Indeed I know not, I never saw any of them but those two.

Mr Att. Gen. Who delivered those two to you?

Eub. My Master, Sir *William Parkyns*.

Mr Att. Gen. Who were those Saddles for?

Eub. They were for two Gentlemens Horses that were there.

Mr Att. Gen. Whose Horses were they?

Eub. They were not my Master's, but they stood at that Place.

Mr Att. Gen. Did your Master ever speak to you about them to look after them?

Eub. He said, if at any time I was there, I should see that the Ostler gave them their Corn.

Mr Att. Gen. Were they your Master's Horses, or not?

Eub. Not that I know of.

Mr Att. Gen. What Time did you go out of Town?

Eub. I went out of Town with them about four a Clock in the Afternoon.

Mr Att. Gen. When did you hear from your Master after that?

Eubank. Upon Monday I had a Letter from him.

Mr Att. Gen. What was that Letter for?

Eub. It was to go to my Master's House in *Warwickshire*, to one *Richard Evans* that was his Servant, to whom he sent a Letter.

Mr Att. Gen. What were the Contents of that Letter?

Eubank. I did not see what they were, it was sealed.

Mr Att. Gen. Did you carry that Letter to *Evans*?

Eub. Yes, I did.

Mr Att. Gen. What Time did you come thither?

Eub. I came there a Tuesday at four a Clock.

Mr Att. Gen. What did *Evans* and you do after you had read the Letter?

Eub.

Eub. We went to fetch some Boxes that my Master had order'd *Evans* to fetch home. It was about two Miles or more from home, at a Tradesman's.

Mr At. Gen. What was his Name, was it *Haywood*?

Eub. Yes, I think it was something like that Name.

Mr At. Gen. Did you go with *Evans* to fetch the Boxes from thence?

Eub. They had a Man that drove the Team to fetch them.

Mr At. Gen. Were they carried in a Team then?

Eub. Yes, they were.

Mr At. Gen. Were you there when the Goods were brought back?

Eub. Yes, I was at my Master's House.

Mr At. Gen. What did they do with them?

Eub. They buried them in the Garden, Sir.

Mr At. Gen. What in the Boxes?

Eub. Yes, Sir.

Mr At. Gen. How many Boxes was there?

Eub. Five or six I think, I know not what was in them.

Mr At. Gen. You help'd to bury them, did you not?

Eubank. No; but I was there, I saw them buried.

Mr At. Gen. Did *Evans* tell you what they were?

Eub. *Evans* told me they were choice Goods.

Mr At. Gen. *Evans* told you so, did he?

Eub. Yes.

L. C. J. What Time of the Day or Night were they fetch'd home?

Eub. They went away about four a Clock in the Afternoon.

L. C. J. How far is it from Sir William Parkyns's House to *Haywood's*.

Eub. I think about three or four Miles, I can't tell how far exactly.

L. C. J. What Time did they return?

Eub. About ten or eleven a Clock at Night.

Juryman. My Lord, I understand he says they buried them immediately, was he there, and did he help to bury them.

Eub. No, I did not help to bury them; but I saw Earth put upon them.

Mr At. Gen. Pray, *Eubank*, let me ask you one Question: The Person that lay at the *Confectioner's*, did you observe whether he had a lame Arm or no?

Eub. No, I did not take Notice of any such Thing.

Mr Sol. Gen. Will Sir William Parkyns ask him any Questions?

L. C. J. What say you, Sir William, will you ask him any Questions?

Parkyns. You say one *Holmes* went out of Town with me, pray give an Account what *Holmes* that is?

Eubank. It is *Fat Mr. Holmes*, if it please your Honour, he lives at the *Golden Key* in *Holbourn*.

Parkyns. My Lord, I observe this to distinguish it that it was not, as Mr Attorney opened it, *Major Holmes* that is in the Proclamation; it was one that us'd to be at my House frequently; he was at my House all the Summer.

Mr At. Gen. You did well to ask him that Question to explain it.

L. C. J. Will you ask him any more Questions?

Par. No, my Lord.

Mr Sol. Gen. Then our next Witness is one *Thomas Hipwell*; (who was sworn)

Mr At. Gen. Where do you live?

Hipwell. At in *Warwickshire*.

Mr At. Gen. With whom do you live?

Hipw. I live of my self, Sir.

Mr At. Gen. Do you know of any Goods that were carried from Mr *Haywood's* House to Sir *William Parkyns's* House?

Hip. I came from *Litchfield* Fair upon *Asb-Wednesday*, where I had been to carry Goods for my Master

Mr At. Gen. Did not you say you lived of your self? I ask'd you before who you liv'd with; Who is your Master?

Hip. Mr *Haywood*.

Mr At. Gen. You said before you had no Master.

Hip. That is, when he pleases to employ me, I work for him.

Mr At. Gen. Pray tell what you carry'd from *Haywood's* House, and who came for them.

Hip. There were, to the best of my Remembrance, either 7 or 8 Boxes.

Mr At. Gen. Who came for them?

Hipwell. There was one of Sir *William Parkyns's* Men, one *Richard Evans*, that was his Servant, and one *Weststone*, that was Tenant to Sir *William*.

Mr At. Gen. Well, how did they come, and what did they do?

Hipwell. They brought a Waggon and Two Mares.

Mr At. Gen. About what Time was it?

Hip. It was about nine or ten a Clock at Night, when they went away.

Mr At. Gen. What Orders had you from your Master?

Hip. It was near upon seven a Clock, when the Waggon came, and my Master wish'd me to go to borrow a Mare of at I did so, and I brought the Mare I had borrowed with me home.

Mr At. Gen. What was that Mare borrowed for?

Hipw. I know not.

Mr At. Gen. What Use was she put to afterwards? What did you see more?

Hip. Why, before the Team came (about a quarter of an Hour before) to fetch these Goods, my Master told me, that Sir *William Parkyns's* Men were to come to fetch some Bedding and other Goods, what they were he knew not, and he order'd me, when they knock'd at the Gate, to let them in; and I did so.

Mr At. Gen. Well Friend, did they carry away any Goods, and what were they?

Hip. They were in Boxes, at first in Three Boxes; and then Sir *William Parkyns's* Servant did knock of the outside Lining, which was a Deal Board, and he drew the Nails, and took out of two Boxes three Boxes apiece, and two out of another, to the best of my Remembrance I think there were eight, but I am not sure whether there were seven or eight.

Mr At. Gen. Did they carry them away that Night?

Hip. Yes, Sir *William Parkyns's* Man *Richard* and the Tenant carry'd them to the Waggon, and I lighted

lighted them down with a Lanthorn, according to my Master's Order.

Mr At. Gen. When, what Day was this?

Hayw. It was *Ash-wednesday* at Night.

Mr At. Gen. Then set up Mr Haywood. (*who was sworn before.*) Pray give my Lord an Account, when Sir William Parkyns's Goods were brought to your House, who brought them, and what Directions were given about the careful Keeping of them.

Haywood. My Lord, about *Michaelmas* last, Sir William Parkyns's Man came to me with a Letter from one Mr Charnock, and the Effect of the Letter, was to desire the Favour of me to lodge some Goods of Sir William Parkyns at my House; for he was taking his Servants from his House, and he was loth to leave his Goods in an empty House, and he desired me to let them lye at my House, which I did.

Mr At. Gen. How were they put up?

Haywood. I think in three Chests pretty big Chests, nailed up and tack'd; and there was a Bed, and Bedding, and a Piece of Tapestry or two.

Mr At. Gen. Pray did that Letter come from Mr Charnock?

Haywood. Yes, Evans, Sir William Parkyns's Man brought it me.

Mr At. Gen. Pray, Sir, how are you related to that Mr Charnock? What a Kin is he to you?

Haywood. I married his Sister.

L. C. J. You took the Goods into your Custody upon that Letter from Charnock?

Hayw. Yes, my Lord, I did.

Mr At. Gen. Pray, will you give an Account, whether you were in Town before this Discovery, and had any Discourse with Mr Charnock or Sir William Parkyns about these Goods? When did you see Mr Charnock afterwards?

Haywood. I came up to London the 16th Day, and I was in London the 17th, 18th, and 19th; I think those three Days; and I went to see Mr Charnock at his Lodgings, but I was hardly with him a Quarter of an Hour: I told him Sir William Parkyns, had sent some Goods to my House, and I desired to know when he would fetch them away. Says he, I can't say when I shall see him again. Said I, I shall have some Business at the Temple, and I will meet you at the Temple Coffee-House. Says he, I will meet; and bring Sir William Parkyns with you if you can, said I: He came about eight or nine a Clock on *Tuesday* Morning; says he, Sir William Parkyns is at my Lodgings, just a going out of Town, and would desire to see you. So I went up, and Sir William Parkyns was ready to go out of Town: I told him I had some Goods of his at my House, and I desired to know how he would dispose of them; what he would do with them: He would take them away, he said, the first Opportunity, or to that Effect.

L. C. J. When was this, what Month?

Hayw. It was in *February* last.

L. C. J. What Day?

Hayw. I think it might be about the eighteenth Day.

L. C. J. It was you that desired to have them taken away, it seems, was it not?

Hayw. I asked him when he would take them away, or what he would do with them.

L. C. J. And what Answer did he make?

Hayw. He said he would take them away the first Opportunity, as soon as he could dispose of them, or to that Effect.

Mr At. Gen. Now when you came home, tell us who came for those Goods, and when?

Haywood. I think it was upon a *Shrove-Tuesday* that I came home, and my Wife said Sir William Parkyns had sent for his Goods, and desired to have them away, but that she had made answer, I was not at home, but should be at home soon, and then he might have them away. The next Day I came home from *Litchfield Fair*, about five or six a Clock at Night: It was *Ash-wednesday* at Night when I came home, and the Man came to me between six and seven, and told me his Master desired to have the Goods away. I told him he might have them when he would; he said he would have them away that Night. I told him it was an unseasonable Time: But says he, the Waggon is a coming, and I desire you would give me leave to take them away, which I did: Then he said he had but two Horses, and he desired me to lend him a Horse, which I did, and he took the Goods, and went away with them; but for what he did afterwards with 'em, I know nothing at all of it.

Mr Soll. Gen. Then swear Mr Whetstone. (*which was done.*)

Mr At. Gen. Pray Sir, do you give an Account when you went with Evans to Haywood's House, and what happened.

Whetstone. His Man came to me—

Mr Att. Gen. Whose Man?

Whetstone. Sir William Parkyns his Man, to desire me to go to Mr Haywood's to fetch some Goods of Sir William Parkyns, some Bedding, and some odd Things, which I did; and said he, I will go the next Way to the House, and I will meet you before you can get thither; and he did meet me half a Mile off the House, and told me I must stay and not come to the House till it was Night, till it was later.

L. C. J. Who told you so?

Whetstone. Sir William Parkyns's Man told me so; so he went forwards to the Gate, and then came back, and called me to come in; then we went to the House; and loaded the Waggon with Boxes and Bedding that was there.

Mr At. Gen. How many Boxes were there?

Whetstone. I cannot tell whether there were seven or eight.

Mr At. Gen. Whither did you carry them?

Whetstone. We carried them to Sir William Parkyns's House.

Mr At. Gen. What was done with them?

Whetstone. There they were put into the Ground by the Wall-side where they were found.

Mr At. Gen. Why; was you present when they were found?

Whetstone. Yes, I saw them dug up.

Mr At. Gen. Then you can give us an Account of them, What were they?

Whetstone. They were Arms.

Mr Att. Gen. How many were there? what quantity?

Whetstone. Truly I cannot tell.

Mr Baker. Where is the Constable Thomas Watts?

Watts. Here am I. (*he was sworn.*)

Mr Att. Gen. Are you the Constable?

Watts. Yes Sir, I am the Constable, and search'd Sir William Parkyns's House, and upon searching in the Garden I found some Arms there.

Mr *Att. Gen.* Pray what Quantity of Arms did you find there?

Watts. Four Dozen of Swords, Thirty two Carbines, Twenty five Brace of Pistols.

Mr *Att. Gen.* What kind of Swords were they?

Watts. They were broad Swords, two-edged Swords.

Mr *Att. Gen.* Were there any Hilts to the Swords?

Watts. No, but there was a Box of Hilts that I suppose was prepared for them.

Mr *Att. Gen.* Where did you find them?

Watts. In a Border under the Wall by the Wall-side.

Juryman. Did you see the Boxes broke open Sir?

Watts. Yes Sir, I took them and broke them open my own self.

Juryman. Was *Whetstone* by pray Sir when they were broke open?

Watts. He was not there by at the first, when we dug them up; but I brought them to my own House, and there I broke them open and there we saw them.

Mr *Att. Gen.* Will you ask him any Questions Sir *William*?

Parkyns. No Sir.

Mr *Sol. Gen.* Then call *Turton*, *Freeman*, *Fielding*.
(who were all sworn)

Mr *Att. Gen.* Pray set up Mr *Freeman*. (which was done)

Mr *Att. Gen.* Where do you live?

Freeman. At the *George Inn* in *Holbourn*.

Mr *Att. Gen.* What are you?

Freeman. I am Hostler there.

Mr *Att. Gen.* Pray do you give an Account what Horses were kept there of Sir *William Parkyns*, and how many?

Freeman. He was a Guest to the House all this last Summer, sometimes more sometimes less.

Mr *Att. Gen.* How was it last Winter about February last, how many Horses had he then?

Freeman. He had sometimes Three came in, sometimes Four, the most that ever he had was Five.

Mr *Att. Gen.* What time was that that he had Five pray?

Freeman. To my best Memory it was just the Week before the Disturbance, before the Plot broke out.

Mr *Att. Gen.* Before the Proclamation you mean?

Freeman. Yes, before the Proclamation.

Mr *Att. Gen.* When was it, what Day of the Week was it?

Freeman. They came in on Friday Night.

L. C. J. Holt. What; did five come in then?

Freeman. Yes I think so.

L. C. J. H. Who was with him?

Freeman. I only saw his Groom and another Servant.

Mr *Att. Gen.* How were they accoutred?

Freeman. Four with Holsters and small Pistols, one was a led Mare with a Portmanteau; and in a Horse-cloth wrap'd up there was one or two Pair of Jack Boots, and I think a Coller in one, I cannot tell whether there was one Bridle or two.

Mr *Att. Gen.* When did they go away?

Freeman. On Saturday in the Afternoon.

Mr *Att. Gen.* Did you observe any Persons to come there on Saturday Morning?

Freeman. There were two Men that were there that rid out between two and three Hours; they rid out between Nine and Ten, and they came in again between Twelve and One; where they had

been I cannot tell, but they had rid pretty hard for the time they were out, for the Horses came in in a Sweat.

Mr *Att. Gen.* Before this time that you now speak of, what Horses came up can you remember, how many Horses came up the Week before?

Freeman. The Week before there were some, but how many I cannot remember; they very rarely staid above a Night.

Mr *Att. Gen.* What do you know of any other Horses that were left there?

Freeman. There were three Horses that were at our House a Week, that were very good Horses, but I do not know whose Horses they were, nor the Names of the Gentlemen that owned them. The Gentlemen that brought them in paid for the Horses, only the Groom told me his Master Sir *William Parkyns* had ordered him to see the Horses fed. I never received a Farthing of Sir *William Parkyns* but always of the Groom.

Mr *Att. Gen.* Pray did you observe any Particular Horse that was brought in there, a Roan Horse?

Freeman. Yes there was one Horse brought in.

Mr *Att. Gen.* From whence did that Horse come?

Freeman. As was told me from *Montague House*.

Mr *Att. Gen.* I believe you mistake the Place, recollect your self a little.

Freeman. *Somerset House*, I mean, a Porter brought it.

Mr *Att. Gen.* Are you sure it was *Somerset House*?

Freeman. Yes it was.

Mr *Att. Gen.* Do you know one *Lewis*?

Freeman. I do not know him, perhaps the Tapster does.

L. C. J. Holt. How many Horses came from *Somerset House*?

Freeman. Only the Roan Gelding, and a very fat Man mounted him and rid out with Sir *William Parkyns*.

Parkyns. Pray Sir what Sort of Horse was that Bay Gelding that you say the fat Man rid upon?

Freeman. I say he rid upon a little Roan Gelding about 14 Hands high.

Park. But the Bay Gelding how high was that?

Freeman. About 14 Hands high.

Parkyns. There's your mighty Horse for Service.

Freeman. They were no great sized Horses none of them.

Parkyns. And have not you known these Horses to have been mine a great while?

Freeman. Yes I have known them to be yours a good while.

L. C. J. H. What; was the Roan Gelding Sir *William Parkyns*'s?

Freeman. No, not the Roan but the others; they were no strange Horses, they were frequently there all last Summer; there was no new strange Horse but the Roan.

L. C. J. H. Will you ask him any more Questions?

Parkyns. No my Lord.

Mr *Soll. Gen.* Then set up Mr *Turton*. (which was done)

Mr *Att. Gen.* Pray will you give an Account what you know of Horses that were standing at the *George Inn* in *Holbourn*.

Turton. I have known Sir *William Parkyns* to have used the Inn this four or five Years, ever since the Inn was built; and in last February he came to Town with three Horses the first time.

Mr *Att. Gen.* What Day of the Month was that?

Turton. I cannot say what Day of the Month, but it was about the Week before his last coming there, which was just before the Discovery of the Plot.

Mr *Att. Gen.* Do you know what Day of the Week it was?

Turton. No, truly I do not, for I keep no Account of Horses going in or out. The last time of his coming was with about four or five Horses to the best of my knowledge, and that was upon the Friday before the Plot broke out; and then upon that Friday, Sir William Parkyns gave order to his Groom to get the Horses ready against Saturday Morning.

Mr *Att. Gen.* Did he go out with his Horses on Saturday Morning?

Turton. He did not go out with all the Horses according as he had given order; but two Gentlemen rid out with two of the Horses, and staid out about two or three Hours and came in again, as if they had rid pretty hard, the Horses being in a Sweat; and in the Afternoon they all went fairly out of Town, and gave out that they expected to be in Town on Sunday or Monday following, but they did not return; but then came down one Mr. Lewis, I know not that that is his Name, only when I formerly belonged to my Lord of Oxford, I knew him to be Gentleman of the Horse to my Lord Feversham, but I did not know his Name.

Mr *Att. Gen.* Had you not seen him there before, what time did he come?

Turton. I do not know that I ever saw him there before; he was on Saturday in our Yard.

L. C. J. H. You are ask'd when Lewis came?

Turton. The first time I see him was on Saturday, in the Yard asking for Sir William Parkyns.

L. C. J. H. What time on Saturday was that?

Turton. It might be Three of the Clock in the Afternoon, about an Hour or thereabouts before Sir William Parkyns's Horses went away; and asking for Sir William Parkyns, and he not being there, he returned back again; and after they were gone he came again, and I told him they were gone, but the Groom had acquainted me, and given me an Account, that he would be there again on Sunday or Monday. On Sunday in the Afternoon about five or six, Mr. Lewis came to enquire if Sir William Parkyns's Horses were come to Town; I told him no; and so he came again upon Monday Morning betwixt Eight and Nine of the Clock, and ask'd me if I heard nothing of his coming to Town; I told him no, I did not hear of his coming again.

Mr *Att. Gen.* The Horses that came up on Friday Night, how were they accoutred?

Turton. Two or three of them had Holsters; I cannot say but for Pistols they had four or five Case.

Mr *Att. Gen.* Had they no Carbines?

Turton. No, but only Horse-Pistols.

Mr *Att. Gen.* Did you not observe any other Arms, or other Furniture?

Turton. I did see a Pair or two of Jack-Boots that they rid in, but I did not see any more.

Mr *Att. Gen.* Were there any that were wrapt up in a Horse-Cloth?

Turton. No, I did not see any, they were not brought into the House.

Mr *Cooper.* Do you know what Time the Horses were saddled that Day?

Turton. No, I did not.

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Parkyns. You observ'd, and said there were two or three Cases of Pistols, did not I always ride with Pistols?

Turton. Yes, you seldom came without two or three Pair when you came with Servants.

Parkyns. And as to the Jack-Boots you said we rid in them?

Turton. I suppose so.

Parkyns. We alighted at Mr. John's House, and so our Boots were sent thither: And these were small Horses all of them; pray will you tell the Court what siz'd Horses they were, was there ever a great Horse among them?

Turton. Never a one, I believe that exceeded above fourteen Hands and a half, some under Fourteen.

Mr *Sol. Gen.* Did you see the Roan Gelding what Size was that?

Turton. A small Padd that might be about Thirteen and a half.

Mr *At. Gen.* Did you ever see him come with so many Horses before?

Turton. I have seen more at the Sword and Buckler, when I lived there; and he used to inn there.

Mr *At. Gen.* How many have you seen at the Sword and Buckler?

Turton. I have seen four or five at a Time, but this is many Years ago, Seven or Eight years ago, when he used to keep his Coach and four Horses, and come up with several saddle Horses with him.

Mr *At. Gen.* How long have you lived at the George Inn?

Turton. About two Years.

Mr *At. Gen.* Did you observe any other Horses that stood there?

Turton. There were two that were pretty sizeable Horses, larger than any of Sir William's own.

Mr *At. Gen.* Whose were they?

Turton. I cannot tell.

Mr *At. Gen.* Did any Body own them?

Turton. I don't know who owned them, there was one that paid for their Meat, and took them away.

Mr *At. Gen.* Who is that?

Turton. Truly, Sir, I cannot tell, I do not know who he was; I never saw him in my Life.

Mr *Sol. Gen.* Has Sir William Parkyns, any more Questions to ask him?

Parkyns. No, Sir.

Mr *At. Gen.* Then, my Lord, we shall call no more Witnesses, unless he gives further Occasion, we leave it here till we hear what he says to it.

L. C. J. Sir William Parkyns, Mr. Attorney General, and the King's Council have done; now is your Time to make your Defence.

Parkyns. My Lord, I rely upon your Lordship for my Defence; for I am ignorant of these Proceedings; I rely wholly upon your Lordship, to give a true Account of them to the Jury: I hope your Lordship is so just, that you will repeat the Evidence to the Jury as it is, and no otherwise. But I do not observe, that as to the Assassination there is more than one Witness, and that is Captain Porter: There is not a Tittle more! and as to that, I suppose your Lordship will declare to the Jury, that I was not concerned in it; and Captain Porter declares, I was to have no Hand in it, onely I was to furnish five Horses, and accidentally I was at some Meetings, but he does not declare that I was to do any Thing in particular.

L. C. J. Yes, yes, you agreed upon the Debates to the several Resolutions, of Assassinating the King, and said, that it was necessary and fit to take him off.

Parkyns. Still, that is but one Witness, I deny it utterly, and the Law says positively there shall be two Witnesses.

L. C. J. Not to every Overt-Act, there is no Law says so.

Parkyns. As to the Assassination there is but one, no other but he; and so as to the Regiment he did not say that I was to raise a Regiment; but that he was told by a Gentleman that I had been desired to be in the Matter, but I would not, because I had engaged in another Business, about a Regiment, but this was all but hear-say.

L. C. J. Yes, he said you own'd you had a Regiment. Besides, it is said, you own'd you had your Saddles, and your Troop consisted of old Soldiers.

Parkyns. No, Captain Porter never said so.

Mr. At. Gen. That was *Sweet*.

L. C. J. You told Porter, you had a Regiment to look after.

Parkyns. Captain Porter is here, I desire he would explain himself.

L. C. J. Yes, and you told *Sweet*, that your Troop consisted of Old Soldiers, and that you had bought thirty Saddles.

Parkyns. My Troop, aye! But still there was nothing of a Regiment; nor did they say I had raised a Regiment, or a Troop, or was to raise a Regiment.

Sweet. You told me your Troop consisted of old Soldiers. I did not say that you said you had raised or wou'd raise, but it did consist of Old Soldiers.

L. C. J. He says that which makes it plain, that you were to have a Troop, or had a Troop, consisting of Old Soldiers, besides Volunteers that had been Officers: and that you had bought a great many Saddles, thirty Saddles; and you were to go into *Leicestershire*, and accordingly you did go, and upon your Return, you did give an Account that all was well, and the *West* was as well inclined to King *James's* Interest as the *North*.

Parkyns. That I went into *Leicestershire*, and met several Gentlemen, and that they were all well inclined; I hope that is no Evidence of Treason against me: Every Body ought to be well inclined.

L. C. J. Aye! But they were all well disposed or inclined to King *James's* Interest.

Parkyns. He did not say so, if your Lordship pleases to call him again.

L. C. J. Call him again.

Sweet was set up again.

Mr. Sol. Gen. What did Sir *William Parkyns* tell you of his Journey into *Leicestershire*?

Sweet. he said he had been there and had met his Friends, and all was well.

L. C. J. What did he say? Did he Name King *James*?

Sweet. He did not Name King *James* to me at that Time.

L. C. J. What was the Discourse about, that they were all well inclined to?

Sweet. He always named it the King's Interest, and did not name King *James*, but I understood it, and always took it to be King *James* he meant.

Mr. Mountague, What did he say of the *North* and *West*?

Sweet. He said that the *West* was as well inclined to the King's Interest as the *North*.

Mr. At. Gen. What did he say before he went?

Sweet. He told me he was to go into *Leicestershire*, to meet some of the King's Friends.

Parkyns. Pray, Recollect your self, and consider what you say.

Sweet. He said some Gentlemen rid as far to him, as he did to meet them.

Mr. At. Gen. Was that the Time he talk'd about the Troop?

Sweet. No, that was before this Time. I cannot remember the particular Time; it was at his own House, and Captain *Scudamore* was with him.

Mr. At. Gen. When was the Discourse about King *James's* Landing?

Sweet. He told me that he believed now that King *James* wou'd land, he said he had his own Word for it, it was about *Christmas*.

Mr. At. Gen. What did he say about Preparation for it?

Sweet. He said his own Troop was to consist of all Old Soldiers.

L. C. J. Did he tell you he had a Troop?

Sweet. I speak his own Words, he said, my Troop consists of all Old Soldiers.

L. C. J. Was it consists, or will consist, though I think there may be no great Matter of Difference in this Case?

Parkyns. Yes, my Lord, but there is a great deal sure, for will consist shews nothing yet done, and all is but Words.

L. C. J. *Sweet*, Answer to Sir *William Parkyns's* Question.

Sweet. I tell your Lordship, I repeat his own Words, my Troop consists or is composed of all Old Soldiers.

Mr. Comper. What did he say of Volunteers?

Sweet. He said, there were some Gentlemen that would go along with him as Volunteers, that had been Old Officers.

Mr. Comper. Pray, let me ask another Question; when he discoursed of the present King, by what Name did he use to speak of him?

Sweet. He called him by the Name of the Prince of *Orange*.

Parkyns. Pray, recollect your self, *Mr. Sweet*, and think of what you say, since he was declared King, did I ever call him Prince of *Orange*? I am upon my Life, and pray speak nothing but the Truth.

L. C. J. Consider and Answer the Question, what did he use to call him?

Sweet. Truly, my Lord, I am not positive as to that, I understood it so. I never knew that he allowed him to be King of *England*.

Parkyns. Did you ever hear me call him Prince of *Orange* since he was King?

L. C. J. Look ye, Sir, how long have you been acquainted with him?

Sweet. About three Years, my Lord.

L. C. J. Well that is long since his Majesty was declared King, have you ever heard Sir *William Parkyns* call this King Prince of *Orange*?

Sweet. I am not positive in that, but I understood he did not allow him to be King.

Mr. Sol. Gen. You frequently discoursed with him about the Government it seems; pray what, did he use to call him.

Sweet. I have heard him call him King *William* and the little Gentleman.

Parkyns. When ever did you hear me call him the little Gentleman? *Mr. Sweet,* pray, when you are upon your Oath consider well, and recollect your self, and don't answer rashly and suddenly, but think of what you say. I always express'd my self, when I had occasion to speak of him, and called him King *William*, as other People use to do, I never used the Words, little Gentleman, nor Prince of *Orange* neither.

L. C. J. Did you ever hear him call him otherwise than King *William*?

He paused a while.

L. C. J. Pray speak the Truth and no more.

Sweet. I have heard him call him Prince of *Orange*.

L. C. J. But you have heard him call him King *William* too?

Mr. Sweet. Yes.

Mr. Compter. But pray, when he Spoke of the King, what King did you understand by it?

Sweet. I used to understand King *James*?

Parkyns. What is that to me what he understood?

L. C. J. But I would observe to you one Thing, when you came from *Leicestershire*, you talk'd how well dispos'd they were to the King's Interest, he says, he understood that King to be King *James*, and you said the *West* was as well dispos'd as the *North*; pray now, were you employed by King *William* to see how the Gentlemen stood affected to him?

Parkyns. No, nor by King *James* neither.

L. C. J. Why then should you concern your self for the King's Friends, in the *West* and the *North*?

Parkyns. I never was in the *West* in my Life, and therefore I can't tell why I should tell him any Thing about the *West*.

Mr. At. Gen. Pray, Sir, when was it that Sir *William Parkyns* spoke about the King's Landing?

Sweet. It was about *Christmas*, he said he believed he would land.

Parkyns. Did I tell you positively it would be so then.

Mr. At. Gen. He tells you he said you did believe it, for you had it from his own Mouth.

Parkyns. That shews it is not probable I should tell him so, that I should have it from his own Mouth, carries such an Improbability with it that the Evidence is *Felo de se*, it destroys it self.

Mr. Sol. Gen. He does not say you had it from his own Mouth, but that you had his Word for it, and this being about *Christmas*, long after our King was return'd, it could mean no other King but King *James*.

L. C. J. Look you, Sir *William Parkyns*, there is another Thing I would observe, why did you send your Man to *Kensington* to one *Brown*? who is that *Brown*, and what was the Man that lodged at the Confectioner's in *Holbourn*?

Parkyns. I cannot tell who it was, I know neither *Brown* nor the other Man, but I sent my Man at the Request of Mr. *Charnock*, who lodged in the same House with me; he desired he might go upon an Errand for him to *Kensington*, and I directed him to go upon such an Errand, for he was formerly Mr. *Charnock*'s Servant, and I desired him to go of the Errand if he requested it. Who these Men were I know not, neither of them, nor any of their Business.

L. C. J. But he was bid by the Man that lodged at the Confectioner's to tell his Master that he would stay within for him.

Parkyns. That might be Mr. *Charnock*, for he was his Servant once.

L. C. J. But he says he carry'd the Message to you, and you receiv'd it. Well have you any more to say?

Parkyns. My Lord, I think there is but one positive Evidence of any one Overt-act.

L. C. J. Yes, what do you Think of the Design of bringing in King *James*, and consulting about it, and assisting in the Invasion, and preparing a Troop, and providing Arms and Horses, are not these Overt-Acts. Do you think your having a Troop of old Soldiers is no Overt-act.

Parkyns. There is no positive Proof of any Troop, or any Arms.

L. C. J. It is proved there were Arms sent by you at *Michaelmas* last to Mr. *Haywoods*, *Charnock*'s Brother-in-Law, and these lay there till *Ash-wednesday* last, after your Name was in the Proclamation, and then they were removed in the Night, and buried at your House, and were taken up there, and here is an Account given what Arms they were, four Dozen of Swords, twenty five Pair of Pistols, thirty two Carabines.

Parkyns. First it does not appear when these Arms were bought, nor for what Intent they were brought from *Haywoods*.

L. C. J. But what Use had you, a private Man, for so many Arms, and then your going into *Leicestershire* to meet some Gentlemen, and your giving an Account how they stood affected to the King's Interest, whether that be understood for the Interest of King *James*, I must leave to the Jury, since you give no Account that you were employed by King *William*.

Parkyns. My Lord, I went upon my private Occasions, and then talk'd of News as other People do.

L. C. J. But when you returned back again, you declared all was well, and gave an Account how Persons were dispos'd in the *West* and *North*.

Parkyns. Is there any Persons named, or Particulars? Can it be an Overt-act of Treason for me to discover my Acquaintance?

L. C. J. But your going with that Design to engage in an Interest against the King and for the late King.

Parkyns. He does not say discovered my Design. I went to meet with some Friends of my own.

L. C. J. Did he not tell you he was to go into *Leicestershire*?

Sweet. Yes, he did so.

L. C. J. Did he tell you to what purpose?

Sweet. He said he was to go to meet some of the King's Friends.

Parkyns. Did I tell you who?

Sweet. No.

L. C. J. But there was a Lord's Brother, what did he tell you of that?

Sweet. he said all Things were well, and the *West* was as well inclined as the *North*.

L. C. J. To what?

Sweet. To the King's Interest.

L. C. J. Treby. You spoke of a Lord's Brother that was concerned?

Sweet. He said several Persons of Quality in the *West* were concerned, and a Lord's Brother was among them.

Juryman. My Lord, I desire he may be ask'd when he said the King would land, what King he mean't, whether he named the late King, or King *James*.

L. C. J.

L. C. J. Well, Answer that? when he discoursed to you of the King's Landing, did he name the late King *James*? or did he say the late King *James*?

Juryman. Was he mentioned in the Discourse?

Sweet. He never used to mention King *James* to me, but only the King, which I understood always of King *James*.

Mr. Att. Gen. Pray what Time was it that he spoke of the King's Landing?

Sweet. It was about *Christmas*.

Mr. Att. Gen. Therefore no other King could be meant but King *James*, for there was no other King to land at that Time; and he said he had the King's Word for it. I suppose he can't pretend he had King *William's* Word for it.

Parkyns. I hope, to talk of the King's landing is no Treason; it is but Words: If I tell an idle Story of what I think may come to pass, shall that be reckoned Treason? Then for him to say, I had it from the King's own Mouth, it is impossible to be true, and is no Overt-Act, being only Words, and cannot be reputed Treason. And then as to the other two Parts of the Charge, the Consultations with my Lord of *Ailesbury*, and those other Persons, there is but one Witness; no Body but *Porter*; neither is there any more but he for the Assassination; his Evidence is but a single Proof, and there ought to be two positive Witnesses, by the Law, to each Overt-Act.

L. C. J. Holt. No: There ought to be two Witnesses to each Species of Treason, that's all.

Parkyns. There ought to be two Witnesses to both these Parts of the Treason.

L. C. J. Holt. I must tell you, Sir *William Parkyns*, if any Person does design and contrive that the Realm should be invaded, or the King deposed, and another set upon the Throne. That conspiring to invade the Realm, or depose the King, are Overt-Acts of High Treason, within the Statute of 25 *Ed. 3.* and the same Species of Treason as designing to assassinate him is. It is compassing, designing, imagining his Death and Destruction. Now the Question is, Whether there is not another Witness, besides Capt. *Porter*, to prove another Overt-act of this Design.

Parkyns. I don't find there is; for all the Rest is only Discourse.

L. C. J. Holt. Yes: For what, do you think providing Arms for that Purpose, is only Discourse?

Parkyns. The Witnesses don't say, for what Purpose the Arms were bought.

L. C. J. H. Nor do you tell us of any other Purpose.

Parkyns. My Lord, it does not appear when they were bought.

L. C. J. Holt. Ay, but what Occasion had you for such a Quantity of Arms?

Parkyns. My Lord, I did not buy them after all. I found them. If I had had liberty to have sent down for Witnesses, I could have proved that these Arms were in Boxes all rusty in my House, when I first came to it.

L. C. J. Holt. Ay: But why were they buried, just at the Time when the Plot was broke out, and the whole Design discovered?

Parkyns. I can't tell, my Lord, how to help it, if they will make an ill Interpretation.

L. C. J. Holt. What Interpretation would you have us make?

Parkyns. My Lord, it is very easy to imagine,

People don't care to be found with Arms at such a Time; but, however, the Having of Arms is no Treason. They are as much a Commodity as any Thing else.

Mr. Att. Gen. And then the Horses coming to Town just at such a Time, and the Saddles.

Parkyns. I have not bought a Horse this two Years, and I travelled in no other Manner than I used to do. So the Groom tells ye, I used to come to Town with three or four Horses always. I never kept less than six or seven Horses this twenty Years; sometimes a great many more; and they were very little Horses, Padds, no way fit for the Service they are presumed to be for.

L. C. J. Holt. Have you any Thing more to say, Sir?

Parkyns. I hope, my Lord, as to the Assassination I am clear: Perhaps the World may imagine, I have had some Inclinations to King *James's* Service, and perhaps they may not think amiss; but I never did any Thing, nor had an Opportunity to do.

L. C. J. Holt. God be thanked you had no Opportunity.

Parkyns. And I hope my Life shall not be taken away without Proof; I hope it will be rather thought, that every one should be taken to be innocent; and it would better please the King, that I should be acquitted, than to let me be found guilty upon slight Grounds, and Imaginations, of which little or nothing can be made.

L. C. J. Holt. No question of it: It will please the King, and every Body else, that you should be found innocent.

Parkyns. Then, I hope, my Lord, you will not strain the Law to take away my Life; according to the Rule, That it is better five guilty Men should escape, than one innocent Man suffer: For the Blood of a Man may lie upon every Body, if it be causelessly shed; and it is very severe to strain the Law to take away any Man's Life.

L. C. J. Holt. Look ye, Sir *William Parkyns*, I must tell you, you may be under a very great Mistake: You may think it necessary to have two Witnesses to every Overt-act, but that is not so; for if there be one Witness to one Overt-Act, and another Witness to another Overt-Act of the same Species of Treason, that is all that the Law requires.

Parkyns. Here are two Species of Treason, levying War is one Species, and Assassination is another.

L. C. J. Holt. Your Design was, originally, the Restoring of King *James*, and in order to that the Dethroning of King *William*.

Parkyns. That appears but by one Witness, which is not according to Law, which requires two.

L. C. J. Holt. One Way of effecting your Design was by Assassination, the other by Invasion, or by Force.

Parkyns. Still, my Lord, here is the same Witness, and that is but one.

L. C. J. Holt. Yes, there are two.

Parkyns. None but Capt. *Porter*.

L. C. J. Holt. What, not as to the Restoring of King *James*, which tends to the Dethroning King *William*?

Parkyns. In what Particulars, my Lord?

L. C. J. Holt. Your providing Arms, and going to *Leicestershire*, and sending *Charnock* on that Errand into *France*. As to the Assassination, indeed,

deed, there is but one positive Witness, besides other Circumstances, which have their Weight; but as to the other, you said the King would come —

Parkyns. It was my Opinion, that's all.

L. C. J. But you said you had his Word for it.

Parkyns. Does not that answer it self, my Lord? Is it possible it should be true, that I who was in *England*, should have the Word of one that is at such a Distance beyond Sea?

L. C. J. And then your Buying of Saddles, for what Purpose were they?

Parkyns. My Lord, does he say it was in order to it? I am sure he does not, and I hope I shall not be presumed out of my Life.

L. C. J. When you talkt of the King's Landing, and said, you had his Word for it; you likewise said, your Troop was made up of old Soldiers, besides Volunteers that had been Officers.

Park. Still there is nothing done; he does not say there was one Man raised.

L. C. J. And your going into *Leicestershire* upon such an Errand, as you told him you went upon.

Parkyns. Well, my Lord, I must leave it to your Lordship. I hope you will consider well of it.

L. C. J. We must do that which is right between the King and his Subjects.

Par. And, I hope, my Lord, the Conversion of Subjects is more acceptable than the Destruction of them; and the Government is more concern'd to save the Innocent, than to stretch the Law to punish the Guilty.

L. C. J. It will be more acceptable, and indeed the King and Kingdom are very much concerned in this Matter, and at this Time, *Sir William*; and the Government ought to take Care to preserve it self. Have you any more to say, Sir, if you have pray speak it?

Parkyns. I have no more. I submit it to your Lordship: I think there is but one Witness, and all the other is but Conjecture and Nonsense; and one Witness is not sufficient, by the Law of *England*, for by the Statute there must be two.

L. C. J. I have told you my Opinion.

Par. Besides, your Lordship has known me this many Years, and you know that my Education was not to War, and Fighting, but the Gown; and your Lordship knows how peaceably I have lived.

L. C. J. I have known you heretofore, *Sir William*, while you kept your Profession and your Gown.

Parkyns. And now in my old Age, my Lord, I am grown lame, and have lost the Use of my Hands with the Gout, and scarce able almost to go on my Feet. Therefore it cannot in Reason be thought probable, that I should engage in such a Business as this; and therefore I hope you will interpret all Things in a milder Sense, in Favour of Life, rather than for the Destruction of it, and the Ruine of a Man's Fortune and Family.

L. C. J. I tell you, You have had my Opinion concerning the Number of Witnesses. I suppose my Lord and Brother will declare theirs.

L. C. J. Treby. My Lord Chief Justice, it seems, does please to have us deliver our Opinions; I think we ought to be very tender in a Case of Blood: I think the Life of *Sir William Parkyns* is at Stake, and we ought to be careful that he have

no Wrong done him. But I think in the Cases of Treason, especially of this Nature, the Life of the King, and the Lives of all the innocent People of the Kingdom are also at Stake; and we must be indifferent in this Case, and by the Grace of God we will be so. The Question that *Sir William Parkyns* proposes, is, Whether there are two Witnesses upon this Evidence, to this Matter of which he is indicted, which is, the Compassing and Imagining the King's Death. One Witness, at least, does positively prove, That you *Sir William Parkyns* did agree to the Design of Assassinating the King's Person, and promise to provide and contribute Horses and Arms to that Purpose. Now suppose this is prov'd but by one Witness, and the Evidence had gone no farther, then your Objection would have had a very good Ground, that this could not be a legal Proof of Treason; but I must tell you, That this Treason of Compassing and Imagining the King's Death may be made evident by other Overt Acts, besides that of Assassination: To conspire with a Foreign Prince, to invade the Realm, to provide Arms, to join with Invaders, and to make an Insurrection against the King, these are Overt Acts of imagining the King's Death. For it cannot be supposed, but that he that would have an Invasion and an Insurrection against the King's Person, does intend the Destruction of the King; he that would take away all his Defence, which he might have by the Assistance of his Subjects, and leave him exposed to his mortal Enemies, cannot but be presumed to design the King's Ruine and Murder. Therefore, *Sir William*, such Things being in their Nature a Compassing and Imagining the King's Death; your Providing Arms and a Troop are Evidences and Overt Acts of this Treason; and so will your Going up and down and Meeting People in order to rise, if that were your Business in *Leicestershire*, &c. as it seems by the Evidence it was.

Parkyns. But that is not said, my Lord, I humbly beg your Pardon for interrupting you; it is not said, That I met them to rise, by no Evidence whatsoever; and therefore, pray my Lord, do not enforce it beyond what the Evidence has proved; he said, I went to meet my Friends: Was there any Thing said, it was in Order to a Rising?

L. C. J. Treby. I think you mistake your own Words, as you spoke them to the Witnesses, if I did take them, as I think I did, right, for they were several Times repeated. I will do you no wrong, *Sir William*, I assure you. You went into *Leicestershire*, and you say, It was to meet your Friends, the Witness says, It was to meet the King's Friends; by the King, it is very plain, you meant not King *William*, but King *James*; for you spoke before of the King's Landing, which was at *Christmas* last, when every Body knows King *William* was in *England*. These coupled together —

Parkyns. I beg your Pardon, my Lord; those two Things are not both to be join'd together, the Discourse of the King's Landing was at *Christmas*, as he says, the other Thing, my Journey into *Leicestershire* was a Month afterwards, and therefore they cannot be coupled together.

L. C. J. Treby. The Coupling of them, that I meant, was only to shew who was understood to be spoken of by you, when you named the King; so the Question is, Whether you did not mean the same Person in *January* that you meant in

December, by the Word King, especially since as a Discovery you had made, you said farther, that the *West* was as well inclined to the King's Interest as the *North*, and a Lord's Brother was concerned in it. If by the King, you had meant King *William*; how impertinent and insensible had been all this Discourse, that the *West* was as well inclined as the *North*, and that a Lord's Brother was concerned in it; concerned in what? In being inclined to King *William*; to what Purpose could that be said?

Parkyns. It may as well be interpreted that Way as the other.

L. C. J. Treby. I must leave that to the Jury. And I confess, if there was not somewhat more in the Case, you might the better argue upon this, as to the Interpretation. But laying aside the Consideration of your Riding into *Leicestershire*, &c. here is this providing of Arms, proved by Four or Five Witnesses, and the serving of them in that Manner; and there is no Account given by you, that they were provided for the Service of the Government, or that you were employed so to do. Certainly it is not lawful to provide Arms, especially for a whole Troop, as for ought I perceive here was, though indeed I am not skilful enough in those Businesses, to know how many make up a Troop; but it's plain here was an Insurrection intended, when the Invasion was made; and that is an Evidence, that these Arms were to be employ'd upon that Account, for no other Use was to be made of them, nor is pretended. If you had found those Arms in your House (as you say) it had been your Duty to have deliver'd them up, or disposed of them to the Use and Service of the Government, which Service too, could only be when you had a Commission from the Government, and not of your own Head. And then, besides all this, you acknowledg'd that you had a Troop of old Soldiers.

Parkyns. It is but slidingly that, for he only tells you, that a Troop would be composed of old Soldiers.

L. C. J. Treby. How can that be? when he says, he repeats your own Words, My Troop consists of old Soldiers; can any Body say, that his Troop consists of old Soldiers, without having a Troop.

Parkyns. Pray, Mr *Sweet* speak, my Life is at Stake, Did I say to you, it did consist, or it was to consist? recollect your self, and consider well before you speak.

L. C. J. What was it that he did say? it did consist, or it would consist.

Sweet. He said, his Troop was composed all of old Soldiers.

Parkyns. But does it appear by any Evidence, that I had a Troop; if I had, who were they? none of these Men do appear. Does this Troop consist of Men in the Air? that I should list Men that are all in *Nubibus*, and not one of them to be known. Suppose I should tell him a Lie or make some Brags, is this Treason? here is no Person proved to be listed or named.

L. C. J. But Arms were found in your House for a Troop.

Parkyns. But where they were bought, and when they were bought, and made ready, it does not appear; and I affirm to your Lordship, if you would give me but one Day's Time, I would prove, that they were at my House in *Warwickshire*, when I first came down thither, which is

two Years ago. And I'll fully make it out to your Satisfaction, or I'll be crucify'd, or any Thing in the World. I can prove it by a great many Witnesses, by my Friends, and all the Servants that belonged to me, they were there long before this Discourse was had or thought of.

Mr Justice *Rokeby*, If your Lordship expects that I should deliver my Opinion, I am ready to do it. As to this Matter of Law that Sir *William Parkyns* has proposed, he says, There are not two Witnesses to the same Overt Act, and therefore no Evidence of Treason; truly, I take it, and always did, that the Law is, there need not be two Witnesses to the same Overt Act; but if there be two Witnesses, one whereof speaks to one Overt Act, and another to another Overt Act of the same Species of Treason, these are two Witnesses within the Law. Now I think, there are two Overt Acts in the Indictment of this Treason. The Treason is Compassing the Death of the King; the Overt Acts are first, the particular Design of the Assassination upon his Person, and the other is, the Bringing in of a foreign Force, and preparing Horses and Arms to meet that foreign Force here: All this to the same Intent and Purpose, the Compassing and Imagining the King's Death. Now besides that of the Assassination, there are a great many Witnesses that prove there were Arms prepared; for there were found a great Quantity, when they opened the Boxes, which Boxes, it is plain, he himself sent down to *Haywood's* House: For though *Charnock* writ a Letter, yet it was by his Direction, as he own'd to *Haywood*, when he was here in Town. And then his Servant fetched them away from this Place, and this I take to be another Overt Act, and proved by several Witnesses. Sir *William Parkyns* speaks of his being a Gown-Man, but I do not know what a Gown-Man has to do with such a Quantity of Arms.

Parkyns, If you will give me Leave to send for some People, I will demonstrate it to you as clear as the Sun, that they were in the House two Years ago, when I came first thither.

Mr Justice *Rokeby*, There were Preparations two Years ago, it appears, for the Destruction of the King and Kingdom, however the Men that were accused of it, had the Luck to escape and be acquitted.

Parkyns, My Lord, I hope I shall not be interpreted out of my Life, I desire the Statute may be read.

Mr Just. *Rokeby*, What Statute do you mean.

Park. The 25 of *Edw. 3.* and the new Statute too, let them both be read to the Jury, that they may consider of it.

The Statute of the 25 of Edward 3. was read.

Parkyns, There is nothing of two Witnesses there.

L. C. J. No, but there is another Statute of the 5th *Edw. 6. Cap. 11.* that may be more for your Advantage, Will you have that read?

Park. Yes, if you please, I know there is another Statute that does direct it, and I expected to have found it in this Statute.

Cl. of Ar. This is an Act made in the 5th and 6th Years of King *Edw. 6th.*

The Statute was read to these Words, Unless without Trial he shall confess the same.

Park. There's enough.

L. C. J. You have heard the Statute read, would you infer any Thing from it?

Parkyns,

Parkyns. I infer that there ought to be two Witnesses, and here is but one.

L. C. J. There are two Witnesses.

Park. Not direct to the same Thing.

L. C. J. I shall leave it to the Jury, whether this Evidence does not prove an Overt Act, to demonstrate a Design against the King; if the Design be to depose him, and that's manifested by two Overt-Acts, undoubtedly that is Treason within the Statute of 25 of *Edw. 3.*

Park. That I agree, but yet there must be two Witnesses of it.

L. C. J. Suppose Dethroning the King be the main Design that strikes at his Life, and you resolve it shall be done one Way or other. One Way by Assassination, the other by Insurrection; or by Invasion and Joining with a foreign Army.

Par. My Lord, I conceive there ought to be two Witnesses for each.

L. C. J. No, no; for that very last Act that is to take Effect in a few Days, declares it is sufficient, if there be one to one Overt Act, and another to another; but still it must be of the same Head or Species of Treason; and Deposing the King and Assassinating of him, and Preparing to raise an Army against him, or to excite an Invasion, are but one sort of Treason.

Par. It may be so, if they were Overt Acts of one sort of Treason; but Rising in Arms, and Assassination are as different Things as can be in the World, and therefore there ought to be two Witnesses to each of them.

Mr J. Rokeby. That which I deliver'd as my Opinion was, that one Witness proving one Overt Act, and another Witness proving another Overt Act of the same sort of Treason are two good Witnesses, according as the Law requires. And I am the more fully confirm'd in it, by the Clause that is in this new Act of Parliament, made for Tryals in Cases of Treason, That a Man shall not be convicted of Treason, but by and upon the Oaths and Testimony of two lawful Witnesses, either both of them to the same Overt Act, or one of them to one, and the other of them to another Overt Act of the same Treason.

Park. Of the same Treason, aye.

Mr Just. Rokeby. And here it is the Imagining the Death of the King, that is the Treason.

Par. Then you may say every Thing else is so; but if you please to let the whole Statute be read.

L. C. J. You shall have it read if you will; but this is all that is in it concerning this Matter. Now a Design to depose the King, which is manifested by some Overt Act, is an Overt Act to prove the Design of the Death of the King.

Par. Then it must be manifest, and not by Interpretation; and all these Things are by Interpretation, except it be what *Porter* swears.

L. C. J. If by Overt Act it be proved, that you designed his Deposition, that is an Overt Act to prove your Design of his Death.

Par. They are very different Things, Death and Depositions. We have seen a King deposed, and yet he is alive.

L. C. J. Treby. I am sure we have seen a King agreed to be assassinated, and yet, God be thanked, he is still alive.

L. C. J. It is not the Succeeding in the Design, but the Design it self that is the Treason. God forbid that it should have Success to make it Treason.

L. C. J. Treby. But whenever People will agree together to bring in foreign Forces, or to prepare Men and Arms against the King that is in Possession, this is reckoned an Overt Act of a Design against his Life, and has always been reckoned so

by my Lord Chief Justice *Hales*, my Lord Chief Justice *Coke*, and by all those Men that have been reputed the most tender in Cases of this Nature. For any Act that expresses an Intent of Dethroning the King, by means of an Invasion by a foreign Force, and an Insurrection against the King, is a proper Proof of a Design of his Destruction; and if not, then Agreeing to shoot him is not an Overt Act. Men may say also, that there need be actual Shooting to make out the Overt Act in that Case.

Park. If your Lordship pleases to have the Act read, I shall submit to your Lordship's Judgment.

L. C. J. Let it be read.

Parkyns. If you please to read the Act, the Preamble of it.

Cl. of Ar. This is an Act made in the 7th Year of our Sovereign Lord the King: Is that the Act? It is an Act for Regulating of Tryals in Cases of High Treason, and Misprision of Treason. Is that the Act?

Par. Yes, yes. *(The Act was read.)*

Mr J. Rokeby. I believe if you look into the great Case in Parliament, the Case of my Lord *Stafford*, you'll find it was declared for Law, that one Witness to one Overt Act, and another Witness to another Overt Act of the same Treason, they were two Witnesses within the Law, and this was a solemn Resolution in Parliament in the House of Lords.

Park. I believe it has been done; but here is a beneficial Law made, which if my Tryal had been put off a few Days, I should have had the Benefit of it.

L. C. J. It would have been the same Thing as to this Matter, for this Act declares the very same Thing, as to the two Witnesses.

Par. And then, my Lord, I could have had Witnesses to have taken off a great Part of this Evidence, and the Law comes to take Effect within one Day, and it turns here upon this Matter of *Sweet*, who is not a good Evidence; for it is manifest he has contradicted himself, and it is manifest he has sworn what cannot be true.

L. C. J. Wherein?

Par. That I should say the King would land here, for I had his Word for it.

Mr Just. Rokeby. You might have his Word, and not delivered by his own Mouth; there are other Ways to convey a Man's Word besides Speaking.

Park. But then we don't call it his Word, that's Hearsay.

Mr Just. Rokeby. If a Man write his Note that he will do such a Thing, we may very well say, we have his Word for it.

L. C. J. It is not impossible but that you might speak with him.

Par. It is impossible I should speak from hence to *France*.

L. C. J. You might have been over with him, I believe a great many others have, and it's proved *Mr Charnock* went over.

Mr J. Rokeby. If any Man should have said at the latter End of the last Month, I believe that there was an Assassination intended against the King, because I have his Word for it, merely from reading his Speech to the Parliament, wherein he affirms that he had several Proofs of it, that had been a proper Expression, though he did not hear the King speak it.

Par. Yes, if he had the Speech to produce.

Mr J. Rokeby. Then if it come by Letter or Message or common Fame, he might send you Word by a particular Messenger.

Par. Yes, if there was any such Authority as that it were true. But he has manifestly contradicted

himself, and Capt. Porter swears for his own Life, and I must leave it to you, whether they are to be believed.

Mr J. Rokeby. Capt. Porter's Testimony has been sufficiently confirm'd by the Acknowledgment of dying Persons.

L. C. J. Well, have you any more to say, Sir William Parkyns?

Parkyns. No, my Lord, I submit it to your Lordship's Direction.

L. C. J. Then what say you to it, Mr Attorney or Mr Solicitor?

Mr Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Council for the King in this Matter, and it is my Turn to sum up the Evidence against the Prisoner at the Bar: He stands indicted for Compassing the Death of the King, for Designing to depose the King, for Promoting a foreign Invasion, for Intending an Insurrection here at home, and for Aiding and Abetting the King's Enemies, and for Doing what he could to procure the Subjection of his own Country to Foreigners and Strangers.

Gentlemen, some of these Crimes run into one another; Designing the Death of the King by Assassination, and Designing to depose the King, amount to one and the same Thing, with Compassing and Imagining the Death of the King.

My Lords, the Judges have given you their Opinion in that Point of Law, and I think it is agreeable to all the Resolutions that have been since the Making of the Statute of 25 of Edw. 3d. I think that it has been explained so in the Time of Richard the Second; but this I am sure of, that it was so resolv'd in the Time of Harry the Fourth, when there was a Design to set up Richard the Second again, and it was adjudged to be High Treason in Compassing and Imagining the Death of the King. For Deposing the King, is Destroying him in his politick Capacity, as much as Assassination and Murdering of him is Destroying him in his natural Capacity, and the Conspirators in such Cases know what the great End is they aim at, to subvert the Government as it is established by Law, whereby every Man enjoys his own Property, and the Freedom of his Person, and those that will be quiet may have their Liberty and Property preserved entire to them; but some People are so very impatient of submitting to the Law, that they cannot be content to be in Servitude themselves, but they must needs do all they can, to bring it upon their Fellow-Subjects. And it were very well if that those who are in Love with Slavery, would but go to some other Places, where they may have enough of it, and not bring it upon those who are so little desirous of such a Thing, as we are, and I hope always shall be.

Gentlemen, to prove Sir William Parkyns guilty of this Treason, whereof he stands indicted, we have produced several Witnesses; and first there is Mr Porter, and he tells you Sir William Parkyns told him he had seen a Commission from K. James, written with his own Hand, for making War against the Person of K. William.

Parkyns. Sir, I beg your Pardon for interrupting you, but there was not one Word of that said, here is Mr Porter, pray ask him, if ever I saw a Commission from King James.

L. C. J. Porter did say so, if I remember any Thing Porter said, you told him you had read the Commission, and it was written with his own Hand.

Par. All that I heard of it was, that when I was desired to make one in the Assassination, I refused it because I said I was busy about the Matter of my Regiment.

Mr Att. Gen. Pray call Porter again. (Capt. Porter came in.)

Mr Sol. Gen. Pray Capt. Porter, will you give the Court and the Jury an Account what you heard Sir William Parkyns say about the Commission that came from King James?

Capt. Porter. I ask'd Mr Charnock why I might not see the Commission, and he told me he had never seen it himself, but Sir William Parkyns had. I did ask Sir William Parkyns, whether he had seen it, and he told me he did see it, and read it, and it was to raise War against the Person of the Prince of Orange.

Mr At. Gen. Whose Hand was in it, did he say?

Capt. P. It was written with K. James's own Hand.

Par. This was my Mistake, I thought he had said I told him I had a Commission for a Regiment.

Mr Mountague. Did he give any Reason, why it was written with King James's own Hand.

Capt. Porter. We used to say amongst our selves it was, because he would not trust any of his Ministers with it.

Mr. Sol. Gen. I would not do Sir William Parkyns any wrong, but only sum up what is material in the Evidence given against him. I remember very well Mr. Porter said, Mr. Charnock told him Sir William Parkyns had seen the Commission, but I would not offer that as Evidence against the Prisoner what another told him, but he says besides that Sir William Parkyns told him himself, that he had seen it, and that it was written with King James's own Hand. He says that they had several Meetings together, Sir William Parkyns, and a great many others; and he names the Places, the Naggs-Head in Covent-Garden, the Sun Tavern in the Strand, and the Globe Tavern in Hatton-Garden; he tells you particularly, that it was agreed that King (who was executed) and Knightley, and himself should go and view a Place that should be proper for the Assassination, and to give a Report to the Prisoner, and the Rest of the Conspirators, what they thought the most proper Place; and that accordingly they did view the Place, and came home at Night, and met the Company, whereof Sir William Parkyns was one; and they gave an Account how the Place was viewed, and which was thought most proper, and then all the Company agreed to it. He says indeed, that Sir William Parkyns was not one that was to execute it in his own Person, but one Scudamore was to be the Man employed by him, and he did say it was a Thing that was very necessary to be done, and would facilitate the Introduction of King James, and the bringing him back again: And there is likewise this concurring Evidence of Mr. Porter's with what I shall observe by and by, that Sir William Parkyns was to procure five Horses, three whereof he was to mount himself, and two he was to send Captain Porter to mount, and if there were further Occasion he could procure more from Mr. Lewis, Gentleman of the Horse to my Lord Feversham, and accordingly we have produced to you two Witnesses, Freeman and Turton, the one a Tapster, the other an Hostler that lived at the George Inn in Holbourn, who give you an Account that upon Friday before the first Day that was designed for the Assassination, there did come three Horses to Town, for Sir William Parkyns, but it being put off upon the Disappointment, they were sent out of Town again. Upon the Friday afterwards, the Day before the Discovery, then there were four Horses brought to Town, and a 5th was of Mr. Lewis which was a Roan Gelding.

Parkyns.

Parkyns. Pray, Sir, will you please to observe what Sort of Horses they were; and particularly the Height of them, that it may be known how fit they were for this Business.

Mr. Sol. Gen. I will do you no wrong *Sir William* if I can help it. The Jury have heard the Evidence; and by and by they will hear my Lords Directions: But they do say there were 4 brought to Town, and a 5th was sent, a Roan Gelding; first the Witness said the Horse came from *Mountague House*, but then presently he recollected himself, and acknowledged the Mistake; and afterwards said it was from *Somerset House*. So there were the 5 Horses, 3 whereof *Sir William Parkyns* was to mount, and 2 Captain *Porter*, as he himself says; and these Facts I instance in as making a concurring Evidence, and very near to two Witnesses to prove this Part of the Conspiracy.

Then, Gentlemen, Captain *Porter* goes further, and says, that he had heard (but *Sir William Parkyns* did not tell him so himself) that *Sir William Parkyns* had a Commission to raise a Regiment of Horse, and was preparing so to do, against the Time of the Invasion, to joyn with the Forces that were to come from abroad. To confirm which we have called *Mr. Sweet* to give you an Account that he had been acquainted with *Sir William Parkyns* for three Years, and that he had often talkt with him about the King, that is his present Majesty, whom he called the Prince of *Orange*, and the little Gentleman; and about King *James*, whom he used to call always King; and he said the King was to land very speedily, and that he had a Troop which consisted of old Soldiers, and that there were several Volunteers that were Officers; he said he was to take a Journey into *Leicestershire*, and accordingly he went; and when he returned back again he said, the West and the North were very well inclined to the King's Interest, or to that Purpose. And to strengthen his Evidence we prove, that he did go accordingly into *Leicestershire*, and we prove it by his Servant that went with him, where he met with several Persons, particularly one *Tarborough*, and a Parson; what they did transact the Servant cannot prove, but he is a concurring Witness to prove, that he went into *Leicestershire*; and we have all the Reason in the World to believe that he went on that Errand that he spoke of before, that is to meet the King's Friends, as he called King *James*. And then there is a further concurring Evidence of his having a Regiment, or a Troop, it is not material, whether it be one or the other; and that is the Matter of the Arms, 4 Dozen of Swords, 32 Carbines, 35 Cases of Pistols, that were hid in the Garden of his House: And these Arms we have traced further, he sent them from his House to *Haywood's House*, there he thought they would not lie safe, and therefore *Sir William Parkyns* sends for them privately; they were to come away at Night, and he brought back to his House, and they were accordingly brought back in the Night to his House, and there they were buried; and the same Person saw them taken up afterwards, which brought them to *Sir William Parkyns's House*, and proves they were the same Boxes that were buried, and which upon Opening proved to be these Arms, that were first sent to *Haywood's*, and afterwards brought back to his own House.

So that this, Gentlemen, is a concurring Evidence both to what *Sweet* says, and to what *Porter* says, and those are the Two Witnesses to this Part

of the Treason, that there was a Provision of Arms and Men for this Purpose, which he said he had a Commission for.

Now, Gentlemen, against all this he makes but a very small Objection. As to the Matter of two Witnesses to every Overt Act, that has been overruled by the Court; and as to the Arms, he says he found them at his House when he first came to it; and then they were old rusty Arms, but of this he gives you no Manner of Evidence. But if they were there when he came to the House, how came he at this Time of Day to hide them, and secrete them? Why might they not be as publick now as they were before he came, which he has had Time enough to prepare to prove since the Finding of them? And he does not give you so much as any colourable Reason why he so secreted them. And therefore 'tis a most just and violent Suspicion, that they were for the Purposes that the Witnesses have given you an Account of; and you have Reason to believe they were provided for to arm that Number of Men, which he was to raise to assist the *French* when they came to land here. So that if you believe what the Witnesses have sworn, you cannot say but that he is guilty of the Treason charged upon him; and we doubt not you'll find him so.

Mr. Comper. May It please your Lordship, and you Gentlemen of the Jury; I am of the same Side of Council for the King. *Sir William Parkyns* has given us a good Caution, which I shall take care to observe: and that is, not to strain either Fact, or Law, to his Prejudice. But, my Lord, When such a Matter as this, a Crime of this Nature, is so far proved against the Prisoner at the Bar, that no Body can in his private Judgment reasonably acquit him; then I think it a good Piece of Service to the Publick to make the Matter so plain, that it may be put beyond all Manner of Doubt, both for the Ease of the Jurors, and for the Satisfaction of all others that hear this Tryal.

My Lord, *Sir William Parkyns* has truly divided his Indictment into two Parts, the one that accuses him of being concerned in the Assassination, and the other that accuses him of being concerned in Inviting the *French* into the Kingdom, and engaging to meet them with an armed Force.

My Lord, As to the first Part, I must do *Sir William Parkyns* that Right, that there is but one positive Evidence as to the Assassination; but that Evidence tells ye he agreed to it at several Meetings, nay, that he was one who said it was necessary to be done, in order to the other Design he was engaged in, the facilitating the Landing of the *French*, and King *James* his Descent and Restoration. There is, I say indeed, but one Witness of that Matter, but the Evidence of that one Witness is confirmed by many concurring Circumstances; by his sending for Horses to Town the Day before the first *Saturday*, when this execrable Treason was to have been executed; by sending them out of Town again that Day upon the Disappointment; by sending for them again the *Friday* before the second *Saturday* that the King was to have been assassinated; by his having more Horses than were usual with him that Day; by his taking care then of three Horses that were none of his own, and one of them brought very suspiciously from *Somerset-House*; and that all these eight Horses should be immediately hurried and carried away upon the Disappointment the

second *Saturday*, and nothing ever heard of them afterwards. I say one of them was brought very suspiciously; for, my Lord, you observe it came from *Somerset-House*, and sent by *Lewis* according to the Prisoner's Promise to *Capt. Porter*, which *Lewis*, it is apparent by all the Witnesses of this Matter, was privy to this Design.

My Lord, There is another Circumstance besides this, which, I think, has not been observed; and that is, his sending for *Sweet* up to Town before the second time that the King was to have been Assassinated; he came up indeed before both the times: The first time he was told by the Prisoner, he had once designed to have used him in a Business; but upon second Thoughts he had Compassion for his Family. And when he came the second time, he was first ask'd what Condition he had left his Family in, whether he had provided them Money. He said, No; and thereupon he was chid: And the Prisoner said, he might then as well have staid at home. All these Circumstances, besides the one positive Evidence, favour strongly of his having a great Hand in the Design of Assassinating the King.

But then, my Lord, As to the other Part; his Inviting the *French*, and preparing to meet them, that is positively proved by two Witnesses. *Capt. Porter* tells you, That the Prisoner was at the two Meetings in *Leaden-hall-street*, and *St. James's-street*, where it was expressly resolved by all that were present, and the Prisoner among the rest, to send *Charnock* over to invite the *French* to invade this Kingdom, and to promise to meet King *James* at his Landing with two Thousand Horse. He swears, That *Sir William Parkyns* did particularly agree to what was so resolved upon at both the Consults. And *Sweet* tells you that he had prepared for the same Design; for that *Sir William Parkyns* told him, the King would land, he had his Word for it; and he himself had a Troop of old Soldiers. *My Troop does consist* (he spoke it in the present Tense; for it being a Doubt *Sir William Parkyns* did himself that Right as to examine the Witness again, and he repeated it as his Words, *My Troop consists*) *of old Soldiers, or is composed of old Soldiers*. And he was to have several Volunteers that had been Officers.

My Lord, These two positive Witnesses are Evidence that goes to the same Species of Treason, nay to the same Design, the raising a Rebellion, and the Deposing the King, which is Killing him in his politick Capacity; I say, these Two go home to the same Design.

And, my Lord, This Evidence upon this Branch of the Indictment, is corroborated too by very strong Circumstances. There is a Journey to *Leicester*, which *Sweet* speaks of, that *Sir William Parkyns* told him he would undertake: This Journey it is proved by his Servant that he did undertake; that he met there with several Persons, and came back and made his Report to *Sweet* of the Success of his Journey, and how well disposed the King's Friends were, by which Name he always meant King *James*; for when he spoke of our present King he called him the *Little Gentleman*, or sometimes King *William*, and sometimes, as the Witness at last said positively, the Prince of *Orange*: But when he spoke of the King, without any thing else, he always meant King *James*; and besides, he spoke of a King that was beyond Sea at *Christmas* last, which could not be King *William*, who was then, and had been in *England* so long before.

My Lord; the Prisoner in his Defence says, That this Servant of his that went with him into *Leicestershire*, had been formerly *Charnock's* Servant, and was sent by *Charnock* with the Message to *Kensington*, and not by him. Yet I must observe, that the Evidence swore positively he was sent by *Sir William Parkyns*, his Master, and brought the Note in the Almanack back to the Person to whom he was directed to carry it, who lodged at the Confectioner's House; and when he had so done, that the Person that lodged at the Confectioner's did not remit him to *Charnock*, but to his Master *Sir Will. Parkyns*, with a Message that he would be at Home, and stay there ready, whenever he should have Occasion for him; and this was upon the very *Saturday* the King was to have been assassinated.

My Lord, *Sir William Parkyns* has complained, that if he could have had his Evidence here, he could have proved the Arms had been two Years in his House, and that he found them there when he came thither first. If we should admit that Matter, we might confess, and avoid it; for it is apparent, that these Arms were on this Occasion put up in a suspicious Manner in Boxes, and sent to *Haywood's*, (who is a suspicious Person by Reason of his Relation to *Charnock*, upon whose Letter and Recommendation they were received) and concealed till the Plot was disappointed; and then they were carried away from that Place, and buried in *Sir William Parkyns's* own Garden. This was just after the Breaking out of the Plot; and they were buried for the better securing them as choice Goods. And whereas the Prisoner says they were old and rusty when he found them, it now appears they were clean and new-furbished Arms, and the Hilts were off the Swords, and packed together.

My Lord, he has Recourse to another Argument in the last Place, the most moving, I must confess of all, and that is the Argument of Pity: He has spoke of his Education in the Profession of the Gown, of his Infirmities, his Age, and his Family. Arguments of Pity I am very unfit to give an Answer to, and should be very unwilling to extinguish any Motions of it; but this I must observe even by Way of Answer to that Argument, That the Time was when he should have pitied himself, and not engaged in such an abominable and merciless a Design; That he should have had Pity upon his Countrey, which he plotted to bring under the greatest Confusion and Desolation; That he should have had Pity upon the best of Kings, and the best of Men; but then there was no Pity, when they thought they had laid their Designs so that they had him in their Power, but they resolved barbarously to murder him, and persisted in the Resolution of Assassinating him after they were once disappointed; That, it seems, did not discourage them, but they undertook it a second Time, and it does not appear that they ever had any Remorse at last for it; but the Plot broke out and so their whole Design was frustrated.

My Lord, This is the Sum, I think, of his Defence; I have as well as I was able given an Answer to the Objections made to it, and I must now leave it with you, Gentlemen of the Jury: And tho' these Considerations that I have mentioned may not quite remove all Compassion, yet they may serve to confirm you in a Resolution of doing the King, and Kingdom, and your selves Justice; and that is all we ask of you.

L. C. J. Gentlemen of the Jury, *Sir William Parkyns* is indicted of High-Treason, for Designing, Imagining, and Compassing the Death of the present King. There have been several Witnesses produced that have given Evidence upon this Indictment; the first of them is *Mr Porter*, who has been a Witness heretofore against several upon the like Occasion; and he gives you this Account, That about the latter End of *May*, or the Beginning of *June* last, there was a Meeting of divers Persons at the *Old King's Head Tavern* in *Leaden-hall-street* in the City, where they dined together, and there was *Sir William Parkyns*, *Captain Porter* himself, *Sir John Fenwick*, *Sir John Freind*, and divers others that he has mentioned to you. At that Meeting they did consult together, which Way the late King *James* might be restored, and it was thought very necessary that there should be a *French Force* sent over hither to join with others for his Restoration. And they did among themselves agree, and determine what Number of Forces might be convenient for that Purpose, they did propose 10000, 8000 Foot, 1000 Horse, and 1000 Dragoons: And that a Message should be sent over to King *James*, to persuade him to solicit the *French King*, to furnish him with such a Number of Men to be sent over into *England*. *Mr Charnock*, that was then in the Company, was the Person agreed upon among them to be the Messenger to be sent upon this Errand, which Employment he did undertake, upon their Promise, that they would raise among themselves 2000 Horse for to meet the late King at his Landing.

This being at that Time determined, and *Mr Charnock* having accepted this Employment, he did make Preparation to go upon this Errand. In some Time after, (a Week or a Fortnight, or thereabouts) there was another Meeting at which were several of the same Persons, that were present at the former, and among them *Sir William Parkyns* was one: And this Meeting was at one *Mrs Mountjoy's*, that keeps a Tavern in *St. James's-street*, where they did discourse of what they had formerly agreed upon, and did again consider whether they should proceed to send *Mr Charnock* with that Message; to which they all agreed, that *Mr Charnock* should go, and he accordingly went; and *Captain Porter* met him about five or six Weeks after the Meeting at *Mrs Mountjoy's*, and *Charnock* told him he had been in *France*, and that since his Return he had been with the several Persons who had sent him, and had acquainted them with the Answer of *K. James*, which was, That at that Juncture of Time the *French King* had such Occasion for his Forces, that he could not spare them, or furnish him with so many to come over here. This is the first Matter that *Porter* gives you an Account of.

But then *Captain Porter* tells you farther, how the Design of Assassinating the King was set on Foot about the latter End of *January*, or the Beginning of *February* last. About which Time *Sir George Barclay* was sent over with a Commission from the late King *James*; which seems to have given great Encouragement to that Party of Men: For *Sir George Barclay*, *Captain Porter*, and *Sir William Parkyns*, with divers others, had several Meetings at the *Globe Tavern* in *Hatton Garden*, the *Nagg's-head Tavern* in *Covent Garden*, the *Sun Tavern* in the *Strand*, and other Places. And at these Meetings they entred into Consideration, what was the best Way to restore the late King

James to the Throne; and it was agreed among them, that the best Means for the Effecting that Restoration, would be to kill King *William*, which they resolved to undertake; and at these Debates and Resolutions, *Sir William Parkyns*, the Prisoner at the Bar was present. *Captain Porter* being ask'd whether *Sir William Parkyns*, at these Consults, did consent to the King's Murther, he said they did all agree to the Assassination of the King, and *Sir William Parkyns* said, he thought it was very necessary to be done, to facilitate the Restoration of the late King.

Gentlemen, This Design of the Assassinating the King being thus resolved upon; the next Thing considered among them was, how it might be effected; there were several ways proposed: One was by an Ambuscade; for the King having a House in the Country by *Richmond*, his Majesty used to go once a Week a Hunting thereabout, and to return at Night; and therefore an Ambuscade on that side of the Water, near the House, was proposed: Then another Proposal was made to fall upon the Guards on this side the Water, and at the same Time that the King's Coach was to be set upon. And these two Places being proposed, there was some Difference of Opinion among them, whereupon it was agreed that some Persons should be sent to view the Ground on both sides the Water, which Persons were *Captain Porter*, *King* that was Executed, and one *Knightley*; and so some Days before the 15th of *February* they did go on both sides the Water; and viewed the Ground, and returned in the Evening to the *Nag's-Head Tavern*, according to Agreement, where were met together *Sir George Barclay*, *Mr. Charnock*, and the Prisoner at the Bar, *Sir William Parkyns*. And there they made their Report done of their View of the Ground, and upon which both the Proposals were debated, and at last they did all agree that the Attack should be made upon the King on this side of the Water, in a Lane that was between *Brentford* and *Turnham Green*; and the Attack upon the Guards was likewise to be made thereabouts.

Sir William Parkyns was to furnish five Horses, whereof three of them were to be mounted by Men of his own providing, the other two were to be mounted by Men of *Captain Porter's* providing; *Mr. Porter*, *Mr. Charnock*, and one *Rookwood*, were to be principally engaged in Attacking the Guards. The Number of Men agreed upon for the whole, were about forty or few more, and *Sir George Barclay* was to have a Party out of them all, of about eight, and as those others went to fall upon, and charge the Guards, *Sir George Barclay*, with his Party of Men, was to attack the King in his Coach, and by shooting into the Coach to kill the King and all that were with him.

The Time agreed upon for putting this Design in Execution was on *Saturday* the 15th of *February*. That Day it was expected the King would go a Hunting. And two Men were planted at *Kensington* to give Notice when the King went, and upon such Notice, these Men were to march out in small Parties, and to lodge in the Inns, and publick Houses about *Brentford*, and *Turnham Green*, upon Notice of the King's Return from the other side of the Water, and *Sir George Barclay* was to be in Readiness to set upon the Coach in the Lane; and the other Party to attack the Guards.

But this horrid Design was very happily discovered, which prevented the King's going Abroad on that Day; and though they were disappointed for

for that Time, yet the Design was not at an End : But their Resolutions continue to make the like Attempt when they could have an other Opportunity. And for that Purpose there was another Meeting, as Captain Porter tells you, upon the Friday following at the Sun Tavern in the Strand, at which Sir William Parkyns, Sir George Barclay, Rookwood, and Charnock, and Captain Porter, were present, and they did agree to attack the King and the Guards, the next Day in the same Place, and Manner that they had formerly agreed upon. But by good Providence the King had Notice of it, so that he did forbear to go Abroad that Day, whereby these Conspirators were totally disappointed of their barbarous and villainous Design which they had resolved upon, and had made such Preparations to compass.

It is true, Captain Porter does tell you, Sir William Parkyns was not to be one that should be actually present at the Assassination ; but he was to furnish five Horses, three of them to be mounted by Men of his own Providing, and two by Men that Captain Porter was to provide. And you are told positively that Captain Porter, at this last Meeting, did complain that two of his Horses were fallen lame, and acquainted Sir William Parkyns with it, and he promised to help him to two more by the means of one Lewis that was Gentleman of the Horse to my Lord Feversham.

Then you are told, that Sir William Parkyns sent to Sweet to come to Town the 11th of February, and Sweet comes to Town accordingly, on Wednesday the 12th of February, and then he had Discourse with Sir William Parkyns at his Lodgings, where Sir William told him, that because of his Family, he would not imploy him in the Business he intended for him, and therefore bid him go home again ; and with all, directed him to return to Town the Friday following ; and order his Groom to bring his Horses to Town ; he mentioned three Horses which should be the strongest he had ; the Groom brought up the three Horses, and Sweet came to Town with him, and staid till Saturday. Sir William Parkyns said he thought to go out of Town in the Afternoon, but did not, but stay'd till Monday, when he went out of Town.

But upon the Friday following, the Horses of Sir William Parkyns, were brought to Town again, which now were Four, and were set up at the George Inn in Holbourn ; and it appears that Mr Lewis furnished one Horse, for there were five Horses upon the Account of Sir William Parkyns, of which a Roan Horse was one which came from Somerset-House. This is proved by the Hostler ; and that Lewis himself came in on Saturday in the Afternoon to inquire for Sir William Parkyns, but he was gone and the Horses were taken away, and he once came with Sir William Parkyns to the Inn. These are Circumstances that do concur with, and confirm Captain Porter's Evidence concerning the providing Horses for this Design.

Then there is another Particular of Captain Porter's Evidence concerning the Commission from King James, which is remarkable : It was told you, that he askt Charnock whether he had seen the Commission : He said, No, but Sir William Parkyns had : And Sir William Parkyns was askt by Porter, as they were sitting by the Fire-side, whether he had seen the Commission ; and Sir William Parkyns answered, that he had seen it, and had read it, and it was written with King James's own Hand ; and that the Substance of it was to make War upon the Person of the Present King, who

was called in the Commission as you may suppose the Prince of Orange. So that, Gentlemen, as to the Design of the Assassinating the King, and of this Commission which was understood by them to be for that Purpose ; this is the Sum and Substance of Porter's Evidence so attended with, and confirmed by these Circumstances, as you have heard.

Besides the other Witness, Sweet, who was a great Acquaintance of Sir William Parkyns, tells you, That about Christmas last, he was informed by Sir William Parkyns, that the King would come, which he understood to be meant of King James. He ask'd Sir William Parkyns how he knew it ? and he said, He had his Word for it ; and that his Troop consisted of Old Soldiers, and he had thirty Saddles ; and besides, there would be some Volunteers, which were Old Officers. Then he said, He was to go into Leicestershire, and he did go with one Scudamore ; and this was in January, about the latter End, as I remember. They lay that Night at Stony-Stratford, and the next Night at Leicester, and Scudamore went with him ; and afterwards one Tarborough, and a Parson, came to him out of Yorkshire : And when he came back he said, He found all there to be very well ; and the West was as well inclined to the King's Interest, as the North ; and a Lord's Brother was concerned.

Then in the next Place you are told, That at Michaelmas last, Mr. Charnock did write a Letter to one Haywood, who had married his Sister, and lived near Sir William Parkyns in Warwickshire, to desire him to receive some Goods into his House that were to come from Sir William Parkyns's, and lay them up very carefully ; for they were choice Goods, which Sir William durst not leave in his own House, because he had left it. And accordingly there were these Boxes and Chests sent to Haywood's, and received by him into his House, where they continued till the latter End of February. Haywood about this Time, when the Design of the Assassination was on foot, met with Sir William Parkyns in Town, and ask'd him how he would dispose of those Goods ? Thereupon Sir William Parkyns sent his Servant into the Country ; and Notice was given on Ash Wednesday, the Wednesday after the first Proclamation that issued upon the Discovery of this Conspiracy, that these Goods should be removed : And a Man, in the Evening, went to Haywood's House with a Cart and Horses, and removed these Chests ; they were three in Number ; and those being opened, there were eight lesser ones taken out, and carried away about Nine or Ten a Clock at Night, to Sir William Parkyns's House in Warwickshire, where they were buried in the Garden, and afterward were dug up, which was at the Searching Sir William's House upon the Breaking-out of the Plot ; and when they were open'd, it did appear what Sort of Goods they were : They were Arms, a considerable Quantity of them ; Four Dozen of Swords without Hilts, Twenty five Pair of Pistols, and a great Number of Carbines, Thirty two as I remember, and a Parcel of Hilts pack'd up in a Box by themselves. This, Gentlemen, is sworn to you by the Persons that were present at the Digging them up, and Opening the Boxes.

Then, Gentlemen, you are told, That though Sir William Parkyns pretends they were Arms that he found in the House when he came thither, yet they were not old rusty Arms, as he pretends, but they were very bright, and fit for Use and Service.

There is one Circumstance more that seems to affect Sir *William Parkyns*, about the Business of the Assassination; and that is proved by *Eubank*, Sir *William's* own Servant. There was a Note sent upon *Saturday*, the 22d of *February* in the Morning, to one *Brown*, at *Kensington*, by Sir *William Parkyns's* Man; and this *Brown* writ in the Servant's Almanack, that he would be in Town himself in a little Time, and bid him carry it to a Man that lodged at a Confectioner's over-against *Grays-Inn Gate* in *Holbourn*: Sir *William Parkyns's* Man accordingly goes to this Confectioner's, and speaks with the Person there that he was directed to go to; and he says he was a *Scotch Man*, and talk'd broad like a *Scotch Man*, and he bid him go and tell his Master, That he would stay within for him till he came; and he did accordingly.

Gentlemen, This is the Sum and Substance of the Evidence that is given against Sir *William Parkyns*. Now you are to consider what Sir *William* says for himself: He does admit, and agree, That what *Porter* says is very positive and full; but that is but the Evidence of one Witness: For, says he, by the Law no Person ought to be convicted of High-Treason, upon the Testimony of one Witness. As to the Matter of Law he is in the right; No Man ought to be convicted of Treason upon the Testimony of a single Witness. Now first suppose the Design to assassinate the King had not been proved; consider then whether there be not Two Witnesses besides. *Porter* proves, That *Charnock* was sent into *France* by Sir *William Parkyns*, and others, upon that Errand; to which, if you add the Testimony of *Sweet*, that swears, That Sir *William Parkyns* told him the King wou'd come, and he had a Troop, and had bought Saddles; and what is said concerning his going into *Leicestershire*, and his having a Quantity of Arms: If all which be understood in Pursuance of the Design against his present Majesty, then there are at least Two Witnesses of several Overt-Acts of the same Treason.

For, Gentlemen, I must tell you, tho' there had been no Evidence of a Design to Assassinate the King, but the Design and Purpose had been to Depose him, and set the late King upon the Throne, or join with a Force to invade the Realm, that is High-Treason within the Statute of 25 *Edw.* the Third, as being a Designing the Death and Destruction of the King. There hath been a full Proof by Two Witnesses, if what *Sweet*, and the other Witnesses besides *Porter* say, do prove Sir *William Parkyns* to be concerned in that Design, which shall be considered further of by and by.

But in the next Place, suppose that the Meetings at the King's-Head in *Leaden-Hall Street*, and at *Mountjoy's*, had not been proved; but the Design to Assassinate the King is proved by one Witness, and the Providing Men and Arms to fight against him is proved by one other Witness: This is a Proof of the same Treason; for though the Overt-acts be several, yet they both tend to the same End, the Destruction of the King, though in a different manner; and tho' the Law requires two Witnesses to the same Sort of Treason, yet it does not require two Witnesses to any one Overt-act. For if one Witness prove one Overt-act at one Time, and another Witness prove another Overt-act at another Time,

these are two Witnesses within the Meaning of the Law; and so it has been always practised, and never denied to be Law that I know of.

Besides it is observable upon this Point, which my Brother has mentioned, That this new Act of Parliament, which does not yet take Effect, provides, that there shall be either two Witnesses to one Overt Act, or one Witness to one, and another to another of the same Species of Treason; and you have had the Opinion of all us now that are here, that these are Overt Acts of one and the same Species of Treason.

But then Sir *William Parkyns* objects, That *Sweet* does not prove any Overt Act. Now for that, you are to consider the Force of *Sweet's* Evidence, who tells you the Discourse of Sir *William Parkyns*, about *Christmas* last, of the King's Coming, of his Saddles, and of his Troop's Consisting of old Soldiers, and Volunteers that were old Officers: But says Sir *W. Parkyns*, this is only Words, and Words are not Treason. But then consider, that they are Words that relate to Acts and Things. You hear he had a great Quantity of Arms, beyond what he, as a private Man, could have Occasion for, or would use. He does not give you any Account what he was to do with those Arms, or to what Purpose he should keep them, nor why he caused them to be removed in the Night, after they had lain privately in *Haywood's* House, and caused them to be carried back to his own House, and buried them in the Ground, and at such a Time when there was a Plot, and after the Plot was discovered, and a Proclamation out for his own Apprehension.

Sir *William Parkyns's* Discourse with *Sweet*, of King *James's* Coming, and his Troop Consisting of such Men, plainly shews what those Arms were for. For, Gentlemen, Men's Discourses and their Words explain their Actions; and an indifferent Action in it self may be so explained by Words, that it will be unlawful. It is lawful for a Man to buy a Pistol; but if it can be plainly proved from his Words or his Speeches, that the Design of Buying it was to use it against the Person or Life of the King, that will be an Overt Act. Now when Sir *William Parkyns* said, The late King would come, and that he had a Troop which consisted of such Soldiers; then these Arms being found in that Manner, I must leave to your Consideration whether it is not a Proof, for what Purpose he did provide them, and to what Use he intended to put them; especially since he gives you no Account, what Use or Occasion he had for them. He says, indeed, he found them in the House two Years ago, how probable that is, you may consider.

Then there is another Thing, his Going into *Leicestershire* with *Scudamore*, and his Meeting there with *Tarborough*, and other People in that private and hasty Manner. He went out on the *Thursday*, and came Home again upon *Monday* Night; and then he meets with *Sweet*, and tells him that all was well; and the West was as well inclined to the King's Interest as the North. What King must he mean? he had no Commission from King *William* to go into *Leicestershire* to discourse with People, to see how they stood affected to his Interest. *Sweet* comes and tells you, that when Sir *William Parkyns* spoke of the King, he understood he meant King *James*. I must leave it to your Consideration, how you will interpret these Words.

It is true, Gentlemen, it is not fit there should be any strained or forced Construction put upon a Man's Words or Actions, when he is tryed for his Life. You ought to have a full and satisfactory Evidence to convince you, that he is Guilty, before you pronounce him so; but however you are to consider the Nature of Things, and the Circumstances that attend them. If you can suppose that he went into *Leicestershire*, to King *William's* Friends, and that he was of Opinion, the West was as well Affected to King *William*, as the North; then you make a different Construction from *Sweet*, who tells you, that always when he spake of the King, he understood it of King *James*; and at *Christmas*, when he spoke of the King's Coming, it must be meant King *James*; for King *William* was here before, and he pretends not he had any Authority to raise a Troop for King *William*.

So that, Gentlemen, I must leave it to you upon the whole Matter; if you are satisfied, that Sir *William Parkyns* is guilty of the Matters of which he stands charged, you will find him guilty; you have heard the Evidence, and will consider of it; and if upon the Whole, you are not satisfied, that he is guilty of the Matters charged in this Indictment, then you are to acquit him.

Then an Officer being sworn to keep the Jury according to the Custom, they withdrew to consider of their Verdict, and in less than Half an Hour, returned into Court.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names. *William Northey*,—
Mr *Northey*. Here.

(And so of the Rest.)

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Sir *William Parkyns*, hold up thy Hand, (which he did.) Look upon the Prisoner; how say ye, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty, my Lord.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the Time of the High-Treason committed, or at any Time since?

Foreman. None to our Knowledge.

L. C. J. Jaylor, look to him, he is found Guilty of High-Treason.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it. You say that Sir *William Parkyns* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, or Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

Jury. Yes.

Cl. of Arr. Gentlemen, the Court discharges you, and thanks you for your Service.

While the Jury was withdrawn to consider of the Verdict, Sir John Friend was brought from Newgate to the Bar, in order to his being called to Judgment, and after the Verdict, he address'd himself to the Court thus,

Friend. My Lord, I humbly beseech your Lordship to give leave to read this Paper.

(To which the Court gave no Answer.)

Friend. My Lord, will your Lordship give me Leave to read it.

L. C. J. Ay, if you will.

(Reads.)

Friend. My Lord, I humbly move in Arrest of Judgment, that I am not convicted of Treason by Two Witnesses, as I ought to have been with in the Statute of the 25th of *Edward the Third*: For Mr *Porter* swears, That I with others, in May or June last, sent to the *French King* to invade *England*; he is the only Witness to that Matter. Mr *Blair* swears, That I shewed him a Commission in *Surrey-street*, about two Years since, sign'd by King *James*, and countersign'd *Melford*, to be a Colonel of Horse, and that I gave him some Moneys for the Cherishing of the Men: My Lord, here is no Levying of War, sworn by Mr *Blair*; and Conspiring to levy War not being Treason, I am convicted by one Witness, and therefore I pray Council may be assigned me, to plead this Matter.

L. C. J. Sir *John Friend*, that which you move now, is not in Arrest of Judgment, it is Matter that does arise upon the Evidence, and what you now say, arraigns the Verdict, and the Proceedings upon your Tryal. There were Two Witnesses against you, that is plain. You were not indicted for Levying of War, but for Compassing and Imagining the Death of the King; and we told you the Design of the Invasion, and Conspiring to depose the present King, and restore the late King, was an Overt Act of that High-Treason. The Commission was not so much stood upon, but the Advancing Moneys upon this Account, to *Blair* your Lieutenant Colonel, to give to the Men, that was a plain Overt Act, and so there were certainly two Witnesses against you.

Friend. My Lord, I hope, I can clear my self: I thank God, I am as Innocent as the Child unborn, of the Assassination of the King. I would not have the People think, that I am such a Man.

L. C. J. But you remember, it was sworn you knew of it, and we have told you, that the Design of Restoring the late King by Force, and Deposing the King, are Overt Acts of imagining his Death, if such an Intention be proved, as it was in your Case, and the Jury have found it so.

Friend. My Lord, I humbly beseech you, because I do not understand Matter of Law, and am advis'd to move this in Arrest of Judgment; I desire my Council may be heard to it.

L. C. J. We cannot hear Council, but upon a Matter that arises upon the Record it self, that is, the Indictment. We cannot enter into any Examination of this Matter, that you now speak of, you had a long Tryal yesterday.

Friend. My Lord, I am sorry to give your Lordship any Occasion of Trouble; but I humbly beseech you, if it may be, that I may be heard by my Council, for the Satisfaction of the World; pray, my Lord, hear what they can say.

L. C. J. They cannot say any Thing; no Council in the World that understand themselves, can argue any Thing against what has been so often settled and always practised.

Friend. My Lord, if it be to be granted, I beseech your Lordship to grant it.

L. C. J.

L. C. J. It cannot be granted ; besides the Matter you now move upon, is improper ; it was all considered upon your Tryal. It was told you, we did all agree, that a Conspiracy to levy War to depose the King is Treason, or to invade the Realm is Treason. All this was consider'd at your Tryal, and that is now over.

Parkyns. My Lord, if your Lordship pleases, I desire I may have the Liberty of some Friends and Relations, and a Minister to come to me.

L. C. J. Yes, yes, by all Means.

Parkyns. If your Lordship pleases, that they may come and be private with me, and pray let me have a Rule of Court for it, otherwise I shall not have any Benefit of it.

L. C. J. Yes, yes, it is very fit you should have it ; there shall be an Order of Court for it : See that the Keeper take Care it be done with Safety.

Freind. My Lord, I desire the same Liberty of a Minister, and my Relations and Friends to come to me ; that for what Time I have to live, I may make the best Use I can of it for my Soul, which I hope God will enable me to do.

Then the Court was adjourned until Five a Clock in the Afternoon, and about Six, the Justices returned, and the Court was resumed.

Cl. of Arr. Set Sir John Freind to the Bar : (*Which was done.*) Sir John Freind, hold up thy Hand ; (*which he did.*) Thou standest convicted of High Treason, for traiterously Compassing and Imagining the Death of our Sovereign Lord King William the Third. What canst thou say for thy self why the Court should not give the Judgment according to the Law ?

(*Then being made to kneel, he afterwards stood up.*)

Freind. I have said already, what I have to say in Arrest of Judgment.

Mr Com. Serjeant. Sir, you have heard the Judgment of the Court, as to what you have said, if you have nothing else to offer, the Court must proceed to Judgment.

Cl. of Arr. for Middlesex. Sir William Parkyns, hold up thy Hand ; (*which he did.*) Thou standest convicted of High Treason in Compassing and Imagining the Death of the King, and adhering to the King's Enemies. What canst thou say for thy self, why the Court should not give thee Judgment to die, according to the Law ?

(*He was made to kneel, and rise up again.*)

Parkyns. I have nothing more to offer.

Cl. of Arr. Then Cryer, make Proclamation.

Cryer. O yes ; all Manner of Persons are commanded to keep Silence, while Judgment is in giving, upon Pain of Imprisonment.

Which Proclamation was made on both Sides the Court ; and then Mr. Common Serjeant sitting with the Rest of the Court upon the Bench, pronounced the Sentence.

Mr Com. Serj. You the Prisoners at the Bar, Sir John Freind, and Sir William Parkyns, you have been indicted for High Treason, in Compassing the Death and Destruction of the King : For your Tryal, you have put your selves upon the Country, which Country has found you Guilty. The Offence is the greatest in the Judgment of the Law, that a Man can commit ; and it is justly and reasonably so. For Robbery and Murder are Injuries to private Persons, but Compassing the Death of the King, is Compassing the Destruction of the Father of your Country, and letting in Rapine, Death, and Desolation upon Thousands of People. And even this, the hainoufests of Offences, is capable of Aggravation ; for there have been always Excuses, and sometimes Justifications for Rebellion : And as to Murder and private Revenge, there may be somewhat said in Mitigation from the Violence of Men's Passions. But to sit, and conspire, and consult, and debate the Destruction of a Prince ; no Man yet ever had the Confidence to make an Excuse for it. I would not add to your Affliction ; I am sensible of the severe Judgment that is to follow, and which you have brought upon your selves, and cannot but pity you for the great Burden of Guilt, that you have laid your selves under. I only say this to offer it to your serious Consideration, in the few Moments you have to prepare for another World, and another Judgment. All that remains for me, is to pronounce the Judgment of the Law in these Cases, and the Court does Award it.

That you, and each of you, go back to the Place from whence you came, and from thence be drawn on a Hurdle, to the Place of Execution, where you shall be severally Hanged up by the Neck, and cut down alive ; your Bodies shall be ript open, your Privy-Members cut off, your Bowels taken out, and Burnt before your Faces ; your Heads shall be severed from your Bodies, your Bodies respectively to be divided into Four Quarters, and your Heads and Quarters are to be at the Disposal of the King : And the Lord have Mercy upon your Souls.

Then the Prisoners were carried back to Newgate.

The TRYAL of AMBROSE ROOKWOOD.

Publish'd by AUTHORITY.

Die Martis decimo quarto Aprilis, Anno Regni Regis Gulielmi Tertii Octavo, Annoque Dom. 1696.

THE Court being sat, at which were present the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, Mr Justice *Nevil*, Mr Justice *Powell*, and Mr Justice *Eyres*; the Court proceeded in this Manner.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez: All Manner of Persons that have any Thing more to do, at this Sessions of Oyer and Terminer, holden for the County of *Middlesex*, draw near and give your Attendance. *God save the King.*

Then the Grand Jury were called over, and the Appearances marked, and Witnesses being sworn in Court, to give Evidence to them upon a Bill of Indictment against Alexander Knightley, they in a little Time after withdrew to hear the Evidence.

Then the Keeper of Newgate was ordered to bring his Prisoners to the Bar; (which he did.) to wit, Robert Lowick, Ambrose Rookwood, and Charles Cranburne; who were thus arraigned.

Cl. of Arr. Robert Lowick, hold up thy Hand. (which he did.)

Ambrose Rookwood, hold up thy Hand. (which he did.)

Charles Cranburne, hold up thy Hand. (which he did.)

You stand indicted in the County of *Middlesex*; by the Names of Robert Lowick of the Parish of *St Paul Covent Garden*, in the County of *Middlesex*, Gentleman; Ambrose Rookwood of the same Parish, Gentleman, and Charles Cranburne of the same Parish and County, Yeoman; for that you, together with one Christopher Knightley, of the same Parish and County, Gentleman, not yet taken; not having the Fear of GOD in your Hearts, nor weighing the Duty of your Allegiance; but being moved and seduced by the Instigation of the Devil, as false Traytors against the most serene, most illustrious, most clement, and most excellent Prince, our Sovereign Lord William the Third, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. your supreme, true, rightful, lawful, and undoubted Lord, the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King should bear, and of right ought to bear, withdrawing, and utterly to extinguish

intending and contriving, and with all your Strength resolving, designing, and conspiring the Government of this Kingdom of England, under him our said Sovereign Lord the King that now is, of Right, duly, happily, and well establish'd, altogether to subvert, change, and alter, as also our said Lord the King to Death and final Destruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of England, into intolerable and most miserable Servitude to Lewis the French King to subjugate and intral, the 10th Day of February, in the seventh Year of the Reign of our said sovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Parish of *St Paul Covent Garden*, aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, and contrive, resolve, design, and intend, our said Lord the King that now is, to kill, slay, and murder, and a miserable Slaughter among the faithful Subjects of our said Lord the King, throughout this whole Kingdom of England, to make and cause, and the same your most impious, wicked, and devilish Treasons, and traiterous Compassings, Contrivances, and Purposes aforesaid, to fulfil, perfect, and bring to effect, you the said Robert Lowick, Ambrose Rookwood, and Charles Cranburne, together with the said Christopher Knightley, and very many other false Traytors, to the Jurors unknown, afterwards, to wit, the same 10th Day of February, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, Falsely, Maliciously, Advisedly, Secretly, Traiterously, and with Force and Arms, did Meet, Propose, Treat, Consult, Consent, and Agree, him our said Lord the King that now is, by lying in wait, and Guile, to Assassinate, Kill and Murder; and that execrable, horrid, and detestable Assassination, and Killing the sooner to execute, and perpetrate, afterwards (to wit) the same Day and Year, and divers other Days and Times, at the Parish aforesaid, in the County aforesaid, Traiterously did Treat, Propose, and Consult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what Manner, our said Lord the King, so by lying in wait, the more easily you might kill; and did consent, agree, and assent, that forty Horsemen, or thereabouts, whereof the said Christopher Knightley, you the said Robert Lowick, Ambrose Rookwood, and Charles Cranburne, should be four; and every one of you traiterously took upon himself to be one, with Guns,

Guns, Muskets, and Pistols, charged with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Weapons, being Armed, should lie in wait, and lie in Ambush, our said Lord the King in his Coach being, when he should go abroad, to invade, and that a certain and competent Number of those, Men so armed, should set upon the Guards of our said Lord the King then attending him, and being with him, and should fight with them, and overcome them, whilst others of the same Men so armed, our said Lord the King should assassinate, slay, kill, and murder; and you the said *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, together with the said *Christopher Knightley*, the Treason, and all the traitorous Intentions, Designs, and Contrivances aforesaid, to execute, perform, fulfil, and bring to Effect; afterwards (to wit) the aforesaid Tenth Day of *February*, in the seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Swords, Rapiers, and other Weapons, Ammunition, and warlike Things, and military Instruments, falsely, maliciously, secretly, and traiterously did obtain, buy, gather together, and procure, and cause to be bought, obtained, gathered together, and procured with that Intention, then in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King that now is, as aforesaid to be used, employed, and bestow'd; and the same Premises the more safely and certainly to execute, do, and perform, the aforesaid *Christopher Knightley*, with one *Edward King*, late of High Treason, in contriving and conspiring the Death of our said Lord the King that now is, duly convicted and attainted, by the Consent and Agreement of divers of the Traytors and Conspirators aforesaid, the said Tenth Day of *February*, in the seventh Year aforesaid, went and came to the Place proposed, where such intended Assassination, Killing, and Murder of our said Lord the King by lying in wait, should be done, performed, and committed, to see, view, and observe the Convenience and Fitness of the same Place for such lying in wait, Assassination, and Killing, there to be done, performed, and committed: And that Place being so viewed and observed, afterwards, (to wit) the same Day and Year, their Observations thereof to several of the said Traytors and Conspirators did relate and impart, (to wit) at the Parish aforesaid, in the County aforesaid: And you the aforesaid *Charles Cranburne*, the same Day and Year there, in order the said execrable, horrid, and detestable Assassination, and Killing of our said Lord the King, by the Traytors and Conspirators aforesaid, the more readily and boldly to execute, perform, and commit, advisedly, knowingly, and traiterously did bring and carry between divers of those Traytors and Conspirators, forward and backward, from some to others of them, a List of the Names of divers Men of those who were designed and appointed our said Lord the King so as aforesaid by lying in wait to kill and murder; against the Duty of the Allegiance of the said *Christopher Knightley*, you the said *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, and against the Peace of our said Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in such Case made and provided.

Vol. IV.

How say'st thou, *Robert Lowick*, Art thou Guilty of the High-Treason whereof thou standest Indicted, or Not Guilty?

Lowick. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Lowick. By God and my Country.

Cl. of Arr. God send thee good Deliverance. How say'st thou, *Ambrose Rookwood*, Art thou Guilty of the High-Treason whereof thou standest Indicted, or Not Guilty?

Rookwood. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Rookwood. By God and my Countrey.

Cl. of Arr. God send thee good Deliverance. *Charles Cranburne*, How say'st thou? Art thou Guilty of the High-Treason whereof thou standest Indicted, or Not Guilty?

Cranburne. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be Try'd?

Cranburne. By God and my Countrey.

Cl. of Arr. God send thee good Deliverance.

Cranburne. My Lord, I desire your Lordship would grant me the Favour for my Wife to come to me in private, and that I may have Pen, Ink, and Paper.

L. C. J. Pen, Ink, and Paper, you *Sir John* must have; but as to the other, we *Holt* must consider of it. Keeper of *Newgate*, What has been usual in those Cases?

Keeper. My Lord, we let no Body come to them in private, but their Council.

L. C. J. That's provided for by the Act that allows them Council: But has it been usual heretofore to permit any Body else to be with them in private; the Wife, or any other Relations?

Keeper. It has not.

L. C. J. It is very dangerous if it should; therefore let him have his Wife come to him in the presence of the Keeper:

Cranburne. And Pen, Ink, and Paper, I hope, my Lord?

L. C. J. Yes, yes, that you shall have.

Cranburne. You don't deny me, my Lord, that I may have my Wife come to me?

L. C. J. No, we don't, but she must not be in private with you, for fear of an Escape.

Rookwood. I beg the same Favour, my Lord, to have my Brother come to me, and Pen, Ink, and Paper.

L. C. J. You shall have the same Rule; but you, Keeper, must have especial Care who you do permit to come to them, and be private with them; for it is still at your Peril if any ill Accident happens by your Indulgence to them: And yet it is fit they should have all that is reasonable for preparing for their Defence at their Tryals.

Lowick. And I desire, my Lord, I may have my Sister come to me, and the Liberty of her being in private with me.

L. C. J. Your Friends may come to you at reasonable Times, in the presence of the Keeper; you shall have any thing that is reasonable, but the Safety of the Government must be look'd after. Therefore, Keeper of *Newgate*, take back your Prisoners, and bring them here this Day sevensnight at seven a Clock in the Morning, without any other Order.

They staid at the Bar about half an Hour, the Judges consulting among themselves about the Precept for the Petty Jury upon a late Act of Parliament which has appointed six Days for the Jury to be summon'd before they appear

pear to try any Cause, and upon the last Act in Regulating Tryals in Cases of High-Treason; which requires that the Prisoner shall have a Copy of the Pannel of the Jury duly return'd, at least two Days before his Tryal.

Then the Prisoners were carried away; and the Grand Jury withdrew to consider of the Evidence against Knightley, and in a Quarter of an Hour came back, and being called over, delivered in a Bill to the Court.

Cl. of Arr. Gentlemen, you are content the Court shall amend Matter of Form, or false Latin in this Indictment, without altering any Matter of Substance without your Privy.

Jury. Yes.

Cl. of Arr. Then, Gentlemen, you may go for this Time; and you are to take Notice if there be Occasion at any Time to call you together, you shall have sufficient Warning given you beforehand. This is *Billa Vera* against Alexander Knightley for High-Treason.

Then the Judges resumed the Debate among themselves, and at last resolved that there should go three several Venires for the Petty Jury, returnable this Day sevensnight; one to try between the King and Robert Lowick, the second to try between the King and Ambrose Rookwood, and a third between the King and Charles Cranburne; because, though the Indictment be against them jointly, yet it was a several Offence in every one of them; and they might sever in their Challenges, and that would be troublesome, and therefore it was thought best to sever them in their Tryals; and therefore the Court adjourned for an Hour or something more, while the Precepts for the Jury were preparing, and according to the Adjournment met, and signed and sealed the Precepts, and then adjourned the Sessions of Oyer and Terminer until this Day sevensnight, at seven in the Morning.

Die Martis Vicesimo primo Aprilis, Anno Regni Regis Willielmi Tertii Octavo, Annoq; Dom. 1696.

THE Court sat about Eight a Clock, at which were present a great Number of Noblemen, and Persons of Quality who were in the Commission, and Seven of the Judges; to wit, the Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr. Justice Nevile, Mr. Justice Powell, Mr. Justice Eyres, and Mr. Baron Powis.

Cl. of Ar. Cryer, Make Proclamation.

Cryer. O yes, O yes, O yes. All manner of Persons that have any thing more to do at this Sessions of Oyer and Terminer, adjourned over to this Day, draw near and give your Attendance. And God save the King.

Cl. of Ar. Cryer, Make Proclamation.

Cryer. O yes, Sheriffs for the County of Middlesex return the Precepts to you directed, upon Pain and Peril will fall thereon.

The Under Sheriff returned the Precepts.

Cl. of Ar. Mr. Baker, pray, Who do you intend to begin with?

Mr. Baker. With Ambrose Rookwood.

Cl. of Ar. Cryer, Make Proclamation.

Cryer. O yes, You good Men of the County of Middlesex summoned to appear here this Day, to try between our Sovereign Lord the King, and the Prisoners that are, and shall be at the Bar, answer to your Names as you shall be called, every one at the first Call, and save your Issues.

The whole Pannel was called over, and the Appearances of those that answered Recorded; and the Defaulters were again called over.

Cl. of Ar. Keeper of Newgate, Set Ambrose Rookwood to the Bar. (Which was done.) You the Prisoner at the Bar, Ambrose Rookwood, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Tryal of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, before they be sworn.

Sir B. Shower. If your Lordship pleases, We have a Doubt or two to propose to your Lordship, in respect of the Tryal this Day: But before I offer it, we beg your Favour for a Word in behalf of our selves.

My Lord, We are assigned of Council, in pursuance of an Act of Parliament, and we hope that nothing which we shall say in Defence of our Clients, shall be imputed to our selves. I thought it would have been a Reflection upon the Government and your Lordship's Justice, if being assigned we should have refused to appear; 'twould have been a Publication to the World, That we distrusted your Candour towards us in our future Practice upon other Occasions. But, my Lord, there can be no Reason for such a Fear, I am sure I have none; for we must acknowledge, we who have been Practisers at this Bar especially, that there was never a Reign or Government within the Memory of Man, wherein such Indulgence, such easiness of Temper hath been shewn from the Court to the Council, as there always hath been. Never was there such Freedom and Liberty of Debate and Argument allowed to the Bar, and we thank your Lordship for the same.

My Lord, We come not here to countenance the Practices for which the Prisoner stands accused, nor the Principles upon which such Practices may be presumed to be founded; for we know of none, either Religious or Civil, that can warrant or excuse them. But the Act of Parliament having warranted the appearing of Council for Persons accused to make Defence for them, we hope your Lordship will give us leave to make what Objections we can on their behalf.

L. C. J. Holt. Look ye, Sir B. Shower, go on with your Objections; let us hear what you have to say.

Sir B. Shower. My Lord, It appears to be a Doubt to us, upon this Act of Parliament, whether this Cause can be tryed this Day: And if it be a Doubt, we hope, though it should not have that Weight with the Court, that we apprehend it has; yet your Lordship will excuse us, and settle it according to your Judgment. The Act requires, That all that shall be Accused and Indicted for High-

High-Treason, whereby any Corruption of Blood may, or shall be made to any such Offender or Offenders, or to any the Heir or Heirs of any such Offender or Offenders, or for Misprision of such Treason, shall have a true Copy of the whole Indictment; and afterwards shall have Copies of the Pannel of the Jurors who are to try them, duly returned by the Sheriff and delivered unto them. And every of them so Accused and Indicted respectively two Days at the least before he or they shall be Tryed for the same. Now if your Lordship will please to cast your Eye upon this *Venire Facias*, and it will appear to be returned but this Day, and that is not according to the Intent of this Law. And it is impossible then, if it be as we apprehend it, and put it, that this Tryal should go on at this Time; and that this Construction should be so as we say; not only the Words, but as we take it, the Intent and Meaning of the Act of Parliament too are for us, that there ought to have been a Copy of the Pannel after the Return two Days before the Tryal. For in the first Place, My Lord, the Words are plain: It must be a Copy of the Pannel duly returned by the Sheriff. Now though it be a Copy of the Array of the Pannel which we have delivered to us, yet it is not a Copy of the Pannel of the Jurors returned; for it is no Return till it come into Court. And the King's Council must admit, that in the Case of all Writs returnable, it cannot be said that there is a Return, where there is a Writing upon the back, or a Label annexed, till it be actually returned into Court. As in the Case of a *Pieri Facias*, or a *Mandamus*, an Action for a false Return cannot lye, till the Writ be actually returned. For such Action must be brought into the County of *Middlesex*, where the Court resides, before whom the Return is made, and not in the County where the Sheriff lived that made the Return; for it is not a Return till filed in Court. Now here the Words of the Act are; *He shall have a Copy of the Pannel of the Jurors who are to try him, duly Returned by the Sheriff two Days before the Tryal.* Now we humbly insist that the Words duly Returned must be antecedent to the having the Copy, or else he cannot be said to have a Copy of the Pannel duly Returned. The Act of Parliament does not say which shall be duly Returned; and therefore there does arise a Doubt, whether your Lordship will not direct us to have a Copy after the Return made, which is but this Day.

Mr. Phipps. If your Lordship pleases to spare me a Word of the same side: We take it, that by this Act of Parliament the Jury must be duly returned before the Pannel is delivered to us. Now the Return is the Answer that is Indorsed upon the Writ with the Pannel annexed, and delivered into Court; for the Return is to the Court, and till it be delivered into Court, it cannot properly be said to be a Return. We acknowledge the Copy of this Pannel has been delivered unto us two or three Days ago. But the *Venire* being not returned till to Day, we think we have not a Copy of the Pannel within the Intent of, and according to the Act of Parliament. And I desire to put your Lordship this Case: This Act of Parliament does likewise provide, that the Prisoner should have a Copy of his Indictment five Days before his Tryal, to enable him to consult with his Council how to plead and defend himself; suppose then a Copy of a Bill that is intended to be presented to the Grand Jury, be

delivered to the Person accused five Days before the Grand Jury are to meet, and they afterwards meet, and find it, and the Party is brought immediately, and arraign'd upon it: This is a true Copy of the Indictment, yet certainly the Intent of the Act of Parliament is not answered, for it was not a true Copy of the Indictment at the Time it was deliver'd. And I take this Case to be under the same Reason. This is not a Pannel duly returned, till now; and therefore by Consequence we have not that Advantage that this Act of Parliament intended to give us; for which Reason we humbly apprehend we ought not to be tryed to Day; which we submit to your Lordship.

L. C. J. What say you to it, Mr. Attorney.
Mr. Attorney General. My Lord, with *Sir Thomas* Submission, this Objection will receive a Trevor very plain Answer. If I understand it aright, they say that they ought to have a Copy of the Pannel after it is returned, and that it cannot be said to be duly delivered, according to the Provision in this Act of Parliament, till after the *Venire facias* be duly returned into the Court, and then they are to have it two Days before they are tryed. They say the *Venire facias* is returned but to Day, and so the Copy delivered to them, is not pursuant to the Act of Parliament; and so they cannot be tryed to Day: This I take to be the Objection. But with Submission, *My Lord*, it will be plain both by the Words of the Act, and the Reason and Intention of it, that there is no Occasion at all, nor no Necessity of having the Writ returned before the Copy of the Pannel be delivered. The Words of the Act of Parliament are these; *That every Person and Persons who shall be accused, indicted, and tryed for Treason, or Misprision of Treason, after the 25th of March, 96, shall have Copies of the Pannel of the Jurors who are to try them, duly returned by the Sheriff, and delivered to them two Days before they be tryed.* Now, first, *My Lord*, I think it is apparent what the Meaning and Design of the Act of Parliament was, that the Prisoner should know two Days before the Tryal, who were the Jury that were to pass upon him, that he might have an Opportunity to consider how he should make his Challenges as he thought fit, and Time to enquire into the Qualifications of them, that if there were any particular Ground of Challenge, he might not lose that Benefit; so that if he has a Copy of the Pannel array'd by the Sheriff, which is afterward returned by the Sheriff into Court, and there is no Variation of that Pannel afterwards; then certainly the End and Intent of the Act is entirely pursued; for by that Means the Prisoner has the Names of all the Jury returned, and are afterwards called, and has a full Opportunity of making such Challenges as he thinks fit. And as the Reason and Intent of the Act is answered by this Construction, so the very Words of the Act are answered: For it is not said in the Act, that he shall have a Copy of the Pannel after it is return'd, but it is said a Copy of the Pannel duly returned by the Sheriff; that is, when the Sheriff has arrayed a Pannel, then he is to have a Copy of that Pannel; and if afterwards the Sheriff return the same Pannel into Court, is not this a Copy of the Pannel duly return'd? With Submission it is, and sufficient to answer both the Words and Intention of the Act of Parliament. It is true, *My Lord*, if the Act of Parliament had said he shou'd have a Copy of the Pannel after it was return'd, then we

we could not have said but that the Objection wou'd hold. But when the Words are general, and it is most reasonable to be interpreted that the Copy is to be delivered when the Array is made, because that answers the Intent and End of the Act of Parliament, which was to enable the Prisoner to make his Challenges, we take that to be sufficient; and if another Interpretation shou'd be made, it wou'd render the Tryal in such Cases liable to all the Mischiefs in the World, and make it impracticable that any Person shou'd be try'd; at least it wou'd introduce a new Method of Proceedings that never was practised, nor ought to be introduced, unless this Act of Parliament by exprefs Words, had appointed and constituted such a new Method; and we suppose your Lordship will never make any such Construction, that the Act intended a new Method, unless expressly declared; for if it were, as they would have it, that the Copy of the Pannel was not to be delivered till after the Return of the Writ, then the Prisoner cannot be tried upon the Return of the Writ; for upon the return of the Writ, the Jury must be brought to the Bar, the Prisoner must be brought to the Bar, and adjourned over to a further Time, that in the mean Time a Copy may be delivered to them. I believe that they can never show any President that there was such an Adjournment of a Jury of Life and Death, over to another Day, for a Person to have a Copy of the Pannel, to enable him to his Challenges; and either that must be the Consequence, or else the Jury must not come upon the Return of the *Venire facias*, but there must go a *Habeas Corpora*, and the Prisoner tried upon that *Habeas Corpora*: For first there must be the Return of the Writ, then the Copy of the Pannel delivered, then the *Habeas Corpora* returnable another Day; and upon that the Tryal must be had: But I believe there can be no Instance given of a Tryal for Treason upon a *Habeas Corpora*. Now if the Parliament had intended that they wou'd not have the Copy of the Pannel deliver'd till after the Return of the *Venire facias*, they would certainly have express'd and provided how the Method of Tryal should have been; that is, that either the Jury should have been adjourn'd over till another Day, or else brought to the Bar upon a *Habeas Corpora*; which is the only way that can be thought of. Indeed, My Lord, I do agree, that if the Sheriff should give a Copy of the Pannel, and afterwards should vary that Pannel, tho' but in one Name, that would not answer the End of the Act of Parliament, because the Prisoner is deprived of the Opportunity of knowing the Name of the Person that he so altered, in Order to his making his Challenges against him: But if the Sheriff do return the same Persons that are in that Copy delivered to the Prisoner, then we do, to all Intents and Purposes, answer the End of the Act of Parliament, and avoid the absurd Construction that they would make of this Act for the Changing the Method of Tryals, and no Body can well tell what Method shou'd be pursued: But certainly if the Act of Parliament intended a new Method shou'd be pursued, they wou'd have described and settled what it shou'd be.

Mr Solicitor General. If your Lordship pleases to spare me a Word of the same side; my Lord, this is an Objection that has been foreseen, and I think has been prevented; for, with Submission, I take it the Act has been sufficiently answered both as to the Words, and as to the Intent of it in the Pri-

soners having the Copy of the Pannel before the Jury be returned; there must be such a Thing as a Pannel array'd before the Jury be summon'd, and therefore it is sufficient that the Prisoner have a Copy of that Pannel so many Days before his Tryal; which was only intended for that particular Reason, that he might be provided sufficiently to make his legal Challenges. Certainly within the Intent of the Act of Parliament it is well enough, if he had but a Copy of the Pannel two Days before the Return of the Writ, provided the Jury was not alter'd that was array'd, nor any other Names put in but those that he had a Copy of before. Now, my Lord, I think this Act of Parliament must be taken according to the Intent and Meaning of it, or else it will bear hard upon the Prisoner, and harder sure than it was designed it should: This Act says, he shall have a Copy of his Indictment so many Days before his Tryal; now I would fain know whether they would have it construed, that the Copy does not need to be delivered till after Issue joyn'd, which must be if their Doctrine hold true, that the Act is to be construed according to the strict Letter of it, for Tryal is the Tryal of the Issue; what if the Indictment be delivered five Days before the Tryal, tho' after Issue joyn'd, it is well enough according to such an Exposition, for the arraignment of the Prisoner is no Part of the Tryal, and yet it was the Intent of the Parliament that he should have a Copy of the Indictment five Days before he was arraigned, and that for this Reason, because he might have several Pleas to plead and Objections to make before he pleaded the General Issue; he might have Pleas in Abatement, which after Plea pleaded of Not guilty he could not have the Advantage of, nor could he afterwards move to quash the Indictment, which he might otherwise have good Reason for, if he had the Copy before he was put to plead; so that I take it the Act is to be interpreted every where according to the Intention of it, and the Prisoner at the Bar according to the Intention of the Act, has had a Copy of this Indictment five or six Days before his Arraignment, and therefore we have acted according to the Purpose and Meaning of the Parliament, and likewise he has had a Copy of the Pannel of the Jurors that are to try him, which is duly returned by the Sheriff, which is likewise according to the Act of Parliament: As for what they say that even a Copy of the Indictment before it be found would not be good according to this Act; that's true, but the Case is not the same, nor the Reason of the Case alike between that and the Pannel of a Jury, because it is sufficient in Law to make it a good Pannel if it be array'd by the Sheriff before the Jury be summoned, for the Sheriff must array and compleat his Pannel to let his Bailiff know who must be summoned, but in the Case of an Indictment, tho' a Bill be first form'd by the Clerk, yet it is not look'd upon as a formal Indictment in point of Law till it be found by the Jury as their Verdict, and preferred to the Court, and it is not necessary that this Indictment should be formed for the Jury before they find it, for they are properly to make their own Presentments themselves; and the ancient Practice was, that they only presented the Fact, and the Matter was put into Form afterwards by the Court, and in many Cases it is so at this Day, as we have had some Instances lately; but as to the arraying of a Pannel it always was

was so, and always must be so array'd by the Sheriff before the Jury summoned, and there's the Difference between the giving a Copy of an Indictment and the Copy of a Pannel, the one is taken Notice of in Point of Law to be necessary, the other is not. This giving a Copy of the Pannel, my Lord, we say is within the Intent of the Act, which was only to enable Persons accused to make their just Challenges and that they may as well do when a Copy is delivered after it is array'd by the Sheriff, as, when it is return'd by the Sheriff, and being so done, with Submission, it is well done within the Words, and within the Intent of this Act of Parliament.

Mr *Conyers*. My Lord, the Words of this Act of Parliament are, that they shall have a Copy of the Pannel of the Jurors who are to try them duly returned by the Sheriff and delivered to them, and this two Days before the Tryal: My Lord, that this is the Pannel of the Sheriff of the Jurors that are to try them as soon as it is array'd has been observ'd already; now it would be a forc'd Construcion to construe these Words that follow, duly returned by the Sheriff, to be meant, that a Copy should be delivered after the Jury is returned, because that would be a Delay of Justice, and keeping off the Tryal longer than was intended by this Act of Parliament, and more than will answer the End of this Law, for the End of it was to give the Prisoner all Benefit and Advantage of Exceptions against any of those that were to try him, and if he has this Pannel two Days before his Tryal, he has that Benefit the Law intended him. Now, my Lord, as to what has been said of an Indictment, which by this Law he is to have a Copy of too, that is plainly quite another Case; for it is not an Indictment till it be found, and so answers not the Words nor Intention of the Act till found by the Grand Jury, till then it is not a Copy of his Charge, and therefore by no Construcion can it be called a Copy of the Indictment. I think I need not trouble your Lordship any further in this Matter, because this Objection was foreseen, and has been already considered of by the Court upon the Prisoners Arraignment.

Sir *B. Shower*. My Lord, in Answer to what Mr. Solicitor has said, that there is as much Reason to expect that the Copy of the Indictment should not be delivered till after Plea pleaded, as that the Pannel should not be delivered till after the Jury return'd, because in the Case of the Indictment it is said so many Days before the Tryal, and the Tryal cannot be till Issue joyn'd, there can be no Weight in that Objection at all; for the Words of the Act are quite differently penned in the Case of the Indictment, from what they are in the Case of the Pannel, for tho' it be said it should be done five Days before the Tryal, yet it is added, in Order to the advising with Council how to plead, which must be before Plea pleaded, and therefore it must be absolutely necessary to be done before the Arraignment. My Lord, I have propos'd my Doubt, it may have Consequences on the one Side and the other, we submit intirely unto your Lordship's Judgment, it is a new Law, and never has received any Opinion; the Words of it are, *duly return'd by the Sheriff*, and the Question is, Whether a Copy of the Pannel upon the Array before it be return'd be a Copy of the Pannel duly return'd, tho' the same Pannel be afterwards duly returned.

Mr. *Phipps*. My Lord, Mr. Attorney General owns, that the Pannel after it is arrayed may be amended and altered by the Sheriff, and it was never intended by this Act of Parliament, that any Copy of the Pannel should be delivered to the Prisoner but of those Men that were really returned, so that we take it we ought to have it two Days after the Return and before the Tryal, for certainly it must be a Copy of the Men returned, which if the Sheriff may alter at any Time before the Return, the Intent of the Act of Parliament can never be answered by any Copy but what is a true Copy of the Return. Mr. *Conyers* would answer the Objection that I made about a Copy of the Indictment by this, that it is not an Indictment till it be found by the Jury, but I think it is no Answer to our Objection at all, tho' it be but a Copy of the Bill intended to be presented to the Grand Jury, yet if the Grand Jury afterwards find it is as true a Copy of the Indictment, as this is a Copy of the Jury intended to be returned, and afterwards returned. As to what they say, that this will introduce a new Method of Tryal, contrary to all Form or Proceedings, that can be no Objection neither; for if it be so, we can't tell how to help it, the Parliament have thought fit to have it so, and we must submit to take it as the Law has made it: If there be a Necessity for a *Habeas Corpora* upon the Provision made in this Act, so it must be, for we must take the Law as it is. We submit our Objection to your Lordship; we think we have not had the Benefit of this Law.

Mr *Comper*. Surely, my Lord, what Mr *Phipps* has now said has no Weight in it; that because the Sheriff had it in his Power to alter the Pannel before it was returned, that therefore this is not now a true Copy of the Pannel of the Jurors who are to try the Prisoner, duly returned by the Sheriff; which are the Words in the Act. It is true, if the Sheriff had in fact altered the Pannel from what it was, and return'd it so altered into Court, no doubt of it the Prisoner would be very well intitled to make this Objection, that he had not a Copy of the Pannel, or the Names of the Jurors that were summoned to try him; but now we can aver, that we have pursued this Act of Parliament literally; for in Answer to their Objection, we may ask this Question of them upon the Words of the Act, Have you not had a true Copy of the Names of those that are to try you, and are duly returned by the Sheriff for that Purpose; and was not that Copy delivered unto you above two Days ago? They cannot say they have not had it so, and if they cannot say so, then both the Words and Meaning of the Act of Parliament are in every respect answered; if when the Jury come to be called the Prisoner finds the Pannel to be altered, he has Reason to object, and will have the Benefit of the Objection, that he has not that Advantage which the Law intended him, but till that prove to be the Fact, we think here is a full Compliance with this Law.

Mr *Soll. Gen.* Sir *Barth. Shower* mistakes my Objections about the Copy of the Indictment, for we say, if the Intent of the Act of Parliament be complied with, it is sufficient, especially where the Words are any way doubtful; according to the Words of this Act of Parliament, a Copy of the Indictment need to be delivered but five Days before the Tryal; but it appearing that the Intention of these Law-makers was, that he should

should have a Copy of the Indictment to enable him to plead to it if he had Cause, therefore tho' the Words be before the Tryal, we have taken it that he should have a Copy five Days before his Arraignment, and so we have complied with the Meaning of the Law in that point, as we have also in this, which was, we take it, only to enable the Prisoner to make his Challenges, and if that be done two Days before his Tryal, with Submission, it fully answers this Law.

L. C. J. Have you done, Gentlemen?

Counc. Yes, my Lord.

L. C. J. Then look you, Sir *B. Shower*, as to this Point that you now insist upon, we have had it under Consideration heretofore; we were here this Day seven-night, and then we did consider in what Method we should proceed, so that the Prisoner might have the Benefit intended him by this Act of Parliament: The Act of Parliament does design in the first place, that every Prisoner that is to be tryed for High Treason should have a Copy of his Indictment, at least five Days before the Tryal, that I think was all that the Makers of this Act of Parliament intended at the first; but then there being subsequent Words, which shew the Reason why they gave him the Copy so long before the Tryal; which is, that he might advise with his Council what to plead; these Words we conceive have given the Prisoner a further Time than what was originally intended, therefore we have thought it necessary that the Prisoner should have a Copy of his Indictment five Days before he be arraigned, which is five Days before he was put to plead; and your Client, the Prisoner at the Bar, has had the Benefit of this Act in that respect before we arraigned him; then after he has pleaded, the Question was, when he was to have a Copy of the Pannel: Now the Design of this Act of Parliament was, That the Prisoner should have a Copy of the Pannel two Days before his Tryal, in Order that he might consider of the Persons that were to try him; that he might inform himself of their Qualities, Tempers, and Dispositions; that so he might make use of the Benefit the Law gives him of Challenging Five and Thirty, without shewing any Cause, if he did not like the Men, and as many more as he should think he had good cause to challenge: Now in this Case, the whole Design of this Act of Parliament is answered, for he has had a Copy of the Pannel, as you your selves acknowledge, two Days before the Day of his Tryal, so that he has the full Benefit that the Act of Parliament intended; he is by this Copy as well enabled to make his Challenges as the Law design'd he should be, and has had the same Time allowed him that the Act of Parliament meant he should have; then supposing the Design of this Act of Parliament be fully answered and complied with in the Case. The next Question is, whether the Words of the Act are satisfied, for we would be very loth, in a Case of this Nature, where an Act of Parliament intends a Favour to a Prisoner that stands at the Bar for his Life, to abridge him of any Part of that Favour which the very Words of the Act would allow him, tho' the Intent of the Act of Parliament were answered otherwise: Now in the first place it is observable, that the Act of Parliament does not say, that the Prisoner shall have a Copy of the Return, nor does it say, he shall have a Copy from the Court, but

he shall have a Copy of the Pannel of the Jurors duely returned that are to try him; now if the Sheriff array his Pannel several Days before the Tryal upon the *Venire facias*, and does give him a Copy of that very Pannel, which Pannel is afterwards returned in Court. Has not he then a Copy of the Pannel duely returned? Does not this answer all the Words of the Act? For you your selves say that it is not said in the Words of the Act, that the Copy shall be delivered after the Pannel returned, nor does there need a Copy of the very Return. Surely we must not carry it farther than the Words, if the Meaning be complied with, and we think this answers both Words and Meaning: It is a Copy of the Pannel; and a Copy of that Pannel that's duely returned. Now to make another Construction would indeed not only alter the usual Course of Tryals, but be contradictory to the very Process it self. We are by the Course of Law to award Process to summon a Jury to appear at a certain Time, to try the Issue joined between the King and the Prisoner; and yet when we have done this, and the Jury thereupon are summoned and do appear, they may go as they came; for the Issue cannot be try'd, because after the Return, the Prisoner must have a Copy of the Pannel two Days before he can be tried. I do think the Design of the Act of Parliament, and the very Words of the Act are fully satisfied in giving a Copy of the Pannel two Days before the Return. We had this Matter under our Consideration before, and upon Debate among our selves, we did think fit to award the Precept returnable this Day, and resolved to try the Prisoner this Day, unless better Reasons were offered us to alter our Opinion, and we are not satisfied, that any such better Reason has been given, but that this Tryal ought to go on, the Prisoner having the full Benefit that was designed him by this Act of Parliament. And the Giving a Copy of the Pannel that is return'd, tho' before the Return, sufficiently satisfies the Words of the Act, no other Construction can be made without great Absurdities: This is my Opinion.

Sir B. Shower. My Lord, I hope we shall be excused for our Client, we have another Doubt to propose to the Court.

L. C. J. You have had my Opinion upon this Point, if my Lords and Brothers are of another Opinion, they will tell you.

Judges. No, my Lord, we are all of the same Opinion.

L. C. J. My Lord Chief Justice of the Common Pleas, and my Brothers are all of the same Opinion.

Sir B. Shower. My Lord, we say we have another Doubt to propose upon this Act of Parliament: It is a new one, and never put in Practice till now, and therefore we hope your Lordship will please to excuse us, if we offer our Objections, because there has yet never been a Determination about it, and we are assigned of Council by your Lordship.

L. C. J. Never make Apologies, Sir *Bartholomew*, for it is as lawful for you to be of Council in this Case, as it is in any other Case where the Law allows Council. It is expected you should do your best for those you are assigned for, as it is expected in any other Case that you do your Duty for your Client.

Sir B. Shower. My Lord, our Exception is this, we say that this Tryal cannot go on at this Time, upon this Act of Parliament, because we have no true

true Copy of the whole Indictment, it does not appear, in the Copy we have delivered to us, before whom it was taken, or whether it was taken at all, or in what Place it was taken; it says only *Middlesex* in the Margent, and then *Juratores pro Domino Rege presentant*: That might be before the Justices of the Peace at the Quarter-Sessions, or it might be at the Monthly Sessions at *Hicks's Hall*; or it might be at the Sessions at the *Old Baily*; or it might be before Commission of *Oyer and Terminer*, as perhaps it really was; but *non constat* where it was taken, nor how it comes hither: It might be before your Lordship here, as we believe it was, but this Copy not letting us know where and how it was taken, we think we have not the Benefit of this Law; for the Party accused is by this Act of Parliament to have a Copy to advise with Council, that he may be enabled to plead. And that is the Reason why the Words of this Act are so penned, that he shall have a Copy of the whole Indictment, which we cannot plead to, unless we know where it was taken, if we should have Occasion to plead any special Matter. And besides, my Lord, there is another Reason why we should have the whole Indictment to enable us to plead, because if we had the *Caption*, it might perhaps appear, that the Indictment was taken before the Time of the Fact alledged in the Indictment, and then that would make it vicious; it might be before the 9th of *February*, when this Treason is said to be committed; and then we ought not to be brought to Tryal. Now the Design of this Act of Parliament, in giving the Prisoner a Copy of the Indictment so long before the Tryal, was not only to enable him to make his Defence upon the Tryal, but also to advise with Council to plead; for so the Words are, the better to enable him to plead. Now we say to answer this End, it is necessary we should have a Copy of the whole Indictment, as it stands before your Lordship in Court. And another Reason is this, it is no Indictment, unless it be presented by the Jury, as their Inquisition upon Oath, unto some Court that has Jurisdiction of the Matter: What we have delivered to us is only a Copy of a Bill, as to be delivered to a Grand Jury, to be found; *non constat*, that it is found. Now the Intent of the Act of Parliament being to give the Prisoner this Advantage to enable him to plead, he may have several Pleas, of which he might take a legal Advantage if he had a Copy of the whole, which he knows not how to come at now; and in truth it is very necessary, because if he be tried upon an Indictment found in another County, then these Commissioners have not a legal Authority to try him; and if the Tryal should go on, and he be acquitted, he is subject to be indicted and tried again, and never can relieve himself by the Acquittal upon such an Indictment before Persons that had no Authority to try him. I doubt he can never plead the Acquittal, because he cannot make out that he was duly try'd and acquitted: And for these Reasons we humbly submit it to your Lordship, whether we have had the Benefit of this Law, in having a Copy of the whole Indictment to enable us to plead; and if we have not, till we have that Benefit, we humbly conceive this Tryal ought not to go on.

Mr *Phipps*. My Lord, the Question is whether the Style of the Court, the Persons before whom it was taken, and to whom the Presentment is made, the Time when it was taken, and the

Place where, ought not to appear in the Indictment. This Law requiring that the Prisoner should have a Copy of the whole Indictment to enable him to plead; for if it should happen, that the Indictment was taken before Persons that had no Jurisdiction, then I believe it will not be denied but that the Prisoner might plead to the Jurisdiction, and there might be several other Pleas that he might take Advantage of. I would desire to know of the King's Council, whether ever they saw a Copy of an Indictment given in Evidence, or pleaded without the *Caption*. It is not a true Copy without it; there ought to be the Time, the Place, and the Style of the Court before whom it is taken.

Mr *At. Gen.* Truly, my Lord, I think I need say no more to this Objection, than that it does not come at a proper Time; for with Submission, if the Prisoner will upon this Act say he has not had a Copy of his Indictment to enable him to plead, he ought to have taken the Advantage of it before he does plead, that is the proper Time for him to object this Matter to the Court, for if after he has had such a Copy as this Prisoner has had, he does submit to plead, with Submission it is too late to come at his Tryal and make this Objection, he cannot be received to make it after.

L. C. J. That is a full Answer, Mr Attorney.

Mr *At. Gen.* I think it is, my Lord, with Submission, not that we would wave giving other Answers to it, if it were in a proper Time; but the Method of proceeding must be, and we think we have no Occasion at this Time to say any Thing more to this Objection.

L. C. J. No, no, that is a full Answer in this Point, for look ye, you that are of Council for the Prisoner, when once you have pleaded, you admit you have had a Copy; for the Copy was given you to enable you to plead, and when you have pleaded, you have pass'd by all Advantage that you could have from the Copy, as to any Plea that you can make: For it's taken for granted ye had a Copy to enable you to plead, and to advise with your Council about it; since you did plead, and do not insist upon it at the Time of your Arraignment that you had not such Copy.

Sir *B. Shower*. My Lord, we have proposed one Doubt, and we humbly submit it to the Court.

Mr *Sol. Gen.* It was their own Fault that this Objection was not made in Time.

L. C. J. That Doubt of yours may serve at another Time, but now certainly it is quite out of Time.

Mr *Sol. Gen.* Nay, my Lord, even upon the Arraignment that would not serve their Turn neither.

L. C. J. We will not enter upon that now, pray go on to swear the Jury.

Cl. of Ar. You the Prisoner, look to your Challenges, as I told you before. Cryer, call Sir *Jeremy Sambrook*.

Cryer. *Vouz, avoz.*

Sir *B. Shower*. Mr *Rookwood*, you are to make your own Challenges.

Rookwood. I do not challenge him.

Cl. of Ar. Then hold Sir *Jeremy* the Book.

Sir *Jer. Sambrook*. My Lord, I am incapable of serving upon this Jury, for I have been deaf this

several Years, this Dozen Years; I cannot hear what is said in Court, though I am now so near the Court, I could not hear what your Lordship said; nor what was said at the Bar. I have a Certificate here, if your Lordship please to have it read; and most of the Persons of Quality here about the Court know it to be true.

Mr At. Gen. My Lord, I am afraid it is so.

L. C. J. Nay, if it be so, it is not fitting that he should be upon the Jury, when he can't hear what's said: You must excuse Sir Jeremy Sambrook. Go on to the next.

Cl. of Ar. George Ford.

Cryer. *Vous avoz.*

Cl. of Ar. Look upon the Prisoner.

Rookwood. I challenge him.

L. C. J. Mr Ford, you must not go away, for you are upon another Pannel, wherein you may be employed, tho' you are now challenged.

Cl. of Ar. William Underhill.

Rookw. I challenge him.

Cl. of Ar. William Withers.

Rookw. I challenge him.

Cl. of Ar. Samuel Powell.

Rookw. I do not except against him.

Cl. of Ar. Then swear Mr Powell.

Cryer. Look upon the Prisoner. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Cl. of Ar. Thomas Trench.

Rookw. I challenge him.

Cl. of Ar. John Wolfe.

Rookw. I challenge him.

Cl. of Ar. James Bodington.

Rookw. I challenge him.

Cl. of Ar. John Raymond.

Rookw. I challenge him.

Cl. of Ar. Richard Marsh. (He did not appear.)

George Haws.

Rookw. I challenge him.

Cl. of Ar. Francis Barry.

Rookw. I challenge him.

Cl. of Ar. Arthur Bailly.

Rookwood. I except not against him. (He was sworn.)

Cl. of Ar. John Webber.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Thomas Glover.

Rookw. I challenge him.

Cl. of Ar. Dormer Sheppard.

Rookw. I challenge him.

Cl. of Ar. George Tredway.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Matthew Bateman.

Rookw. I challenge him.

Cl. of Ar. Timothy Thornbury.

Rookw. I challenge him.

Cl. of Ar. James Partherich.

Rookw. I challenge him.

Cl. of Ar. Thomas Freeman.

Rookw. I challenge him.

Cl. of Ar. Joseph Blithit.

Rookw. I challenge him.

Cl. of Ar. Timothy Lenney.

Rookw. I have nothing to say against him. (He was sworn.)

Cl. of Ar. John Harris.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. John Billers.

Rookw. I challenge him.

Cl. of Ar. Richard Bourne.

Rookw. I challenge him.

Cl. of Ar. George Carter.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Francis Chapman.

Rookw. I challenge him.

Cl. of Ar. Alexander Forth.

Rookw. I challenge him.

Cl. of Ar. Thomas Playsted.

Rookw. I challenge him.

Cl. of Ar. William Esley.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. John Marsh.

Rookw. I have nothing to say against him. (He was sworn.)

Cl. of Ar. Samuel Hooper. (He did not answer.)

L. C. J. Did Mr Hooper appear?

Cl. of Ar. Yes, my Lord, he is mark'd as appearing.

L. C. J. Then you ought to call him again, and set a Fine upon his Head.

Cl. of Ar. Cryer, call Samuel Hooper.

Cryer. Samuel Hooper, come into Court and give your Attendance upon Pain of ten Pound, for the Court has recorded your Appearance.

Cl. of Ar. John Hall.

Rookw. I challenge him.

Cl. of Ar. Nicholas Roberts.

Rookw. I challenge him.

Cl. of Ar. William Partridge.

Rookw. I challenge him.

Sir B. Shower. How many has he challenged Mr Hardesty?

Cl. of Ar. I will tell you Sir Bartholomew, — he has challenged 24.

Sir B. Shower. Well then, go on, Sir.

Cl. of Ar. Peter Laveane.

Rookw. I challenge him.

Cl. of Ar. Thomas Moody.

Rookw. I challenge him.

Cl. of Ar. Richard Bealing.

Rookw. I challenge him.

Cl. of Ar. Thomas Evans.

Rookw. I challenge him.

Cl. of Ar. Thomas Rammage.

Rookw. I challenge him.

Cl. of Ar. Edward Townesend.

Rookw. I challenge him.

Cl. of Ar. William Gunston.

Rookw. I challenge him.

Cl. of Ar. Samuel Freebody.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Philip Wightman.

Rookw. I challenge him.

Cl. of Ar. There are now Thirty two challenged. John Wyberd.

Rookw. I challenge him.

Cl. of Ar. William Strowd.

Rookw. I challenge him.

Cl. of Ar. Daniel Byfield.

Rookw. I do not except against him. (He was sworn.)

Cl. of Ar. Benjamin Noble.

Rook.

Rook. I have nothing to say against him. (He was sworn.)

Cl. of Arr. Cryer, count them. Samuel Powell, —

Cryer. One, &c.

Cl. of Ar. Benjamin Noble.

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Twelve sworn were these.

Samuel Powell,	}	George Carter,
Arthur Bailey,		William Atley,
John Webber,		John Marsh,
George Tredway,		Samuel Freebody,
Timothy Lennoy,		Daniel Byfield, and
John Harris,		Benjamin Noble.

L. C. J. Look ye, Mr Phipps, your Objection upon the Indictment slipt me, and therefore I would speak to it now: You said it might be as well a Copy of the Indictment before it be found, as well as this a Copy of the Pannel before it be returned. Now that can't be, for an Indictment is not an Indictment till it be found, it is only a Writing prepared for the Ease of the Jury, and for Expedition; it is nothing till it is found, for the Jury make it an Indictment by finding it, they may alter what they please, or refuse it absolutely. And if the Jury, upon examining the Witnesses, would only present a Matter of Fact, with Time and Place, the Court might cause it to be drawn up into Form, without carrying it to the Jury: Again, There needs no *Billa vera*; for that is only the Jury's Owning that which the Court has prepared and drawn up for them: But a Pannel is a Pannel when it is arrayed, before it be returned, and a Copy of the Pannel given before it be returned, is a Copy of the Pannel returned, if it be afterwards returned, as it must.

Sir Barth. Shower. But, my Lord, that Notion strengthens our Objection that we last made, that makes it necessary that we should have a Copy of the *Caption*, as well as the other Part, to make it a true Copy of the whole Indictment.

L. C. J. That's another Thing, we will talk of that another Time; but I speak of this only as to his Objection which slipt my Memory, because I would have nothing remain unanswered.

Mr Phipps. My Lord, when the Bill is found, the Copy that we delivered before is as much a true Copy of the Indictment as our Copy of the Pannel is a Copy of the Jury returned.

L. C. J. A Pannel is a Pannel when it is arrayed, but a Bill is not an Indictment till it be found; one cannot say a Man *indictatus existit*, till it be found; all that we say of it before it be found, is that there was *quadam Billa* preferred to the Grand Jury, and if the Jury bring it in *Ignoramus*, whereby they disown the Presentment, it is cancelled, and there is no Record of it, nor nothing, only a *Memorandum* in the Clerk's Book perhaps, that such a Thing was. Well, go on.

Cl. of Ar. Cryer make Proclamation.

Cryer. O yes, If any one can inform my Lords the King's Justices of Oyer and Terminer, the King's Serjeant, the King's Attorney General, before this Inquest be taken, of the High Treason whereof *Ambrose Rookwood*, the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard; for now the Prisoner

stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance.

Cl. of Ar. *Ambrose Rookwood*, hold up thy Hand. (Which he did.) You that are sworn look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Ambrose Rookwood*, of the Parish of St. Paul Covent Garden, in the County of *Middlesex*, Gent. for that he, together with *Christopher Knightsley*, not yet taken, *Robert Lowick*, and *Charles Cranburne*, and divers others, false Traytors, &c. — *prout* in the Indictment, *mutatis mutandis* — and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraign'd, and upon his Arraignment hath pleaded not guilty, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to inquire, whether he be guilty of the High Treason whereof he stands indicted, or not guilty; if you find him Guilty; you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since: If you find him not guilty, ye are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so and no more: And hear your Evidence.

Mr Mountague. May it please your Lordship, and you Gentlemen of this Jury, this Indictment that has been read to you, does charge the Prisoner with High Treason for Compassing and Imagining the Death of the King, for endeavouring to subvert the Government, and to subvert the People of *England* to the Slavery of *Leu* is the *French King*, and for this End the Indictment sets forth, that the Prisoner at the Bar did privately meet with several false Traytors, to consult how they might compass the Death of the King, and commit those other Treasons; and that the 10th of *February*, at *Covent Garden*, in this County, it was agreed among them, that they should get together Forty Horsemen whereof the Prisoner at the Bar was to be one, and they were to lie in Ambush, and set upon the King in his Coach upon his Return from going abroad; some were to attack the Coach, others to attack the Guards, and there were to kill the King in the Coach: And the Indictment does likewise charge the Prisoner with gathering together Horses, and providing Arms for this Purpose. To this Indictment, Gentlemen, he hath pleaded not guilty; we shall call our Witnesses, and prove the Fact, and when we have so done, we do not at all doubt but you'll do your Duty.

Sir B. Shower. My Lord, before the Witnesses are called we have a Doubt to propose to your Lordship upon this Act of Parliament, and that is, whether we are to take our Exceptions to this Indictment before the Evidence be opened or given?

L. C. J. It should properly be before the Jury is sworn.

Sir B. Shower. The Words of the Act, my Lord, is before the Evidence given.

L. C. J. That Act provides, That if you do not take the Advantage of it, before the Evidence

Given, you shall not move that in Arrest of Judgment.

Sir B. Shower. It only says before Evidence given, and no Evidence has yet been given.

L. C. J. But you are certainly very irregular in point of Practice, no Body ever took Exceptions to an Indictment after the Jury was sworn.

Sir B. Shower. If your Lordships please to let the Words be read of the Act of Parliament, they are these, That no Indictment shall be quash'd, unless Exception be taken in the Court where the Tryal shall be, before any Evidence given in Court upon that Indictment. Which, we say, strongly implies that the Law-makers thought it might be done at any Time before the Evidence was given in open Court, besides that the Law takes Notice that after Conviction it should be of no Avail, it would have been a very improper Expression before Evidence given in open Court, if it had meant before the Jury were sworn and charged; for the Word Evidence supposes the Tryal commenced: If they had intended it otherwise, that is, that it should be before the Jury is sworn, they would have express'd it to be done at the Arraignment; but mentioning it to be done in the Court where the Tryal is to be, before Evidence given, that supposes the Indictment to be at Issue before the Party needs to make his Exceptions. Therefore, my Lord, we hope we are regular in offering our Exceptions now.

L. C. J. Pray, what say you to it, Mr Attorney?

Mr Att. Gen. Truly, my Lord, I think they are no Way regular; for, with Submission, I take it, that though this Act of Parliament has indulged them in several Things which were not allowable by Law before, yet as to this Part they are not allowed to take Exceptions to the Indictment, otherwise than they could before this Act was pass'd: Nay, so far from that, that if your Lordship looks into the Act, you find they are restrain'd in this Point from an Advantage that they had before, that is they shall not move any such Things as are there mention'd, after Verdict, in Arrest of Judgment: So that this Part is restrictive to the Prisoner, and takes away some Advantage that he had before; which was, moving in Arrest of Judgment after Verdict; but it leaves the making Exceptions as to any Time before the Verdict, as it was before, which was before Plea pleaded, but not after the Jury sworn: For it cannot be denied that in point of Practice, such a Thing as this that is now offered could not have been done before the Act. I would be glad to know whether they can shew any Precedent of any such Thing as they now contend for. They say, the Words of the Act are, Exception must be taken before Evidence given; but that must be taken at such a Time as they might by the Course of Law do it before: For when the Jury is sworn, they must give a Verdict, and I do not know how they can be discharged without giving a Verdict; therefore unless the Act had given Directions for a particular Manner of Proceeding in this Matter, which it has not done, your Lordship will not, I presume, do it in any other Manner than as it was before the Act made; and if there be no Precedent to be shown of any such Thing as this, of taking Exception to an Indictment after the Jury sworn and charged with the Prisoner; then there is no

Power in this Act of Parliament, given to them to take Exceptions to this Indictment at this Time, we take it the Motion is very irregular upon all Accounts.

Mr Sol. Gen. My Lord, we first say, that it is not proper for them to make any such Motion as this upon this Act of Parliament, till they tell us what their Exception is, that we may see whether it be within the Words and Meaning of this Act of Parliament. The only Thing now that is proper for us to consider, is the Issue joined, and the Inquiry whether the Prisoner at the Bar is guilty of the High-Treason of which he is indicted, to which Indictment he has pleaded not guilty: That's the Thing that is now before your Lordship to be tried, they have Room for Exceptions to the Indictment afterwards, for some Exceptions I mean, (I do not know what their Exceptions are) but if they be such as may be taken after the Verdict, then I am sure they are irregular now in their Motion, and they can shew no Precedent, when it was done after Plea pleaded and Issue joined, as it is in this Case.

Mr Conyers. The Advantage that the Act gives the Prisoner, of having a Copy of his Indictment so long before Tryal, is to enable him to plead, or to take Exceptions to quash it; but I never heard a Motion to quash an Indictment after a Jury is charged to hear the Evidence. Certainly they ought to do it before Plea pleaded, and not now to come to make a Motion to quash the Indictment, after they have pleaded, and the Jury sworn: Therefore we submit it, upon the constant Practice in like Cases, to the Judgment of the Court.

Sir B. Shower. In Answer to that which Mr Attorney has said, That it is an improper Time; I thought truly I had moved it for the Advantage and Ease of the King's Council, that they might not proceed upon this Tryal, when perhaps after all their Trouble, the Foundation, which is the Indictment, may fail. I have a great many Exceptions to the Indictment; they say we should name what our Exceptions are: I will acquaint them with them, as fast as I can, if your Lordship please, the Indictment is very loose and uncertain.

L. C. J. Certainly the Motion is irregular in point of Practice.

Sir B. Shower. My Lord, we were afraid we should be excluded from taking these Exceptions after the Evidence given.

L. C. J. So you are by the express Words of the Act.

Sir B. Shower. Then certainly we may do it before the Evidence given.

L. C. J. But the Act does not say, Ye shall do it at any Time before the Evidence given, especially in such an irregular Manner, after Issue joined, and the Jury sworn. Suppose Mr Attorney had given some Evidence.

Sir B. Shower. Then, my Lord, I agree we had been without the Words; therefore I now move it before the Evidence, because the Act of Parliament has given me a Liberty to do it before the Evidence given: For the Law having given this Liberty to the Prisoner, to make such Exceptions within such a Time, your Lordship will not restrain us from making Use of that Liberty further than the Law has restrained, but we may make Use of our Exceptions before the Evidence given, either

either to induce your Lordship to quash the Indictment, or the Jury to find us not Guilty, as we hope your Lordship will direct them to do: For what is more common upon Indictments after the Jury are sworn, than if Facts appear upon the Record not to be sufficiently alledged, the Court will direct the Jury to find the Party not guilty. We think this Act does give us this Liberty, otherwise I know not to what Purpose it was made, the very Meaning seems to be, that the Exceptions of the Council for the Prisoner might be of Prejudice to the King; and therefore it says, After the King's Evidence given, and the Fact discovered, no such Exception shall be made: Therefore we must make it before the Evidence given, otherwise this Act of Parliament that was designed in Favour of the Prisoner, will prove a very great Hardship upon him, especially in Case of an imperfect Indictment, as we apprehend this is, and he will be in a worse Condition than ever he was; he must take his Exceptions now or not at all. The Act says, He is not to take it after Evidence given; and by Construction the King's Council would have it, That he should not give it before: And consequently he has no Time at all to give it.

L. C. J. Have not you had Time to do it before now Sir *Bartholomew Shower*, certainly you had? You had Time this Day Sevensnight, when you were arraign'd; you have had your Opportunity if you would have taken it; the Jury are now charg'd, the Indictment is opened, they have been told what they are to enquire of, and now you would break in and take Exceptions to the Indictment.

Sir B. Shower. My Lord, This is a new Act of Parliament, it says we shall take our Exceptions before the Evidence given; which we take it, is any Time before the Evidence given; and if your Lordship will not allow us to do it now, it may be we may lose the Benefit of it absolutely.

L. C. J. It is one Question whether we shall allow it or no, and another Question whether you can claim it or no: Certainly it is an irregular Motion, and the like of it was never offered in any Case before, be it Criminal or Civil: For if it be a Criminal Case that is not Felony or Treason, when the Issue comes to Tryal upon an Indictment, Did you ever know any Exception taken to the Indictment after the Jury were charged? Certainly it is contrary to all Practice; and it is not fair, the Court is not well dealt with, you have had an Opportunity before, and will you now put the Court and the Jury to so great deal of Trouble, to stay till the Jury be called over, the Prisoner called to his Challenges, he has challenged Thirty four, the Jury is sworn, the Indictment is read to them, the Charge given them, the Council have opened the Indictment, and now when the Business is only to try the Issue with which the Jury are charg'd, you come to turn us quite round, by taking Exceptions to the Indictment.

Mr Phipps. My Lord, We take it the Act gives us this Time to do it in.

L. C. J. You know you had another Time more proper to do it in.

Mr Phipps. My Lord, If we have not time now, then this Clause, with humble Submission, signifies nothing at all.

L. C. J. The Clause was made in this Respect, to your Disadvantage, because you should have a Copy of the Indictment, whereby you might

have an Opportunity to advise with Council, that they might instruct you how to plead, and to take any manner of Exception before Plea pleaded, it ought to be before the Tryal, and now because of this Advantage, it provides that you shall take your Exceptions before the Tryal, and not move them in Arrest of Judgment; that is the Meaning of the Act.

Mr Phipps. Then, my Lord, there needed no Time at all to be mentioned in the Act, but have left it as it was at Common-Law.

L. C. J. Yes, Yes, there did need a Time to be limited, for this Clause was made I say in your Disadvantage, in depriving the Prisoner of the Benefit of such kind of Exceptions in Arrest of Judgment, because of the Advantage that was given in the former Part of the Act, where you had Time given you to make your Exceptions, for which End you are to have a Copy of the Indictment five Days before you are called to plead.

Sir B. Shower. We could not come before, my Lord, as we apprehend, because the Words of the Act are before Evidence given.

L. C. J. But I tell you, this Clause was not for your Benefit, but for your Disadvantage.

Sir B. Shower. My Lord, What we press, arises from the very Words of the Act of Parliament, if the Meaning of the Law-makers was as the King's Council now contend to have it; they would never have used those Words before Evidence given in open Court, but have said they should have had no Advantage of the Exception, unless it were before Plea pleaded; it does not say it shall be after the Verdict, or before the Verdict, but before the Evidence given: Now if they had meant what these Gentlemen say, they would have appointed it to be before the Verdict, which would have included the Tryal; because then it had been like the Penning of other Acts of Parliament, the Statutes of *Feotails* and the like, which say, That after a Verdict, such and such Exceptions shall not Arrest a Judgment: But if they can shew me any Statute that is penn'd like this, they give me an Answer: All those Statutes are, That no Judgment shall be arrested or delay'd upon such or such Exceptions after a Verdict: But here it says, They shall not arrest Judgment, unless the Exception be taken before Evidence given in open Court. My Lord, We submit it to you, we think the Law-makers did intend somewhat by that particular Way of Expression, different from all other Acts of Parliament; and truly if it be not as we offer to your Lordship, we think it can have no Meaning at all.

Mr Att. Gen. Truly, my Lord, we think it is very plain what the Parliament meant by this Clause in this Act, the Design was, to restrain the Prisoner from moving in Arrest of Judgment, for Mis-spelling, or false Latin, or little Matters of Form, if he did not move it in a proper Time, having such a Liberty allow'd him, as to have a Copy of the Indictment so many Days before he was compelled to plead: They insist upon it, that the Words are, Before Evidence given; It is so: But what can be the Meaning of that? It must be at such Time as the Law allows; it is not making a new Method of Tryal; you shall take Exception before the Evidence, that is, before the Tryal, for it can never be intended, that they meant to alter the Course, and let the Council

cil break in between the Time of the Jury's being sworn, and the Evidence given, that by no Law could ever have been done before.

Sir B. Shower. Pray, Mr. Attorney, when would you have us do it?

Mr Att. Gen. Regularly before Plea pleaded, at least-wise before the Jury be sworn.

L. C. J. Undoubtedly this is not regular, it is contrary to all the Course of Practice, it is not fair Dealing with the Court. But then there is another Consideration in the Case, that I would have you think upon: If so be this had been at a Tryal by *Nisi Prius*, then the Judge of *Nisi Prius* is only to try the Issue; but now here the very Record is before us, and we are Judges of the Record, as well as we are to assist the Jury in Trying the Issue. Now take it in any other Case of the like Nature, Suppose a Tryal at the Bar in any Civil Cause, though this be contrary to Practice, and the Court not fairly dealt with, yet when we have the Record before us, and find an Error in the Record, cannot we quash the Indictment and discharge the Jury. That is the Question, Mr. Attorney, though I must confess, I do not know that it has been practicable.

Mr Att. Gen. No, my Lord, in a Case of Treason, where the Jury are once charg'd, they are to give a Verdict, they must either acquit or convict.

Sir B. Shower. It was done in *Whitebread's* Case.

Mr Att. Gen. But I know what has been usually thought in that Case, and I believe they cannot shew me another.

L. C. J. Nay, that this is a very irregular Motion, is very plain.

Mr Sol. Gen. Certainly, my Lord, you must take it as the Law was before this Act, for this Clause does nothing for the Prisoner, but is against him.

L. C. J. I know it is not for the Advantage of the Prisoner, therefore I put it as a Case in an Action, or an Indictment, as the Law was before, whether this being a Tryal in the same Court where the Indictment was found, and we find an Insufficiency in the Record before us, whether we cannot quash the Indictment.

Mr Sol. Gen. Your Lordship mentions Civil Actions, with Submission, nothing of that kind could be done after once the Cause came to Tryal, but in Criminal Causes according to the Course of Practice, which will always be the Law till particularly altered, I believe no Body can pretend, that after Issue joyn'd, and a Jury charg'd, any one can move to quash the Indictment. I think I have heard it often said in this Court, that in Capital Cases, as High Treason, you may put in a Plea in Abatement of, but not a Motion to quash an Indictment; I am sure it was disallowed where I moved to quash an Indictment of Murder, let them but show any President of this Nature.

Sir B. Shower. We will show you, tho' this is the first Case upon this Act of Parliament, therefore to show any practice upon it would be very hard to require of us.

L. C. J. But can you show it before this Clause in this Act of Parliament, which, as I told you, is not for your Advantage, it does not give that Liberty that you desire.

Sir B. Shower. All the Clauses in this Act of Parliament shew'd their Intention was this, that the Sense of the Law-makers was, that we should

have this Liberty at any Time before Evidence given, for if there be such Words as shew'd they thought it might be quash'd at any Time, tho' they were mistaken in the Practice, yet we shall have the Liberty that they intended us, and the Word-ing of this Act shows, that the Parliament thought it might be done after the Tryal begun before Evidence given, because they restrain us from taking those Exceptions after the Evidence given, and it is no Prejudice to the King at all really, it is rather for the Advantage of the Prosecution, because there is none of the Evidence disclosed, and therefore if the Indictment should be found faulty, still the Evidence remains undiscovered upon another Indictment; and I have often heard it said at this Bar in Cases of Indictments for Felony or Treason, as Murder, or the like; if any one did come as *amicus curie*, and acquainted the Court, that they were going to proceed upon an erroneous Record, or give an erroneous Judgment, or do any other erroneous Act, he ought to be received with Kindness, because he would prevent a Wrong doing.

L. C. J. That is in the proper Time not to interrupt the Tryal when the Jury is once sworn.

Sir B. Shower. We are ready to offer our Exceptions, and we hope it is no Prejudice at all to the King before the Evidence of the Fact is given.

Mr Phipps. My Lord, I perceive that this Clause, as they would have it, is intended to prevent us from moving that in Arrest of Judgment, which we could have moved before, and ties us up to do it before Evidence given; now I would fain know, if we could not before this Act move in Arrest of Judgment, for mis-spelling, or false Latin, or improper Latin.

Mr Att. Gen. You might, no Doubt of it.

Mr Phipps. They say we might; why then, if we could have a Time to move it after the Verdict, and that Time is abridg'd by the Act of Parliament, which directs that it shall be before Evidence given in open Court, sure we may take any Time before the Evidence given, and shall not be restrain'd further than the Letter of the Law has restrain'd us, for this Act was intended for the Benefit of the Subject, and ought to be construed as much in their Favour as the Letter of it will permit.

Mr Att. Gen. No doubt of it, it is to be done before Evidence given; but the Question is, at what Time it must be before the Evidence given, whether it must not be at such Time as by the Course of Practice and Usage of the Law it should have been done before; if you will satisfy my Lord and the Court that ever such an Exception was taken, or an Indictment quash'd between the Swearing of the Jury and the giving the Evidence, ye say something; but I believe not one Instance of that Nature can be given, and therefore it is very irregular for them to do it.

L. C. J. They don't pretend to it, for ought I hear, for I would put them upon it, to show me whether they could do it before.

Sir B. Shower. I don't question, my Lord, but it might be, with Submission.

Mr Conyers. Did you ever know it before that any one undertook to inform the Court as *amicus curie*, but it was to prevent a wrong Judgment, and for that you have your proper Time either before

before Plea pleaded by Motion to quash the Indictment, or after Verdict to arrest a Judgment; this Act of Parliament has restrain'd you in particular Instances that are mention'd from doing it after Verdict in Arrest of Judgment, but having given you a Copy of the Indictment before you pleaded, you have had a proper Time to make these Exceptions, and if you have laps'd your Time you come too late to do it now, for sure no Body ever made a Motion to quash an Indictment after Issue joyn'd and the Jury sworn.

Mr *Soll. Gen.* My Lord, I would only mention one Case, and that was of Sir *Richard Mansell*, upon an Indictment of Murder for Killing the Apothecary in *Holbourn*; I did my self move to quash the Indictment, because it was not express'd in what Year of the King the Fact was done; but the Court was of Opinion we could not move to quash an Indictment for that or any such notorious Crime, till after the Fact determined.

L. C. J. No, we were always of that Opinion, never to allow Motions to quash Indictments for Perjury, Murder, or any great Offence, but it must be moved in Arrest of Judgment afterwards.

Mr *Comper.* My Lord, these Gentlemen seem to beg the Question upon this Act of Parliament, as if it had appointed this to be the Time of making Exceptions to the Indictment, the Act of Parliament does not say you shall make your Exception immediately before the Evidence given in open Court, as if it had pointed out and directed to them that particular Time, that then they should take their Exception and no other Time: The Act has only set a Bound, that they shall not do it afterwards, but as to the particular Time, it is left as it was before, to the regular Course and Method of Proceedings, which is before Plea pleaded.

Mr *Phipps.* My Lord, they do not answer my Objection, it is, it seems, a Restriction of a Liberty that we had before of moving in Arrest of Judgment; if so, we ought not to be restrained further than we are by the Words of the Act of Parliament, which say, before Evidence given, that is at any Time before Evidence given, as well after as before Plea pleaded.

Sir *B. Shower.* I would ask these Gentlemen, whether the Law-makers intended that we should have no Advantage of excepting against false Spelling and improper Latin.

Mr *Conyers.* Yes, they did, but that you should do in your proper Time.

Sir *B. Shower.* Then the Time for doing it must be that which the Words of the Law say, before the Evidence given in open Court, and that's now.

Mr *Conyers.* No, you might have come at the Day of Arraignment, and have taken the Advantage of it then before you had pleaded.

L. C. J. Ye have had my Opinion what I think of it, my Lords and Brothers, I suppose will tell you theirs.

L. C. J. Treby. My Lord Chief Justice has delivered his Opinion in this Matter, and he thinks fit that we should deliver ours. I think this Motion of the Prisoner's Council to quash this Indictment after the Jury sworn, is irregular and quite out of Season; the Intent of this Clause in this Act of Parliament, certainly was not in Favour of the Prisoner, it abridgeth him of a

Liberty he had before, but gives him nothing: For the Law-makers did think they had given the Prisoner an extraordinary Favour in the foregoing Part of the Act, in giving him a Copy of the Indictment five Days before he should plead, and a Copy of the Pannel two Days before he should be tryed, and allowing him Council, and all these Advantages were to enable him to quash the Indictment, or the Process returned, for the Clause extends to both; the Words are, *That no Indictment nor Process or Return thereupon, shall be quash'd on the Motion of the Prisoner or his Council for Mis-writing, Mis-spelling, false or improper Latin, unless Exception concerning the same be taken and made in the respective Court where such Tryal shall be by the Prisoner or his Council assign'd before any Evidence given in open Court upon such Indictment, nor shall any such Mis-writing, &c. after Conviction be any Cause to stay Judgment:* Therefore they made this extraordinary Provision to restrain the Prisoner, in Part, by this Clause; as much as to say you have an Advantage of the Copy of the Indictment, and you may make use of that to quash it by Motion, if you think fit, as you may also the Process, but it shall be *before Evidence given.* 'Tis true, those are the Words, but the using that Term, *viz. quashing* such Indictment or Process, shows it must be done in such a Way and Time as is proper for quashing; and the very Words are, that it shall be *upon Motion.* Now we are to expound those Words. And I say, a Motion to quash an Indictment, must be understood a Motion in the proper Season, which I think is before Plea pleaded; but at least before the Jury is sworn. There were three Times when the Prisoner might have had the Advantage of a Fault in the Indictment before this Act: 1. By Motion to quash it before Plea pleaded. 2. Then afterwards in Arrest of Judgment: And 3. After that by Writ of Error. Now this Clause of this Act takes away the Privilege of moving in Arrest of Judgment for Mis-writing, &c. but saves the Advantage upon a Writ of Error, and upon a Motion to quash the Indictment. We are to consider what is a proper Time for a Motion to quash an Indictment, the Motion is to be made to the Court, and to them alone. It is not to be made to the Court and the Jury. When the Jury is sworn, all Application is to be made to the Court, as having a Jury present which they are to assist in the Tryal and Determination of the Fact only. What Use then is there of the Jury, when you make this Motion, which consists only in Points of Law? They must stand by and be out of Office all the while this Motion is making: And it is not reasonable, nor certainly ever was intended that after a Jury is sworn to try a Matter of Fact, they should stand idle, while you move a Thing which you should have moved before they came to the Bar, suppose you should now move some Exception to the *Venire*, and the Return thereupon, should we, when we and you also have admitted the Jury to be sworn, quash the Process whereby they are return'd? And yet we may as well do that as this. For, the Act provides in the very same Words concerning Quashing Process and Indictments. But, when the Jury is sworn, and ready to receive their Evidence, sure, then it is out of all Season to make such a Motion, therefore I do not think the Parliament intended by this Clause (which was a kind of Exception to the Favour the Prisoner receiv'd

ceiv'd by having the Copy of the Indictment) to institute a new Method of Proceedings for Motions to quash Indictments, even when a Jury is at the Bar and sworn to try the Issue, and there is nothing proper to be proceeded upon but only to hear the Evidence produc'd for the Proof of that Issue, till the Jury is discharged. But still this I would say; this is a new Case, and upon a new Statute. I am truly of Opinion, that the Motion is altogether unreasonable and irregular, and it should have been made before, and you had a full Opportunity to make it this Day Seven-night before Plea pleaded, and you might likewise to Day before the Jury was sworn; therefore when the Jury are now at the Bar actually enter'd into, and imploy'd upon the Service, the Court ought not to be interrupted by such a Motion. Yet nevertheless I would propound this, that, seeing it is a new Case and upon a new Statute, the Court would forgive the Irregularity (for I think it does need Forgiveness) and if the King's Council will consent to it (to prevent any Error or any Pretence of Hardship upon a new Law) that we should hear their Exceptions.

L. C. Baron. This Act of Parliament, as it has given a Benefit to the Prisoner that he had not before, in allowing him a Copy of his Indictment, in Order to his making Exceptions; so it has restrained him as to the Time of making those Exceptions: That he shou'd have Time, there is no Doubt; the Time limited for it, as this Act says, must be before Evidence given, because they thought it unreasonable that there shou'd be any Quashing of the Indictment after such Time as the King had given any Evidence whatsoever in the Case, for that wou'd be a Discovery of the King's Evidence, and great Inconveniencies wou'd ensue thereupon; but the Question is at what Time this is to be done; Whether it may be at any Time before Evidence given, or no; it did intend surely that the Motion to quash the Indictment and the Exceptions to it might have their proper Effect, and that must be before the Tryal; for it was not the Intent of the Act to alter the Method of Proceedings, and it is to no Purpose after the Jury is sworn, for then their proper Office is to determine the Fact; now if before this Act of Parliament it never was allow'd to take any such Exception as this after the Jury sworn, it will be consistent with the Words of the Act of Parliament, which are, *That it shall be done before Evidence given*: If then it be in the regular Time for Motions, which is before Plea pleaded or Jury sworn, that is, before Evidence given; for it is not said, as Mr. *Comper* observed, that it shou'd be immediately before the Evidence given, I think sure such an Exposition as was formerly made ought to be made in this Case, the Time not being precisely fix'd by this Act, if there were a certain Time determin'd when Men should take their Exceptions, as we know it has been in Practice before Issue joyn'd, then after the Jury is sworn it is an improper Time then, I think, to make such Exceptions: I do not suppose this Act, as to the Method of Proceedings—, than it was before, but this Exception ought to be taken before Plea pleaded: Truly it is a new Act of Parliament, and this is so far within the Words of the Act that it is, before Evidence given, as the Council for the Prisoner say. If this

can be govern'd and ruled by Proceedings and Practice in former Times in Cases not of Felony or Treason but only in Criminal Cases. If no Body should suffer by any Interpretation, I should think it ought to bear a conformable Construction to what the Practice was before, I take it you have lost the regular Time for making your Exception, and you invert the whole Method of Proceedings upon Tryals; for to what Purpose is it to take Exceptions to quash the Indictment when the Jury are once charged with it: If it be an Indictment that ought to be quash'd, the Jury ought not to be charged, you have had two Times, and they are both of them elaps'd for this Matter, that is, at the Arraignment, and before the Jury sworn; yet I would propose it to the King's Council as my Lord Chief Justice of the Common Pleas has done, it being a new Case, that it should be better consider'd of and agreed upon, that in these Cases we may go on upon a certain Rule that it may be establish'd for all Time to come.

Mr J. Nevile. I wou'd begin with the Proposal, because, I believe, I may not be so clear in my Opinion, otherwise I must deliver my Thoughts according to my Judgment, but I wou'd have the King's Council consider of the Proposal.

Mr Att. Gen. My Lord, for us, to consent to that in such a Case as this, where the Court thinks it not regular, would be pretty hard to desire of us, if any Thing of Advantage should happen on the other Side, I verily think the Council for the Prisoner will not be so ready to consent to wave any such Advantage, nor am I for asking them to do it; this Clause goes only to some Faults in the Indictment; Mis-spelling, Mis-writing, false and improper Latin, that is all that they are restrain'd from moving in Arrest of Judgment; any Thing else, any Uncertainty or other Matter that is not comprehended under these Particulars they may take Advantage of to move in Stay of Judgment after a Verdict, this Clause does only abridge them from moving in Arrest of Judgment for Mis-writing, Mis-spelling, false or improper Latin, therefore if your Lordship should think it reasonable we should consent to let them in to make any Exception now, it must be confin'd to those particular Objections of false and improper Latin, there can be no Colour to make the Liberty larger, because for any Thing else they are not restrain'd from moving it in Arrest of Judgment, for there can be no Hardship in that Case, as I think, they have no Reason to complain that there has been in any other Part of the Case, but for those Particulars that there may be no Complaint of Hardship, if your Lordship thinks it reasonable we should consent, it may be we may be prevail'd upon to do it, though whatever Hardship does happen it is their own Fault, and the Prisoner may thank his own Council for that Hardship: If we assist them now to let them in, it ought to be taken as a great Kindness; and truly, my Lord, I am unwilling to do any Thing that your Lordship and the Court should think hard upon the Prisoner. Certainly it is the Fault of their own Council now the Law has allow'd the Prisoner Council, not to take the proper Time, and pursue the usual Methods; and it is a Strain beyond what is usual, that we must help their Faults by our Consent; however, if the Court think it reasonable, I shall not

not be against it, but then I am sure the Court will take Care they shall be confin'd to those Particulars that are mentioned in the Act.

L. C. J. No Doubt of it: Therefore Sir *Bartholomew Shower*, are your Exceptions for Mis-spelling, Mis-writing, or false or improper Latin? for if they be such Things as you may move in Arrest of Judgment, and have that Advantage, then there is no Colour that we should break through all the Rules of Proceedings to admit such an irregular Motion as this.

Sir B. Shower. My Lord, in the Case of a Life of a Man I will not take upon me to say what is Mis-spelling, Mis-writing, or false or improper Latin, or what is substantial, but all that I say is, I have Five Exceptions, every one of them imports a Doubt, as I take it, worthy the Consideration of the Court, and some of them effectual enough to quash the Indictment; but for me, when a Man's Life is at stake, and it partly depends upon me as his Council, to say what is proper or improper Latin, or to admit it to be Matter of Substance, and then to Morrow to have it come and told me, you should have mov'd this to Day, then I am sure they would have Reason to say, it was the Fault of the Prisoner's Council; for he would have chosen very ill Council, in me, I confess, if I should consent to put any such Disadvantage upon him. I beg the Favour that I may have the Liberty to propose my Objections, which I think are worth Considering of; it is for the Advantage of the King for us to take our Exceptions all together, because, else if any of them prove material, the Trouble of the Tryal will be but Mispence of Time.

L. C. J. No, we cannot hear all your Objections, but those that are mention'd particularly in the Act of Parliament, for such as are not mentioned in the Clause, you have a proper Time to move them in Arrest of Judgment.

Sir B. Shower. Then we will put those that are within the Act.

Mr Att. Gen. If we do any Thing by Way of Consent in this Matter, we must insist upon it, that they be confin'd to the Particulars in the Act, we desire they may open their Objections to the Court, and if the Court shall think they are properly under those Heads, then they will consider of them, if the Court be of another Mind, then they must be reserv'd till the proper Time.

L. C. J. Do you consent then, Mr. Attorney, that they shall now take those Exceptions that are mentioned in the Act of Parliament?

Mr Att. Gen. If the Court think it reasonable upon those Terms, I do.

Mr J. Poyss. Let them open them if your Lordship please, and let us keep the Power in our own Hands to do as our Discretions shall direct.

L. C. J. Truly I do not know whether we can do any Thing in this Matter, I question much whether it be discretionary in us to break through all the common Method of Proceeding, and admit of such Irregularities.

L. C. J. Treby. I have a great Inclination to hear them, that we may get rid of these pretended Exceptions, which I am apt to think will, when opened, disappoint the Expectations that may be rais'd by this mentioning them in general; for, I have that Opinion of the Ability and Circumspection of the Council, that I believe if they had had Exceptions sufficient to quash the

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Indictment, we should have heard of them at a Time more proper than this now between the Swearing the Jury and giving Evidence to them. But, possibly, the Council may think fit to make an Essay, and try what can be got out of this unusual Expression in this new Act.

L. C. J. No, no, I know this is a Piece of Art, and the Court is not well dealt with in it.

L. C. J. Treby. Indeed I am very willing to hear them for that Reason.

L. C. J. I look upon it only as meer Trick, and a Piece of Art to taste the Opinion of the Court.

Sir B. Shower. My Lord, it was my Mistake then, for I take it, if the Act of Parliament had intended otherwise they would have express'd it otherwise.

L. C. J. Does the Act of Parliament give you another Liberty, and a greater than you had before? Does it not design to abridge you of a Liberty that you had before? Certainly it never intended that the Court should admit of any irregular Proceedings.

Mr J. Powell. You should have tim'd your Motion better, for certainly now the Jury is charg'd they must give a Verdict either of Acquittal or Conviction; and if you move to quash the Indictment, and your Exceptions are material, the Jury cannot proceed; you see what a Pass your Motion has brought it to, 'tis certainly a mighty irregular Motion.

L. C. J. Treby. What Judgment would you have us give? I would ask you that: If any Exception were moved before the Jury were sworn, and it proved material, the proper Judgment were, that the Indictment be quash'd; but now they are sworn, what Judgment must we give? Must we not expect the Verdict of the Jury first upon the Fact? And must we then give Judgment upon your Exception?

Sir B. Shower. I know not whether your Lordship may not give Judgment first to quash the Indictment, and then discharge the Jury.

L. C. J. Treby. And what if we do not find Cause to quash it, then you'll say, we must go on with the Evidence, as we were going before this Interfering? Are we to be doing two Things at once. I am pretty certain you can show me no President for any like Proceedings in any Case: It is confounding the Offices of the Judge and Jury.

Mr Pihpps. If your Lordships try'd the Validity of our Exceptions, and find Occasion to quash the Indictment, there will be no need of a Jury.

L. C. J. Upon the Statute of *Jeofailes* in a civil Cause, suppose at a Tryal at Bar, it appears upon the Face of the Declaration, that there is such a Mistake as will be cured by the Verdict; but if the Party had demurred, and shown it for Cause, it would have been fatal. Do you think when he has wavy'd the Benefit of Demurrer and pleaded to Issue, that you shall move this and help your self by such a Motion, because it will be helpt after a Verdict?

Sir B. Shower. If this Act had been worded as that Statute of *Jeofailes* is, it may be we might not.

L. C. J. Why, it is not said in the Statute of *Jeofailes*, that it shall be good after Issue joined, before the Jury is charg'd or sworn, but that it shan't be good after the Verdict.

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Sir

Sir B. Shower. It is before the Evidence given.

L. C. J. Could he do so in any Case before this Act, and does the Act enlarge your Liberty or abridge it?

L. C. J. Treby. Sir Bartholomew Shower, you insist upon Part of the Words of the Act of Parliament, it says, no Indictment or Process shall be quash'd upon the Motion of the Prisoner or his Council, unless it be made before any Evidence, &c. Now, I suppose, the Parliament use that Expression, *upon the Motion*, in the same Sense as it is used in Law, viz. for such a one as should be in the Time when Motions for quashing the Indictments are properly to be made; now, when is that? It is plain, it was always before the Jury come to the Bar, nay before the Plea of the Party. If that be the proper Time to make such a Motion, then that Expression in this Act of a *Motion to quash the Indictment* will very well help to construe the other Part of the Clause that you insist upon: For if the Motion be made before Plea pleaded, it is certainly before the Evidence given in your Sense. And I conceive, that under that Expression [*Evidence given*] which signifies the main Part, the Parliament intended to comprehend the whole Proceeding to Tryal, beginning, if not from the Pleading *Not Guilty*, at least, from the *Swearing* the Jury. *Before Evidence given in Court*, may reasonably be expounded; *Before the Prisoner hath fully entered into that Contestation of the Fact, which is to be determined only by Evidence in Court.* I attended the Court of *King's-Bench* a long Time, and I believe that I have heard it said a hundred Times, upon Motions to quash Indictments of great or odious Offences; No, try it, says the Court, we will not quash it, plead to it, let the Fact be tryed, you may then move it in Arrest of Judgment. Those Expressions shew'd that the proper Time for a Motion to quash an Indictment was before Plea, tho' they, in their Discretion, would not grant a Motion to quash, in Cases of such great Offences. But sure they did not think that when a Jury came to the Bar, it was a tolerable Time to move to quash an Indictment, there was no Expectation of hearing of such a Motion then. And certainly this Clause which is made wholly against the Prisoner, should not be construed to help him to such a new extraordinary and absurd Liberty.

Sir B. Shower. My Lord, with Submission, that Practice goes upon another Reason, the Court would not quash it at all upon a Motion; this Act of Parliament supposes that you will quash upon a Motion at any Time before Evidence given; We never heard of a Motion to quash an Indictment for Felony or Treason, but still the Court would always say, Demur, or Plead, or move in Arrest of Judgment, but by this Law it seems the Sense of the Parliament was, that it might be quash'd upon a Motion.

Mr Sol. Gen. Sir B. Shower is come to what I said, that in Truth there is no such Thing as Quashing an Indictment for Treason or Felony, as I mention'd in Sir Rich. Mansel's Case, and I think the Rule that was given in that Case will serve now in this Case; I am for consenting if they be kept within the Limits of the Act of Parliament, but I must desire the Opinion of the Court before we do consent.

L. C. J. Holt. Aye, aye, Go on Brother Nevile.

Mr. J. Nevile. I must confess I cannot but doubt,

as this Act is, there were two Times that they had Liberty of taking these Exceptions to Indictments; but indeed, in Murder and Treason they were seldom admitted, till they came to move in Arrest of Judgment; but still there was always a Privilege, and a Time given to the Prisoner, be the Crime what it would, to take that Advantage which the Law gave him, to prevent Judgment against him. Now I agree, it is irregular and unseasonable to offer it now, and quite different from all former Practice; you might have done it before now, the Act says expressly it must be done before Evidence; but you might have taken Advantage before the Jury was sworn nay before you had pleaded, but you have lapsed your Time. Yet truly, notwithstanding you have lapsed your Time, I cannot satisfy my self to take away the Liberty that the Law has given the Prisoner sometime or other, to except against the Indictment. It is plain that before this Act after Verdict he might have moved in Arrest of Judgment, now he cannot do so, whether the Fault be in the Council I cannot tell, but the great Prejudice is to the Person that is to be try'd, who will now be wholly precluded from making any Advantage of the Exceptions he has to the Indictment, because by the Act he cannot move in Arrest of Judgment. This seems a strong Implication that the Parliament intended he must have some Time or other, but before Evidence given, to offer his Exceptions. I say this only to those particular Things that are mentioned in the Act, Miswriting, Misspelling, False or Improper Latin; as to these four particular Things which the Party is barr'd from moving in Arrest of Judgment, I cannot satisfy my self but that he should have one Time or another to take this Advantage before the Evidence given, and therefore I think he should have it now: It is true, it is altogether irregular, the Jury being sworn, and it ought to have been done before; but I hope if it be admitted now, it will be with such Observation, that no Body will ever offer at it for Time to come. As this Case is before us, and the Act of Parliament, which perhaps may have led the Council into that Mistake, that it might be any Time before Evidence given, tho' they know the proper Time, and the regular Method in other Cases, yet I doubt it is hard to put such a Construction upon this Act on the sudden, quite to debar the Prisoner of the Benefit of his Exceptions to the Indictment.

Mr. J. Powell. I have already declar'd my Opinion, that the Prisoner has had his proper Time for making his Exceptions, but he has elapsed that Time; but I am not against that Motion in a Case of Life, upon an Indictment for so great a Crime as Treason is, and where the Consequence is so great, if it may consist with the Rules of Law, and it be the Sense of the Court, and the King's Council consent to let them be heard, I submit to it, nay I would Second or Third that Motion that they may be heard.

Mr. J. Eyres. Truly I am of the same Opinion, I think we ought not to alter the ancient Course of Law by Words of Implication, nor go any farther than the Act of Parliament does express. The Act appoints that a Copy of the Indictment should be delivered to the Prisoner so many Days before, to enable him to make his Exceptions, and therefore deprives him of the Benefit of those Exceptions after Conviction in Arrest of Judgment. I see

no Words in the Act of Parliament that do alter the Course of Proceedings, as to this Matter, from what it was in all Civil and Criminal Causes before; Persons must take their Advantage of Excepting in their proper Time, but when it comes to Issue, the next Thing to be done is the Tryal; and truly I must needs say the Council are to blame, that knew this so very well, that if they have any Advantage of Excepting, they did not take that Advantage sooner, it is their Fault; but seeing it is so, I am of Opinion not to foreclose the Prisoner, as the Case stands. I would be Tender of Life, but at the same Time I declare my Opinion upon this Act of Parliament, as the rest of my Brothers have done, to prevent the Objection for the Time to come; yet seeing there is this Misfortune, and there would be a Hardship upon the Prisoner by the Default and Neglect of his Council in the Case of a Man's Life, I would be so tender as to indulge them to make their Objections now.

Mr. *B. Pomy*. I am of the same Opinion the Prisoner has lost his Time, for I take it this Clause of this Act of Parliament has not altered the common Course of Proceedings, nay, I take it signifies very little in this Case, for certainly it was intended to disable the Prisoner, and not enable him at all; and therefore, as the Case is, I think it very Irregular and Impracticable to introduce so great a Novelty, as to admit the Motion for quashing the Indictment; when the Jury is sworn, and when the Fact is the only single Point to be determin'd and every Thing else ought in legal Course to come before or after; but for us to confound Time, one Time for Pleading, another Time for Tryal, and another for Arrest of Judgment, all at once, and to have a Jury attending merely to hear Council at the Bar moot Points of Law, which might be determin'd either before or after the Tryal, is so very irregular, that it really introduces nothing but Confusion, which Courts of Justice ought to avoid above all Things, and ought to keep to the proper Seasons that the Law allows. Therefore, truly I think in Strictness of Law we ought not to allow it; but it being in a Case of Life, and it being a new Case upon a new Act of Parliament, if the King's Council think's fit to Consent, I shall be for it, if not, I think in Strictness of Law we cannot allow it.

Mr. *At. Gen.* My Lord I am very unwilling to deny the Prisoner any Advantage, that he might have had by this Act of Parliament, though his Council have slipt the proper Time; if Sir *Bartholomew Shower* will say his Exceptions are to any of the four particular Heads mentioned in this Clause of the Act of Parliament, for we must confine them to that, then we do consent that he should make them now.

L. C. J. Truly Mr. Attorney, if you do consent that they take their Exceptions now, we may consider of it whether it can be; but I know not how we could admit them to that Liberty otherwise, for if there be any Thing material, they may move it in Arrest of Judgment.

Mr. *At. Gen.* And I believe they won't say their Objections are so slight, as to be only Matter of Form, they say they are Substantial, and then your Lordship will hear them in a proper Time.

Sir *B. Shower*. I don't know whether I am mistaken in the Law, I am sure you are mistaken in the Indictment.

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L. C. J. Well, do you consent to let them make their Objections, as to those four Heads in the Act of Parliament.

Mr. *At. Gen.* Yes, my Lord, if it be any Matter of Substance, that is out of the Case at present, for the Provision of the Act of Parliament is onely for meer Matter of Form, and I should be very unwilling in any Point that is material, to make a President in such a Case as this.

L. C. J. I confess if you had consented farther, I do not know how we should have admitted of it.

L. C. J. *Treby*. I tell you how I thought it might be done, you might have committed an Irregularity, for which in a Case of Life, and upon a new Law, I believe and hope we should have been forgiven.

L. C. J. Well, for my Part I will not commit any Irregularity upon any Account whatsoever; I cannot see how by Law they can take any Exceptions to the Indictment, Mr. Attorney cannot consent, and if he did, I think it could not be, unless he did also consent to discharge the Jury; but I see they will not offer any Objections according to your Consent, Mr. Attorney, and therefore pray go on to open the Evidence.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, *Ambrose Rookwood*, stands Indicted for High Treason, in Compassing and Imagining the Death of his Majesty. Gentlemen, the Overt Acts that are laid in the Indictment to prove this Treason, are, that He, together with divers Others, had frequent Meetings and Consultations, in order to Assassinating His Majesty's Royal Person, and did provide Horses and Arms for that purpose.

Gentlemen, the Evidence that you will hear, to prove these Facts that are thus laid, will be of this Nature; you will hear by the Witness, That there has been for some Years a Design carried on to Murder the King's Person; that this was discoursed of, and several Debates and Consultations were had about it the last Year, some Time before the King went to Flanders; there was several Meetings, where were Sir *William Parkyns*, Captain *Porter*, and *Charnock* that was Executed, and several others, and there they did consider in what way to take off the King at that Time; and you will hear they did expect a Commission to authorise it from the late King *James*; but then the Commission did not come, they had not any such at that Time; but they did think fit to put it in Execution without any such Order and Authority, and therefore they endeavour'd to have got a Vessel to have carry'd them off after they had Executed this bloody Conspiracy; but it happen'd His Majesty went to *Flanders* sooner then they Thought, and they could not provide Themselves of a Security for a Retreat, and so at that Time the Design was laid aside.

But Gentlemen, you will hear this Conspiracy was renewed, and set on Foot this Winter, and in Order to the Accomplishment of it you will hear, that about Christmas last there were several Persons sent from *France* by the late King *James*, on purpose to put this horrible Design in Execution. Sir *George Barclay* was to be at the Head of it, he was a Lieutenant in one of the late King *James's* Troops of Guards in *France*, he was sent over with a Commission; and Mr. *Rookwood*, the Prisoner at the Bar, was a Brigadier

gadier in the Guards there; these came over, and several other Troopers of the late *King James's* Guards, by two or three at a Time, that they might not be observ'd; particularly you will hear, that when *Sir George Barclay* was come over, several Troopers were sent to by *King James* himself to come to him at *St. Germain's*; and there he told them he had a Piece of Service for them to do in *England*, and that they should observe *Sir George Barclay's* Orders and Directions. More particularly there was one *Harris* and *Hare*, two Troopers in the Guards, were sent for by the late *King James* into the late *Queen's* Bed-Chamber at *St. Germain's*, where *Collonel Parker* was present; they were told by the late *King*, He was sensible they had served him faithfully, and He would advance them, and he had now a Piece of Service for them to do, which would enable him to do it; He told them, they must go over into *England*, and be sure to obey *Sir George Barclay's* Directions, and they were ordered to endeavour to find out *Sir George Barclay* when they came into *England*; and were told by him, that they would meet *Sir George Barclay* twice a Week in *Covent-Garden* Square, in the Evening, and the Token by which they shou'd know him, was, he would wear a white Handkerchief out of his Pocket; this they were told by the late *King*, when he sent them upon this Errand; *Colonel Parker* was by at the same Time, and being there he was ordered to go to *Mr. Carol* Secretary to the late *Queen*, who had order to furnish them with Money, to bear the Charges of their Journey into *England*, and if they were detained by contrary Winds, they had Letters of Recommendation to *Monsieur Latour*, the *French King's* President at *Callis*, to furnish them with Money, to bear their Charges over into *England*, and accordingly they went; but being detained at *Callis* for want of a Wind, they were furnished by the *French* President; and by the Beginning of *February*, they came over.

But I omitted one Thing, Gentlemen: Before they came over, the late *King* when they were with him took a List out of his Pocket of Names, and told these two, *Harris* and *Hare*, what Names they should go by in *England*; *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiny*, and accordingly they came over in a Boat, and landed in *Kent*, and when they came to Town they endeavoured to find out *Sir George Barclay*: The first Time I think they did not find him; but the second Time they did find him; and he saluted them, and told them he was glad to see them come over, and he would furnish them with Money, and he sent *Major Holmes* to them, and accordingly he did come, and give them Subsistence Money.

Now Gentlemen, you will hear that *Sir George Barclay* being come over with these Troopers and many others, to the Number of Sixteen, that at several Times were sent upon this Conspiracy, I say, after they were come, *Sir George Barclay* had frequent Meetings and Consultations with several other Persons that were to be engaged in the same Design; and they met at several Places, sometimes at *Captain Porter's*, sometimes at the *Nags-head* in *Covent-Garden*, at another Time at the *Sun Tavern* in the *Strand*; and you will find by the Evidence, that the Prisoner at the Bar, *Mr. Rookwood*, was present at most of those Meetings, and there they did consult of

the best Ways and Methods for putting this Conspiracy in Execution; sometimes they thought of doing it by an Ambush, laid on the other Side of the Water, by Persons on Foot, in a little Wood there near *Richmond*, where the *King* was to pass by whilst others on Horseback were to take Notice of their Firing, and then to Attack the Guards: This was proposed, but there was another Proposal to do it on this side the Water; and therefore to settle the Matter, one of the Conspirators, *King*, was sent to view the Ground on the other Side of the Water, and he did glory that he had found a very proper Place, and thought it a very convenient Method, but yet they were not all satisfied, and at the *Nags-head Tavern* in *Covent-Garden* they did debate the Matter again, and it was resolved to have the Ground viewed again, and *Porter*, and *Knighley*, and *King* that was executed went to view the Ground on both sides the Water, to see which was the most convenient Place; this was about the 12th of *February*, they did take an Account of the most convenient Places on either Side, and when they had done it, they came back in the Evening to give an Account what they had done, to several others of the Conspirators, who met for that purpose, and I think the Prisoner at the Bar, *Mr. Rookwood* was present there at this Meeting; and you will hear, the Place agreed upon was the Lane that leads from *Turnham-Green* to *Brentford*, that they thought the most convenient Place because there were several Inns in and about *Turnham-Green* and *Brentford*, where they might place their Men by two or three in an Inn, that they might not be liable to Observation: This was the Place that was approved of.

Then next, the Manner of doing it was to be considered and adjusted, and that was thus: That the whole Number, should be divided into three Parties, one Party to be commanded by *Sir George Barclay* to attack the Coach, and kill the *King*, and all that were in it, while at the same Time the two other Parties to be commanded by *Captain Porter*, and *Mr. Rookwood* the Prisoner at the Bar, were to set upon the Guards; and the Time agreed upon to put it in Execution was the Fifteenth of *February* on *Saturday*, that being the usual Day the *King* went to *Richmond* a Hunting, and you'll find that on *Saturday* Morning they met in several Parties, not all together, but under the several Heads of the Parties in order to be ready, if the *King* had gone out that Morning, to have Assassinated him.

Gentlemen, I say, you will hear of several Meetings that Day; there was one Meeting at *Mr. Charnock's* where were present *Mr. Porter*, *Sir William Parkyns*, and several others; and another Meeting you will hear of where the Prisoner at the Bar was present, at the Lodgings of one *Counter*, another of *King James's* Friends, that came over for this purpose, and there was *Sir George Barclay*, and there was the Prisoner at the Bar; and those that were to be under *Sir George's* Command met that *Saturday* Morning in order to make ready, in Case the *King* had gone abroad, to have Attackt him: You will find by the Evidence that the Prisoner was there, and *Harris* that was one of the Troopers sent over from *France*, was sent for, and came in and found them in a great Hurry, for *Harris* was not acquainted at *St. Germain's* with the immediate Design of Assassinating the *King*, but finding them in a great

great Hurry, he askt them what was the Matter? And they told him they were to make ready immediately upon the Design. He wonder'd at it, and ask'd what it was, and then they told him they were to go to attack the Prince of Orange to assassinate him, and Rookwood the Prisoner at the Bar told him, if he would go to Counter, he should have particular Orders and Instructions from him what to do. Accordingly Harris went to Counter, he told him where his Horse, and Hare's Horse, and Hungate's Horse were; and their Horses happen'd to be placed in Somerset-House, by Mr Lewis, in a Stable there recommended by him, to the Care of my Lord Feversham's Servants, who were to take Care of them, and of two or three more that were placed there, in all, six of these Conspirators Horses by the Recommendation of Mr. Lewis were lodged in that Stable in Somerset-House, and look'd after by my Lord Feversham's Men; and thither Harris, Hare, and Hungate, were directed by Counter to go for their Horses.

But it happen'd by very good Providence, that his Majesty did not go abroad that Day; and Durance, one of the Orderly Men that lodged at Kensington to give Intelligence, came from thence and acquainted them, that the King did not go out that Morning, so there was nothing more done; but Harris was told that he should have his Horse at that Time, and take it away, and in the mean Time till they were to go upon their Design, they were to ride out upon their Horses, as they had Opportunity, to make them fit for Service, or else it would be thought the Rider's Fault, if, at the Time of the Attack, they did not come up in good Time and Order to join with the rest, and it would be thought Want of Courage in the Rider; and accordingly Major Holmes, another of those Conspirators, went with Harris and Hare to Somerset-House to take away their Horses, and they carried them to a Stable in Soho; but for several Nights they had been kept at Somerset-House.

You will find, Gentlemen, that Mr Rookwood, the Prisoner at the Bar was concern'd in all these Consultations and Meetings, in making Preparations for the Assassination they intended, as I said, to do it on the 15th of February; but that not taking Effect at that Day, between that and the Saturday following, Mr Harris was frequently in the Company of Mr Rookwood and Mr Lowick, and others, where they did discourse of this Assassination, and they did think it a very barbarous Thing; but however they resolv'd they would do it, for they had Orders to obey Sir George Barclay: And this was expressly declared by Lowick and the Prisoner, that they had Directions to obey Sir George, and what he would have them to do they would do: They must and would obey Orders; that was their Resolution even upon discoursing of the Hainousness of so bloody and barbarous a Design.

You will likewise hear, Gentlemen, by the Evidence, that the next Saturday being the Two and Twentieth of February, they resolv'd to put it in Execution again; and accordingly there was a Meeting on the Friday before at the Sun Tavern, where were present Sir G. Barclay, Mr Porter, and others; and there they did resolve upon it, tho' they had at first some Apprehension the Thing was discovered, but they were soon satisfied there was no such Thing, because they said among them-

selves, that if it had been so they should have been taken up, and not have been permitted to meet there: Therefore they resolv'd the next Day to put it in Execution, and accordingly they met at several Places, and got ready in the Morning in Case the King had gone abroad; the Prisoner met that Morning at Porter's Lodging, with several other Troopers, to make ready for the Enterprize, and there the Prisoner at the Bar did, at that Time, give a List of the Names that he was to command, for he was to have one Party of those that were to attack the Guards, of whom Harris was one, and Hare was another, and Richardson was another, and Blackburne was another, and his own Name was Chief, and he order'd Harris to go and see to get them ready, for they must go out that Morning: Accordingly Harris did go, and got them ready, and came back and gave an Account of it. His Majesty did not go abroad that Day, as it happened very fortunately by Reason of the happy Discovery; so that News being brought back again, though they had made all Things ready, those Preparations were put off, and they did nothing that Day, and quickly after the Discovery was fully made, and made publick by the Apprehension of the Conspirators.

Gentlemen, you will have this Matter fully proved to you by several Witnesses, that I think there can be no Room to doubt the Truth of it, that there was such a Conspiracy, and that the Prisoner was as highly concerned in it, as those who have suffer'd the just Punishment of the Law. We will call our Witnesses to prove this, and I believe they will be able to give you an Account of the whole Affair, better and more fully than I can do, or can pretend to open it.

Mr Sol. Gen. Call Mr Harris and Mr Porter.

Sir B. Shower. We oppose the Swearing Mr Porter: I must beg the Favour of the Court to hear us in it; if my Instructions be true, we insist upon it, that he is not capable of being a Witness, he stands convicted of Felony: Here we have the Record, and we desire it may be read.

Capt. Porter. I know nothing of the Matter, that there is any such Thing standing out against me.

Sir B. Shower. Then sure we are mistaken in the Man. Pray let us hear it read.

Cl. of Arr. (Reads the Record.) This is an Indictment of Murther against George Porter, for the Killing of Sir James Hacket, Knight.

Mr Att. Gen. Do you know any Thing of this, Mr Porter?

Capt. Porter. I came off with Manslaughter, and pleaded the King's Pardon in Court.

Mr Att. Gen. Pray, read what was done upon it.

Cl. of the Crown. Here's the Jury's Verdict. *Quod predictus Georgius Porter est culpabilis de felonica Interfectione predicti Jacobi Hacket, & non culp.* as to the Murder. Here is a Curia advisare vult, and I suppose there was a Pardon afterwards.

Mr Justice Powell. Was he not burnt in the Hand?

Capt. Porter. No, I pleaded the King's Pardon.

L. C. J. And there are several Acts of Pardon since.

Mr Cowper. See the Time when the Indictment was.

Cl. of Arr. It is the Eighth of December in the Thirty Sixth Year of King Charles the Second.

Sir B. Shower. We agree that he did plead the King's Pardon, and then the Case is no more than this, a Man is convicted of Manslaughter, and the King pardons him, he still remains unqualified to be a Witness; we say, this has been the Case that has been much debated in *Westminster Hall*, and upon Debate it has been resolved.

Mr J. Powell. It has been so, but always against you.

Sir B. Shower. It was in the Case of my Lord *Castlemaine* at this Bar; one of my Lords the Judges went to the Court of *Common Pleas* to ask their Opinion, and these Cases were put: In Case a Man be out-law'd of Felony and pardon'd; in Case a Man be convicted of Felony and had the Benefit of his Clergy, and in Case a Man was convicted and not attainted, but pardoned upon the second Case; they were of Opinion, that the Receiving the Punishment of Burning in the Hand, had purged the very Guilt, and did set him upright by the Statute of the 15th of Queen *Elizabeth*, they thought it did operate to that Purpose; but in the Case of a Pardon of a Man attainted or convicted, it was agreed he was not qualified to be a Witness; and *Dangerfield*, against whom the Objection was made, being burnt in the Hand, was received to be a Witness; and it was only made use of against him to take off his Credit. The Record of that Case is in this Court, and I looked upon the Print of the Tryal this Day. We say, that there is a Case in 1 *Brownlow* 47. a Man attainted of Felony cannot be of an Inquest, though pardon'd; and we think, he that cannot be a Juryman, sure cannot be a Witness; there is the same Exception to his being a Witness as there is in the Case of a Jury-man; for the one ought to appear as free, and stand as clear and unsuspected, in Respect of his Probity and Verity as the other, as the one is sworn to try and determine upon Oath, so the other is sworn, and his Oath is to sway and determine the Jury, and in Consequence it is all one, and upon these Reasons we hope he is not a good Witness.

L. C. J. Where is that Case in *Brownlow*?

Sir B. Shower. It is 1 *Brownlow* 47. and then there is 11 *H. IV.* 41. 2 *Bulst.* 154. there my Lord *Cook* says, if a Man be convicted of Felony, and pardoned, he cannot be a Jury-man; for though the Punishment is pardoned, the Guilt remains, so that he is not *probus & legalis Homo*, and every particular Person has an Interest in it, that they have free and clear Persons to be Jury-men and Witnesses.

Mr Phipps. My Lord, that is the Distinction we go upon, which was taken in *Dangerfield's* Case upon the Tryal of my Lord *Castlemaine*, where the whole Court were of Opinion that a Pardon from the King only would not make him a good Witness, but if he were burnt in the Hand, that by the Statute of *decimo octavo Elizabethæ*, amounted to a Statute Pardon, and set him right to all Intents and Purposes: And there they did take Notice of that Book that *Sir Bartholomew Shower* cited of 11 of *H. IV.* that a Man attainted could not be a Jury-man, though pardoned by the King: It was objected he might be a Witness; but *Mr Justice Jones* said, it was the same Reason if he be not fit for a Jury-man, he is not fit for a Witness; they ought to be both *probi & legales Homines*, thus the Case stood there. And that other Book

of *Bulstrode* is the same, it was in the Case of a Prohibition for a *Modus Decimandi*, where the Suggestion is to be prov'd by two Witnesses, it was objected he had not prov'd it by two Witnesses, because they were both attainted of Felony, and though they were pardoned, yet that did not make them good Witnesses in the Opinion of the Court.

L. C. J. This is quite another Case, it does not come up to your Point, here is no Attainder, and here is Pardon upon Pardon, by Act of Parliament.

Mr Phipps. As to that we think the Parliament Pardon is out of the Case; for if the Pardon from the King be a good Pardon, there is no Guilt for the Act of Pardon to work upon.

Sir B. Shower. My Lord, this we think to be a good Distinction as to that Matter, a Man that is actually pardon'd the Punishment by the King's Pardon, and afterwards an Act of Pardon comes and pardons all Offences, that we say does nothing, for he is not a Subject of Pardon, for he was discharged of his Punishment before.

Mr At. Gen. Sure these Gentlemen are not in earnest when they make this Objection.

Sir B. Shower. When the King has once pardon'd him he is not an Offender within the Meaning of the Act of Parliament, and therefore the Act works nothing as to him, and so he stands as much disabled from being a Witness, as he was before.

Mr J. Powell. In the Case of *Cutington* in *Hobard*, there it is said the Pardon takes away *tam Reatum quam Pœnam, &c.* an Action being brought for calling a Man Thief, who had been indicted for Felony, and convicted, and pardon'd, the Court adjudged, that he ought not to be called so; for he was no Thief, for the Pardon had washed him entirely clean, and he was discharged both of the Guilt and the Punishment, and all the Consequences of it.

L. C. J. Those Cases that have been put are no Authorities at all in this Matter; for where there is a Conviction of Manslaughter, and the Party is pardon'd, we think that Pardon of the King works in a Way of Discharge as much as the Burning in the Hand. I take it, it is the same Thing: They admit, that will discharge him to all Intents and Purposes, and so we think does this as effectually; for having his Clergy, and being burnt in the Hand, works by Way of Statute Pardon; for the Case of a Jury-man, I take it not to be the same with this Case; but even in that Case, I do not think that the Party convicted, after the King hath pardoned him, is disabled from being of a Jury; but supposing that to be so, yet there are many Cases wherein a Man may be a Witness, that cannot be a Jury-man. It is true, the Credit of such a Witness is left to the Jury, but it is no Objection against his being a legal Witness; and it is a very strange Argument to me, that because he was pardoned by the King, if that should be deficient, that therefore, the Act of Pardon should have no Effect. Truly, that is to say, that the King's Pardon works so, as to have nothing left for the Parliament Pardon to work upon, and certainly it sets him so right, that to all Intents and Purposes he is as good a Witness as ever he was; and if any Thing remained to be done, the Act of Parliament has done it, and supplied the Defect; but I think the King's Pardon is sufficient.

Mr At. Gen. My Lord, I suppose they do not insist upon it, as thinking there is any great Weight in

in it, but only for Objection sake, but we hope that notwithstanding this Objection Mr Porter shall be sworn.

Mr Soll. Gen. My Lord, they take this Exception at an improper Time, for they speak to his Credibility.

L. C. J. No, they except to his being a Witness.

Mr Soll. Gen. If so, your Lordship remembers a Case that was before your Lordship not long since, but in *Easter Term* last, when one was try'd at this Bar for Treason, and Aaron Smith was produced as a Witness, and the Prisoner took Exception against him as no good Witness, because he had stood in the Pillory, and your Lordship and the Court did say, that the Act of Pardon did restore him to all Intents and Purposes *ad liberam Legem*.

Mr Conyers. In the Case of the Earl of *Castlemaine*, both the Courts of *King's Bench* and *Common Pleas*, held *Dangerfield* a legal Witness, tho' burnt in the Hand for Felony, and so was the Opinion of *Rolls*: In *Stiles Reports* 388, one that hath been burnt in the Hand for Felony, may notwithstanding be a Witness.

Sir B. Shower. My Lord, in answer to that Case that was put, that after the King's Pardon for one convicted of Felony another Man has not the Liberty to call him Thief, that was an Objection in my Lord *Castlemaine's* Case, that may stand as good, and our Notion that we contend for, be good too; he cannot be impeach'd, or have Guilt imputed to him, when once the King has forgiven him, and yet that may not restore him to his entire Credit, as was my Lord Chief Justice *Scroggs's* Distinction in the Case of *Dangerfield*; and as to the Case of *Aaron Smith*, that was very different: The Reason in that Case was, because the Crime for which Mr Smith was indicted, did not import any such scandalous Offence for which his Credit could be impeached.

L. C. J. No, no, we did not meddle with that, we went upon the Pardon.

Sir B. Shower. But in that Case, they did not insist upon it that he had a Pardon antecedent to the Act of Pardon, so that he was *Subiectum capax*, for the Act to work upon, he was an Offender that needed a Pardon, whereas Mr Porter being pardon'd before, could not be an Offender needing a Pardon, and consequently not within the first Words of the Act of Indemnity, because he was pardon'd by the King before, but he was not by that Pardon, say we, restor'd to his Credit to make him a good Witness, and the Act of Parliament did not affect him, he being not *Subiectum Materia*, as not being an Offender.

Mr Phipps. As to Mr Solicitor's Case of *Aaron Smith*, we agree the Act of Parliament did restore him, because he never was pardon'd before by the King, so there remained an Offence for the Parliament Pardon to work upon.

L. C. J. Do you agree that, then you may agree the other; for the Act of Parliament pardons none but those that the King can pardon generally.

Mr Phipps. It is true, my Lord, but we say that an Act of Parliament Pardon, removes those Disabilities which the King's Pardon does not, for every one is in Law a Party to an Act of Parliament, and therefore no Person shall be permitted to alledge in Disability of another, any Crime which he himself hath pardon'd, for that is to

aver against his own Act, but 'tis otherwise in the Case of the King's Pardon.

L. C. J. Why, the very Parliament Pardon comes from the King; the King has a full Power of Pardoning, and where he does pardon under the Great Seal, it has the full Effect of the Parliament Pardon. A Pardon before Attainder, prevents all Corruption of Blood, so that tho' a Man forfeits his Goods by Conviction, yet after a Pardon he is capable of having new Goods, and shall hold them without any Forfeiture whatsoever, for the Pardon restores him to his former Capacity, and prevents any further Forfeiture. Indeed if he had been attainted whereby his Blood was corrupted, no Pardon, whether it were by the King or by the Parliament, could purge his Blood without Reversal of the Attainder, by Writ of Error, or Act of Parliament, or express Words in the Act to restore Blood; but either Pardon makes him a new Creature, gives him new Capacity, and makes him to all Intents and Purposes, from the Time of the Pardon, to be *probus & legalis Homo*, and a good Witness. Indeed this Crime might be objected against his Credit, but it is not to be urged against the Sufficiency of his Evidence, that is, his being a Witness.

Mr Att. Gen. My Lord, we desire he may be sworn. (Which was done.)

Mr Soll. Gen. Now, Mr Porter, do you give my Lord and the Jury an Account, what you know of this intended Assassination, how it came to your Knowledge, and what Share the Prisoner at the Bar had in it.

Capt. Porter. My Lord, the first Account that I had of this Assassination, was from Mr *Charnock*, who brought to me Sir *George Barclay* and Major *Holmes* to my Lodging in *Northfolk-street*, where I was sick of the Gout. Sir *George Barclay* did not then particularly acquaint me with the Business, but said, he would leave it to Mr *Charnock* to tell me what it was.

L. C. J. Who told you so?

Capt. Porter. Sir *George Barclay*; and after that we had several Meetings, at which the Prisoner at the Bar was present, particularly at the *Globe-Tavern* in *Hatton-Garden*, where it was consulted of the best Ways and Means to assassinate the King as he came from *Richmond*: Some were of Opinion that it was best to be done on the other Side of the Water; others were of Opinion that it should be done on this Side, by a Party of Men on Horse-back: Upon this Difference of Opinion, there were Persons appointed to go and view both Places; I was appointed for one to go with Captain *Knightley*, and Mr *King* went along with me, and we did view the Ground on both Sides, and when we came back, we gave an Account to Sir *George Barclay*, and those that sent us, and upon our Report, Sir *George Barclay's* Mind was chang'd, who was for the other Side of the Water before. And he agreed to do it in the Lane that leads from *Turnham-Green* to *Brentford*; afterwards there was a Meeting at the *Globe-Tavern* in *Hatton-Garden*, and there it was agreed that the King should be attack'd on Saturday the 15th of February, by Sir *George Barclay* and his Party; and Mr *Rookwood*, the Prisoner at the Bar, was to command a Party of Men that came over from *France*, who were to assault the Guards on one Side, and I and Mr *Charnock* were to set upon the

the Guards on the other Side. Sir George Barclay, with four Men out of each Party, was to attack the King in his Coach, and to kill him and all that were there in it.

L. C. J. Who were at that Meeting?

Capt. Porter. There were Sir George Barclay, Captain Charnock, Sir William Parkyns, My self, Major Holmes, Captain Rookwood, and Captain King.

L. C. J. Where was this?

Capt. Porter. At the *Globe-Tavern* in *Matton-Garden*, upon *Saturday* Morning the 15th, we having two orderly Men that lay at *Kensington* to give Intelligence, had Notice brought us first that the King would go out; *Durance*, who was one of them, used to go every Morning to Court to get us what Intelligence he could, and Sir George Barclay told me upon the *Friday*, that he should give me an Account as soon as ever he could the next Morning; and the next Morning at my Lodging in *Little Rider-street* in *St. James's*, he came to me, and told me, the Advance Guards were gone out, and the King's Kitchen was gone, and all was preparing for the King's going abroad, and there went a great many Noblemen and Gentlemen a Horse-back with him, and therefore he thought there would be no Opportunity of effecting the Thing; said I, that's no Objection at all, nor any Reason for putting it off, because when the Sport is over, all the Company goes away, and the King comes only in his Coach with the Guards; he said, he would give Sir George Barclay an Account of it, and he came back with Sir George Barclay and Mr Rookwood to my Lodging, and upon repeating that Objection, and my giving the same Answer, it was agreed if the King had gone out that Day to have put the Design in Execution.

Mr Att. Gen. Was the Prisoner at the Bar there at that Time when that was agreed upon?

Capt. Porter. Yes, he was.

L. C. J. Where do you say was that Meeting?

Capt. Porter. At my Lodging in *Little Rider-street*.

L. C. J. Had you that Discourse with Sir George Barclay, in the Presence of the Prisoner?

Capt. Porter. Yes, Sir George said, he doubted we could not do it, because there would go so many with the King; but I objected against that, that after the Sport was over, all the Company went away, and the King came back in his Coach; then it was agreed to go on, there was Sir George Barclay, *Durant*, and the Prisoner at the Bar and my self, in the Room.

L. C. J. This you say was *Saturday* the 15th, in the Morning.

Capt. Porter. Yes, my Lord, but I cannot say I saw the Prisoner at the Bar at any Meeting after that.

Mr Att. Gen. Pray, tell my Lord and the Jury, what Method you were to take in putting this Design in Execution.

Capt. Porter. There were to be so many Horsemen armed and prepared for the Purpose. Sir George Barclay told me, we should be about 40 or 45 Horse-men, and they were to be divided into two Parties, and Sir George Barclay was to have four Men out of each Party, and his Business was to attack the King, and all that were with him in the Coach. Captain Rookwood was to command those that were come out of *France* to serve under Sir George Barclay, and Captain Charnock and I were to command the other Party,

and both Parties were to set upon the Guards at the same Time that Sir George Barclay attack'd the King's Coach.

Mr Att. Gen. If the Prisoner will ask him any Questions, let him.

Sir B. Shower. Pray, Captain Porter, when was that first Meeting at the *Globe-Tavern*?

Capt. Porter. It was one Day in the Week before the 15th.

Sir B. Shower. Was Mr. Rookwood, the Prisoner at the Bar, there that Day?

Capt. Porter. Yes, he was.

Sir B. Shower. How long before the 15th?

Capt. Porter. One Day that Week, but I cannot tell what Day.

Sir B. Shower. He says it was agreed so, and so I desire to know what Words Mr. Rookwood uttered at that Time.

Capt. Porter. It was discoursed by every one round, which was the best Way and Method. I heard Mr. Rookwood say, indeed, he believed it a very desperate Thing, and he was not very willing to engage in it; but when Sir George Barclay told him he should command his Party, he replied in *French* —

Mr Sell. Gen. What's the Meaning of that?

Capt. Porter. There's an End of it.

Mr Att. Gen. You say the Prisoner was at your Lodging *Saturday* the 15th, in the Morning, What Discourse had you there?

Capt. Porter. He was there upon *Saturday* in the Morning, the 15th of *February*, and *Durant* brought an Account that the King's first Guards were gone, and the King's Kitchen was gone before, and it was expected that the King would go about eleven a Clock, but it was said, that there were a great many were preparing to go with him, and therefore it would not be convenient to do it that Day; said I, that is no Objection at all, for the Nobility and Gentry go out of the Field as soon as the Sport is over, and the King used to go with a few People to Mr. ——— House at *Richmond*, and therefore it might be as well done at that Time, as any Time: *Durant* made that Objection at first himself, and when I made him that Answer, he went to Sir George Barclay, and he came back with Sir George Barclay, and the Prisoner was there by at the same Time, and Sir George Barclay made the same Objection; it was at my Lodging in *Little Rider-street*, and when I told them my Reason against the Objection, as I had done before, they all agreed to do it that Day.

Mr Phipps. At that second Meeting, did Mr. Rookwood make any Proposal there?

Capt. Porter. I only say he came with Sir George Barclay, and what I heard, I tell you Sir George Barclay made that Objection, and I gave it that Answer.

Mr Phipps. But what did he say?

Capt. Porter. I cannot say that I heard Mr. Rookwood say any Thing in particular, but they all agreed to do the Thing that Day.

Sir B. Shower. You remember nothing that he said?

Capt. Porter. Sir George Barclay said, we will go and prepare, and he went away with him.

Sir B. Shower. Pray, when did Sir George Barclay come into *England*?

Capt. Porter. Truly, Sir, I don't know that; the first Time that I saw him after he came, Mr. Charnock brought him to my Lodging in *Norfolk-*

Norfolk-street, but before that, Mr Charnock told me, he was come into England.

L. C. J. Hark you, Mr Porter, when you came back from Viewing the Ground before the first Saturday, and you said you made your Report, and then it was agreed that it should be done at such a Place; Do you say the Prisoner was there?

Mr Att. Gen. No, my Lord, he does not say so. Do you say Mr Rookwood was there at that Time?

Capt. Porter. No, my Lord, I don't say so.

Sir B. Shower. I am sure he did not say so before; and besides, your Lordship will observe there is no such Overt-Act as that laid in the Indictment against the Prisoner, that Mr Porter made his Report upon the View, that only concerns Mr Knightley.

L. C. J. No, that is not an Overt-Act, I agree it; but I only ask the Question, whether the Prisoner was there.

L. C. J. Treby. If it were an Overt-Act laid in the Indictment, it would not affect the Prisoner, because the Viewing of the Ground, and making the Report, is Captain Porter's Act, and it must be the Consulting and Debating afterwards that must affect the Prisoner, if he be concern'd.

Mr Conyers. The Meetings and Consultations that are laid in the Indictment are the Overt-Acts.

Mr Soll. Gen. Well, if they have done with Captain Porter, we desire Mr George Harris may be sworn.

Sir B. Shower. My Lord, we beg Leave to oppose Mr Harris's being sworn; here was a Proclamation that did take Notice of this barbarous Conspiracy to assassinate the King, and the Proclamation did signifie, That the King had received Information of several Persons concerned in that Conspiracy; and for the Encouragement of taking those so accused, he did promise a Thousand Pounds Reward for the taking of any of the Conspirators; and in the Conclusion of the Proclamation there is a Clause, *That if any of the Conspirators should discover or apprehend any of the other Persons that were therein named, so as that they should be brought to condign Punishment, such Conspirator so discovering should receive a Thousand Pounds Reward for any of the other Persons apprehended, and his own Pardon.* My Lord, we have a Witness here ready to prove that this was Mr Harris's Case; he was himself in the Proclamation, he did actually discover Mr Rookwood, the Prisoner at the Bar, and was instrumental in the taking of him; and consequently upon this Clause of the Proclamation, if he be brought to Justice, then is Mr Harris intitled to this Reward and his Pardon; and consequently he has such an Interest and Advantage to himself as will prevent his being a Witness. It is true, indeed, where it is at the King's Suit, in a capital Case, it is pretty hard to say that a Man has an Interest; but we think, as this Case is circumstantiated upon this Proclamation, that the same Objection lies against him as would do if this were a civil Cause; if we shew how he is to have an Advantage by the Event of this Cause, then he is not to be admitted a Witness.

L. C. J. Did he apprehend any Body upon the Proclamation?

Sir B. Shower. Yes, he apprehended Mr Rookwood himself, or was the Cause of it, and thereby is intitled to the Reward and his Pardon.

Mr Phipps. That upon which we ground our Objection is the different Penning of the Proclamation; for if any one that is not a Conspirator do

but discover and apprehend any of the Persons named in the Proclamation, he is entitled to the Thousand Pounds; but the Conspirators themselves must go further; for a bare Discovery and Apprehending any of their Accomplices will not entitle them to the Reward mentioned in the Proclamation, but they must discover and apprehend their Accomplices so as they be brought to Justice before they can be entitled to the Reward: And to be brought to Justice for any Crime, is in common Understanding to be brought to such Punishment as the Law inflicts for the Offence. Now Mr Harris's Case is this, he discovered Mr Rookwood, and went with the Guards to the Compter and seiz'd him: And if Mr Rookwood be not convicted, Mr Harris is not to have any Thing for his Pains; but if he be convicted, Mr Harris is entitled to the Thousand Pounds and his Pardon. And therefore surely Mr Harris cannot be admitted an Evidence against Mr Rookwood, since he is to receive so great a Benefit by his Conviction. Upon an Indictment for a usurious Contract, the Person whose Deed it is cannot be a Witness, because 'tis to avoid his own Act: So in an Indictment for Perjury, on the Stat. 5. Eliz. the Party injured by the Perjury cannot be a Witness, because he is to have half the Forfeitures.

Mr. Att. Gen. I suppose they will make out their Objection before they expect an Answer from us.

Sir B. Shower. I hope your Lordship will not put us to prove a Copy of the Proclamation from the Inrolment, but that we may have the same Favour as in the Case of the Statute-Book, that the Print of it may be allow'd for Evidence.

Mr Att. Gen. My Lord, we will not stand with them for that, we know they are mistaken through-out, we consent the Proclamation should be read.

Cl. of Arr. Reads,

By the King a Proclamation.

William R.

Whereas His Majesty has received Information upon Oath, that the Persons herein after named, have with divers other wicked and traiterous Persons entered into a horrid and detestable Conspiracy to assassinate and murder His Majesty's sacred Person, for which Cause several Warrants for High Treason have been issued out against them, but they have withdrawn themselves from their usual Places of Abode, and are fled from Justice: His Majesty has therefore thought fit by the Advice of his Privy Council to issue his Royal Proclamation, and His Majesty does hereby command and require all His loving Subjects to discover, take, and apprehend James Duke of Berwick, Sir George Barclay, Major Lowick, George Porter, Capt. Stow, Capt. Walbank, Capt. James Courtney, Lieutenant Sherborne, Brice, Blair, Dinant, Chambers, Boise, George Higgins, and his two Brothers, Sons to Sir Thomas Higgins, Davis Cardell, Goodman, Cramburne, Keyes, Pendergrofs, alias Prendergrafs, Bryerly, Trevor, Sir George Maxwell, Durance, a Fleming, Christopher Knightley, Lieutenant King, Holmes, Sir William Parkyns, Rookwood, wherever they may be found, and to carry them before the next Justice of Peace or chief Magistrate, who is hereby required to commit them to the next Goal, there to remain until they be thence delivered by due Course of Law. And His Majesty doth hereby require the said Justice, or other Magistrate, immediately to give Notice thereof to Him or His Privy Council. And for

the Prevention of the going of the said Persons, or of any other, into Ireland, or other Parts beyond the Seas, His Majesty does require and command all His Officers of the Customs, and other His Officers and Subjects of and in the respective Courts and Maritime Towns and Places within His Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, that they and every of them in their respective Stations and Places, be careful and diligent in the Examination of all Persons who shall pass or endeavour to pass beyond the Seas, and that they do not permit any Person whatsoever to go into Ireland, or other Places beyond the Seas, without a Pass under His Majesty's Royal Sign Manual until further Order. And if they shall discover the said Persons above-named or either of them, then to cause them to be apprehended and secured, and to give Notice as aforesaid. And His Majesty does hereby Publish and Declare to all Persons who shall conceal the Persons above-named, or any of them, or be aiding and assisting in the Concealing of them, or furthering their Escape, That they shall be proceeded against, for such their Offence, with the utmost Severity, according to Law. And for the Encouragement of all Persons to be Diligent and Careful in endeavouring to Discover and Apprehend the said Persons, We do hereby further Declare, That whosoever shall discover and Apprehend the Persons above-named, or any of them, and shall bring them before some Justice of Peace, or chief Magistrate, as aforesaid, shall have and receive as a Reward, the Summ of One Thousand Pounds; which said Sum of One Thousand Pounds, the Lords Commissioners of His Majesty's Treasury are hereby Required and Directed to pay accordingly. And if any of the Persons above-named shall Discover and Apprehend any of their Accomplices, so as they may be brought to Justice, His Majesty does hereby Declare, That every Person making such Discovery, shall have His Majesty's Gracious Pardon for his Offence, and shall receive the Reward of One Thousand Pound, to be pay'd in such manner as aforesaid.

Given at our Court at Kensington, the 23d Day of February, 169 $\frac{1}{2}$, in the Eighth Year of our Reign.

GOD SAVE THE KING.

Mr Phipps. My Lord, The different Penning of the Clauses is not only in that Proclamation, but it is the Language of every Proclamation that has gone out for the Apprehending any of the Conspirators.

Mr Att. Gen. My Lord, All that we say in Answer to this Objection, is, That Mr Harris is not nam'd in that Proclamation.

L. C. J. What say you to that Sir Bartholomew Shower? He is not named in the Proclamation: And so if he hath discovered and apprehended the Prisoner, he has earn'd his Money, whether he be Convicted or not, because Rookwood's Name is in the Proclamation, tho' his is not.

Mr Phipps. Then, my Lord, with humble Submission, here is another Proclamation wherein he is nam'd, we desire that may be read.

Mr Sol. Gen. And when it is read, it will be as little to your Purpose as the other.

Mr Att. Gen. Let them read what they please, we need say nothing at all to it.

L. C. J. Certainly upon this Proclamation, there's no Objection; for he is intitled to his One Thousand Pound already, tho' Rookwood be never convicted.

Mr Phipps. But is he not by this Proclamation which mentions his Accomplices, intitled to his Pardon? If so, he swears to secure himself.

L. C. J. By the Apprehending and Discovering, he's intitled to his Pardon.

Mr Phipps. But not without he be brought to Justice; that is to say, till he be convicted; therefore he cannot be an Evidence to convict him.

L. C. J. That is, as to any that are there named, if any of them discover and apprehend one another, it must be so as that they be brought to Justice; But if any Person that is not named there does apprehend any that is, he is intitled to the One Thousand Pound, barely by the Apprehension.

Mr Phipps. Then there is another Proclamation where they are both named, as Mr Rookwood tells me.

Sir B. Shower. My Lord, We will set this Matter right; we will show the other Proclamation, in which, if I am rightly inform'd, for I have not read it, Mr. Harris is nam'd.

Mr Att. Gen. If you have not read it, I would advise you not to trouble the Court with it; for you will find the latter Part is restrain'd to three or four particular Persons, of which he is none.

Rookwood. I am named in the Proclamation.

Mr Att. Gen. Ay, but read the latter Part of it, and you will find you are not nam'd in that Clause that they referr'd to: You need not read the former Part of the Proclamation, we agree the Prisoner is named there; but only look towards the bottom, which is the Clause that they refer to.

Cl. of Arr. (Reads) And we do hereby further declare, &c.

Mr Att. Gen. They have not considered the Proclamation, and therefore make an Objection of they don't know what.

Sir B. Shower. We are in your Lordship's Judgment.

L. C. J. For what? See if you can make or state a Case for our Judgment.

Sir B. Shower. Mr Rookwood is mention'd in the first Proclamation, and Harris is not, but there are the Word Accomplices: He is likewise mentioned in the last Proclamation, but not in the last Clause of it. I confess, if he had, it had been plain it would have taken off his Testimony; but now we must submit it to you, whether he is not an interested Person, and consequently no good Witnefs.

L. C. J. Truly I do not see any Colour for the Objection. Is he not as well intitled to his One Thousand Pound, tho' Mr Rookwood had never been try'd, by the bare Apprehending of Mr Rookwood, as if he was convicted?

Sir B. Shower. No, my Lord; because the Words are so as he may be brought to Justice.

L. C. J. That is not so, as to any Person that apprehends one mentioned in the Proclamation, if the Person that apprehends be not mention'd in it, and named himself; if any one that is not mention'd apprehend one that is mention'd, he is intitled, by the Apprehension, to the One thousand Pound. If any one that is mention'd apprehend another, then he is to bring him to Justice; now Mr Harris is not named in this Proclamation, and so, as to the One thousand Pound, he stands in the same Condition as any other Person that discovered or apprehended one of the Persons there nam'd.

Sir B. Shower. But it seems he was one of the Con-

spirators, because he is himself described in another Proclamation.

Mr *Att. Gen.* If it were so, it would not be material, nor any manner of Objection; but as they have made their Objection upon these Proclamations, we think there is nothing for us to give an Answer to.

Mr *Comper.* Nay, my Lord, if it were so, will Sir *Bartholamew Shower* say his Client is not brought to Justice, unless he be convicted? I am sure the Words *Convicted* or *Attainted*, are not in the Proclamation.

L. C. J. There is nothing in it; you must swear Mr *Harris.* (Which was done accordingly).

Mr *Sol. Gen.* Will you give an Account to my Lord and the Jury, what you know of this Conspiracy against the King's Life, from the first Time you were acquainted with it, and what Hand the Prisoner at the Bar had in it.

Mr *Att. Gen.* Pray give an Account of the whole Thing, your Coming over, and who sent you, and upon what Errand, and the whole that you know of this Conspiracy.

Capt. *Harris.* Upon the 14th of January last, the French Stile, New Stile, I was at St. Germain's, where I was sent for by King James, and was ordered to wait his Dinner till it was over, and accordingly I did wait till his Dinner was over, and then I came in, and Col. *Parker* was with him, and one Mr *Hare*, who is also mention'd in the Proclamation, was there also: The King told me he was sensible I had served him well, and now he had an Opportunity of doing something for me; he told me he would send me into England, where I should be subsisted, and I was to follow the Orders of Sir *George Barclay*, and accordingly he order'd me ten Lewidores to be paid by Mr *Caroll*, who is Secretary to the late Queen, and Col. *Parker* went along with me, and Mr *Hare*, to *Caroll*, and told him he came from the King, and we had the Lewidores, and we went to Calais, in Order to our coming over hither: But we were told if we were wind-bound, that the Money we received would not bear our Charges; there was Orders given for our further Subsistence at Calais, to the President there. Accordingly we came to Calais, and the Wind did not serve us for eight or nine Days; and while I stay'd there, the Money that I spent at Calais was paid by the President of Calais, Monsieur *Latour*. Afterwards I landed in England, near Romney Marsh, as I was told, and I came to the House of one *Hunt*, and he provided me and my Comrade with a couple of Horses; and coming from thence, I came in the first Place to one *Tucker's* an Apothecary in Sandway, and next from thence we came to Rochester, to Charles *Crofts's*, and from thence in a Coach to Gravesend, and from thence by Water to London: That Night we lay in Grace-Church-street at an Inn, it being Night, the Night-Tide, and something late. The next Day I came to a Lodging at an Acquaintance of my Comrade's, Mr *Hare*, at the Unicorn in Brownlow-street, one Mr *Wateman's*. The next Night I went to look for Sir *George Barclay*, whom the King told me I should certainly find by such a Sign of a white Handkerchief hanging out of his Pocket, on Mondays and Thursdays, in Covent-Garden, where his Walk was to be in the Evening, because he was not to appear in the Day-Time openly. It happen'd that upon Monday Night after I came to Town, I went there,

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and did not find Sir *George Barclay* according to the King's Direction, which I admired at; but there was one Mr *Berkenhead*, who told my Comrade, a Day or two after, That Sir *George Barclay* would needs speak with me, and accordingly I met with him; and he asked me how the King, Queen, Prince, and Princess did, and I told him they were very well; I told him I was appointed to attend him, and obey his Orders. He told me he had no Money at present, but in two or three Days he would send some; and so he did, by Major *Holmes*. I had five Shillings a Day for Subsistence, and I had no Horse; and when I had a Horse, it was six Shillings a Day; after which rate I had Subsistence for a Month at five Shillings a Day, Guineas going then at Thirty Shillings. Major *Holmes* paid me the Money by Sir *George Barclay's* Order, as he told me, and he afterwards gave me a Guinea, and that was the first Saturday when the Assassination was design'd; for that we told him we wanted Money, and it was not reasonable we should take our Horses out of the Stable before we paid for them: And I met Sir *George Barclay* several Times at Covent-Garden, and he told me it was a suspicious Place, and desired me not to come any more there; but when he had any particular Orders to give me, he would give me Notice of it where I shou'd meet him; and accordingly I did meet him several Times.

Mr *Att. Gen.* Now, Sir, will you tell what you know as to the Prisoner at the Bar.

Capt. *Harris.* As to Mr *Rookwood*, the Saturday that the Assassination was design'd to be, the first Time that I knew of it, I met Mr *Rookwood*, at one Mr *Burck's* Lodging, where he was up, and I saw him in a great Hurry and some Consternation, and in came Mr *Bernarde*; I ask'd him the Meaning of it, and what they were going about; and Mr *Rookwood* told me, If I wou'd go down to Captain *Counter* I shou'd know; accordingly I went, and to the best of my Remembrance, he gave me a little Note to Captain *Counter*, but that I am not positive in. I went to Captain *Counter*, and as soon as ever I came, he told us, We must be immediately ready to go to Turnham Green.

Mr *Att. Gen.* Where was that?

Capt. *Harris.* At the Woolpack, that was the Sign ——— as near as I remember. Mr *Hare* and I were ordered together to come there, and there was Mr *Hungate*, who had been there some Time, and when I came in, Sir *George Barclay* did declare Laughing, *These are my Janissaries*: And he talk'd something of bringing the Garter, and of attacking the Coach; but he went out of the Room, and afterwards he came in and declared, We were all Men of Honour, and that the Business we were going about, was to attack the Prince of Orange; but *Durant* came in after that, and said, The Prince of Orange did not go out that Day. When he talk'd of attacking the Prince of Orange, I was very much startled, not knowing any Thing of it before; and I came the next Morning to Mr *Rookwood*, and ask'd him if we were to be the Murderers of the Prince of Orange, says Mr *Rookwood* to me, I am afraid we are drawn into some such Business; but if I had known of it before I came over, I should have beg'd the King's Pardon at St. Germain's, and not have come over hither; and said I, This is very fine, we have serv'd to a very good Purpose, to be sent over upon such an Errand and Account. After

R 2

this

this Mr *Rookwood*, and Mr *Lowick*, and I, had a Meeting at *Red-Lyon Fields*, where we did discourse about the Matter. I did often declare against it, That it was so barbarous a Thing, that no Man of Honour almost wou'd be guilty of it; but Major *Lowick* answered, That we were to obey Orders, for sure Sir *George Barclay* wou'd not undertake a Thing of that Nature without Orders.

Mr *Att. Gen.* Pray what said Mr *Rookwood*.

Capt. *Harris.* He own'd it was a barbarous Thing; but he was sent over to obey Sir *George Barclay's* Orders, which he had several Times declared he was resolved to do; upon that we parted: so afterwards I came to Mr *Rookwood's* Lodging; it was the *Saturday* Morning I came to him, and so went to Sir *George Barclay's*; while he was there, Mr *Rookwood* gave me a Note, naming so many Names, particularly Mr *Hungate*, Mr *Hansford*, Mr *Hare*, and his own Name at Top, not the Name that he is arraigned by here; but a sham Name that he had, as the rest of us all had sham Names, which at that Time we went by.

L. C. J. What was your Name?

Capt. *Harris.* My Name is *Jenkins*.

L. C. J. Who gave you that Name?

Capt. *Harris.* King *James* at *St. Germain's*, and he gave Mr *Hare* the Name of *Guiney*, and Mr *Rookwood's* Name was *Roberts*. King *James* told us in his Bed-chamber, We were to go by those Names.

Mr *At. Gen.* Pray Sir, what did *Rookwood* say to you, when he gave you that List?

Capt. *Harris.* He told me, he was to go to *Turnham-Green*, and I was to go along with him, and says he to me smiling, *You shall be my Aid de Camp*; and get the Rest of the Gentlemen ready, and accordingly I went to look for several of the Persons, — particularly for Mr *Blackburne*: When I came back again, I found him lying on his Bed, and that Sir *George Barclay* had told him the Prince of *Orange* did not go out that Day, and from thence we went to Dinner, where Major *Lowick* din'd with us, and Mr *Bernarde* and Major *Lowick* seeing me in a Heat, ask'd me, Why I was in such a Sweat; I told him I were getting those Men ready for Mr *Rookwood*, who had made me his *Aid de Camp*: Says Major *Lowick* to me, You may very well do it, for you have Six Shillings a Day allow'd you, and I have nothing; I bring two Men at my own Charge. Said I, Major *Lowick*, I wonder you don't apply your self to Sir *George Barclay*, and then I believe, you may be sublisted too. He answer'd me, He did not think it worth the while to trouble him, since he had never spoke to him of it before: and *Rookwood*, and *Bernarde*, and *Lowick*, and my self, several Times met in *Red-Lion Fields*, and talk'd of attacking the Prince of *Orange*.

Mr *Att. Gen.* Who did?

Capt. *Harris.* *Rookwood*, *Bernarde*, *Lowick*, and my self.

Mr *Att. Gen.* Pray Sir, let me ask you one Question. Where was your Horse at first?

Capt. *Harris.* At first it was at my Lord *Faversham's* Stables, as they told me, in *Somerset-House*.

Mr *Att. Gen.* Where were the other Persons Horses?

Capt. *Harris.* There was Mr *Hungate's* and Mr *Hare's* Horses in the same Place, at the same Time, as they told me.

Mr *Att. Gen.* How came you by your Horse there?

Capt. *Harris.* Maj. *Holmes* did deliver my Horse, and committed it to my Care, and I carry'd it thence to another Place.

Mr *Att. Gen.* Did you observe there was any more Horses there?

Capt. *Harris.* I believe there was Five or Six, as near as I can guess.

Mr *At. Gen.* Do you know where *Rookwood* was to have his Horse?

Capt. *Harris.* He had a Horse; but whence he had it I don't know.

Mr *Att. Gen.* Had you any Arms delivered you?

Capt. *Harris.* Yes, I had by Capt. *Counter*.

Mr *Conyers.* Were you at no other Place together that *Saturday* Night, the 22d of *February*, because you say you din'd together?

Capt. *Harris.* Yes, we were at the *Bear Tavern*.

Mr *Conyers.* What Discourse pass'd between you there?

Capt. *Harris.* They were talking about the Assassination; but what any particular Person said, I cannot tell.

Mr *Conyers.* Pray who were there?

Capt. *Harris.* There was Mr *Knightley*, Captain *Rookwood*, and Mr *King*; and *Knightley* went out, and came in again, and declared, we must have a great deal of Care of our selves, or we should be taken up: and he whisper'd it first, and afterwards I asked him what it was; and he told me, and said, *We must have a Care of our selves*. Says Mr *King*, staring this Way with his Eyes, Surely God Almighty is on our Side; and so we parted.

L. C. J. When was this?

Capt. *Harris.* This was the Night of *Saturday* the 22d, when it was discover'd; for some of them were taken up the next Day.

Mr *At. Gen.* Was *Rookwood* there at that Time at the *Bear Tavern*.

Capt. *Harris.* I cannot positively say whether he was or not.

Mr *At. Gen.* What Discourse had you there?

Capt. *Harris.* We talk'd of Assassinating the King; but what it was in particular, I cannot tell.

L. C. J. Was *Rookwood* there?

Capt. *Harris.* Yes, I believe he was; but I cannot positively say.

L. C. J. You say it was the last *Saturday* that the King was to go abroad, that you apprehended you were discovered?

Capt. *Harris.* Yes, we apprehended we were discover'd before that; for Mr *Lowick* told me, that three or four Days before, in that Week, that his Name, and one *Harrison's*, were given into the Council, and another, and another, Two or Three of them, as he told me; I think Three or Four; and upon that Account Major *Lowick* went from his Lodging, and did not lie at his Lodging the Night before; and I came to Major *Lowick*, and he told me the same Thing at the *King's Arms Tavern*.

Mr *At. Gen.* Can you remember what Discourse you had that *Saturday* Night?

Mr *Cowper.* You say that on *Saturday* the 22d, Mr *Rookwood* gave you the List.

Capt. *Harris.* I do not say it was the 22d, for I cannot swear to the Day of the Month; but it

it was the second *Saturday* that we were to have gone about this Business.

Mr *Cowper*. You say he gave you a List of Names: Pray, when he gave you that List, what Discourse happened in the Room, just before, or after the giving of the List?

Capt. *Harris*. Sir, I think I told the Court that before.

Mr *Cowper*. Sir, I desire you would repeat it.

Capt. *Harris*. My Lord, I humbly desire to know whether I am to answer that Gentleman that Question?

L. C. J. Yes, you are to answer, being upon your Oath, and to tell the whole Truth.

Mr *Cowper*. I asked him the Question so fairly, what Discourse introduced the giving of the List, and what followed upon it, that I perceive this Gentleman does not know which Side I am of.

Capt. *Harris*. Mr *Rookwood* said we were to go to *Turnham-Green*; and he told me, that I was to be one of his Party, that we were to attack the Prince of *Orange*.

L. C. J. You say you were to be one of his Party; pray was it there that he told you, you should be his *Aid de Camp*?

Capt. *Harris*. Yes, he did tell me I was to be his *Aid de Camp*.

Mr *Phipps*. Whose Hand-writing was that List?

Capt. *Harris*. I cannot tell, I had it from that Gentleman.

Mr *Phipps*. But whose Writing was it?

Capt. *Harris*. Indeed I know not his Hand-writing, and therefore cannot tell whose it was: He is for his Life, but I believe he cannot deny any Thing that I have said, I suppose not: I should be very sorry to accuse Mr *Rookwood* of any Thing that was not true.

Mr *Phipps*. Pray whose Names were in that List?

Capt. *Harris*. I have mention'd Mr *Hare*, Mr *Hanford*, Mr *Blackburne*, my self, and you, Mr *Rookwood*, had your own Name at Top.

Rookwood. What is that *Blackburne*?

Capt. *Harris*. He is a *Lancashire* Man.

Rookwood. It's a very strange Thing I should give you a List with a Man's Name that I don't know, I declare it, I know no such Person.

Capt. *Harris*. Mr *Rookwood*, I believe you are very sensible I do not accuse you of any Thing that is not true.

Mr *Phipps*. When did you see that List last?

Capt. *Harris*. He gave it into my Hands, and had it from me again, or I threw it away afterwards.

Rookwood. But you that were to be an Evidence ought to have kept it to justify your Evidence.

Capt. *H*. Truly I did not intend to have been an Evidence at that Time.

Mr *Att. Gen*. If they will ask him any Questions, let them.

Sir *B. Shower*. No, indeed, I will ask him no Questions.

Mr *Att. Gen*. Then, my Lord, we have another Piece of Evidence which we would offer to your Lordship, which is not direct Evidence against the Prisoner, but only to prove a Circumstance or two of what has already been sworn: We do acknowledge, my Lord, it does not affect Mr *Rookwood*, but only to strengthen and confirm what they have sworn.

Sir *B. Shower*. With Submission we hope it will not be Evidence fit to be given as to the Prisoner at all; for because a Man may swear true in the particular Circumstance of a Thing, that therefore he swears true what he swears against the Prisoner, I think is no Consequence in the World.

L. C. J. It is a Thing distinct and foreign to the Matter, as to Mr *Rookwood*.

Mr *Att. Gen*. My Lord, we do not say it directly affects Mr *Rookwood*; but when your Lordship has heard it, we shall submit it to you, how far it confirms even the Evidence given against him.

Mr *Conyers*. My Lord, we say the Prisoner was to have his Horse from *Somerset-House*; and that there were Horses plac'd there for that Purpose we are going to prove.

Mr *Att. Gen*. My Lord, it is one entire Conspiracy, in which every one had his Part; one was to have his Horses and his Party in one Place, and another in another: Now that there were at such Time such Horses at *Somerset-House*, and those Horses were delivered out from *Somerset-House*, is certainly a Confirmation of the Truth of what the Witnesses have said.

L. C. J. It is so. If that be it you offer, it is very material.

Mr *Conyers*. We shall prove, That upon the Disappointment on the first *Saturday*, the 15th of *February*, they were to be ready against the 22d; and you will hear how the Horses were dispos'd of in the mean Time. Call *Chamberlain*, *Maskel*, and *Allen*.

Mr *Att. Gen*. Call any one of them, I believe it is enough.

Mr *Chamberlain* appeared, and was sworn.

Mr *Att. Gen*. Pray will you give my Lord, and the Jury an Account what you know of any Horses that were brought to *Somerset-house* about *February* last and how long they stay'd there?

Chamberlain. There was six Horses.

Mr *Att. Gen*. Who brought them in.

Chamberlain. They were sent in by some Persons in Mr *Lewis*'s Name.

Mr *Att. Gen*. Had you any Direction to take Care of them?

Chamb. Mr *Lewis* sent in a Note to take Care of them for a Night or two.

Mr *Att. Gen*. Who carried them away?

Chamb. I cannot tell: Some People came to see 'em that I never saw before, and they took care of them; I know not who they were, and I never saw them since.

Mr *Att. Gen*. What Time was it that they came for them?

Chamberlain. It was about the Middle of the Day.

Mr *Att. Gen*. What Month was it in?

Chamb. I think it was much about the latter End of *February*, to the best of my Remembrance.

Mr *Att. Gen*. How long was it before the Plot was discover'd.

Chamb. It was about a Week, or a small Matter, before the Plot was discover'd, to the best of my Knowledge.

Mr *Att. Gen*. How long staid the Horses there at *Somerset-House*?

Chamb. Three of them staid a Night or two; but the other three of them about a Matter of a Week or ten Days.

Mr *Att. Gen*. Who own'd those Horses?

Chamberlain. They were sent in, in Mr Lewis's Name; but who own'd them I cannot tell indeed.

Mr Conyers. Then swear *John Allen.* (Which was done.)

Pray tell my Lords and the Jury, what you know concerning any Horses about the Time of the Breaking out of the Plot.

Mr Att. Gen. We mean in *Somerset-House Stable.*

Allen. There were seven Horses came in.

Mr Conyers. Who brought them?

Allen. There was Six in the first Place; one came in afterwards in the Evening.

Mr Conyers. By whose Order were they brought there?

Allen. By Mr Lewis's Order.

Mr At. Gen. How long did they stay there?

Allen. Some of them staid there several Days; Three of them went away the next Day, as I think.

Mr Conyers. Do you remember about what time those Horses were brought thither?

Allen. They were brought there, I believe, about seven or eight Days before the Plot broke out.

Mr At. Gen. My Lord, We only call these Witnesses to confirm the Testimony of the others, that there were such Horses there at that time, and for the Present we rest it here.

L. C. J. Then, Gentlemen, what say you to it for the Prisoner?

Sir B. Shower. If your Lordship please, we are of Council for the Prisoner; and that which we are to insist upon is this, which we submit to your Lordship's Judgment. In the first place, whether here be two Witnesses against the Prisoner to prove this Treason according to the Statute of *Edm. 6.* which requires two Witnesses in High-Treason, and lawful Ones; but that in the first Place we say there are not two Witnesses at all, at least not to any Overt-Act that is laid in this Indictment. As to what Captain *Porter* says of what pass'd between him and *Durant*, the Dialogue between them where *Rookwood* was present, we are in your Lordship's Direction; and we doubt not but the Jury will take it into their Consideration, how far that affects the Prisoner; that he shall not be concern'd in any Transaction between Mr *Porter* and any other Persons; none of their Declarations, none of their treasonable Practices, can be imputed to or affect him in any way whatsoever. Now all that Captain *Porter* says of Mr *Rookwood*, is, that he was once at the *Globe Tavern*, and there was a Discourse about this Matter; and then he tells your Lordship of a Dialogue between him and *Durant*, and an Account of what pass'd between them; but he does not say any Thing of Mr *Rookwood* being any Ways concern'd in the Matter, but only that he dropped this Expression, It was a desperate Adventure, a dangerous Enterprize, and he seem'd against it, but in the End he concluded with something in *French*, which what they are, and what they mean, we must submit to your Lordship and the Jury; he interprets it, when Sir *George Barclay* said he must have a Share in it, then *Rookwood* replied, There's an End of it. But there is not one Word of Agreement sworn to that Mr *Rookwood* spoke, to shew his Consent. There is but one Time more that Mr *Porter* swears to, about the Prisoner at the Bar, and that is, at

his Lodgings in *Little Rider-street*; for as to the other Consults, Mr *Rookwood* was not present there: It seems there was a Discourse about the Affair, but that *Rookwood* said nothing, but went away; there was not so much as the least Intimation of an Agreement to any such Design, or Approbation of what was agitated in the Company, and we insist upon it as to this in Point of Law, that it amounts to no more than Misprision of Treason at most. My Lord, I will not now contend about Notions, nor will I argue whether Consulting and Agreeing be Evidence of an Overt-Act; I submit to your Lordship's Directions, notwithstanding the Variety and Difference of Opinions that have been.

L. C. J. Sir *Bartholomew Shower*, I know not what Variety of Opinions you mean; there have been some Discourses in Pamphlets I agree, but it was always taken and held for Law, that Consulting and Agreeing was an Overt-Act.

Sir B. Shower. Here is no Evidence of any Agreement.

L. C. J. Pray let us hear what you say to that.

Sir B. Shower. It is not the being present where Traytors do consult and conspire the Death of the King, unless they actually agree; nor is it Evidence sufficient to guide or prevail upon a Jury's Conscience, to affirm upon their Oaths, that such a one is guilty of High-Treason, because such a one was there and said nothing at all; for the not discovering afterwards, nor accusing is no Evidence at all against Mr *Rookwood*. As to Mr *Harris*, he gives you an Account of a great deal that does not affect Mr *Rookwood*, neither all that pass'd at *St. Germain's*, nor in their Journey into *England*, for all that may be true, and yet the Prisoner no way concern'd in it. As to what he affirms of the Prisoner, we shall submit it to your Consideration: What it amounts to, and all that his Deposition comes up to, is, That Mr *Rookwood* complain'd that he was to obey implicitly Sir *George Barclay's* Orders; and *Harris* gives an Account but of one particular Time that Mr *Rookwood* undertook or did agree to be concern'd in this Matter; it was but once, and that was, when he gave him the Note of those that were to go to *Turnham-Green*, and that he was to be his *Ayd du Camp*: And as to that, we shall give you an Account by Witnesses whom we shall call, that these two Witnesses ought not to be believed as to what they have sworn, tho' they do not come up to make two Witnesses according to Law upon this Indictment: What they have said as to this Man is not credible, tho' they may speak true as to others; and no Doubt there was a barbarous Conspiracy; it appears there was such, beyond all Exception and Contradiction; and the Persons that have been condemn'd as Conspirators have acknowledg'd it: But, my Lord, that which is now before your Lordship and the Jury, is, to enquire whether the Prisoner is concern'd in this Affair at all, and how far; and we hope the Jury will be of Opinion he is not concern'd. The Heinousness of the Crime, and the Aggravations of it, being to be abhorred by all Mankind, we think ought not to sway with the Jury, nor influence their judgments to believe a Witness ever the sooner in accusing any other Person; it ought rather to have a contrary Allay, for the greater the Crime is, and the farther off from having any tolerable Opinion in the World,

World, they ought to expect the greater Proof; and no one is to be presum'd guilty of such an Act, without very sufficient Evidence of it; and the greater the Crime, the Proof ought to be the more positive and undeniable: It is not their being plainly positive that is sufficient, but whether it is such that is good in Law; and about that we are sure your Lordship will give true Directions in point of Law: and whether the Witnesses be credible or no, must be submitted and left to the Jury, after we have call'd some Witnesses who will give you an Account of their Reputation.

Mr Phipps. My Lord, we humbly insist there are not two Witnesses, such as the Law requires, to prove the Charge upon this Indictment against the Prisoner: The two Overt-Acts that touch Mr Rookwood, are first Consulting and Agreeing how to kill the King; the other is the finding Arms and Horses for that purpose: But as to this latter, the finding Arms and Horses, there is not one Evidence that comes up to it: And as to the former, the Consultations, whether there be sufficient Evidence that comes up to that, is very much a Question with us: But we say, with Submission, there are not two Witnesses in that Case; for Mr Porter says only what he was told by Sir George Barclay, that Sir George proposed this Matter; but withal he tells you, that when Sir George Barclay proposed it, and Mr Rookwood was inform'd what the Design was, he was so far from Conspiring, Consulting, or Agreeing to do it, that he said it was a barbarous Act, and he recoild'd at it. Then at last says Sir George Barclay, *You must command a Party.*

L. C. J. Well, and what said Rookwood then?

Mr Phipps. Porter says, he then said, There's an End of it. Now, my Lord, what Evidence is this of a Consultation and Agreement? And this is all that Porter says. As to what Mr Harris says, we are to consider whether the List given to him be an Overt-Act; and there the Point in Question is, Whether that List can be given in Evidence against Mr Rookwood, upon this late Act of Parliament, as an Overt-Act, it not being laid in the Indictment? There is indeed an Overt-Act of a List laid in the Indictment, as given to Cranburne, but none as given to Mr Rookwood.

L. C. J. Pray take the Evidence right: First, What will you make an Overt-Act? What do you think when there is a Debate among divers Persons about killing the King?

Sir B. Shower. With Submission that will be no Overt-Act, if there be a Debate of such a Matter, tho' he be present.

L. C. J. Aye; but when there is a Consult, and upon Debate a Resolution is formed, and tho' he does at first dislike it, yet when he is told he must command a Party, he says he is content, or there's an End of it; What do you make of that?

Sir B. Shower. He said he did not like it, it was a barbarous desperate Design.

L. C. J. It's true, but when Sir George Barclay said he shou'd command a Party, he acquiesced, and said there was an End of it: There was a Discourse about Cutting off the King, and that was agreed upon in the Company at that Time; and tho' at first he did not like it, yet he might afterwards agree to it.

Sir B. Shower. My Lord, that is it which we deny; we say there is no Proof of his Agreement to it.

L. C. J. Capt. Porter says, he did declare that he said he look'd upon it as a desperate Design,

and was averse from being engag'd in it, but afterwards did agree to it; Whether is not that such an Overt-Act, as is laid in the Indictment?

Sir B. Shower. My Lord, We must beg Leave for the Prisoner in a Case of this Nature, that it may be recollected what the Evidence did say. Mr Porter did not take upon him to affirm that Mr Rookwood consented to it, but only said, *There was an End of it.* Now we must leave that to the Jury, what they can make of such a doubtful Expression.

L. C. J. Call Mr Porter in again.

Mr Conyers. My Lord, the first Meeting Mr Porter speaks of, where the Prisoner Mr Rookwood was, is at the *Globe Tavern*, where this Discourse was; the next Meeting that he speaks of, was on the *Friday Night*, before the first *Saturday* when the Business was to be done, and afterwards he met at Porter's Lodgings, on *Saturday Morning*, in *Ryder-street*.

Then Capt. Porter came in again.

L. C. J. Hark ye, Mr Porter, the first Time that this Matter was proposed, when Mr Rookwood was present, you say was at the *Globe Tavern*.

Capt. Porter. Yes, my Lord, it was.

L. C. J. And you say he dislike'd it, and did not care to be concern'd in it.

Capt. Porter. Yes, my Lord, he did so.

L. C. J. Well, What said Sir George Barclay?

Capt. Porter. Sir George Barclay said he ought to obey his Orders, for he had such a Commission for such a Thing, and he drew out a Scheme how it was to be done; and when Sir George Barclay told Mr Rookwood he shou'd command his Party, he replied in *French*,

There's an End of it.

L. C. J. This was at the *Globe Tavern*, Was it not?

Capt. Porter. Yes, my Lord, it was.

Mr Att. Gen. Pray then, Capt. Porter, let me ask you another Question, Was he afterwards with you at any other Meeting, and when and where?

Capt. Porter. He was with me upon *Saturday* the 15th, at my Lodging in *Little Rider-street*, where was Sir George Barclay and others.

Mr Att. Gen. What Discourse happen'd then, I pray?

Capt. Porter. They did there discourse the whole Matter, and Sir George Barclay was not for going at that Time, because there was so many People that went with the King; that there wou'd not be a good Opportunity to effect the Design: But I told him they wou'd go off after the Hunting was over, and so it was agreed upon to go on with the Undertaking.

Mr Att. Gen. Pray, at that Time did Mr Rookwood pretend to dislike the Affair, or refuse to be any Way at all concern'd in it?

Capt. Porter. No, my Lord, I can't remember that he spoke one Word.

L. C. J. Was Mr Rookwood there?

Capt. Porter. Yes, there was Mr Rookwood, Sir George Barclay, and Mr Durant.

Mr Att. Gen. And had you Discourse at that Time about this Business?

Capt. Porter. Yes, my Lord, there was that Objection made of so many People going with the King, and I made that Answer that I tell you.

L. C. J.

L. C. J. Why then, suppose at the *Globe Tavern*, such an Expression had not dropt from the Prisoner, but a Man is present at two Consults that are held about the Death of the King, but says nothing either at the first or second, What wou'd you make of that Case?

Sir B. Shower. My Lord, I confess this is a Case of a very barbarous Nature, of which I hope my Client will acquit himself: But I think we have the Authority of Parliament on our Side, that this does not amount to a Proof of Treason. It seems they lay a stress upon this, that Mr *Rookwood* came to Captain *Porter's* Lodgings on the Saturday Morning the 15th: But then take the Case as it is; for ought that does appear upon the Proof, he knows not upon what Account the Meeting is beforehand. I think that is the Case of my Lord *Ruffel*, upon which the Reversal of his Attainder went, that the Evidence came short, and that it was but Misprision; for the Evidence was, That he was present at the supposed Declaration's reading, but said nothing at all to it.

L. C. J. But I speak of two Meetings; there was but one.

Sir B. Shower. My Lord, I do not know whether there were two Meetings or one then: But this is the Ground we go upon, there ought to be two Witnesses: And if there be two Meetings upon such a Design, the second may be is accidental, and it does not appear to be a design'd Meeting; and there was no Appointment of Mr *Rookwood* to be there, nor any Negotiation by way of Message or otherwise, to that Purpose. Is this, my Lord, an Overt-Act? Suppose a Man be present at a Consult about treasonable Practices, and he uses Words that are indifferent; it is true, in the Case of a Wager it amounts to an Assent, but it hardly will come to that when People meet by Accident, or for they don't know what.

L. C. J. How is this by Accident?

Sir B. Shower. It does not appear that it was by Design or Appointment.

L. C. J. They were Acquaintance.

Sir B. Shower. He had no Acquaintance with him but in Sir *George Barclay's* Company.

L. C. J. But besides, there was an express Consent at the *Globe Tavern*, when *Rookwood* said there is an End of it.

Sir B. Shower. That is as much as to say, I will not do it, I will not go with you——

Mr Sol. Gen. Sir *G. Barclay* was the Person whom they were to obey; and *Harris* tells you he told them what they were to do, and six Horses were first plac'd, and three of them afterwards remov'd.

Sir B. Shower. That won't affect him what Sir *George Barclay* said, any more than *Lewis's* appointing of the Horses.

L. C. J. Then here is another Thing, Why did he give a List to Mr *Harris*? the List that was given had Mr *Rookwood's* Name a Top, as he was to command the Party, and there was *Harris's* Name and *Hare's* Name as of his Party; that is, their feign'd Names: Mr *Rookwood's* feign'd Name was *Roberts* that was at Top, and they were to go to *Turnham-Green*, and *Rookwood* told *Harris*, he should be his *Aid du Camp*.

Sir B. Shower. My Lord, for that I think we have a Point of Law, that we apprehend will turn off all that Evidence, and sure we may take that Exception now: The Words of the Act are, That no Evidence shall be given of any Overt-Act that

is not expressly laid in the Indictment. Now cannot I shew upon this Indictment, that there is no Overt Act in such a positive direct Manner as they now urge about this List. Will not that satisfy your Lordship's Judgment to set aside all this Evidence? To make the Indictment good for Treason, there ought to be a Compassing of the Death of the King laid, and an Overt Act laid declaring that Compassing; but no Evidence is to be given of any Overt-Act that is not laid in the Indictment.

L. C. J. You are not to take Exceptions to the Indictment now, but only to the Evidence.

Sir B. Shower. I have this one Exception more; there is never a *Quodque*, nor a *Juratores ulterius presentant*.

L. C. J. There does not need; but that is a Fault, if any, in the Indictment, and is not to be stirr'd now.

Sir B. Shower. If there be not a Presentment by the Jury, then there is no Overt Act alledged: And if there be no Overt Act alledged, or no such Overt Act, then we are within the Words of the Act, That no Evidence shall be given of any such Overt Act but what is alledg'd; and it is, if not expressly alledg'd, as if it were not alledg'd at all: Now here it is very loose, & *idem Christophorus Knightley*, and so it goes on with the rest, did so and so. There is a Presentment at first, that they did compass and imagine the Death of the King; and then the Indictment comes farther, and says, that Forty Men should do this Business, and of those Forty these four should be some; and then the *idem* bought Horses and Arms, and so it must go to the last Antecedent, and then there is no express alledging of any Overt Act, and then it is as if no Overt Act at all was alledg'd.

L. C. J. This Exception is not to the Evidence, but to the Indictment: It begins, *Juratores presentant quod*; Does not that relate to all?

Sir B. Shower. No, my Lord; and I can tell you a Reason why not: If it be not so well alledg'd as it should be, it is in an Indictment as if it were never alledg'd at all; and so within the Words of the Act of Parliament this is not an Overt Act alledg'd, and therefore they cannot give Evidence upon it.

Mr Sol. Gen. Truly, my Lord, I can't imagine what they are doing, they are moving in Arrest of Judgment before a Verdict given: They say the Overt Act is not expressly laid; Is that an Exception to the Evidence, or to the Indictment?

Sir B. Shower. If my Lord will please to give us the Liberty, we would shew there can be no Verdict given upon this Indictment.

L. C. J. Certainly this is an irregular Proceeding; this is not a Time of Exception to the Judgment.

Mr Phipps. Then, my Lord, we are in your Judgment, as to the Proof that has been given: If a Man be present at a Meeting of several Persons, and there is a treasonable Debate about Killing the King, and this Man is only present, but neither assents, nor makes the Proposal how it shall be done, whether the bare being silent, and saying nothing, is such an Overt Act as shall convict a Man of Treason.

L. C. J. I tell you, Consenting to a traitorous Design is an Overt Act of High Treason, if that Consent be made to appear by good Proof: Now the Question is, What is a good Proof and Evidence

dence of this Consent? A Man is two or three Times at a treasonable Consult for Killing the King, and though perhaps at the first he did not, yet at the second he did know that the Meeting was for such a Design, (suppose for the Purpose there was but two Meetings) and at the second it is determined to go on with the Design; Is not that an Overt Act, tho' it cannot be proved that the Prisoner said any Thing?

Mr Phipps. If the first Meeting is not a Consent, or an Overt Act, neither will a second or a third be, if there was no more done than at the first, but they are like so many Cyphers without a Figure.

L. C. J. The first Meeting possibly might be accidental, he might not know what it was for, though that will go a great Way if he does not dissent or discover; but then he meets again with the same Company, knowing what they had in Design; Does not that prove a Consent? That was the Case of Sir Everard Digby in the Powder Plot.

Mr Phipps. But where it may be uncertain, my Lord, whether it were with a good Design, or a bad Design, that he met with that Company, it ought to be taken most favourably for the Prisoner: This Man might be present in Order to a Discovery.

L. C. J. But besides, that is not this Case; you are mooting upon Points that are not in the Case. When Mr Harris came to Mr Rookwood, and finding them in some Disorder, and being inquisitive what was the Occasion, he was sent to Counter; and when he discovered what they were to go about, he afterwards meeting Mr Rookwood, says to him, Are we sent over to murder the Prince of Orange? says Rookwood, if I had known of this Design before I came from France, I would have begg'd the King's, that is, King James's Pardon, and desir'd to have been excus'd. Hereby he expresses his Knowledge of the Design, and what he was to do; and though he disliked, yet would obey Orders.

Mr Phipps. There is no Doubt, my Lord, but he knew of it; but whether your Lordship will construe his Silence as a Consent, in Treason, is the Question.

L. C. J. A Man is at frequent Consults about Killing the King, and does not reveal it, it is a great Evidence of his Consent.

Mr Phipps. But it is not prov'd that he did actually consent to it.

Mr Soll. Gen. My Lord, we must submit it to your Lordship, whether this is not totally improper and irregular at this Time; they are arguing how far the Evidence is to be believ'd, before the Time proper for such an Argument comes.

Mr Att. Gen. If they will call their Witnesses, let them; or if they say they have none, then they may make their Observations upon the Evidence; but else we desire we may be kept to the usual Method of Proceedings.

Mr Phipps. With Submission, we thought it fit to know the Opinion of the Court first, if there be two Witnesses against the Prisoners; for if there be not two Witnesses, as the Law requires, we need not trouble the Court with our Evidence.

Sir B. Shower. Then, my Lord, we must desire that the Record may be read of Captain Porter's Conviction of Manlaughter; a Man that has been guilty of doing such an Act, feloniously, maliciously,

and voluntarily, as that is, sure is not a competent Witness.

Cl. of Ar. It has been read already.

Mr At. Gen. I thought we had been over that Objection before.

Sir B. Shower. We think it is proper for us to move it now again; for though it is no Objection to his being a legal Witness, yet we hope it will influence his Reputation as to his Credit; for he that has been guilty of killing a Man in such a Manner as the Indictment lays it, will find but little Credit, we hope, with a Jury of Countrymen. But since it has been read, and your Lordship and the Jury have taken notice of it, we will call some other Witnesses as to Mr Porter's Reputation and Behaviour, we think they will prove Things as bad as an Attainder. I shall not open them to your Lordship, but beg Leave to call our Witnesses, who will acquaint you what they have to say.

Mr At. Gen. Certainly, my Lord, you will not think fit to let them do so. I desire they would not usher in any Thing of Evidence without acquainting the Court what they call them for: For that were the Way to let them in to call Witnesses to Things that are not proper.

L. C. J. Nay, without doubt it is not regular to produce any Evidence, without opening it.

Mr At. Gen. For if it be for any Crime that a Man may be presented for, and there is no Conviction; I think that ought not to be given in Evidence to take away a Witness's Credit: If it be only to his general Reputation and Behaviour, so far they may go, and we can't oppose it. Therefore I desire Sir Bartholomew Shower will open to the Court of what Nature his Evidence is.

Sir B. Shower. Well, I will tell you then what I call them to.

L. C. J. You must tell us what you call them to.

Sir B. Shower. Why then, my Lord, if Robbing upon the High-way, if Clipping, if Conversing with Clippers, if Fornication, if Buggery, if any of these Irregularities, will take off the Credit of a Man, I have Instructions in my Brief, of Evidence of Crimes of this Nature, and to this Purpose against Mr Porter; and we hope that by Law, a Prisoner standing for his Life is at Liberty to give an Account of the Actions and Behaviour of the Witnesses against him. I know the Objection that Mr Attorney makes, a Witness does not come prepar'd to vindicate and give an Account of every Action of his Life, and it is not commonly allowed to give Evidence of particular Actions; but if those Actions be repeated, and a Man lives in the Practice of them, and this Practice is continued for several Years, and this be made out by Evidence; we hope no Jury that have any Conscience, will upon their Oaths give any Credit to the Evidence of a Person against whom such a Testimony is given.

Mr Phipps. We are speaking only, my Lord, to the Credit of Mr Porter, and if we can shew by Evidence that he is so ill a Man as to be guilty of those Crimes that we have open'd, according to the Instructions in our Brief; we hope the Jury will not think him fit to be a good Evidence against us in this Matter.

L. C. J. What say you to this, Mr Attorney?

Mr *Att. Gen.* My Lord, they themselves know, that this Sort of Evidence never was admitted in any Case, nor can be, for it must tend to the Overthrow of all Justice and legal Proceedings; for instead of trying the Prisoner at the Bar, they would try Mr *Porter*. It has been always deny'd where it comes to a particular Crime that a Man may be prosecuted for, and this it seems is not one Crime or two, but so many and so long continued as they say, and so often practis'd, that here are the whole Actions of a Man's Life to be ript up, which they can never shew any Precedent when it was permitted, because a Man has no Opportunity to defend himself. Any Man in the World may by this Means be wounded in his Reputation, and Crimes laid to his Charge that he never thought of, and he can have no Opportunity of giving an Answer to it, because he never imagined there would be any such Objection: It is Killing a Man in his good Name by a Side-wound, against which he has no Protection or Defence. My Lord, this must tend to the preventing all Manner of Justice; it is against all common Sense or Reason, and it never was offer'd at by any Lawyer before, as I believe, at leastwise never so openly; and therefore I wonder that these Gentlemen should do it, who acknowledge, at least one of them did, that as often as it has been offer'd it has been over-ruled; and I know not for what End it is now offer'd, but to make a Noise in the Court: They know that it is irregular as much as any thing that could be offer'd.

Mr *Soll. Gen.* Indeed, my Lord, if the Prisoner at the Bar had offer'd this Matter, it had been excusable; but, that Gentlemen of the long Robe, and who are so well acquainted with the Practice of the Courts of Law, should pretend to do such a Thing, is unaccountable. There was somewhat like this that was offered at *Manchester*, but that was by the Prisoner, to prove that one *Lunt* who was a Witness had two Wives, and they brought a Copy of an Indictment upon which there was no Process; after that they endeavour'd to prove him guilty of several Robberies; but all that Sort of Evidence was refus'd. I only give them this Instance to shew, that where the Prisoner has attempted it, it has been always rejected; and I am sure they cannot shew me that ever it was allowed, even to the Prisoner himself to give any Thing of this Kind in Evidence; and this I must say, they can never shew me any one particular Instance, when Council ever endeavour'd to do it, before this Time.

Sir *B. Shower*. My Lord, I mentioned the particular Crimes, the Faults which I had in my Instructions to object against the Credit of the Testimony of Cap. *Porter*, in Answer to Mr *Attorney's* Desire, that I would open the Particulars of the Evidence, that I would call my Witnesses to the Truth of it; I was loth to repeat the Words, I think the Things themselves so abominable; but we conceive with Submission, we may be admitted in this Case to offer what we have offered. Suppose a Man be a common, lewd, disorderly Fellow, one that frequently swears to Falseness for his Life: We know it is a common Rule in Point of Evidence, that against a Witness you shall only give an Account of his Character at large, of his general Conversation; but that general Conversation arises from particular Actions, and if the Witnesses give you an Account of such disorderly Actions repeated, we hope that will go to

his Discredit, which is that we now are labouring for, and submit it to your Lordship's Opinion whether we may not do it.

L. C. J. Look ye, you may bring Witnesses to give an Account of the general Tenour of his Conversation, but you don't think sure that we will try now at this Time, whether he be guilty of Robbery or Buggery.

Sir *B. Shower*. My Lord, we will give you an Account that he used to have a private Lodging, and come in with his Horse tir'd, and several other such Things, as that he us'd to go out in Disguises, and the like.

Mr *Phipps*. My Lord, I cannot imagine why a Man that has been guilty of any such Crimes, and is not taken, should be of greater Credit than a Man that has been taken and punish'd.

L. C. J. What is that you say Mr *Phipps*?

Mr *Phipps*. My Lord, I say 'tis the Crime that renders a Man infamous, and I do not know why a Man that has had the good Fortune not to be taken and punished for great Crimes by him committed, should be in a better Condition as to the Credit of his Testimony, than one that is taken and undergoes the Punishment of the Law.

Mr *Soll. Gen.* Mr *Charnock* urg'd that as far as it would go, but we are oblig'd, it seems, to hear Things that have been over-ruled over and over; but I desire to know of them, whether they can shew he has been guilty of a greater Crime than he has confest himself guilty of in Court, I mean of the intended Assassination.

Mr *Phipps*. No, we agree we can't, but pray let us prove him guilty of as many Crimes as we can.

Mr *Soll. Gen.* But, my Lord, I hope you'll keep them to the general Question of the common ordinary Tenour of his Conversation.

Sir *B. Shower*. Call Mr *Oldfield*, Mr *Nicholas*, Mr *Milford*, *Black Will*.

(Mr *Milford* appeared)

Cryer. Lay your Hand on the Book. The Evidence that you shall give on behalf of the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth: So help you God.

Sir *B. Shower*. Pray will you give my Lord and the Jury an Account whether you know Cap. *Porter*, and how long you have known him.

Milford. I have known him about Four Years.

Sir *B. Shower*. What Reputation is he of.

Milford. I never knew any Hurt by him in my Life.

Sir *B. Shower*. Pray what is your Name?

Milf. *Frederick Milford*.

Sir *B. Shower*. But the Name in my Brief is *John Milford*, that is my Man.

L. C. J. But you see this Man knows him.

Sir *B. Shower*. Call Mr *Oldfield*.

(Which was done, and he appear'd accordingly.)

Mr *Phipps*. Do you know Cap. *Porter*?

Oldfield. Yes I do.

Mr *Phipps*. How long have you known him?

Old. I believe about Twenty Years.

Mr *Phipps*. Pray will you give my Lord and the Jury an Account of his Life and Conversation.

Oldfield. I can say nothing, he was always civil in my Company, but he was lewd in his Discourse.

Sir

Sir B. Shower. What do you mean by being lewd in his Discourse?

Oldfield. Why he would be talking very extravagantly.

Mr Phipps. What do you mean in talking, was it of what he had done himself, Sir?

Oldfield. No otherwise than that he had whor'd, and those Kind of Things.

Sir B. Shower. What other Things beside Whoring?

Old. I know no other Part of it.

Sir B. Sh. Where is Edward Bowchey?

(He did not appear.)

Mr Phipps. Call William O Bryan.

(He did not appear.)

Sir B. Shower. Where is Mr Page and Mr Hardiman?

(None of them appeared.)

Cryer. There is not a Man of them here, Sir.

Sir B. Shower. Mr Webber, Do you know where they are, for the Court stays for them.

Mr Webber. Indeed I do not, they were summon'd to be here.

Sir B. Shower. Where is black Will?

Cryer. Black Will.

(He appear'd, and was a Moor.)

L. C. J. Ask him if he be a Christian.

Cryer. I have ask'd him, and he says he is a Christian.

(Then he was sworn.)

L. C. J. Well, what do you ask him?

Rookwood. Will, Pray give an Account of your Master, and of his Life and Conversation.

Mr Phipps. You are sworn to tell the Truth, Sweet-heart.

Will. I served him almost Eight Years, and he has been a very good Master to me, my Lord.

Sir B. Sh. What do you know him to be guilty of?

Will. Nothing at all.

Sir B. Sh. I believe they have put in these Men to confirm his Reputation.

L. C. J. Indeed, I think the King's Council should have called these Witnesses, if there had been Occasion.

Sir B. Shower. We submit it to your Direction, how far this Evidence will affect him; there is nothing said, as we apprehend that will amount to Treason: If the Prisoner has a Mind to say any Thing himself, we hope your Lordship will please to hear him.

L. C. J. Ay, if he will, let him.

Rookwood. My Lord, Mr Porter does not say, that I consented to command a Party.

L. C. J. Is that all you have to say? Then, Gentlemen, will you sum up?

Mr Conyers. My Lord, we are agreed, we submit to the Court on both Sides.

L. C. J. Then Gentlemen of the Jury, the Prisoner at the Bar, Mr Rookwood is Indicted for High Treason, in Compassing, Imagining, and Intending the Death and Destruction of the King, by a most barbarous and wicked Assassination; you have had an Account of this Design from Two Witnesses that have been produced, the One is Captain Porter, and the Other is Mr Harris, who swear they were both concerned as Actors in it.

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Captain Porter tells you, about the latter End of January or the Beginning of February last, Sir George Barclay came over into England from France; and there was a formed Design to murder the King; and after several Meetings and Conferences among the Conspirators, they came to a Resolution that he should be Assassinated; but which way to effect it, admitted of a Dispute among them, for the King, as you have heard, going frequently, about once a Week a Hunting, on the other side the Water near Richmond, the Design was first to Assassinate him at Richmond Park, or thereabouts, as he returned from Hunting, and Preparation was made accordingly; but that not being so fully agreed upon, the Conveniency of the Place held still some Debate, for some were of Opinion, that it was better to make the Attempt on this side the Water, than on the other; therefore as Mr. Porter tells you, to determine that Difficulty, there were several Men sent, whereof he was one, Knightley another, and King a Third, to View the Ground on both sides the Water, and to make their Report; the Ground being View'd and the Report made to some of their Accomplices, who to receive it met at the Nagg's-Head in Covent-Garden, which was about the Tenth or Twelfth of February last; it was then agreed, that the King and his Guards should be attack'd on this side the Water about Turnham-Green.

Mr. Porter has told you, that at several Meetings for the carrying on this Design, the Prisoner Mr. Rookwood was present, more particularly at the Globe-Tavern in Hatton-Garden, where were also Sir George Barclay, Mr. Charnock, Sir William Parkyns, himself, and others, and there they did enter into a Consult how they might Assassinate the King; and it being proposed, Mr. Rookwood did not like it, as Mr. Porter says, but said it was a desperate Attempt, and thereupon Sir George Barclay pulled out a Scheme that he had and shew'd it at that Time to Mr. Rookwood, and said you are sent over from France and are to Obey my Orders, and you are to command a Party, and then Mr. Rookwood made an Answer in French, there's an End of it, which, as he says, Imports a Consent.

Then at another Time, which was the Saturday Morning the 15th of February, they met at Captain Porter's Lodging, and there was a Discourse about going on to put the Design in Execution, and one Durant, one of the Men that was to watch the King and the Guards going out at Kensington, came in, and the Question was, whether they should go that Day upon the Design; they had Discourse about it, and Mr. Rookwood the Prisoner was there present, and there did not appear any Dissent in him to the Prosecution of the Design, but it seems it was readily agreed among them, to pursue it according to the former Determination.

Then the next Witness that is produc'd is Mr. Harris, who gives you a large Account of the Beginning of his Knowledge, and of his being concern'd in this Matter; he tells you he was in France, and at the Court of St. Germain's, where the late King then was, and that he spoke with him, and where was also Colonel Parker, and King James took Notice of him and of his faithful Service, and told him, he always designed him a Kindness, and then had Opportunity of doing it, and said he would send him over into

England, where he should be subsisted, and directed him to obey the Orders of Sir George Barclay, and there being one Hare by, who was to come over with him, King James gave them both Names of Disguize, which they were to go by in England, and, as it seems, others that came over did also assume, for Mr. Rookwood went by the Name of Roberts, Harris was to go by the Name of Jenkins, and Hare by the Name of Guiney; they were directed to apply themselves to Sir George Barclay, and had Directions how they should find him, which were to go into Covent-Garden in the Evening, upon a Monday or a Thursday, and if they saw a Person that had a white Handkerchief hanging out of his Pocket, they were to take Notice of him to be Sir George Barclay, and they had Ten Lewis d'Ores a-piece for their Journey's to carry them off, and you have heard from whom they had them; and they were told, that if at Calais they were kept longer than they expected, whereby their Money was spent, Care was taken that they should be supplied from the Governor of Calais, the President there; and it seems Mr. Harris and Mr. Hare went together to Calais, and lay a considerable Time for want of a Wind, whereby their Money fell short of defraying their Expences, but they were afterwards supplied by the Governor of Calais, according as was promised at St. Germain's.

Gentlemen, he tells you, that after they came into England, the first Time they went to seek Sir George Barclay, was upon the Monday Night, but they did not find him at that Time, but afterwards they met with him, and Mr. Harris had Subsistence-Money from him, according to King James's Promise, which was at the Rate of 5 s. a Day when he had no Horse, and afterwards when he had a Horse at 6 s. a Day; this is the Account he gives you how he came over, and of his Journey and meeting with Sir George Barclay.

And now he comes to speak particularly concerning the Prisoner at the Bar, Mr. Rookwood: He tells you that on Saturday Morning the 15th of February, the first Day when this Assassination was designed to be committed, he went to the Lodging of one Burk, where Mr. Rookwood was, with others, and he found them all in great Disorder; and thereupon he ask'd them, What was the Matter, and what they were going to do? And Rookwood bid him go to one Counter, and he should know of him what was the Matter: Accordingly he went to his Lodging, and Counter told him and those who were with him, That they must get ready to go to Turnham-Green; and at the same Time and Place he met with Sir George Barclay, and after some Discourse of Attacking the Coach, Sir George Barclay at the first said, They were his Janizaries; and afterwards going out, he came in again and said, They were Men of Honour, and that they were to go abroad to attack the Prince of Orange.

The next Day, or a little Time after, Mr. Harris met with Mr. Rookwood, and enters into Discourse with him to this Effect: What! are we sent over to murder the Prince of Orange? It is a strange Sort of Employment: (for it seems they were not informed in France what they were to do here, but they were to put themselves under the Conduct of Sir George Barclay, and obey his Orders.) Mr. Rookwood said, He was afraid the Thing was so, and that they were drawn in; but

said, If he had known of the Design before-hand, he would not have come over but have begg'd the King's Pardon. Which shews not only his Knowledge of the Design, but his being engaged in the Prosecution of it.

And then, Gentlemen, you are told further, That upon the Going out upon Saturday the 22d, which was the second Time it was to have been put in Execution, there was a List of Men that Mr. Rookwood gave to Mr. Harris of several Names that he has mentioned to you; he says, Mr. Rookwood's Name was at the Top, as one that was to command the Party, and the Name he went by was Roberts; and there was Harris's Counterfeit Name, which was Jenkins; and Hare's Counterfeit Name, which was Guiney; and they were to make ready to go to Turnham-Green. He told him, There was the List, and that he and Harris was to be of his Party, that he was to attack the Prince of Orange, and that Mr. Harris should be his Aid-du-Camp.

Gentlemen, I forgot to tell you, That between the first Saturday and the second, Mr. Harris, Mr. Rookwood, and Mr. Lowick, walking in Red-Lion Fields, and there in Discourse among themselves, Mr. Harris and Mr. Rookwood did express themselves to be much concerned that they were to be employed upon such a Design as this was, which they owned to be very barbarous; but Mr. Rookwood and Lowick said, They were under Command, and must obey Orders, tho' Mr. Rookwood did not like the Design they were engaged in.

Gentlemen, they have told you of Horses that were placed at Somerset-house, in a Stable there, under the Care of Mr. Lewis my Lord Feversham's Gentleman of the Horse, about six or seven Horses, and those six Horses that were there at that Time were afterwards taken away; but that is only a Circumstance.

So that, Gentlemen, this is now the Sum and Substance of this Evidence that has been given you as far as it relates to the Prisoner; his Council in his Defence have insisted upon several Things; in the first Place, tho' it was last mentioned in Time, yet it ought to have the first Consideration; The Council for the Prisoner have endeavoured to take off the Credit of Mr. Porter, and have opened indeed very great Crimes that he should be guilty of, which must render him a Person not to be believed, but they have not proved any Thing; no Witness that they have called against Mr. Porter says the least against him to invalidate his Testimony, or to induce you to disbelieve what he has said.

Then they say in Point of Law, There is no Overt-Act proved of any Design against the King's Life that affects Mr. Rookwood; now that Matter you are to consider of, Whether or no it does appear by the Testimony of two Witnesses, that Mr. Rookwood was concerned in this Design of Assassinating the King; Capt. Porter is positive that he was at the Consult at the Globe Tavern, where it was proposed, debated, and resolved upon; but Mr. Rookwood says, he did dislike it; so says Captain Porter, he did not approve of it at the first upon his being acquainted with it; but being sent over to obey the Orders of Sir George Barclay, and Sir George Barclay producing a Scheme ready drawn, wherein he was to command the Party, telling him, That he must obey Orders. You hear what he said, and

and the Answer he return'd in *French*, There's an End of it; Whether that does not amount to a Consent and Agreement to be engaged in this Design, is left to your Consideration, for if it do, it is plainly an Overt-Act.

Then, Gentlemen, you hear further that *Harris* was told by Mr *Rookwood*, that he should be of his Party, and be his *Ayd du Camp*, and go to *Turnham Green*, to attack the Prince of *Orange*, and he had a List of Men given him by *Rookwood*, and was directed to get the rest ready.

Rookwood. That was not in the Indictment.

L. C. J. But you were at that Meeting, which laid in the Indictment.

Rookw. My Lord, that List is not in the Indictment; the List in the Indictment refers to Mr *Cranburne*.

L. C. J. No, but that is an Evidence of your being in the Design; I hope that List of Men will be some Evidence of the Consent and Agreement that Mr *Rookwood* was to command a Party.

Sir B. Shower. With Submission, my Lord, the Words of the Act seems otherwise, and that no Overt Act should be given in Evidence, that is not expressly alledged.

L. C. J. But cannot there be one Act, that may be Proof of another Act which is alledged.

Sir B. Shower. Then there is no Advantage of this Law; for my Lord, the End of the Act was, That they should know the particular Crimes that they were to answer to.

L. C. J. That could never be the End of the Law, that all particular Facts that are but Evidence of the Facts alledged should be set forth in the Indictment, it was sufficient before the Act, to alledge any Overt Act, and any other Overt Act, though not alledged, and had no Relation to the Overt Act that was alledged, yet if it were to the same Sort of Treason, might be given in Evidence.

Sir B. Shower. The Law says, ye shall not give Evidence of any Overt Act that is not expressly mentioned.

L. C. J. It is not urged as an Overt Act, but as Evidence of an Overt Act that is alledged; for Instance, the Overt Act alledged, is, That they did meet and consult, shall not they give in Evidence what was said and done at those Meetings, tho' not alledged? *Sir George Barclay* produced a Scheme at the *Globe Tavern*, shall not the producing of that Scheme be given in Evidence, if it may, why not the giving the List to *Harris*?

Mr Phipps. My Lord, it is plain it was Mr *Attorney's* Opinion, it could not be given in Evidence, unless it was alledged in the Indictment; because he has particularly alledged the List in *Cranburn's* Case, in this very Indictment.

Mr Sol. Gen. I know not what those Gentlemen mean by this Sort of Practice; certainly there never were so many Irregularities committed in any Trial as in this, and now particularly to break in upon the Court in the midst of the Charge.

L. C. J. Nay, nay, if there be any Mistake, let us hear them, that it may be rectified.

L. C. J. Treby. I think we should receive them, to try if they can make it out. But the Objection I do not very well understand yet; for, as I take the Matter to stand, it is alledged in the Indictment, That they had prepared Men, and Arms, and Horses, for the Execution of this Design. Now is it not reasonable, or can there be any Thing more proper, than to give in Evidence, and prove that the Prisoner had, and delivered to some of

the Complices, a List of those Men that were to do it. Why, it proves the very Thing alledged, but let us see whether it be so?

Sir B. Shower. My Lord, there is no such Thing alledged.

L. C. J. That is strange, pray see if it be not in the Indictment.

Clerk of Arraignment. (Reads.) *Conveniebant, proposuerunt, tractaverunt, consultaverunt, consenserunt, & agreaverunt, ad ipsum Dominum Regem nunc ex Insidiis & Dolo percutiendum, Anglice, to assassinate, interficiendum, & murdrandum, & ad execrabilem, horrendam, & detestabilem Assassinationem, Anglice, Assassination, & Interfectionem illam citius exequendum & perpetrandum postea, scilicet eisdem Die & Anno, ac diversis aliis Diebus & Vicibus, apud Parochiam predictam in Comitatu predicto, proditorie tractaverunt, proposuerunt, & consultaverunt de Viis, Modis & Mediis, ac Tempore & Loco, ubi, quando, qualiter & quomodo dictum Dominum Regem sic ex Insidiis facilius interficerent; & consenserunt, agreaverunt & assenserunt, quod quadraginta Homines equestres aut eo circiter, quorum iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent quatuor, & quilibet horum proditorie super se suscepit esse unum, cum Bombardis, Sclopis & Sclopetis Pulvere bombardico & Globulis plumbeis oneratis, & cum Gladiis, Ensibus & aliis Armis armati insidiati forent, & essent in Subfessu, Anglice, in Ambush, ad eundem Dominum Regem in Rheda sua, Anglice his Coach, existentem, quondo foris iret invadendum; quodque quidam & competens Numerus de Hominibus illis sic armatis in Satellites, Anglice the Guards, ipsius Domini Regis eum tunc attendentes & secum existentes aggressi forent, & eos expugnarent & devincerent, dum alii eorundem Hominum sic armatorum ipsum Dominum Regem percuterent, interficerent, occiderent & murrarent.*

Mr Conyers. And my Lord, there is Evidence of some of these Forty Men, whose Names were given in a List, by *Rookwood* to *Harris*.

Mr Phipps. But now in *Cranburne's* Part, the List is expressly alledged as an Overt Act.

L. C. J. Never talk of *Cranburne*, we have not him before us now, but what do you say to this of the List given by *Rookwood* to *Harris*?

Sir B. Shower. My Lord, we say this is not Evidence of an Overt Act, according to this Act of Parliament; which says, No Evidence shall be given of any Overt Act, that is not expressly alledged in the Indictment; now the Indictment says, they did agree that Forty Horsemen armed, of which the Four named were to be Four, and every one undertook to be one, who should lie in wait to set upon the King in his Coach, and a competent Number should set upon the Guards; and then it says, in order to fulfil this, they did prepare Horses and Arms, and one of them by the Consent of all the rest, did carry forward and backward a List, that is, *Cranburne*; and that particular List is a particular Overt Act alledged in the Indictment, which makes it plain, they thought it necessary to be particularly alledged by this Act of Parliament, or they could not give any Evidence of it; now the List that Evidence is given of, is supposed to be delivered by the Prisoner to *Harris*. Now first we say, it is not Evidence that Forty should do it, for they may do it without a List, and next it is not Evidence of the List that they have mentioned, for that is alledged to be carried about by *Cranburne*, and as the Prisoner himself

himself has observed, this List given to *Harris* is not in the Indictment, and therefore no Evidence can be given of it.

Mr Conyers. It is an Evidence of that Overt Act which is expressly alledged in the Indictment, that they met together to consult how to effect this Treason.

Mr Comper. My Lord, we are in a very strange Case here, if we be not very proper in this Part of our Evidence; the Overt Act laid, is, That the Prisoner met together with others to consult how to assassinate the King, and there the Prisoner among the rest did agree it should be done so and so. 'Tis admitted the Prisoner was there; but, say they, if you only prove that he sat by while there was a general Discourse of such a Matter, but do not prove that he said or did any Thing, expressing his Assent, that will not amount to a Proof of the Overt Act laid, and yet, if we go about to prove further, any Act done that manifests his Assent, then they say you go too far, and prove an Overt Act that is not mentioned in the Indictment: Thus they grant, the Agreement is a sufficient Overt Act, but object, that being present barely is not a sufficient Proof of his Agreement; then when we go to make Proof of any Thing that is a sufficient Proof of his Agreement, they tell us it is not proper upon this Act of Parliament, because not laid in the Indictment, though his Agreement be laid in the Indictment: And so they would amuse us, rather than make any solid Objection to our Evidence. This Doctrine is certainly very odd, my Lord, and we doubt not will have little Weight with the Court or the Jury.

Mr At. Gen. According to this Doctrine all the Evidence must be put in the Indictment.

L. C. J. They ask you what this giving this List does prove?

Mr At. Gen. His Agreeing at that Meeting to the Conspiracy, and the Execution of it, by giving that List of the Names of them that were to be of his Party, and his own Name as Commander of that Party, this he gives to one that was to be of the Party, and particularly was to be his Aid du Camp, in order to get them ready for the Execution; is not this an Evidence of the Agreement, which is the Overt Act? No Man in the World can be convicted of Treason, if this Doctrine be true.

Mr Sol. Gen. My Lord, they have not express'd something in the Indictment that has been read, which will make it plain that this is the most proper Evidence of the Overt Act laid in the Indictment. The Indictment says, they agreed there should be forty Men or thereabouts armed, of which a certain Number should make an Assault upon the King's Coach, while another Part should set upon the Guards: Now the Proof we make is, that *Mr Rookwood* the Prisoner, was to command a Party that was to set upon the Guards, and in order to it, he gives a List of his Men to *Harris* who was to be his Aid du Camp, and bids him get those Men ready; and this was upon the Day that this Matter was to be acted: So that it proves very plainly that Overt Act that we suggest in the Indictment, that a certain Number of those Men were to assault the King's Person, and another Part the Guards. And therefore they needed not to have interrupted your Lordship; for this List that *Harris* speaks of, is a very good Proof of the Overt Act that is laid in the Indictment.

L. C. J. Then, Gentlemen, as to this Matter which they have objected, that this List given on the Day of the intended Assassination, ought not to be allowed as Evidence to prove the Treason, because it is not specially laid in the Indictment, but is by the late Act of Parliament excluded from being proved to convict the Prisoner; now tho' the Act doth exclude the giving in Evidence of any Overt Act that is not laid in the Indictment, yet it doth not exclude such Evidence as is proper and fit to prove that Overt Act that is laid in the Indictment. Therefore, the Question is, whether this giving of the List does not prove some Overt Act that is alledged in the Indictment? There is in the Indictment an Agreement laid to kill the King, and if that be proved, that's an Overt Act of this Treason; now when the Consent and Agreement of *Mr Rookwood* to that Design is proved, surely the Proof of his giving a List of Men is a further Proof that he did agree to it, and then it is very proper to be given in Evidence; for if by the new Statute no one Act can be given in Evidence to prove another, then must not only the Overt Act, but also the Evidence of that Act be expressed in the Indictment.

Gentlemen, you have heard the Witnesses what they say concerning this Matter. In the first Place, if you do believe that there was such Consults and Meetings, where this intended Assassination of the King was debated and resolved upon, and that *Mr Rookwood* was present and did agree to it, that is an Overt-Act; and again, if you are satisfied that there was an Agreement to prepare and provide a Number of Men to set upon the King and his Guards, in the Manner you have heard, and he was concerned in making this Provision, and was to have a Post, and command a Party in that Attack, that is a further Proof of that Consent and Agreement, that is laid in the Indictment.

Gentlemen, I must leave it to you, upon the Evidence that you have heard; if you are satisfied upon the Testimony of these two Witnesses that have been produc'd, That *Mr Rookwood* is guilty of this Treason of which he is indicted, in Compassing and Imagining the Death of the King, then you will find him guilty: If you are not satisfied that he is guilty, you will acquit him.

Cl. of Arr. Cryer, swear an Officer to keep the Jury. (Which was done)

L. C. J. Now if you have any Thing to move on Behalf of your other Clients pray do it.

Sir B. Shower. Yes, we have an Exception, but never a one of false Spelling.

L. C. J. If so be it be any such Matter as you can move in Arrest of Judgment, it had best be reserv'd till after the Verdict.

Sir B. Shower. Our Exceptions will serve if Occasion be for *Mr Rookwood* in Arrest of Judgment, and they will serve for the others also to prevent the Trouble of the Tryal, if we have your Lordship's Opinion that they are good Exceptions.

Then the Jury withdrew to consider of their Verdict, and after a Quarter of an Hour's staying out return'd, and gave in their Verdict.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names. *Samuel Powell.*

Mr Powell. Here.

Cryer. Vous avez. (And so of the Rest.)

Cl. of

Cl. of Ar. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who shall say for you?

Jury. Our Foreman.

Cl. of Ar. Ambrose Rookwood, hold up thy Hand, (which he did.) Look upon the Prisoner; how say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treason committed?

Foreman. None to our Knowledge.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You say that Ambrose Rookwood is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, or Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any

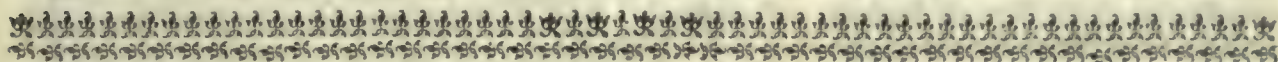
Time since, to your Knowledge, and so you say all.

Jury. Yes.

Mr Powell. We desire we may be discharged.

L. C. J. We cannot do that, till we see whether there be enough upon the other Pannel, we will give you as much Ease as we can, we shall not I suppose try the other till the Afternoon, therefore you may take your Ease for the present, but you must be about the Court when the other Tryals come on.

While the Jury was withdrawn, the Court offered to the Council for the Prisoners, that they might move what Exceptions they had before the Jury was sworn as to any of the other; which accordingly they did; but that relating to the Case of Mr Charles Cranburne, in whose Presence, being then at the Bar, the Objections were made, that Part is left to his Tryal.



The TRYALS of CHARLES CRANBURNE and ROBERT LOWICK,

Publisch'd by AUTHORITY.

*Die Martis vicesimo primo Die Aprilis, Anno Dom. 1696.
Annoque Regni Regis Gulielmi Tertii Octavo.*

At the Session of Oyer and Terminer for the County of Middlesex, sitting in the Court of *King's-Bench* at *Westminster*.

FTER the Tryal of Ambrose Rookwood was over, while the Jury were withdrawn to consider of their Verdict, the Court proceeded in this Manner.

Sir John Holt. *L. C. J.* Mr Attorney, Who will you have try'd next?

Sir Thomas Trevor. Mr Att. Gen. Cranburne, if your Lordship pleases.

Cl. of Arr. Then, Keeper of Newgate, set Charles Cranburne to the Bar.

L. C. J. You, Gentlemen, that are of Council for the Prisoner, if you have any Thing to move for your Clyent, you may move it; but first let the Prisoner be here.

Then Charles Cranburne was brought to the Bar in Irons.

L. C. J. Look you, Keeper, you should take off the Prisoners Irons when they are at the Bar, for they should stand at their Ease when they are try'd.

Keeper. My Lord, we have no Instruments here to do it just now.

Cl. of Ar. You may send to the Gate-house, and borrow Instruments.

Mr J. Powell. It should be done indeed; they ought to plead at Ease.

L. C. J. Well go on Sir Bartholomew Shower.

Mr Att. Gen. My Lord, before Sir Bartholomew Shower enter upon his Exceptions, unless those Exceptions of his are some of the Particulars mention'd in this Act he must not do it now, after Plea pleaded, before the Tryal; but he must do it in Arrest of Judgment.

L. C. J. Treby. It is true, regularly; but let him use his own Judgment.

L. C. J. It is very true; the Course has not been to allow them to move to quash an Indictment for Treason, or Felony; but it may be done.

Mr Att. Gen. Sure it must be only for such Things as they cannot take Advantage of in Arrest of Judgment after the Verdict.

L. C. J. It has not been the Course, but it may be done.

Mr Att. Gen. Not where there is an Issue join'd, and a Jury return'd to try that Issue; I believe that never was done, nor attempted.

L. C. J. Treby. If there were any Prejudice to the King by it, it were not fit for us to alter the Course; but let us hear what his Exceptions are.

Sir B. Shower. I have several Exceptions; five at least; one of them is within the very Words of the Act, that is, improper Latin; I am sure some of it is so.

L. C. J. Well, let's hear what that is.

Sir B. Shower. It says, *Anno Regni dicti Domini Regis nunc Septimo*, and *Lewis* is the last King mention'd

tioned before ; and so here is no Year of the King of England mention'd. It is a certain Rule, that Relatives must refer to the last Antecedent, and that Rule holds always, unless there be Words that accompany the Relative, which undeniably shew to what it refers.

L. C. J. Ay ; but do we call the French King *Dominus Rex* ?

L. C. J. Treby. He would have been so, if he had succeeded in his Invasion, and this Assassination.

Sir B. Shower. In every Indictment, if there be Occasion to mention a former King, it is always *nuper Rex*, and such a one, naming the Name of the King, where the present King's Name does intervene, to prevent Confusion ; and so in Civil Actions it is the same ; and so it should have been here.

L. C. J. Ay ; but I tell you, it is *Dominus Rex nunc*, which is our King.

Mr Phipps. It is not said *Anglia*.

L. C. J. But wherever it is *Dominus Rex*, we understand it of the King of England, and no Body else. Read the Indictment.

Cl. of Arr. *Necnon eundem Dominum Regem ad Mortem & finalem Destructionem ponere & adducere, ac subditos suos fideles, & Liberos Homines Hujus Regni Anglia in servitutem intolerabilem, & miseriam Ludovico Regi Gallico subjugare, & mancipare, Decimo Die Februarii, Anno Regni dicti Domini nunc Regis, septimo, & diversis aliis Diebus, &c.*

L. C. J. Can any Man imagine this to be the French King ?

Sir B. Sh. My Lord, your Lordship is not to imagine one Way or other.

Mr Cowper. In the strictest Sense and Grammar in the World, it must mean King William, and no other. We do not need any Imagination, when in the strictest Construction, it is plain who it refers to.

Sir B. Shower. I am sure no Grammar can make it good ; nothing but a Supposition can help it.

Mr Cowper. When it is said *Dictus Dominus Rex*, if Sir Bartholomew Shower can find out another *Dominus Rex* in the Indictment, then he may make something of his Objection ; but the *Dominus* is only apply'd to our own King throughout.

L. C. J. Treby. Besides, as to the Rule that Sir Bartholomew Shower mentions, it is that *ad proximum Antecedens fiat Relatio nisi impediatur Sententia*. That's the Restriction of the Rule, it must relate to the next Antecedent, unless the Sense would be prejudiced ; but here if this Construction should be, it would make this Clause to be no better than Nonsense, viz. That the Subjects and Freemen of this Realm were to be brought into intolerable Slavery to Lewis the French King, such a Day in the Seventh Year of the Reign of our Lord the French King.

Sir B. Shower. We say it is little better than Nonsense, I am sure it is loose, and uncertain, and not Grammar, but carries a new Form with it.

L. C. J. No, It is as well as it can be.

Sir B. Shower. Then, my Lord, there is another Exception ; it is said, *Diversis Diebus & Vicibus tam antea quam postea* ; and then afterwards it says, *postea scilicet eodem Decimo Die Februarii* ; that is repugnant ; it is as much as to say, That upon the Tenth of February, and two Days afterwards (to wit) the said Tenth Day of February ;

that is, after two Days after the Tenth of February, viz. upon the same Tenth Day.

Mr Att. Gen. That *Postea* is another Sentence and relates to other Matters.

Sir B. Shower. It can't in Propriety of Speech be said to be afterwards the same Day.

Mr Sol. Gen. If Sir Bartholomew Shower remembers the Evidence that we have given this Day, he will find it was in Fact so ; they met on the Saturday Morning, and afterwards met again the Night of the same Day.

L. C. J. There is nothing in that Objection sure, it is a common Form, when they tell of different Matters.

Sir B. Shower. Well then, if you will hear the rest which are not of the same Nature, we shall come to what we think a fatal Exception ; we say this Indictment of High-Treason being against a Subject born, ought to have had the Words in it, *Contra supremum naturalem Ligeum Dominum suum* ; according to Calvin's Case in the 7th Report, Fol. Septimo.

L. C. J. It is *Contra Ligeantiam sue Debitum*, is it not ?

Sir B. Shower. That won't help it, my Lord, for all that is applicable to an Alien born : And so is the Case in my Lord Dyer, 144. where it is said, That if an Indictment of Treason be against an Alien, you must not put in the Word *naturalem*, if you do, it will be faulty, because he owes but a local Allegiance to the King of England ; and not a natural one. Now we say, there are none of these Prisoners but are Subjects born, and the constant Form in Queen Elizabeth's Time, and Queen Mary's, was to put in the Words *Naturalem Dominum*, and they cannot shew me any of those Precedents without it. There was Occasion in Tucker's Case to look into this Matter, and search all the Precedents. I have look'd into my Lord Coke's Entries, and all the Precedents ; I have seen my Lord of Essex's Indictment, and all the others in Queen Elizabeth's Time, and those of the Traitors in the Powder-Plot, and those of the Regicides, and Tucker's own Indictment it self ; all along it is *Naturalem Dominum suum* ; and the Reason for it is, he that is Alien born, you never put in *naturalem Dominum suum*, because he owes a double Allegiance ; one Natural, to his own King under whose Dominion he was born, and the other Local, to the King in whose Dominions he resides, for he is bound to observe the Laws of the Place where he lives : And if he violate them, he does break the Allegiance that he owes to the Government where he lives, upon Account of the Protection he enjoys under it. But if he be born a Subject of the King of England, he has but one natural Liege-Lord : and he being an Englishman born, the King stands in that Relation to him, as he does to all his Native Subjects, but not to Foreigners ; and therefore it was thought requisite to be, and has always been inserted into Indictments of Treason against Subjects born. And, my Lord, we think the very Resolution of the Court, afterwards affirm'd in the House of Lords that revers'd Tucker's Attainder, went upon this Opinion, That the Law required *naturalem Ligeum Dominum* to be put in. There the Exception was, that *Contra Debitum Ligeantiam sue* was omitted ; To which it was objected, that there was *Dominum Supremum Naturalem*, which was Equivalent : No, it was answered, both were requisite, because every Act charg'd in the Indictment ought to be laid against

against the Duty of his Allegiance. Now in Indictments of Treason, there are certain Words that are essential, because of their Relation between the King and his People. There are certain Forms of Words, which if the constant Practice has been to make Use of them, the Omission is an Error. Those usual Forms ought to be observ'd, and the Want of them will be a fatal Exception; so we think it would be in this Case, as much as if the Word *Proditorie* had been left out; or as if in a Case of Felony and Burglary, the Words *Felonice*, and *Burglariter* had been left out.

Mr Phipps. My Lord, we take the Practice, and Precedents to be the Rule of Law in the Case; and I have look'd over a great many Precedents, besides those that Sir Bartholomew Shower has cited; and I never saw any one Precedent of an Indictment of Treason against a Subject born without the Word *naturalem*; and all the Cases cited by Sir Barthol. Shower are full in the Point. Counter's Case in my Lord Hobbart, 271. where 'tis said, that if there be an Indictment against a Subject born, it must be *Contra naturalem Dominum*; if against an Alien, *naturalem* must be left out. To say *Contra Ligeantia sua Debitum* will not do, it is not enough, for that may be said against an Alien, because he owes a local Allegiance, tho' not a Natural one. And I take it, upon this Difference, this Indictment is not good.

Mr Att. Gen. My Lord, I do not know how far you will think it proper to enter into this Matter before the Tryal.

L. C. J. Mr Attorney, I think you had as good speak to it now as at another Time; tho' I must confess it is not so proper in Point of Practice.

Mr Att. Gen. Well, my Lord, then we will speak to it now. The Objection is, That the Word *naturalem Dominum* is not in the Indictment; which they say is contrary to the usual Form: As to the Precedents, there are a great many where it has been, and I am sure a great many where it has not been; and I am sure for this Six, Seven, or Eight Years last past, it has always been omitted: And, with Submission to your Lordship, it is not at all necessary, if there be Words in the Indictment which shew, that what he did was against the Duty of his Allegiance to his Lawful and Undoubted Lord (which are the Words in this Indictment.) It is true, if he be not a Subject born, *naturalem* cannot be in, because that is contradictory to the Obedience which he owes, for it is not a natural Obedience that he owes, but a Local; but if a Man be a Subject born, and commits Treason against the Allegiance that he owes, that is against his natural Allegiance; for whatsoever he does against his Allegiance, he does against his natural Allegiance, and so there's no need to put in the Word *naturalem*; because he owes no other Allegiance but that; it is sufficient if that be put in which shews its being against his Allegiance. If they could shew that a Subject born has two Allegiances, one that is natural, and the other that is not natural; then if you would prosecute him you must shew, whether it was against his natural, or against his other Allegiance. But when he has none but a natural Allegiance, certainly against his Allegiance, without putting in natural, will be well enough. It is true where there is no natural Allegiance, it must be wrong if you put it in, because you put in that Allegiance which he does not owe; but where he is a Sub-

ject born, to put in natural Liege-Lord there is no Ground at all for it; there are Words enough that shew it was against his Allegiance to his Lawful and Undoubted Lord.

L. C. J. Look you, Sir Bartholomew Shower, how does it appear, that these Men are Subjects born? The Matter you go upon does not appear upon the Indictment, and you are not to go off from that.

Sir B. Shower. Every Man is presum'd to be so, unless the contrary appears.

L. C. J. You quote Calvin's Case, and the other Cases that are there put; those are all Cases of Aliens; there is Dr. Lopez's Case; He being an Alien comes into England, and commits High-Treason: Why, say they, how shall we indict this Man? We cannot say it is *Contra Naturalem Dominum suum*; for he owes no natural Allegiance to the Queen of England; How shall we do to frame a good Indictment against this Man? They considered of this; and they said it will be a good Indictment, to charge him with High-Treason, or any one else, leaving out the Word *Naturalem*: For if it appear he has committed an Offence against the Laws of the Kingdom, and against the Duty of his Allegiance, which is High-Treason, that's enough. Now as to Tucker's Case, it was reversed for want of the Conclusion, *contra Debitum Ligeantia sua*. Those Words are material; for let the Offence be never so much against the Person of the King, as to assassinate him, or levy War against him, yet still if it be not against the Duty of his Allegiance, as it cannot be if he owes him none, it is not High-Treason. And therefore if it be against his Allegiance, whether that Allegiance be natural or local, it is all one, it's enough to make it High-Treason.

Mr Soll. Gen. In that Case in Dyer, they shew where it was a Fault to put the Word in, but they can shew no Case where it has been adjudged to be a Fault to leave the Word out.

L. C. J. No Doubt it would be a Fault to have that in, *Contra Naturalem Dominum suum*, where there is only a local Allegiance due.

Mr Phipps. How does it appear whether it is the one or the other that is due?

L. C. J. It is no Matter whether the one or the other do appear, it is High-Treason be it the one or the other, if it be against the Duty of his Allegiance.

Mr Phipps. Suppose an Indictment against an Alien were, *Contra Naturalem Dominum*.

L. C. J. That would be ill, because then you had laid it more specially, and otherwise than really it is, and restrained it where you ought not to do it.

Mr Phipps. How then, my Lord, shall it appear that he only ow'd a local Obedience?

L. C. J. It may be given in Evidence, That he is an Alien born.

Mr Soll. Gen. He may plead it in Abatement to the Indictment.

L. C. J. He ought to be acquitted, for you have indicted him of a Crime against his natural Allegiance, when he owes no such. But Allegiance generally comprehends all Sorts of Allegiance, Natural, and Local.

Sir B. Shower. How then, my Lord, come all the Lawyers of all Ages to put in those Words

in Indictments of High Treason against Subjects born?

L. C. J. No, I have seen Abundance of Precedents, that have only *Contra Ligeantia sua Debitum* Generally, and for the most part are; for Allegiance is the Genus, and if that be suggested, all the Species are contain'd under that.

Mr Att. Gen. Well, have they any more.

Sir B. Shower. Yes, we have more.

L. C. J. Well, you shall have them all in time.

Sir B. Sh. My Lord, here is another Objection, and that's this; here is one Fact that they have laid, and that's the 2d Overt-Act in this Indictment, that they consented and agreed that Forty Men (whereof of these Four were to be Four) but do not lay it to be done traiterously. They say *Consenserunt Agreaverunt & Assenserunt*, but not *proditorie*; and I never saw an Indictment that laid an express Overt Act, without repeating the Word again. If your Lordship pleases, the Words in the Indictment are thus; as to the first Overt Act, it is laid in this manner, *Et ad execrabilem Assassinationem illam exequend.* at such a Time and such a Place *proditorie tractaverunt proposuerunt & Consultaverunt de vijs modis & medijs, &c.* and then comes this which we except against; *& Consenserunt Agreaverunt & Assenserunt quod Quadraginta Homines, &c.* Now this is a plain distinct Act, and there is no *proditorie* to it; and if ever they can shew me any Indictment, in which an Overt Act was laid, of which they gave any Evidence, and it had not the Word *proditorie* in it I am very much mistaken. I am sure, I never saw any such. And it is not enough to say, that the Nature of the Thing is such, as that it cannot but be a Treasonable Act; but they must alledge it to be so, by the express Use of that Word, which the Law has appointed to express this Crime by. In the Case of an Indictment for Felony, if it be not said Felony, it is not good. They are not to describe that by Circumlocution, which is a particular Crime fixt by Law, they must use the *Verba Artis*, the Terms of Art, and no other: If your Lordship pleases it may be read.

Mr Sol. Gen. Let it be read if you please; but take it in English, and it is no more than this, they did traiterously compass the Death of the King, and for that purpose they did traiterously meet, and consult about the Ways and Means, and did consent and agree that forty Men, &c.

Cl. of Arr. Reads, *Et ad execrabilem Horrendam & Detestabilem Assassinationem Anglice Assassination & Interfectionem illam Citius exequendum & anno ac Diversis alijs Diebus & vicibus apud parochiam predictam in Comitatu predicto proditorie tractaverunt, proposuerunt & Consultaverunt de viis modis & medijs ac Tempore & Loco ubi quando qualiter & quomodo Dictum Dominum Regem sic ex Insidiis facilius Interficerent.*

Sir B. Shower. There is an End of that, now go on.

Mr. Att. Gen. No, Sir Bartholomew, you mistake there is no End of it, that's done at the same time with that which follows.

Sir B. Shower. No it is not the same Overt Act; but let him go on.

Cl. of Arr. *Et Consenserunt Agreaverunt & Assenserunt quod quadraginta Homines Equestres.*

Sir B. Shower. Well, you need read no further for our Objection. We say, there wants the Word *Proditorie*: For there are two Overt-Acts, the One is, that they traiterously did consult of

the Ways and Means, how to kill the King, and that Overt-Act we agree to be well laid: But then it says they consented, and agreed that there should be Forty Men, whereof these Four should be Four, but does not say they traiterously agreed are not these distinct Acts?

Mr Phipps. Surely, My Lord, they are distinct Acts, for this Part of the Indictment upon which Sir Bartholomew grounds his Objection, is that Overt-Act of which the List in Mr Rookwood's Case was urg'd by the King's Council, and agreed by the Court to be an Evidence.

Then the Jury against Mr. Rookwood came in, and delivered in their Verdict, as it is in his Trial, then afterwards the Court went on thus.

Mr Att. Gen. My Lord, the Objection is, that *Proditorie* is not inserted into that particular Clause of the Indictment, which shews their particular Agreement that there should be forty Men, whereof of the Four named in the Indictment were to be Four. Now your Lordship observes how the Indictment runs, it is for compassing and imagining the Death and Destruction of the King; and it sets forth for this Purpose, that to affect this Compassing and Imagination, they *Proditorie tractaverunt & Consultaverunt de viis medijs & Modis*, how they should kill the King. Now that which immediately follows after is, the particular Method and Means that were agreed upon, that is, that there should be forty Men. Now this is the strangest Suggestion that ever was, when we have set forth, that traiterously they did so agree of the Ways and Means, and then set forth the particular Means that here must be *proditorie* again to that. This is such a Construction as I cannot but admire how it could come into any one's Head. It is Part of the Sentence; for the other Part, as we have laid it, is not compleat before: It may be it might be sufficient without setting forth the particular Way and Means, but when it is set forth, it is Part of the Sentence, and refers to the first Beginning.

L. C. J. Aye sure it does.

Mr. Att. Gen. I cannot tell what they would have unless they would have us repeat the Word *proditorie* in every Line.

Mr Sol. Gen. Or before every Verb.

Sir B. Shower. No, but I think it ought to be repeated at every Overt-Act.

Mr Conyers. If your Lordship pleases, after that they have set forth that this was the particular Method and Way agreed upon at their Consultation, that forty Horsemen or thereabouts should go about it, of which the Persons Indicted were to be Four, it goes on, *Et Quilibet eorum proditorie super se Suscepit esse unum* there it is put in, and it appears to be as particular as possible can be.

Mr Cowper. Sir Bartholomew Shower says, that when we have alledg'd that they did traiterously treat, propose and consult of the Means and Ways of killing the King, there we have done the Sentence and made that one Overt-Act. Now how is the Sentence done? The next Word is a Conjunction Copulative, *& Consenserunt &c.* And what is the Use of a Conjunction Copulative? But to convey the Force of the Words in a former Sentence to the Sentence following, and to prevent the Repetition of every Word in the subsequent Sentence that was in the Precedent: But it is plain, they are both one and the same Overt-Act, and these subsequent Words are only an Explanation

planation, more particularly of the Overt-Act set forth in the precedent Words.

Sir B. Shower. In Answer to that, that has been said, if they shew me any Precedent, where an Indictment has been for High-Treason, setting forth several Overt Acts, and not the Word *proditorie* set to every Overt-Act, then they answer my Objection. If the Word *Quod* had come in, that would have made them distinct to be sure; and I think they are as distinct Acts now; suppose they had concluded at the End of the Word *Interficerent*, that had been a good Overt-Act, I am sure they will agree that: And if it be so, then the other is a good Overt-Act too. For it is a distinct Thing from that which was a perfect Sentence before; and it either requires a *Like-wise*, or the Word *Proditorie* must be repeated. They have not so much as said *similiter Consenserunt* or *simili modo* there is an (&) indeed, but that does not so couple the Sentences together, as not to make them distinct Acts. There are several *Ets* thorough the whole Indictment, but that does not, as Mr Comper would have it, couple altogether to make one Overt-Act.

Mr Phipps. My Lord, if what Mr Comper says be allow'd, (*viz.*) that the (&) makes it one intire Sentence, then there is no Overt-Act at all; for after the Treason alledg'd, and the Clause is coupled to one another by an *Et*, and consequently by Mr. Comper's Way of arguing the whole Indictment is but one intire Sentence.

L. C. J. I do not understand your Meaning as to that, they tell you *Proditorie* it is alledg'd to the Consulting, Contriving and Agreeing, then they tell you what was the subject Matter of that Contrivance and Agreement to assassinate the King, and in order to that they agreed there should be 40 Men, is not that good enough, without *Proditorie* to every Line.

Sir B. Shower. No, it is not said in *Ordine ad*, there is no such Thing; but only they did consult of the Ways and Means, and did agree that 40 Horsemen should do it, and afterwards did agree to provide Horses and Instruments of War. Now that being with a *Quodque*, they say makes a new Overt-Act; but I cannot understand why *Quodque* is not as much a *Copulative* as *Et*, and the one should not have the same Effect as the other.

L. C. J. First it tells you there was a Consult and Agreement to assassinate the King, and for the Accomplishment of the said Assassination, afterwards *eisdem die & Anno Proditorie Tractaverunt & Consultaverunt de viis & modis*, how they should kill the King.

Sir B. Shower. That is one Overt-Act, say we, and there you should stop.

L. C. J. *Et Consenserunt & Agreaverunt quod quadraginta Homines, &c.* it is all at the same time, and must be intended the same Consult and Contrivance; that they consulted of the Ways and Means, and then agreed so many Men should be provided.

Mr Phipps. No, My Lord, we say that is another Overt-Act.

L. C. J. Treby. It seems to me to be a specifying, and particularising the Ways and Means, that they had consulted of, and concluded on.

Sir B. Shower. If it had been a specifying, it had been much better to put in either then and there, or that this was the Result of the Consultation.

L. C. J. Treby. It does seem to me so, that it

was the Result of the Consultation, and it is well enough.

L. C. J. You had better have sav'd these kind of Exceptions till the Trial was over.

Sir B. Shower. But, my Lord, if there be one Overt-Act ill laid, I submit it whether they can give any Evidence of that Overt-Act.

L. C. J. Treby. No doubt of that they cannot; but we think it is as well laid as it could be laid.

L. C. J. Truly I am not well satisfied, that it is necessary after you have laid the *Proditorie*, as to the particular Treason, to lay it again to the Overt-Act. For the Overt-Act is but Evidence of the Treason: The Treason it self lies in the Compassing which is an Act of the Mind.

L. C. J. Treby. You cannot Indict a Man of Treason for Assassinating or killing the King; but you must in every such Case frame the Indictment upon the Article for compassing and imagining the Death of the King; which must be laid to be done traiterously. Then when afterwards you say the Person accused did wound him, or imprison him, or consult and agree to assassinate him, or did actually assassinate him, these are but so many Overt-Acts of compassing the Death, and you having first said that he did *Proditorie* compass and imagine the King's Death, you have thereby shewn that you charge him with a greater Offence than Felony (which my Lord Coke says is the Use of the Word *Proditorie*;) and that being thus done, I do not apprehend it to be necessary that you should add *Proditorie* to all the rest of the following Particulars; for they are only external Discoveries of the inward Treason; and more properly deemed to be Evidence of the Treason, than to be the Treason it self.

L. C. J. The Treason is consummate in the Intention, besides the Words of the Statute make that the Treason, not the Overt-Act, that is but Evidence, and so it was held, (not upon this Exception, but upon the Reason that my Lord speaks of) in Case of the Regicides of King Charles the First, That the Indictment should not be for killing the King, but for compassing and imagining his Death, and the Killing was alledg'd as an Overt-Act.

Sir B. Shower. It must be so if it were for levying of War.

L. C. J. Most true, for levying the War is the Treason, but in this Case we think it is no Exception.

Mr At. Gen. Then let us have the Fifth.

Sir B. Shower. Then, my Lord, here is another Thing. It is a Question whether there be any Overt-Act presented by the Jury at all. The Indictment says, *Furatores pro Domino Rege presentant*, that they as false Traytors did compass the Death of the King, and the Slaughter of his Subjects, and they did meet, and consult, and agree how to do it, *Et iidem Christophorus Knightley* and the rest, to fulfil their said traiterous Intentions and Imaginations did, afterwards, the tenth of February, buy Arms and Horses. Now our Objection is, that it does not appear, that any one of these Overt-Acts are the Presentment of the Jury; with Submission they ought to have begun it again, either with a *Quodque*, or something that should have referred it to the first, *Furatores presentant*, or else they must have begun quite again, with a *Furatores Uterius presentant*, and not have coupled them, as this is with an *ulterius presentant*, and

not have coupled them as this is with an *Et*. The most Forms begin with an *ulterius presentant*, but here we find no Overt-Act is so introduced. They might present Part, and not present the other Part, for any Thing that does appear. Every Thing ought to be laid positively, as the Jury's *Dictum*, it may be only the Clerk's Saying, and not the Juries, for any Thing that does appear. Your Lordship remembers the Case of the King and Trobridge upon a Writ of Error to reverse a Judgment for erecting and continuing a Cottage against the Form of the Statute, now *Contra formam Statuti* was in the Beginning of the Indictment, but not in the Conclusion; to the erecting but not the continuing. And though there was there *Juratores ulterius dicunt*, it was not *super Sacramentum suum*, and they did not say, he did continue it against the Statute, and there being no formal Presentment, that he maintain'd the Cottage notwithstanding the Act, *Et* did not so couple it to the first Part, as to make it a good Presentment. So we say in this Case, this is a Fault, and different from all the common Forms; there ought to be a direct Presentment of each Overt-Act, and not coupled by an *Et*. For *Et* will not do it; for it is a distinct Overt-Act every one, and should have been *Et quod consultaverunt, quodque Agreeaverunt*, that a certain Number should do so and so, and to be sure, it should have been so at the last Overt-Act, which is only, *Et iidem Christophorus Knightley* did buy Arms and Horses. Now this last *Et*, being a loose Conjunction Copulative, in common Sense ought to refer to that which they had agreed upon, for that is last mention'd there, and the natural Sense leads thither, and not to the Beginning of the Bill *Juratores presentant quod*.

Mr Phipps. I shall not trouble your Lordship further, they ought to have put in a *Quodque*, or an *Uterius presentant*.

Mr At. Gen. Where would you have the *Quodque*, or the *Uterius presentant*?

Mr Phipps. Either to every Overt-Act, or at least to that last.

Mr Att. Gen. The Indictment sets forth, that they committed such, and such Treason; Their Objection is, that *Quodque* is not put into every Overt-Act, and our Answer is, that the first *Quod* governs all that relates to that Treason. It may be if there were two distinct Treasons in the Indictment, when you come to set forth the Second Treason, you should say *Juratores ulterius presentant* the Second Treason; but the Overt-Acts to prove the same Treason, are all Parts of that Treason, and make but one Species of Treason, which is the Imagining the Death of the King. There's the Treason; and to bring it to pass, they did so, and so: This, my Lord, must be Part of the finding of the Jury as well as the Treason it self, of which these are the Overt-Acts. But then if you will lay the levying of War in the same Indictment, then it may be you must say *Juratores ulterius presentant quod*, &c. But it had been a strange Absurdity to say, *Juratores ulterius presentant*, such and such Overt-Acts: For the Overt-Act is not a further Indictment, but only a setting forth that which is Evidence, upon which they found the Indictment for Treason.

Mr. Sol. Gen. What the Indictment says, is as direct Affirmation as can be all along in the Presentment of the Jury, that the Prisoner and others did compass and imagine the Death of the King,

and to bring it about, they did consult together, and did agree to make use of such and such Means, and were to have a Party of 40 Men, and they bought Arms and Horses. Now it does not repeat *quodque*, or *ulterius presentant quod*, to every one of those Sentences, that they did so and so, and that they did so and so. Now I would fain know the Difference between Saying, and they did such a Thing, and Saying, and that they did such a Thing. That's all the Difference that they think to overturn this Indictment for. The omitting of a *Juratores ulterius presentant*, certainly is nothing; for the first Presentment runs through the whole Indictment, and there does not need an *Uterius*.

Sir B. Shower. Certainly there should have been a *Quodque* at least.

L. C. J. No indeed, I think it is better as it is, than as you would have had it; because the first *Quod* goes through the whole, That in order thereunto he did so and so, would you have it said *& quod* in order thereunto he did so and so, but that may be good Sense, I think it is not so good as the other. This Indictment is for one Sort of Treason, and that is, for compassing the Death of the King; and it is, I think, more proper to have but one *Quod*, than to have more; for it makes the whole Indictment more entire. As to the *Juratores ulterius presentant*, that is never proper, where the Species of Treason is the same: For indeed if there had been two distinct Treasons, the one for compassing the Death of the King, and the other for levying of War, in that Case you must bring it in by *ulterius presentant*: Because they are two several Offences, though compris'd in one Bill, and they are in Law as two Indictments. And so it is in the Case that you mentioned of Cottages: It is one Offence to erect a Cottage, and another Offence to continue a Cottage, and they are to have several Punishments; and because they there jumbled them both together in one Indictment, that Indictment was held to be nought: For by Law, the Indictment for erecting a Cottage, ought to conclude *contra formam Statuti*, and then the Jury must begin again, *& ulterius presentant quod* the Cottage was continu'd against the Form of the Statute; because they are several Offences. But here the High-Treason is but one and the same Offence, and the other Things are but Overt-Acts to manifest this Treason, the Compassing the Death of the King; and truly I think it is better as it is.

Mr Phipps. I have seen several Precedents of Indictments, where the several Overt-Acts were to the same High-Treason, but still they had each an *ulterius presentant*.

At. Gen. I believe it is hard to find many Indictments in the same Words: I am sure all are not.

L. C. Baron. Is it not as great an Affirmation to say, and they did such a Thing, as to say, and that they did such a Thing.

L. C. J. I cannot reconcile it to my Reason, but it should be as good Sense without that as with.

L. C. J. Treby. In a long Deed it begins, *This Indenture witnesseth*, that the Party granted so and so, and the Party covenants thus and thus; and so it goes on commonly, without renewing the Word *That* to the subsequent Clauses: But yet the first Expression (*This Indenture witnesseth, that*) governs the whole Deed, though it be many Skins of Parchment.

L. C. J.

L. C. J. If you begin with an Indenture, you begin, That it witnesseth so, and so, without renewing, unless it be a very distinct Thing.

Sir B. Shomer. My Lord, we think that Similitude makes for us. *A. B.* covenants so and so in a Conveyance, and then further, that so and so.

L. C. J. But there you restrain that in the Beginning of the Covenant to every Particular in that Covenant.

Mr Ar. Gen. Will your Lordship please to call the Jury now?

L. C. J. Have you a Mind to go on with the Trial, or to go to Dinner?

Mr Ar. Gen. I believe your Lordship can try but one more to Night, and that may be as well after Dinner as before.

L. C. J. Well than, adjourn till 5 a Clock, and in the mean time, you Keeper, knock off the Prisoners Fetters.

Keeper. They shall, my Lord.

Then the Court adjourned till 5 a Clock in the Afternoon, it being then about 3.

Post Meridiem, the 21st of April, 96.

The Court returned, and was resum'd about 6 in the Evening.

Cl of Ar. Keeper of Newgate, bring Charles Cranburne to the Bar (which was done.) Charles Cranburne, hold up thy Hand (which he did.) Those good Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; and therefore if you will challenge them or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

Cranburne. My Lord, I humbly desire I may have Pen, Ink, and Paper.

Court. Aye, Aye. *He had them.*

Cl. of Ar. Where is George Ford?

Cryer. Vouz Avez.

Cranburne. I challenge him.

Cl. of Ar. William Underhill.

Cranburne. I challenge him.

Cl. of Ar. William Withers.

Cranburne. I challenge him.

Mr Phipps. If your Lordship pleases, those that were of the last Jury I hope shall not be call'd of this Jury: This Prisoner being tried upon the same Indictment the last was.

L. C. J. If they be not, it shall be in Ease to them, but it is not in Favour of you.

Mr Phipps. We humbly conceive, having given their Verdict upon the same Indictment, they are not such indifferent Persons, as the Law intends they should be, and think it is good Reason they should not serve upon this Jury.

L. C. J. What though it be upon the same Indictment? the Evidence is not the same; for they are distinct Offences.

Mr Phipps. I do not know whether it be a good Cause of Challenge, but submit it to your Lordship.

L. C. J. Well, you may doubt of it if you please, and try the Exception.

Cl. of Ar. Thomas Trench.

Cranburne. I challenge him.

Cl. of Ar. John Wolfe.

Cranburne. I challenge him.

Cl. of Ar. James Bodington.

Cranburne. I challenge him.

Cl. of Ar. Jonathan Andrews. (He did not appear.) *John Raymond.*

Cranburne. I challenge him.

Cl. of Ar. George Hawes.

Cranburne. I challenge him.

Cl. of Ar. Francis Barry.

Cranburne. I challenge him.

Cl. of Ar. Arthur Bailey.

Cranburne. I challenge him; he was upon the last Jury.

L. C. J. That is no Reason; Will you challenge him peremptorily?

Cranburne. I do challenge him.

Cl. of Ar. John Caine.

Cranburne. I do not except against him.

Cl. of Ar. Hold Mr Caine the Book, Cryer.

Cryer. Look upon the Prisoner, Sir. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give, according to your Evidence, so help you God.

Cl. of Ar. Thomas Glover.

Cranburne. I challenge him.

Cl. of Ar. Dormer Sheppard. (He did not appear.) *George Tredway.* (He did not appear.) *Matthew Bateman.* (He did not appear.) *Timothy Thornbury.*

Cranburne. I challenge him.

Cl. of Ar. James Partherich.

Cranburne. I challenge him.

Cl. of Ar. Thomas Freeman. (He did not appear.) *Robert Bredon.*

Cranburne. I do not except against him. (He was sworn.)

Cl. of Ar. Joseph Blisset.

Cranburne. I challenge him.

Cl. of Ar. Timothy Lanno. (He did not appear.) *John Harris.* (He did not appear.) *John Billiers.*

Cranburne. I have nothing to say against him. (He was sworn.)

Cl. of Ar. Richard Bourn.

Cranburne. I do not except against him. (He was sworn.)

Cl. of Ar. George Carter. (He did not appear.) *Francis Chapman.*

Cranburne. I challenge him.

Cl. of Ar. Alexander Forth.

Cranburne. I challenge him.

Cl. of Ar. Nicholas Roberts.

Cranburne. I have nothing to say against him. (He was sworn.)

Cl. of Ar. Thomas Playstead.

Cranburne. I challenge him.

Cl. of Ar. William Atlee.

Cranburne. I challenge him.

Cl. of Ar. John Marsh. (He did not appear.) *Andrew Cook.*

Cranburne. I do not except against him. (He was sworn.)

Cl. of Ar. John Hall.

Cranburne. I challenge him.

Cl. of Ar. William Partridge.

Cranburne. I challenge him.

Cl. of Ar. Peter Levigne.

Cranburne. I challenge him.

Cl. of Ar. Thomas Moody.

Cranburne. I challenge him.

Cl. of Ar. Richard Belinge.

Cranburne. I challenge him.

Cl. of Ar. Thomas Evans.

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Cranburne. I do not except against him. (*He was sworn.*)

Cl. of Ar. Thomas Ramage.

Cranburne. I have nothing to say against him. (*He was sworn.*)

Cl. of Ar. Edward Townsend.

Cranburne. I challenge him.

Cl. of Ar. William Gunson.

Cranburne. I challenge him.

Cl. of Ar. Philip Wightman.

Cranburne. I say nothing against him. (*He was sworn.*)

Cl. of Ar. John Wyborne.

Sir B. Shower. I hope you take an Account of the Challenges, Mr. *Hardistey.*

L. C. J. Nay, you should take care of the Challenges, who are his Council; if he had no Council we wou'd take care of him.

Cryer. Here is Mr *Wyborne*, What say you to him?

Cranburne. I have nothing to say. (*He was sworn.*)

Sir B. Shower. I hope your Lordship will also be of Council for him.

L. C. J. We are to be equal and indifferent between the King and the Prisoner: But you that are now his Council by Law, ought to take care that he lose no Advantage.

Cl. of Ar. William Strode.

Cranburne. I have nothing to say against him. (*He was sworn.*)

Cl. of Ar. Daniel Byfield. (*He did not appear.*)

Benjamin Noble. (*He did not appear.*) *Thomas White.*

Cranburne. I do not except against him. (*He was sworn.*)

Cl. of Ar. Cryer Countez. *John Caine.*

Cryer. One, &c.

Cl. of Ar. Thomas White.

Cryer. Twelve good Men and true, stand together, and hear your Evidence.

The Names of the Twelve Sworn were these,

<i>John Caine, Esq;</i>	}	<i>Thomas Evans, Gent.</i>
<i>Robert Bredon, Esq;</i>		<i>Thomas Ramage, Gent.</i>
<i>John Billers, Esq;</i>		<i>Philip Wightman, Gent.</i>
<i>Richard Bourn, Esq;</i>		<i>John Wyborne, Gent.</i>
<i>Nicholas Roberts, Gent.</i>		<i>William Strode, Gent. and</i>
<i>Andrew Cook, Gent.</i>		<i>Thomas White, Gent.</i>

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez. If any one can inform my Lords the King's Justices of Oyer and Terminer, the King's Serjeant, or the King's Attorney General, before this Inquest be taken of the High-Treason, whereof the Prisoner at the Bar stands Indicted, let them come forth and they shall be heard; for now the Prisoner stands at the Bar upon his Deliverance: And all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance.

L. C. J. Mr Attorney, Do you think we shall be able to try the other to Night.

Mr At. Gen. That is according as this holds, my Lord.

L. C. J. I speak it for the Ease of the Jury, that they might be dispatched, and not attend another Day.

Mr At. Gen. I doubt we cannot try any more than this to Night.

L. C. J. Well it is no great Matter, it will be but a Morning-Work; it may be too great a Stress and a Hurry to do any more to Night; and therefore we will discharge the Jury for to Night, those of them that are not sworn; but we will be here to Morrow Morning by Seven a Clock; and therefore pray Gentlemen attend early.

Cl. of Ar. C. Cranburne Hold up thy Hand. (*Which he did.*) You that are sworn look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Charles Cranburne*, late of the Parish of *St. Paul Covent Garden*, in the County of *Middlesex*, Yeoman, for that he, with *Christopher Knightley*, late of the same Parish and County, Gentleman, *Robert Lowick*, late of the same Parish and County, Gentleman, and *Ambrose Rookwood*, late of the same Parish and County, Gentleman, the Fear of God in their Hearts not having, nor weighing the Duty of their Allegiance, but being mov'd and seduc'd by the Instigation of the Devil, against the most Serene, most Illustrious, most Clement, and most Excellent Prince, our Sovereign Lord, *William the Third*, by the Grace of God, of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. their Supreme, True, Rightful, Lawful, and undoubted Lord, the Cordial Love, and the true and due Obedience, Fidelity and Allegiance which every Faithful Subject of our said Lord the King that now is, towards him our said Lord the King shou'd bear, and of Right ought to bear, withdrawing and wholly to extinguish intending and contriving, and with all their Strength, purposing, designing and conspiring the Government of this Kingdom of *England*, under him our said Lord the King that now is, of Right, duly, happily, and very well established, altogether to subvert, change and alter; as also our said Lord the King to Death and final Destruction to put and bring, and his Faithful Subjects, and the Freemen of this Kingdom of *England* into intolerable and most miserable Slavery to *Lewis the French King* to subjugate and enthral, the 10th Day of *Feb.* in the 7th Year of the Reign of our said Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of *St. Paul Covent-Garden* aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine and contrive, purpose, design and intend our said Lord the King that now is, to Slay, Kill and Murder, and a miserable Slaughter among the faithful Subjects of him our said Lord the King, throughout this whole Kingdom of *England* to make and cause; and their said most wicked, impious, and devilish Treasons, and traiterous Compassings, Contrivances and Purposes aforesaid, to fulfil, perfect, and bring to Effect, they the said *Christopher Knightley*, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, and very many other false Traitors, to the Jurors unknown. Afterwards, to wit, the same Tenth Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, traiterously, and with Force and Arms, did meet, propose, treat, consult, consent, and agree, him our said Lord the King that now is, by lying in wait and wile, to Assassinate, Kill and Murder: And that execrable, horrid, and detestable Assassination and Killing the

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sooner execute and perpetrate. Afterwards, to wit, the same Day and Year, and diverse other Days and Times, at the Parish aforesaid, in the County aforesaid, traiterously did treat, propose, and consult of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what manner our said Lord the King so by lying in wait the more easily they might Kill: And did consent, agree, and assent, that Forty Horsemen, or thereabouts (of whom they the said *Christopher Knightley*, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, should be four; and every one of them traiterously took upon himself to be one) with Guns, Muskets, and Pistols, charged with Gun-powder and Leadens Bullets, and with Swords, Rapiers, and other Weapons, Armed, should lie in wait, and be in Ambush our said Lord the King, in his Coach being, when he should go abroad, to set upon; and that a certain and competent Number of those Men so armed, upon the Guards of our said Lord the King, then attending him, and being with him, should set upon, and them should fight with, and overcome; whilst others of the same Men so armed, him our said Lord the King should Assassinate, Slay, Kill, and Murder. And they the said *Christopher Knightley*, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, the Treasons, and all their treasonable Intentions, Purposes and Contrivances aforesaid to execute, perform, fulfil, and bring to effect, afterwards, (to wit) the aforesaid Tenth Day of *February*, in the Seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Swords and Rapiers, and other Weapons, Ammunition, and Warlike Things, and Military Instruments, falsely, maliciously, secretly and traiterously did obtain, buy, gather together, and procure; and to be bought, obtained, gathered together, and procured, did cause with that Intent them in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King that now is, as aforesaid, to be us'd, employ'd, and bestowed: And the same Premises the more safely and certainly to execute, do, and perpetrate, the aforesaid *Christopher Knightley*, with one *Edward King* (late of High Treason, in contriving and conspiring the Death of our said Lord the King that now is, duly convicted and attainted) by the Consent and Assent of divers of the Traitors and Conspirators aforesaid, the aforesaid Tenth Day of *February*, in the Seventh Year aforesaid, traiterously did go, and came unto the Place proposed, where such intended Assassination, Killing, and Murder of our said Lord the King, by lying in wait, should be done, perpetrated and committed, to view, see, and observe the Convenience and Fitness of the same Place for such lying in wait, Assassination, and Killing, there to be done, perpetrated and committed; and that Place so being seen and observed, afterwards, to wit, the same Day and Year, his Observations thereof to several of the said Traitors and Conspirators did relate and impart, to wit, at the Parish aforesaid, in the County aforesaid; and the said *Charles Cranburne* the same Day and Year there, in order the same execrable, horrid, and detestable Assassination and Killing of our said Lord the King, by the Traitors and Conspirators aforesaid, the more readily and boldly to execute, perpetrate, and commit advisedly, knowingly, and traiterously

did bear and carry among divers of those Traitors and Conspirators forward and backward from some to others of them, a List of the Names of divers Men of them who were designed and appointed our said Lord the King, so as aforesaid, by lying in wait, to Kill and Murder, against the Duty of his Allegiance, and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to inquire, whether he be guilty of the High-Treason whereof he stands indicted, or not guilty; if you find him Guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since: If you find him not guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so and no more: And hear your Evidence.

Mr. Montague. May it please your Lordship, and you Gentlemen of the Jury; This is an Indictment of High-Treason that is found against four Persons; but the particular Treason against the Prisoner at the Bar is for compassing and imagining the Death of the King, and endeavouring to subvert the Government, and enslave the Nation to *Lewis the French King*: And the Indictment sets forth, that the Prisoner at the Bar did for this purpose meet and consult with several false Traitors to the King and Government, of the Way, Manner, and Means how, and the Time and Place when and where to Assassinate the King; and at length they agreed that forty Horsemen should go together, and set upon the King in his Coach, as he returned from Hunting; some to attack the Coach, while others set upon the Guards. The Indictment does further charge him with getting Horses and Arms, and particularly with carrying a List of the Assassimators from one to another. These are the particular Things charged in the Indictment, and to this Indictment he has pleaded not guilty; if we prove the Fact, Gentlemen, we don't doubt your Justice.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of the Jury; the Prisoner at the Bar, *Charles Cranburne*, is indicted for High-Treason, in compassing and imagining the Death of the King. Gentlemen, the Overt-Acts laid in the Indictment to prove the Prisoner guilty are, That he was at several Meetings and Consultations about the Manner of putting this Design in Execution; at which Meetings it was agreed, that there should be about forty Horsemen in Number prepar'd, and arm'd for that Purpose, and they did provide Horses and Arms for that very Thing, and did agree to put it in Execution.

Gentlemen, the Evidence that you will hear produc'd against the Prisoner at the Bar will be of this Nature. You will hear from, the Witnesses, that about *Christmas* last, or the Beginning of *January*, *Sir George Barclay*, did come over from *France* from the late King *James*, to whom

whom he was an Officer in his Guards, with a Commission for attacking the Prince of *Orange*, or levying War upon his Person. He came over about that Time, and several Troopers of the late King *James's* Guards, to assist him in that barbarous Conspiracy. When Sir *George Barclay* came over, he did acquaint with this Design several Persons in *England*, that he thought proper to be Accomplices with him in it, particularly Capt. *Porter*, Mr *Charnock*, Sir *William Parkyns*, and several others whose Names you will hear of, and they had several Meetings about it the Beginning of *February*, at Capt. *Porter's* Lodgings, at the *Nagg's-Head* in *Covent-Garden*, at the *Sun Tavern* in the *Strand*, at the *Globe Tavern* in *Hatton Garden*, and several other Places where they consulted in what manner they might attempt and accomplish this bloody Design.

Gentlemen, you will hear, that at these Meetings it was propos'd, that they should do it by Ambuscade as the King came from *Richmond* by Hunting, whither he used to go upon *Saturdays*: Others were for doing it on this Side the Water. And so their Opinions being divided, it was thought necessary to find out and settle which was the best Place; and in Order thereunto they employ'd Capt. *Porter*, Mr *Knightley*, and Mr *King* (who was executed) to view the Ground, and accordingly they went, and pitch'd upon the Lane between *Brentford* and *Turnham-Green* for this Purpose, as the most convenient Place: And having so done, they came back and gave an Account to those that had appointed to meet 'em, to hear the Success of their Expedition, to the *Nagg's-Head* in *Covent-Garden*, and in that Place you will find by the Evidence, that those Persons, who were the Heads of the Conspiracy, undertook to find their several Proportions of Men, for whom they would undertake, that would go with them, and be concern'd in this Design. Sir *George Barclay* was to furnish about twenty. He had the Command of the Troopers that came from *France*, and those other Officers that came thence, were under him. Capt. *Porter* was to furnish seven, *Charnock* was to furnish eight, Sir *William Parkyns* was to furnish five Horses and three Men, and, I think, *Lowick* was to furnish some more: In the whole Number they reckon'd there should be about forty.

It will appear, Gentlemen, that the Prisoner at the Bar, Mr *Cranburne*, was one of the Men that Capt. *Porter* undertook to get, and engage in this Design; and accordingly Capt. *Porter* did acquaint Mr *Cranburne* with it; and he did undertake to be one, and to be ready to go with him, and be concerned in this Assassination. You will find he was acquainted with it about the 14th of *February*, the Day before the first Time that they intended to assault the King: Then he did undertake and agree to prepare himself against the next Day. The next Day, which was the 15th of *February*, they had several Meetings, and they were making Preparation in Order to go out. It happen'd, by great Providence, his Majesty did not go abroad that Day, and thereupon they dispers'd themselves; but they had Meetings afterwards, at which Meetings the Prisoner was present, with Capt. *Porter*, Mr *Pendergrafs*, *La Rue*, and several others that were concerned in the Conspiracy, particularly the 21st of *February*, the Day before the second Time they were to have put this in Execution. Capt. *Porter* being at

the *Sun-Tavern*, with several other Gentlemen, and they resolving to have it executed the next Day, if the King went abroad; Capt. *Porter* sent for *Cranburne*, and *Keys* that was executed, and *Kendrick* and *Sherborn*, four of those that he had undertaken for, (of whom, I say, *Cranburne*, the Prisoner at the Bar, was one) and then he acquainted 'em that they were resolv'd to go on with it the next Day. And then they agreed to be in a Readiness accordingly. The next Day the Prisoner, with some others, met at Mr *Porter's*, where they were preparing to go out and attack the King, and they had several Discourses about the Ways and Means of doing it; and particularly Capt. *Porter* at that Time said, that he had a very good Gun that held about six or eight Bullets, and that Mr *Pendergrafs* was to have, who was to attack the Coach, and shoot into the Coach: Mr *Cranburne* was there present at that Time, and Mr *Cranburne* was employ'd particularly by Capt. *Porter* to carry a List that *Porter* writ of the Names of several Men that were to act in it under him, and this he was to carry to *Charnock*. *Porter* writ it and gave it him, and he carry'd it with Directions to bring it back with the List of the Names of Mr *Charnock's* Men. *Cranburne* did accordingly at that Time carry the List of the Names to Capt. *Charnock*, and brought it back with an additional List, from Capt. *Charnock*, of his Men.

At that Time, you will hear farther, when *Cranburne* brought the List, he brought an Account that he heard the King did certainly go abroad: For Mr *Charnock* had Intelligence so from *Chambers*, who lay at *Kensington* to get Intelligence: At which there was very great Rejoycing among all that were present at that Time, hoping they should have an Opportunity to put this execrable Design in Execution; and so they prepar'd all of 'em to go out. There were several Inns in *Turnham-Green* and *Brentford*, and thereabouts, and they were to be plac'd two or three in an Inn, that they might be ready to get together when Time should serve. It happen'd the King did not go abroad that Day neither, there being some Discovery of this Design, and so they did disperse themselves, as apprehending it was discover'd.

Gentlemen, it will appear by several Witnesses, that the Prisoner at the Bar was engag'd in this horrid treasonable Design, and was to have acted a Part in it. We will call our Witnesses that will make the Particulars out to you, and we do not question but you'll do what is right. First, call Capt. *Porter*; (who was sworn.)

Mr *Sol. Gen.* *Pray*, if you please, Capt. *Porter*, give the Court and the Jury an Account what you know of this wicked intended Assassination, and what Share the Prisoner at the Bar had in it.

Capt. *Porter*. My Lord, before this wicked Assassination was on foot, the Prisoner at the Bar, Mr *Cranburne*, was employ'd by me to buy Arms. I us'd to give him Money to go to the Brokers to buy Arms at second-hand, and he brought a Sword-Cutler to me, of whom I bought about twenty Swords. And when Sir *George Barclay* came into *England*, and this Business was resolv'd upon, I acquainted him with the Design, and promis'd to mount him. He never was at any of the Meetings with Capt. *Charnock*, Sir *George Barclay*, or Sir *William Parkyns*; but he went to look for a Horse, and was ready both *Saturdays* to go along with me. On *Saturday* the 22d I sent

sent him with a Message to Sir *William Parkyns*, for the Note for the two Horses, which he had promised me to furnish me with, out of his five that he was to furnish; he came back again, and told me that there was a Messenger came and said that the King did go out, and he knew where to have the two Horses; that Mr *Charnock* was afraid we should not have the full Number of Men, and desired me to send him the Names of my Men; I did write a List of the Names of my Men, and I went afterwards to the *Blue-Posts* in *Spring-Garden*, whither he was to come to me; he did so, and he brought back the List of my Men, with the List of Mr *Charnock's* Men written underneath it, and at the same Time News was brought that the King did not go abroad that Day.

L. C. J. You say, that before the Assassination was set on foot, you employed him to buy Arms and Horses.

Capt. Porter. My Lord, I acquainted him with it the *Friday* before the first *Saturday*.

L. C. J. You said before the Assassination you employed him to buy Arms: When was that?

Capt. Porter. I said before the Assassination was on foot I employed him to buy Arms. I told him I was to be a Captain in Colonel *Parker's* Regiment, and promised to make him my Quarter-Master.

L. C. J. How long ago was this? Was it a Week before the Assassination was on foot?

Capt. Porter. He has known of my being a Captain in Colonel *Parker's* Regiment this two Years.

Mr Att. Gen. I do doubt my Lord, he does not distinguish the Times when he bought the Arms, and when the Assassination was.

L. C. J. Yes, yes, he does now; I misapprehended him at first, and thought he said he had employed him to buy Arms a Week before the Assassination was on foot; but he says it was a longer Time.

Mr Att. Gen. I desire my Lord, he may be askt what Time he bought Arms before this Assassination: When was the last Time he bought Arms?

Capt. Porter. It was several Months before the Assassination.

Mr Att. Gen. Was it within a Year before it.

Capt. Porter. Yes I believe it was within a Year. I gave him several Times Money for that purpose, in all above ten Pounds, and he told me one with another, he had bought ten Case of Pistols, and kept them in the House till there were Occasion.

Mr Att. Gen. How long ago is it?

Capt. Porter. I believe about a Year; within a Year.

Mr Att. Gen. When did you first acquaint him with the Assassination?

Capt. Porter. Presently after Sir *George Barclay* acquainted me with it, I sent to him, to desire him to get the Pistols clean and ready.

Mr Att. Gen. Did you tell him of the Design?

Capt. Porter. I told him there was a Design on foot, and I would tell him more when I saw him next; and I desir'd him to get the Swords from the Sword-Cutlers, and the Pistols clean and ready. And I met him afterwards, and told him of the Design, and that we intended to do it on *Saturday* the fifteenth; and he engaged to be ready and make one. On the *Friday* before the twenty second he went with me to the Cock-pit, and there we met with one Mr *Gunn*, and I askt

him if he knew where any good Hackney-Horses might be had? He said he believed he did; and I sent *Cranburne* with him, and he came back, and told me he had found two or three out in *Bloomsbury*.

L. C. J. Look ye, *Capt Porter*, you must not speak so fast, it is impossible to understand so much Matter as you deliver without distinguishing of Times. You said, that some long Time before the Assassination was on foot you sent him to buy Arms, for what Purpose were those Arms?

Mr Att. Gen. My Lord, he has told you—

L. C. J. Pray let me hear it from him again.

Capt. Porter. I say, my Lord, he knew of my being a Captain in Colonel *Parker's* Regiment this two Years.

L. C. J. But what were those Arms for that he bought?

Capt. Porter. To be ready against King *James* landed, which was designed several Times.

L. C. J. Why now you make the Matter clear to me.

Mr Att. Gen. My Lord, that is not the Thing we go upon, that is but introductory to the Business that we are now a Trying. Therefore we desire to know of him: Captain *Porter*, when did you first acquaint *Cranburne* of the Assassination of the King?

Capt. Porter. As soon as Sir *George Barclay* acquainted me with it, and desired me to get what Men I could to effect it, I sent for *Cranburne* to my Lodgings in *Norfolk-street*, and he came to me one Morning; and I told him there was a Design on foot, and I would tell him more of it afterwards.

Mr Sol. Gen. When was it that Sir *George Barclay* acquainted you with it?

Capt. Porter. About the latter End of *January*.

Mr Att. Gen. And what said he to it when you acquainted him with it?

Capt. Porter. He did agree to go with me, and I promised to furnish him with Horse and Arms; and on *Friday* before the fifteenth I sent him with three Case of Pistols to Sir *William Parkyns*, to furnish the three Men he was to mount with his own Horses.

L. C. J. Who was to have those three Case of Pistols.

Capt. Porter. Sir *William Parkyns* was, and he carried them to Sir *William Parkyns's*.

Mr Att. Gen. How long was this, do you say, before the Assassination was to have been?

Capt. Porter. It was *Friday* before the fifteenth.

Mr Att. Gen. That was before the first Time that it was to have been done.

Capt. Porter. Yes, and *Friday* before the last, I sent him to look after the Horses that *Gunn* said he believed he could help me to, and he came to me to the Sun-Tavern in the *Strand*, and told me he and *Jeffrey Gunn* had found three Horses in *Bloomsbury*, and I came out of the Room where I was with Sir *George Barclay* and others; and there was *Kendrick* and *Keys*, and *Cranburne*, and I told them we were resolved to put it in Execution the next Day.

Mr Att. Gen. Well, pray what Discourse had you with him the next Day?

Capt. Porter. The next Day, the 22d, he came to my Lodging at *Maiden-Lane*, and I sent him to Sir *William Parkyns* for a Note for the two Horses, that I was to mount of his: He came back and told me he knew where to have them, and that Captain *Charnock* was afraid we should

not have our Compliment of Men, and desired me to send him an Account what Men I could bring, which I did by Mr *Cranburne*, and being to go to the *Blue-Posts*, ordered him to bring it to me thither, and he did bring it back to me to the *Blue-Posts* with Captain *Charnock's* List underneath.

Mr *Sol. Gen.* Pray Captain *Porter*, was there any Body present when you sent the List, and the Prisoner brought it back to you?

Capt. *Porter*. Yes there was Mr *La Rue*, and Captain *Pendergrafs*, and Mr *King*, I know of none else.

Mr *Att. Gen.* Pray do you remember what Healths were drunk after you heard the King was not to go abroad?

Capt. *Porter*. I don't remember what Healths were drunk that Day particularly, but whether it were *Thursday* or *Friday*, (I cannot tell particularly the Day) We drank a Health to the squeezing of the *Rotten Orange* upon the next *Saturday*.

Mr *Att. Gen.* Who was present that Day when that Health was drunk?

Capt. *Porter*. Mr *Cranburne* was there present at that Time, and did drink the Health.

Mr *Cooper*. Pray Sir did he meet you by Appointment on *Saturday* the 15th, or was it by Accident?

Capt. *Porter*. By Appointment, as all the rest did, to get ready as all the rest did, to go upon the Design; and so it was both Days.

Sir *B. Shower*. If they have done with Mr *Porter*, we would ask him a Question or two for the Prisoner: We desire to know when it was that those Arms were bought that he talks of: For we must acknowledge that Mr *Cranburne* heretofore went upon several Messages for Capt. *Porter*; When was that buying of Arms?

Capt. *Porter*. I tell you I cannot exactly tell the Month.

Mr *Cranburne*. Do you remember the Year?

Capt. *Porter*. I believe it was less than a Year before the Assassination was on Foot.

Mr *Cranburne*. If you remember, Sir, it was a Month before Col. *Parker* was put in the Tower.

Capt. *Porter*. It was several Times, I cannot tell the particular Times.

Sir *B. Shower*. My Lord, I desire to know when he first communicated this Design to Mr *Cranburne*, and who was by, and where was it?

Capt. *Porter*. I told you I sent for Mr *Cranburne* one Day in the Week before the 15th, and he came to me at my Lodging in *Norfolk-street*, and I acquainted him that Sir *George Barclay* was come, and there was such a Design on Foot; and I desired him to get those Pistols that he had of mine ready, and cleaned: that they might be ready for the Execution.

Sir *B. Shower*. What Day was that?

Capt. *Porter*. One Day in the Week before the 15th.

Mr *Cranburne*. Did you ever name Sir *George Barclay* to me in your Life?

Capt. *Porter*. Yes I did, I told you he was come from *France*.

Mr *Cranburne*. Where was that, at Mr _____

Capt. *Porter*. In *Norfolk-street*, where I lay?

Mr *Cranburne*. Who was by?

Capt. *Porter*. No Body but my self.

Sir *B. Shower*. Upon what Occasion did you meet there?

Capt. *Porter*. I sent for him to my Lodging.

Sir *B. Shower*. How long had Sir *George Barclay* been in Town, before that Time?

Capt. *Porter*. I cannot tell the Time when he came to Town.

Sir *B. Shower*. How long was it after he came to Town before you saw him? Had you seen him a Week or a Fortnight before? Pray recollect your self.

Capt. *Porter*. I told you that the first Time I heard of him, was the latter End of *January*; Capt. *Charnock* told me he was come, but I was then sick of the Gout.

Sir *B. Shower*. Now then I would desire to know, who was by upon the *Friday* before the 22d at the *Sun Tavern* in the *Strand*, when you and Mr *Cranburne* were there?

Capt. *Porter*. I did tell you, Sir.

Sir *B. Shower*. I desire to know, whether there was any Body besides Mr *Cranburne*, *Kendrick*, and *Keys*?

Capt. *Porter*. Sir, I will tell you all I can remember; I was in one Room with Sir *George Barclay*, and there was Sir *William Parkyns*, Capt. *Charnock*, and my self; and afterwards I went into another Room, where there was *Kendrick*, and *Cranburne*, and *Keys*, and *Jeffrey Gunn* came in afterwards, I remember no Body else.

Mr *Phipps*. Was not *Gunn* there when you first came in?

Capt. *Porter*. To the best of my Remembrance, he came in afterwards.

Sir *B. Shower*. My Lord, this may be a very material Part of our Defence, and therefore we must enquire a little the more into it. Mr *Porter* is pleased to say, that he was in a Room with Sir *George Barclay*, and *Charnock*, and Sir *William Parkyns*; and he came out into another Room where was Mr *Cranburne*, *Kendrick*, and *Keys*; and there he says, after he had been there some Time, *Gunn* came in, I desire to know, whether *Gunn* was there when he first came in?

Capt. *Porter*. To the best of my Remembrance, he came in afterwards, but I cannot positively tell, for I was in and out several Times.

Mr *Phipps*. At the Time that you communicated this Design to Mr *Cranburne*, what said he to you?

Capt. *Porter*. When I first communicated the Thing to him, I told him there was a Thing on Foot for the Service of King *James*, and desired him to go along with me.

L. C. J. What Kind of Service did you tell him it was?

Capt. *Porter*. He asked me, what kind of Service it was? I told him Sir *George Barclay* was come over, and I told the whole Design of the Assassination of the Prince of *Orange*, that it was intended to take him off, as he came from *Richmond* from Hunting.

Mr *Phipps*. And pray what did Mr *Cranburne* say to you?

Capt. *Porter*. He said he would be ready to go along with me.

Mr *Phipps*. You say, you sent by him three Case of Pistols to Sir *William Parkyns*, at that Time did you tell him for what Design those Pistols were?

Capt. *Porter*. I told him, they were for the three Men that Sir *William Parkyns* was to mount upon three of his five Horses.

Mr *Cranburne*. Did you speak to me to carry those Pistols to Sir *William Parkyns*?

Capt. *Porter*.

Capt. Porter. I think so, to the best of my Remembrance I ordered you my self to carry them.

Sir B. Shower. Captain Porter, I desire you to recollect your self, and tell us plainly, whether the Design was communicated to Mr Cranburne before the 15th.

Capt. Porter. Certainly Sir.

Sir B. Shower. Are you sure of it?

Capt. Porter. Yes Sir, I am sure of it.

Sir B. Shower. I ask you, because you know what has been said upon this Occasion in other Trials.

Cranburne. Where did you write the Note, that you say you sent to Sir William Parkyns? Was that Note sealed or was it not?

Capt. Porter. I did not tell you that I writ a Note.

Cranburne. You swore that you wrote a Note, and sent it by me to Sir William Parkyns for two Horses.

Capt. Porter. I said no such Thing, Sir.

Mr Sol. Gen. Look you, Capt. Porter, let him ask you any Questions, and if they be proper answer them, and let not his Affirmations, or Mistakes provoke you to be angry.

Capt. Porter. I said, I sent him to Sir William Parkyns, for a Note to have the Horses from Mr Lewis.

Mr Phipps. Did you send him with a Letter, or was it a Message by Word of Mouth?

Capt. Porter. I did send him by Word of Mouth, for a Note.

L. C. J. Pray, Gentlemen, observe the Evidence, Sir William Parkyns was to give a Note for two Horses, and Capt. Porter sent Cranburne for the Note.

Mr Phipps. The Question therefore that I ask, is, Whether he sent a Letter for the Note, or whether by Word of Mouth?

Capt. Porter. I sent by Word of Mouth.

Mr Cranburne. Pray will you tell the Court what you said upon the 22d to Mr Pendergrafs and me, after you came down from the Blue-Posts leaning upon the Rail.

Capt. Porter. I don't remember a Word of it, for I cannot remember every Word that I have spoken.

Sir B. Shower. If you can remember one Particular, sure you can remember another. If you can't remember this, how came you to remember any Part of the Discourse that happen'd at the Blue-Posts.

Capt. Porter. Because that was material to this Business, for I had very soon after a particular Occasion to recollect it upon the breaking out of the Plot.

Mr Cranburne. Pray what Hour was it this Saturday the 15th that you communicated this Design to me?

Capt. Porter. I cannot tell what Hour, but I say you met me at the Blue-Posts Saturday the 15th.

Mr Cranburne. You say, you communicated it to me the 15th.

Mr Att. Gen. He says he communicated it to you, before the 15th.

Mr Cranburne. I desire to know where he was the 14th.

Capt. Porter. I say, one Day before the 15th, in that Week I sent for you to come to my Lodgings, and you did come, and there I communicated it to you.

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Cranburne. Sir, I was not at your Lodgings that Week.

Mr Phipps. What Day of the Week?

Capt. Porter. I cannot be positive whether it was Thursday, or Friday, or what Day; but one Day that Week it was.

Mr Phipps. You ought to be positive when it was.

Capt. Porter. I do tell you as near as I can.

Mr Phipps. With Submission, my Lord, he ought to be positive one Way or other.

L. C. J. Nay, I don't see that he ought to be positive to a Day; he may be so if he can.

Cranburne. Pray what Day did you say you sent me to Sir George Barclay?

Capt. Porter. I do not say that I ever sent you to Sir George Barclay?

Mr Phipps. Can you take upon you to say, That he was at your Lodgings that Week before the 15th?

Capt. Porter. To the best of my Knowledge it was one Day that Week.

Mr Phipps. To the best of your Knowledge: Are you sure of it?

L. C. J. Speak as certainly as you can.

Capt. Porter. Indeed, I believe so, it was before the 15th. I am sure, I think, it was within three or four Days after Sir George Barclay had acquainted me with it, I sent to the Prisoner to come to me to my Lodgings, at Mrs. ——— in Norfolk-street, and acquainted him with it.

L. C. J. And when you acquainted him with it, What did you tell him? What Part was he to act in it?

Capt. Porter. I told him, I would have him go along with me, and that I had set him down for one of my Party, and would provide him Horse and Arms; and he did agree to go along with me.

Sir B. Shower. Mr Webber, Pray let me see Charnock's Tryal.

Mr Sh. Buckingham. Why, Sir Bartholomew, is the Tryal any Evidence?

Sir B. Shower. Mr Sheriff, I know what Use I can make of it.

Mr Sol. Gen. Will you ask him any more Questions?

Sir B. Shower. No, Sir.

Mr Sol. Gen. Then swear M. De la Rue. (which was done.)

Pray, Sir, give the Court, and the Jury, an Account what you know of the intended Assassination, and what Share the Prisoner had in it.

M. De la Rue. It is too long a Story to tell you all that I know of this Matter; but, if you please, I will tell you what concerns the Prisoner at the Bar. I am heartily sorry that I have Occasion to appear against him, as I wou'd be truly against any Body: But since I am here upon my Oath, I must declare the Truth, and nothing but the Truth; and I hope I shall not declare any Thing but what is Truth. Upon Saturday, the 15th of February, the Day that the Design was to have been put in Execution against his Majesty, and all that were in the Coach with him, and against his Guards, I went to Mr Charnock's Lodgings in Norfolk-street, to inform my self whether they resolved on that Day to go out upon the Design; and I found by Mr Charnock that they did resolve it, and I stay'd there a while, till such Time as Mr Chambers came in; I did not know whence he came then, but, as I was informed afterwards, he came from Kensington to Mr Charnock,

and his Boots were dirty; and Mr Charnock told me he had sent a Messenger to Mr Porter, And, says he, *if you will stay a little Time, I shall have an Answer.* The Messenger came back, and told him, That Capt. Porter din'd at the *Blue-Posts* in *Spring-Garden*. I did not go to dine with him, but went Home, where I saw Mr King at my Lodging, who told me, that the King did not go out that Day. I told him, I heard he did not: I found by Mr Chambers's coming back, and that we had no Notice from Mr Charnock, that it was concluded the King did not go out as it was supposed he shou'd have gone. When I had din'd at my Lodging, I went to the *Blue-Posts* in *Spring-Garden*, to Mr Porter, and there were four, or five, or six People with him; there was one Mr Sherborn, and Mr Kendrick, and two People that I never saw before, and another Person, but I can't tell now who he was. When we had been there a little while, comes in this unfortunate Man at the Bar, Mr Cranburne; I don't know where he had been; but by his coming in so late, I suppose he had not din'd, and he ordered the Drawer to get him some Costelets. This is all that I can say as to that Day: I had seen Captain Porter twice or thrice between that, and the 22d, and he desired me to be at Home on Friday Night, between Eight and Nine, and he wou'd send to me: He did send, and I was from Home. But when I came, I was informed his Servant had been to speak with me; and in the Morning, about Eight or Nine a Clock, Saturday the 22d, he sent his Servant to me to tell me his Master would speak with me at his Lodgings. I went to his Lodgings, and he then lay in *Maiden-Lane*, at one Brown's a Surgeon's: When I came in, he was in Bed; and he told me in French, *Touts Parties sont Prests*, All Parties are ready. I understood all along that there were three Parties to be engag'd; one to attack the King's Coach, and the two others the Guards; Sir George Barclay was to head the first, and Porter, and Rookwood, the rest. Mr Porter arose and dress'd himself, and in came Mr Cranburne; and Mr Porter went out to him into the Dining-Room, and what he said I can't tell: But soon after came in Pendergrafs, Mr Keys, and Mr King, and then he takes Pen, Ink, and Paper.

Sir B. Shower. Who took that?

M. De la Rue. Capt. Porter took Pen, ink, and Paper, and writes down a List of his Party, and puts me down first. Mr. Pendergrafs ask'd me if I was the Captain, and I made him some Answer, but what in particular I cannot tell; I think I told him, I knew of the Thing before the most did: But I can remember particularly that List was given to Mr Cranburne, to carry to Mr. Charnock; upon what Account it was, I cannot tell; but I concluded, that Mr. Charnock was to be acquainted with those Persons that Mr. Porter was sure of: And Mr. Porter at that time told me that he was disappointed of some People, and desired me to get him some other Men in their Rooms; and he sent particularly to one that Mr. King propos'd; and I did go, and brought him to the *Blue-Posts*, where Cap. Porter told me he was to dine; and the Gentleman I went to, told me he wou'd meet me at the *Blue-Posts* in *Spring-Garden*. When I came back to Mr Porter's Lodgings, Mr Porter, and Mr Pendergrafs, and Mr Oldfield, and I, went in a Coach to the *Blue-Posts* in *Spring-Garden*; and when we had been there a little while, Mr. Cranburne came back to give an Account of the Errand Mr. Porter had sent him upon, and he brings this List.

Mr At. Gen. Who brought it?

M. De la Rue. Mr. Cranburne?

Cranburne. Whither did I bring it?

M. De la Rue. To the *Blue-Posts* in *Spring-Garden*.

L. C. J. You must not ask any Questions till they have done with him. But, Mr De la Rue, let me ask you what Day was this?

M. De la Rue. This was Saturday, the 22d of February; and he told Mr Porter there was a List of Mr Charnock's Men at the Bottom of that List, and I took the List in my Hand, and there was Mr Charnock's List of Six or Seven, or thereabouts, of his Party, and at the Bottom of it was R. C. I think, for Robert Charnock. Mr Porter takes Mr Cranburne from the Company into another Room, and I went after them, and he told Captain Porter, in my hearing, that the King did not go out that Day. There is one Thing I forgot, which now I recollect, and I am upon my Oath to tell the Truth, and the whole Truth: When I was at Mr Porter's Lodging, he told me the King was to go out; and that Mr Chambers, the orderly Man, had sent Word, That the King resolv'd to go out between Ten and Eleven.

L. C. J. Who said so?

M. De la Rue. Mr Cranburne told me so at Mr Porter's Lodgings, I say I had forgot it, but it occurs to my Memory now, that he told me there before we went to the *Blue-Posts*, that the King did go out that Day between 10 and 11; for Mr Chambers, the orderly Man, had been with Mr Charnock or Sir William Parkyns, to let them know so much. And afterwards when he came back with the List of Captain Porter's Men, to Captain Porter at the *Blue-Posts* in the *Spring-Garden*; there was at the Foot of that List, a List of Mr Charnock's Men in another Hand, I suppose writ by himself, but that I cannot swear whose Hand it was, and Mr Porter took him into another Room, and then Mr Cranburn told him the King did not go out, and I believe it was then between 11 and 12 a Clock, and he also told Mr Porter, that Mr Charnock was apprehensive the Thing was discovered, and therefore desired him to have a Care of himself, for he himself was resolved not to lie at home that Night; I think, my Lord, Mr Porter did send back Mr Cranburne to Mr Charnock, I cannot be positive whether he did or not, but I believe he did; because I am sure Mr Cranburne did tell Mr Porter, Sir George Barclay would speak with him, and Mr Porter made Answer, why should he desire me to go to him, when he knows I am under some ill Circumstances, and he can better come to me? and I believe Mr Porter did send Mr Cranburne once again to Mr Charnock.

L. C. J. Well, pray do not say any Thing of any Matter but what you can be positive in.

M. De la Rue. But Mr Porter did not go to Mr Charnock, nor did Mr Charnock come to him, therefore they stay'd there and din'd; and after Dinner, or a little before Dinner, Keys the Trumpeter, came up, and told us, that my Lord of Oxford's Regiment of the Guards was returned from Richmond, foaming: Keys went down Stairs again to learn Intelligence as I thought, and came up and told us he saw the King's Coaches newly return'd to the *Mews*, and Mr Cranburne was by all the Time; I think this was before Dinner, and then we went to Dinner.

L. C. J. I tell you again, don't speak any Thing that is material but what you can be positive in.

M. De la Rue.

M. *De la Rue*. I am positive as to the Thing, and that it was the 22d of *February*, but I cannot be positive as to all the Circumstances: After Dinner there was the usual Healths, the Jacobite Healths to King *James*, and the Prince of *Wales*, and the Restoration, and the like; and after that I think it was Mr *Porter* took an Orange in his Hand and squeez'd it, I am sure one in the Company did, and drank something to the Rotten Orange, I cannot very well remember just now what it was; but I would be cautious of saying any Thing but what is Truth, but if your Lordship will give me leave to recollect my self, I will tell you what it was—Oh! it was to the squeezing of the Rotten Orange, and the Health went round, and Mr *Cranburne* was in the Company, and drank the Health, but being disappointed and frustrated of the Design by the King's not going abroad that Day, and Mr *Porter* being cautioned by Mr *Charnock* to take care of himself, and being told that Mr *Charnock* would not lie at home that Night, and the Guards returning in that Manner, they were all apprehensive that the Thing had taken Air, and the Design of Assassinating the King was discovered, and therefore Mr *Porter* concluded of going out of Town; several Healths were drunk round, and I think about Two a Clock he went out of Town, and then the Company broke up. This is what I can say as to the Prisoner, and I hope I have said nothing but what is Truth.

Mr *Sol. Gen.* Then, my Lord, we desire to know whether they will ask him any Questions?

Mr *Phipps*. At the Time you say this List was given by Captain *Porter*, to Mr *Cranburne*, did Mr *Porter* declare to what purpose the List was sent?

M. *De la Rue*. No, Sir, not a Word of any such Thing. Mr *King* was by, and Mr *Pendergrafs* was by, and I think Mr *Keys* was by, and he writ a List of his Party, putting me down First, and Mr *Pendergrafs* said to me, you are Captain, and he gave it to Mr *Cranburne* to carry it to Mr *Charnock*; what the particular Message was, I cannot be positive: Indeed I don't very well remember the Message, but the List was carried to Mr *Charnock*, and to the best of my Memory it was to give Mr *Charnock* an Account what Men he was sure of; for Mr *Porter* told me of several Disappointments he had had, of Persons that had promis'd him and fail'd.

Mr *Phipps*. Can you remember what Mr *Cranburne* said upon that?

M. *De la Rue*. No, I do not.

Cranburne. What Message was that you say, I brought from Sir *George Barclay*?

M. *De la Rue*. I do not say that you brought any Message from Sir *George Barclay*.

Cranburne. You said that I brought a Message that Sir *George Barclay* would see him.

M. *De la Rue*. I do not say so; but I say that you told Mr *Porter* that Mr *Charnock* sent you with a Message to let him know that Sir *George Barclay* was desirous to see Mr *Porter*, to confer about taking care of themselves.

Cranburne. Did you hear me name Sir *George Barclay's* Name?

M. *De la Rue*. Yes, I say you told Mr *Porter* that Mr *Charnock* bid you caution him to take care of himself, and that he would go that way, for Sir *George Barclay*, and he, desired to see him; and Mr *Porter* said it was an unreasonable Thing for Mr *Charnock* to desire it, because they

knew he was under Circumstances that it was not proper for him to go, and he wondered rather they would not come to him.

L. C. J. What time a Day was this?

M. *De la Rue*. It was about Twelve a Clock, I think.

L. C. J. Was it after such time as the News was brought that the King did not go abroad that Day?

M. *De la Rue*. Yes, my Lord, it was after that time.

Mr *Phipps*. Were you with Sir *George Barclay* when he was here in *England*? Did you see him here?

M. *De la Rue*. I did not see him on this Side of the Water. I knew him abroad, and a great many other unfortunate Persons, that were concern'd in this Affair; I knew some of them here, and that they were concern'd in the Design, but I did not converse with many, indeed with but a very few about it; for to shew that I was not a Man that designed to trappan or insnare any Man, I did never exchange Two Words about this Matter with any Persons that I knew were concern'd in it, but Sir *William Parkyns*, (and that but in a small Measure) and Mr *Charnock*, and Mr *Porter* and Mr *King*, and Col. *Parker*, except what past upon the 22d, between Mr *Porter*, and Mr *Charnock*, when Mr *Porter* sent Mr *Cranburne* to Mr *Charnock*. Mr *Cranburne* was one who Mr *Porter* called his Quarter-Master: I know this Gentleman was commonly depending upon Mr *Porter*, but I think I never was much in his Company, I did not know what Design he had upon him, but I was told by Mr *Porter*, that he intended to make him his Quarter-Master, and I understood Mr *Porter* was to have a Troop of Horse in Col. *Parker's* Regiment.

Mr *Phipps*. You say you knew a great many of them that were concern'd, but you discourf'd and convers'd but with a few?

M. *De la Rue*. I do so, Sir.

Mr *Phipps*. How do you know that they were concern'd, when you did not discourse with them?

M. *De la Rue*. By Information from Mr *Charnock*, and Mr *Porter*.

Mr *Phipps*. Do you know any thing more of Mr *Cranburne*, than the List, and what have you said already?

M. *De la Rue*. I give you an Account of all that I do know.

L. C. J. Answer that particular Question. Do you know nothing more than what you have said?

M. *De la Rue*. No, my Lord, I do not remember nor know any more as to Mr *Cranburne* than what I have declared, and I am sorry I had Occasion to declare so much.

Mr *Att. Gen.* Then call Mr *Pendergrafs*. (who was sworn.)

Mr *Sol. Gen.* Pray will you give my Lord and the Jury an Account of what you know of the intended Assassination, and how far Mr *Cranburne*, the Prisoner at the Bar, was concern'd in it.

Capt. *Pendergrafs*. My Lord, the 13th of *February* last, I came out of *Hampshire*, Mr *Porter* sent for me to come to Town, and I met him that Day at the *Blue-Posts* in *Spring-Garden*, and there he told me of the Assassination that was to be done on *Saturday* following: The next Day we dined at the *Rose-Tavern*, where the Prisoner dined with us, and we talk'd of the Business,

Business, that was *Friday* the 14th, and we were to be in readiness the next Day to assassinate the King, as he was coming from *Richmond*; but some Company coming in afterwards, we left off the Discourse, and talk'd no more that Night. The next Day that we were to do the Business, we met at the *Blue-Posts* in *Spring-Garden*, and finding the King did not go abroad that *Saturday*, we dined there at the *Blue-Posts*, and talk'd over again of Assassinating the King, and the Prisoner was by at the same time, they were all mightily concerned the King did not go that *Saturday*; but when we had dined there, we had no further Discourse about the Assassination that Day, but every Body was to prepare against the next *Saturday*.

L. C. J. Was that agreed upon then?

Capt. Pendergrafs. Yes it was, by all the Company; so we parted that Day. Some time the next Week I met Mr. *Porter*, and Mr. *Porter* ask'd me if I had a Horseman's Sword; I told him no: Says he to Mr. *Cranburne*, let Captain *Pendergrafs* have one of the Horesemens Swords that you have got. Says Mr. *Cranburne* to me, if you will come to my House you shall make choice of one your self, for I have several at home. Said I, Mr. *Cranburne*, I cannot go that Way, but I'll take one of your choosing, if so be you'll leave it at my Lodgings: He said he would do it, and did; he left it at my Lodgings in *Suffolk-street*, which Sword I have still. The Day following I met him, and he ask'd me if I had receiv'd the Sword; I said I had it; and he said, it was very well. After this I did not see Mr. *Cranburne* till *Saturday* the 22d, at which Time I came to Mr. *Porter*'s Lodgings between Nine and Ten a Clock in the Morning, and the Prisoner at the Bar was there, and I heard Mr. *Porter* give him a Message to go to Sir *William Parkyns* for some Horses, I know not how many. The Prisoner went, and in some Time after, came back again, and brought an Account that the King went out that *Saturday* the 22d to *Richmond*; so every Body was to get ready: And Mr. *Cranburne* said, that Mr. *Charnock* desired that Mr. *Porter* would send a List of his Men; upon which Mr. *Porter* wrote a List of his Men, and gave it to the Prisoner to carry it to Mr. *Charnock*, and bid him meet him at the *Blue-Posts*; and Mr. *Porter* and M. *De la Rue* and I took Coach, and went down to *Spring-Garden*, and when we came to the *Blue-Posts*, there were some Persons that I think M. *De la Rue* had appointed to come there; the Prisoner comes thither, and brought the List back, with a List of Mr. *Charnock*'s Men underneath. I know not who the Men were, for I saw it only on the one Side of the Table, in Mr. *Porter*'s Hand; at the same Time the Prisoner brought an Account, that the King did not go Abroad that Day, and presently after we had the same Account from other Hands; and Captain *Porter* and I went out of Town, and we heard no more of it.

L. C. J. Are you sure that he did agree to this Matter before the 15th?

Capt. Pendergrafs. Yes, I am sure of it, he agreed to it *Friday* the 14th, at the *Rose Tavern* in *Covent-Garden*.

L. C. J. On the 15th, it seems they were disappointed; are you sure there was an Agreement to pursue it the 22d?

Capt. Pendergrafs. Yes, I am sure there was, my Lord.

L. C. J. Was the Prisoner there?

Capt. Pendergrafs. Yes, my Lord, I am sure that the Prisoner at the Bar was there.

Cranburne. Pray, Mr. *Pendergrafs*, was there any Discourse about this Thing when I was there?

Capt. Pendergrafs. Yes, Mr. *Cranburne*, you cannot but remember there was.

Cranburne. What Hour did I come there, pray Sir?

Capt. Pendergrafs. Truly, I cannot be positive to an Hour; but you was there while the Discourse was.

Cranburne. Whether did I stay there all the while, and who was in the Company?

Capt. Pendergrafs. All the Company broke up about six a Clock, there was Mr. *King*, Captain *Porter*, Mr. *Kendrick*, Mr. *Cranburne*, Mr. *Keyes*, and my self.

Cranburne. Was *Kendrick* there when I was there?

Capt. Pendergrafs. Yes, I am sure of it; I will do you all the Justice in the World that I can.

Sir B. Shower. You say, Sir, he did agree upon the 14th to this Design; pray what Words did he use?

Capt. Pendergrafs. He did agree, that we should attack the King the next Day.

Sir B. Shower. Pray, Sir, if you can, recollect your self; what did the Prisoner say, or whether you took him to agree by being silent?

Capt. Pendergrafs. He said, he hop'd we should execute our Business the next Day.

L. C. J. What Day was that?

Capt. Pendergrafs. That was the 14th of *February*, and the same Night I gave Account of the Matter to my Lord *Portland*.

Mr Phipps. Did he agree to be one in the Execution of the Design.

Capt. Pendergrafs. Yes, he did; he discoursed the Matter to me himself.

Mr Att. Gen. My Lord, we have done with our Evidence.

L. C. J. Well, then what say you to it for the Prisoner?

Sir B. Shower. My Lord, what we have to say on Behalf of the Prisoner in this Respect is this, Here are but three Witnesses produced, and as to one of them, *De la Rue*, there is no Evidence that he gives your Lordship and the Jury, that affects this Matter, but only that there was a List given by Captain *Porter*, and carried by the Prisoner to Mr. *Charnock*, and so brought back again. But he does not recollect, nor swear to any Message that was sent from *Porter* by the Prisoner to Mr. *Charnock*: Now, my Lord, the bare carrying of a Note of Names will be no Evidence of Treason. M. *De la Rue* does not swear to any Privy of the Prisoner, what the List was for, nor to the Delivery of the List, which is the Overt-Act in the Indictment, nor upon what Account this List was written, or sent, or brought back again, or any Word that proceeded from Captain *Porter* to him upon giving the List, or any Word when it was brought back again. So that as to *De la Rue*'s Testimony, we must submit it to the Memories and Recollection of your Lordship and the Jury, we think he only proves a Plot in general, of which there is no peradventure, every Body is satisfied, that there was such a horrible Conspiracy: Those that have been condemned and executed for it, have own'd it; and so it can never be doubted, but he does not say any Thing to affect the Prisoner at the

the Bar; for as to the Drinking of Healths, and being present when those Healths were drunk, tho' it be an Evidence of Disaffection to the Government, or too much good Manners and Complaisance to the Company a Man is in, yet that Disaffection, or civil Temper, or Complaisance, we hope are no Evidences of Treason. It is plain the Prisoner did depend very much upon Captain Porter; he was in Truth his Servant to go of his Errands, and expected an Office from him, God knows when; but it does not appear by any particular Action, that he did any Thing that can be Treason, upon M. *De la Rue's* Evidence. Then as to what Mr *Pendergrafs* says, I must confess his Evidence comes Home: For he says there was a Design of the Assassination, and some Agreement of the Prisoner to it; but I must beg your Lordship's Favour to observe, upon Mr *Pendergrafs's* Evidence, if that stand alone, it will be but one Witness, and then we are safe by the Purview of this Act of Parliament.

L. C. J. Ay, and by the Law, before the making of that Act.

Sir B. Shower. Then, as to Captain Porter, I must beg Leave to say, If our Witnesses are come that were absent at the other Tryal, and they prove what is in my Instructions, it will be very much questionable, whether there be any Credibility due to his Testimony; Then if you take off his Testimony, there is only the Evidence of Mr *Pendergrafs*; and if he be to be believed, to which I have nothing to say at present, in the Case of a Man's Life, upon an Indictment of Treason, where the Law requires two credible Witnesses, his single Testimony is not sufficient to convict the Prisoner. We beg Leave to call our Witnesses, and then we shall leave it to your Lordship, and the Jury.

Mr Phipps. As to the particular Overt-Act laid in the Indictment, the carrying about the List, only M. *De la Rue* speaks to it, and Sir *Bartholomew Shower* has given it an Answer, and I shall not repeat it.

L. C. J. Look ye, for that, if any one Overt-Act is prov'd by two Witnesses, it's well enough.

Mr Sol. Gen. Besides, they mistake, my Lord, extremely; for Captain Porter, and Mr *Pendergrafs*, speak both of them to that Particular, as to the List.

Sir B. Shower. We do not deny it; the Question is, Whether you have two credible Witnesses?

Cranburne. Pray, Mr *Pendergrafs*, do you remember what Captain Porter said to you, and I, when we came down to the *Blue-Posts*, leaning upon the Rail?

Capt. *Pendergrafs*. Indeed, Sir, I do not.

Cranburne. I would have you recollect your self; as we stood against the Rails in *Spring-Garden*, when we came down from the *Blue-Posts*, after the Design miscarry'd, Mr Porter said, Mr *Charnock*, and they, might thank themselves if it were discovered; For, says he, *I never communicated a Word of this Thing to any of my Party.*

Capt. *Pendergrafs*. Indeed I don't remember a Word of it, Sir.

Mr Phipps. My Lord, we have one Piece of Evidence to offer against the Testimony of Captain Porter: He says, That he sent Cranburne with Gunn from the Cock-Pit to see for Hackney-Horses, and that Cranburne came to him to the *Sun Tavern*, and there they had some Discourse about

executing the Design the next Day; and being ask'd who was by, when he communicated the Design to Cranburne, and particularly, Whether Mr Gunn was by? He says he came in afterwards, but was not there at the Time of the Communication about the Design. Now we shall prove that Gunn came in with the Prisoner, and was with him all the Time, and there was no such Discourse happen'd.

Sir B. Shower. Call *Geoffrey Gunn*, and *Mary Gerrard*.

[They appeared.]

Your Lordship will observe, what Captain Porter swore, That he went in to the Room to Cranburne, and Gunn was not there: Now, if we falsifie him in that Particular, we shall submit to your Lordship how far he is to be believed in the rest.

Mr At. Gen. Pray, Sir *Bartholomew*, ask your Witnesses what you will, but make no Descants upon their Evidence till you have heard them.

Then the two Witnesses were sworn.

L. C. J. Well look ye, you are both upon your Oaths, Consider what you say, speak the Truth, and tell all that you know, and nothing but the Truth. Which do you begin with?

Mr Phipps. *Jeffery Gunn*: Pray, Mr Gun, did you go to the *Sun Tavern* at any Time with Mr Cranburne?

Gunn. Yes, I did.

Mr Phipps. What Day of the Month was it?

Gunn. I cannot positively tell the Day, it was of a Friday.

Sir B. Shower. Was it of a Friday, in February, or January?

Gunn. It was in February.

Mr Phipps. Was it before the Plot broke out?

Gunn. Yes, It was.

Mr Phipps. How long was it before the Plot broke out?

Gunn. I cannot tell that, truly.

Mr Phipps. Whence did you go?

Gunn. I was at the Cock-Pit, and I went from thence to the *Sun Tavern*.

Sir B. Shower. Who did you meet there?

Gunn. I saw Captain Porter there.

Sir B. Shower. What Room were you in?

Gunn. We went into a Room next the Street.

Sir B. Shower. Who was there with you?

Gunn. There was Mr Cranburne, and I, and Mr *Keyes*.

Sir B. Shower. How long was it before Mr Porter came in to you?

Gunn. He came in about Half a Quarter of an Hour after I was there.

Sir B. Shower. Were you there from the Beginning till Mr Cranburne went away.

Gunn. Mr Cranburne, and I, went from the Cock-Pit together.

Sir B. Shower. How long did you stay there?

Gunn. I was there about an Hour and a half.

Sir B. Shower. Were you out of the Room at all in that Time?

Gunn. Yes, I was out of the Room once.

Sir B. Shower. How long were you out of the Room?

Gunn. I went Home to my Lodging.

Sir B. Shower. Were you ever with Mr Cranburne at the *Sun Tavern* at any Time besides this?

Gunn. Never in my Life.

Sir B. Shower. Who did you leave with him when you went out?

Gunn.

Gunn. Capt. Porter, and Mr Keyes, as I remember.

Sir B. Shower. Were you there before Captain Porter came to him?

Gunn. I was with Mr Cranburne, and Captain Porter came in about a Quarter of an Hour after, we came from the Cock-Pit together.

Sir B. Shower. Pray recollect your self, and tell us upon your Oath, were you there when Capt. Porter came in?

Gunn. Yes, I think I was there when Capt. Porter came in.

Sir B. Shower. Did you go and leave him there?

Gunn. We went all out together. I was there about an Hour and half.

L. C. J. Nay, but you said you were absent some Time.

Gunn. I went Home, and came back again.

Sir B. Shower. When you went Home, did you leave Mr Cranburne behind you?

Gunn. Yes, I think so.

Mr Phipps. Did you leave Captain Porter with him?

Gunn. I think Cap. Porter was with him then.

Mr Phipps. But upon your Oath, was you in Company with Mr Cranburne at the Sun Tavern, when Capt. Porter came first in?

Gunn. Captain Porter went in and out several Times.

Sir B. Shower. Did you see Capt. Porter before you went to your own House?

Gunn. Yes sure.

Mr Phipps. Then it cannot be true what Mr Porter says, that Gunn did not come in till afterwards.

Mr At. Gen. Now Mr Gunn I would ask you a Question or two first, Were you there all the while that Mr Cranburne was there, or did you go Home?

Gunn. I went Home.

Mr At. Gen. Did you come back again?

Gunn. Yes, I came Home and eat some Victuals.

Mr At. Gen. How long were you absent?

Gunn. I came back in half a quarter of an Hour.

Mr At. Gen. How far is it to your House?

Gunn. 'Tis not above 100 Yards.

Sir B. Shower. Did Mr Porter come in to you before you went Home, when you first came in with Cranburne?

Gunn. He came in after we were in the Room.

Mr Phipps. Capt. Porter said, when he came into the Room Gunn was not there.

L. C. J. He did not say positively, but as he remember'd; now I would ask you a Question or two.

Sir B. Shower. Pray my Lord, our Inference from this Evidence is thus; Capt. Porter says, that upon Friday the 21st of February he was with Cranburne at the Sun Tavern, and out of one Room into another he came to Mr Cranburne, and talk'd with him of this Design, and after that Gunn came in to the Room, after the Communication was over: Now this Man swears he went from the Cock-Pit with Mr Cranburne, he was with him in the Room at first when Capt. Porter came in; some Time afterwards he went to his own House, and left Captain Porter with Mr Cranburne, and came back again, and they came away together: Now we say, these two are inconsistent; for Capt. Porter swears that Gunn was not there till after the Communication was over.

L. C. J. As he remembers.

Mr Phipps. Nay, I think he was positive he came in afterwards.

L. C. J. As I remember he was not positive, but call Capt. Porter again.

Mr Phipps. When you came back from your House, who were in the Room?

Gunn. The same Company as I left, as far as I remember.

Mr Mountague. Was Capt. Porter in the Room when you came back?

Gunn. Indeed I can't directly tell, I believe he was.

L. C. J. Pray observe what your Witness says: He says, Capt. Porter came in and out, and was there several Times before he went away.

Gunn. Yes, my Lord, he was so.

L. C. J. And you were absent some Time, but were you there some Time before Porter came in?

Gunn. Yes, I believe I was.

Then Capt. Porter came in.

Mr Att. Gen. Look ye, Capt. Porter, you see that Man there?

Capt. Porter. Yes.

Mr Att. Gen. Pray give an Account of what you know of that Man's coming in to you at the Sun Tavern.

Capt. Porter. I came several Times out of Sir George Barclay's Room into theirs, and to the best of my Remembrance, Mr Cranburne was there before Gunn came in.

Sir B. Shower. Do you remember whether the first Time that you went out of Sir George Barclay's Room to speak with Mr Cranburne, Mr Gunn was there?

Capt. Porter. To the best of my Remembrance he was not; to the best of my Remembrance, Mr Gunn, I saw Mr Cranburne in the Room before you was there.

Sir B. Shower. Did not you order Gunn to come with him to the Sun Tavern?

Capt. Porter. Yes, Sir, I did.

Sir B. Shower. Can't you tell whether they came together?

Capt. Porter. I was not in the Room when they came in first, but to the best of my Remembrance he was not there when I came in the first Time.

L. C. J. Now, Gunn, you hear what Capt. Porter says, before you went away to your own House did Mr Porter come into the Room to you?

Gunn. Indeed my Lord I am not positive, I think he did.

Mr Att. Gen. Neither of them is positive, and it is a Circumstance not very material; for it seems he was absent, and then the Discourse might be.

L. C. J. No, it is not material, but you see upon a strict Examination what it comes to?

Sir B. Shower. They are agreed upon it I perceive, to be positive on neither Side.

Mr Phipps. Mr Cranburne, pray ask Mrs Gerrard what you have a mind.

Cranburn. Pray what do you know of Capt. Porter's going out in Disguise, and wearing false Hair and Vizards, and going upon the Highway, and such things?

Gerrard. I know not what Mr. Cranburn means: *(at which the People laugh'd.)*

Sir B. Shower. It is no laughing Matter, when a Man is upon his Life.

L. C. J.

L. C. J. No, no, let him have fair Play ; Answer the Question.

Cranburne. Do you know any thing of your Master's going abroad in Disguises ?

Gerrard. I do not know any thing of my Master's going upon the High-way.

L. C. J. Did he go out with Vizards, or any such Things ?

Gerrard. I never saw him wear a Vizard or false Beard in my Life, but he had once a Patch on when he was forced to keep out of the way, upon the Account of the Dog Tavern Business in *Drury-lane*.

Mr. Phipps. See if *Mr. Edward Bouchier* is here.

(*He was call'd, but did not appear.*)

Sir B. Shower. Call *Mrs Burton*, (*which was done ; but she did not appear.*)

Mr. Phipps. Is *William Hurdyman* here ? (*He was call'd, but did not appear.*)

Sir B. Shower. Then call *Simon Dawson*, and we have done. (*which was done.*)

Cyer. They are all call'd, but they do not appear.

Sir B. Shower. My Lord, we must submit it to your Lordship's Directions upon the Evidence that has been given, as to the Credibility of these Witnesses, and whether what *Capt. Porter* says, and what *Gunn* says be consistent ; so that you can be satisfied there are Two Lawful Credible Witnesses to prove any Overt Act.

L. C. J. Yes sure, but I would have you debate it if you believe there be any thing in it.

Sir B. Shower. I submit it to your Lordship's Directions.

L. C. J. The Question is, Whether I should give any Directions at all or no, or whether there be any Occasion for it ?

Cranburne. I declare this openly before this Honourable Court, and so many Noblemen as are here, that *Mr. Porter* never made me acquainted with this Design, till what he swore here.

L. C. J. I can't tell, 'tis sworn by Two Witnesses.

Cranburne. I do declare, tho' *Capt. Pendergrafs* says he does not remember it, that *Capt. Porter* did declare in *Spring Garden* the 22d, when he came out of the *Blue Posts* by the Rails, if this Design miscarry, says he, *Mr. Charnock* may thank himself, for I never communicated this Secret to any of my Friends.

L. C. J. But hark ye, do you consider what you say, if this Design miscarry : Pray what Design was that ?

Cranburne. He never named any thing but the Design, he did not say what it was.

L. C. J. But why were you employ'd to carry a List from *Capt. Porter* to *Mr. Charnock*, and to bring a List back again from him to *Capt. Porter* ?

Cranburne. I did carry the Note, but there was nothing mention'd what the List was for.

L. C. J. Then you were there on *Friday* the 14th, and there the Design was proposed to Assassinate the King the next Day, and you engag'd in it.

Cranburne. Not a Word of it true, my Lord.

L. C. J. Aye but *Mr. Pendergrafs* swears it, and that you were hearty in the Matter, and hop'd you should do your Business the next Day.

Cranburne. I can't help it if he does swear it.

L. C. J. Then you were at the Meeting at the *Sun Tavern* the 21st.

Cranburne. My Lord you hear what *Gunn* says,
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L. C. J. As to that they are neither of them positive, but you did there promise and undertake the Matter, that *Capt. Porter* is positive in, that it was agreed by you all to do it the 22d ; and *Mr. Pendergrafs* says, when you were disappointed the 15th, you all agreed to pursue the same Design the *Saturday* following.

Cranburne. My Lord, I did not dine at the *Blue Posts* that Day.

L. C. J. But you were there ; I think indeed *Mr. Pendergrafs* says you came in after Dinner, and had some Steakes.

Cranburne. I never heard directly nor indirectly of this Design, till what I heard them swear here.

L. C. J. Gentlemen of the Jury, you do understand for what Crime this Prisoner at the Bar is Indicted : It is for High-Treason, in designing and compassing the Death of the King, which was to be effected by an Assassination, in the most barbarous and wicked Manner, that any Attempt of that Nature can possibly be made, being to surprise the King, and murder him in his Coach.

The Question Gentlemen is, whether this Prisoner be Guilty of this Crime or no ; there have been three Witnesses produced that have given Evidence against him, *Capt. Porter*, *Mr. De la Rue*, and *Mr. Pendergrafs* ; and they do all tell you, that there was such a Design on foot to Assassinate the King, as he came from Hunting at *Richmond*, after he came on this Side the Water, in the Lane between *Brentford* and *Turnham-Green*. There were diverse Persons engaged in this Design, which *Sir George Barclay* was come from *France* to promote and manage : *Capt. Porter*, as it does appear upon his Evidence, was a Person that was principally engag'd, and at that Time was hearty in the Prosecution of it.

As to *Mr. Cranburne*, *Capt. Porter* tells you he was a Man that he had had a long Acquaintance with, and had employed him and designed to employ him as an Officer under him, in case a Revolution happened, which it seems about that Time ; and some time before it, was expected. *Captain Porter* was to have been a Captain, and I think he designed to promote *Cranburne* to be his Quartermaster ; and he sent him to buy Arms ; and Preparations were made for that Business ; but that is not the Thing that we are now upon, the Matter that now properly falls under our Consideration, is this ; The coming over of *Sir George Barclay*, the latter End of *January*, or the Beginning of *February* last, upon which, as it seems, *Mr. Porter* was Engaged ; and having an Interest in this *Cranburne*, and there being Horses to be furnish'd to attack the King and his Guards about *Turnham-Green*, this Man, *Cranburne*, was a Person that was engaged to be one of the Horse-men that were to make the Attack, and he tells you that he did employ him to provide Horses and Swords, and to prepare the Pistols, and that he did engage in it, and particularly that the Design was to be executed on *Saturday* the 15th of *February*, and that he was then ready to go with *Capt. Porter* ; but on that *Saturday* the King did not go abroad, whereby the Design was disappointed for that Time : Afterwards there was a Meeting at the *Sun Tavern* in the *Strand*, where he met with *Sir George Barclay* and others of them, and there comes to that Tavern *Mr. Cranburne* and others, and they were in another Room, and *Capt. Porter* says he came to them, and did discourse about pursuing

pursuing the Design the very next Day, which was agreed, and *Cranburne* was ready to go the next Day.

Then he tells you farther, that the next Day being *Saturday* the 22d, the second Time that this Assassination was to have been Executed, upon the Desire of Mr. *Charnock*, who was a Person also that was engag'd in this Design, Capt. *Porter* writes a List of the Men he could bring, and sent it by *Cranburne* to *Charnock*; *Cranburne* carries the List to Mr. *Charnock*, and brings it back again with an Addition of the Names of Mr. *Charnock's* Men underneath.

Mr. *De la Rue* is called, and he swears to that very Circumstance, that Mr. *Cranburne* was sent by Capt. *Porter* with a List to Mr. *Charnock*, and brought it back again from Mr. *Charnock*, with an Addition of other Names.

Then Mr. *Pendergrafs* tells you, that he was with this Mr. *Cranburne*, the Prisoner at the Bar, the fourteenth of *February*, and there was a Discourse of going in pursuance of this Design the next Day, and the Prisoner agreed to it, which he is positive in: He tells you, that when they were disappointed the 15th, being at the *Blue-Posts*, they then agreed to pursue it the next *Saturday*; *Cranburne* was one of them that agreed.

Capt. *Porter* and *De la Rue* informs you that Healths were drank to the late King, and the late Queen, and the Prince of Wales, as they called him, and then at length, as the concluding Health, Capt. *Porter*, or some of them in the Company, having an Orange in his Hand, squeez'd it, and drank a Health to the squeezing of the Rotten Orange, which was pledged by all, and particularly by Mr. *Cranburne*, as is prov'd by both Capt. *Porter* and *De la Rue*.

So that now Gentlemen I must leave it to you, whether this is not Evidence sufficient to prove this Man Guilty of the Treason whereof he is Indicted, that is, of designing and intending the Assassination of the King, and being engaged as a Party to execute this Design, whenever there was an Opportunity.

The Council insist upon it, on the Behalf of the Prisoner, that what Capt. *Porter* says is not Evidence: In the first Place they urge that he is not a Man of Credit, for they have mentioned that he used to be disguised, and wear a Vizard Mask, and go abroad under odd Circumstances, and therefore his Reputation they hope is not good enough to make him a credible Witness against the Prisoner: Now the Prisoner's Witness being produced, says he never knew him go in Disguise, or wear a Vizard Mask, but once he wore a Patch, because he was under some ill Circumstances about a Riot in *Drury-lane*; every Body understands what the Meaning of that was, his drinking of Healths at a riotous Assembly, upon the 11th of *June*, and he being under some Prosecution for that, occasioned him to wear that Disguise, but it was not done to injure any Person, or do any Mischief.

But then say they he is mistaken in his Evidence, of the Meeting at the *Sun Tavern* the 21st of *February*, the Day before the last, that this Design was to have been executed, for whereas he says, that *Gunn* was not there when he came to them, yet *Gunn* was in the Company at that Time, and whereas he swears positively that they discoursed of going upon the same Design to Assassinate the King the next Day, as was

agreed the *Saturday* before; *Gunn* heard no such Discourse. *Gunn* is called, and he tells you he did come to the *Sun Tavern* at that Time, with *Cranburne* and Capt. *Porter*, he came into the Room, and he heard no such Discourse. They did open it indeed that *Gunn* had been there all the while, and if so, then if there had been such a Discourse he must have heard it. *Gunn* has been Examined, and does tell you he was not there all the while, but went out and was absent for some Time, about half a quarter of an Hour.

They have made a Question whether Capt. *Porter* came in when *Gunn* was there, he says truly he thinks that Capt. *Porter* did come into the Room while he was there, before he went out, but he cannot tell certainly, he was there some Time, while he was there. Then Capt. *Porter* was called again, and Capt. *Porter* does say he knows *Gunn* was there, but whether he was there at that Time he came in, he cannot say positively; but *Gunn* says Capt. *Porter* was going in and out several times, as *Porter* says himself; and *Gunn* was absent for some part of the Time. So that I cannot see any sort of Contradiction between the Evidence that *Porter* gives, and the Evidence that *Gunn* gives; the one is uncertain, and so is the other as to that Circumstance.

But Gentlemen, they would infer, that if there was any such Discourse while *Gunn* was there, it must be of necessity that *Gunn* must have heard it; but it is not necessary the Discourse should be when *Gunn* was there: Capt. *Porter* swears positively that there was such a Discourse of going the next Day to pursue the Design, and he says he thinks *Gunn* was not present at that Time when the Discourse was, and *Gunn* says he was absent some part of the Time.

And so I must leave it to you; upon the whole Matter, if Mr. *Cranburne* the Prisoner at the Bar, did consent and agree to act in this bloody and wicked Design, then you are to find him Guilty; if you are not satisfied of that upon the Evidence you have heard, or you think there is any Inconsistency, or Incoherence in the Testimony on the one side, and the other; and that there is good Reason to disbelieve the Evidence against the Prisoner, then you are to acquit him. You have heard your Evidence, and you had best consider of it.

Cl. of the Crown. Who keeps the Jury?

Cryer. There is an Officer Sworn.

Then the Jury withdrew to consider of their Verdict, and about a Quarter of an Hour after Returned.

Cl. of Ar. Gentlemen, answer to your Names, *John Kaine*.

Mr. *Kaine*. Here. (And so of the rest.)

Cl. of Ar. are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who shall say for you?

Jury. Foreman.

Cl. of Ar. *Charles Cranburne*, hold up thy Hand, (which he did.) Look upon the Prisoner; how say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treason committed, or at any Time since?

Foreman.

Foreman. None to our Knowledge.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You say that Charles Cranburne is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

Jury. Yes.

Mr. Kaine. My Lord, the Jury humbly desires they may be discharged from their Attendance to morrow.

L. C. J. We cannot do it, unless the Jury be full without them; if you come early, we shall dispatch you presently.

Then the Prisoner was taken from the Bar, and the Court adjourned till Seven a Clock the next Morning.

Die Mercurii Vicesimo Secundo Die Aprilis, Anno Domini 1696.
Annoq; Regni Regis Gulielmi Tertii Octavo.

THIS Day the Justices of Oyer and Terminer holden for the County of Middlesex, adjourned over to Seven this Morning, met, and the Court was resum'd by Proclamation in usual Form.

Clerk of the Arraignments. Keeper of Newgate, set Robert Lowick to the Bar, (which was done.) You the Prisoner at the Bar, Robert Lowick, those Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you, upon Tryal of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them, as they come to the Book to be Sworn, and before they be Sworn.

Mr. Mompeffon. If your Lordship pleases to favour me with one Word for the Prisoner at the Bar, I shall not trouble your Lordship with any Thing that was urged by the Gentlemen that were of Council Yesterday, but I shall rely upon something that has not yet been spoken to. My Lord, they have not laid any Time or Place where the Consent or Agreement was, for the forty Men that were to set upon the King and his Guards: There is a Time laid before where they met and discoursed of the Ways and Means how to assassinate and kill the King; but when it comes to the *Assenserunt*, *Consenserunt* & *Aggreaverunt*, with submission, this being another Act, there ought to be another Time and Place laid, and for That I shall cite your Lordship two or three Cases; for Men may meet and propose, and discourse, and consult of such Things, though they be very ill Things, and yet that may not be Treason. It's the Agreement that is the Treason, and so 'twas held in Captain Blague's Case about taking the Tower. They may meet at one Time and Place, and at another Time and Place they may agree, in *Dyer*, 68 B. and 69 Pl. 28. A Man was indicted for Murder, That he at such a Place in and upon the Person that was murdered *insultum fecit*, & *ipsum*, the Person that was murdered, *cum quodam cultello*, of such a Price, *percussit*; and he does not shew the Place where he struck him, nor had the Indictment the Words, *ad tunc* & *ibidem*, and therefore the Court held it void: So it is likewise ruled in *Goodrick's Case*, *Hell*. 35 & 119. and therefore in Indictments for Murder, since they generally set forth not only the Time and Place of the Assault, but likewise of the Blow; so likewise in Things of a more inferior Nature, as Rescues returned by the Sheriff, that the *Capias* was served, but does

not shew where the Rescue was; or though he shews where the Arrest was, and an & coupled the Rescue to it, yet it was adjudged an ill Return, *Dyer* 69. Pl. 29. 10 Edw. 4. 15 Fitz. Ret. Vic. 32 Bro. Ret. Det. Bre. 97. and Error 194. Palm. 563. and in *Noy* 114. there are these Words, Note, It was moved in discharge of a Rescue, the Return was, that they, viz. A. B. aforesaid, the Bailiffs, *ad tunc* & *ibidem* *vulneraverunt*, &c. And the aforesaid George, &c. *Rescuserunt* without *ad tunc* & *ibidem*, referred only to the *Vulneraverunt*, and not to the *Rescuserunt*, and therefore the Return was adjudged insufficient; for my Lord, although in Conveyances, a Clause or Word in the Beginning or End may refer to the Whole, yet, in Indictments, every Sentence must be certain, plain, and express, and have its own Time and Place: Therefore, in *Noy's Rep.* 122. *Raymond* was indicted for stopping a Cross-Way leading from a certain Ville called *Stoake*, into a Ville called *Melton*, in the County of *Dorset*, and the Indictment was quash'd, because in the County of *Dorset* shall refer only to *Melton*, and not to both: So an Indictment of forceable Entry into a Messuage *existens Liberum Tenementum* of J. S. is not good for Want of the Words *ad tunc*, though the Participle *existens* does strongly imply that it was his House at that Time, 3 Cro. 754. *Het.* 73 *Noy* 131. Palm. 426. *Bridg.* 68. 2 Cro. 214, & 610. *Sid.* 102. *Lat.* 109, &c. And my Lord Coke tells us in *Calvin's Case* 5. B. that Indictments of Treason, of all others, are the most curiously and certainly indited and penn'd; and all those that I have seen and observed, have contained more Certainty than the Indictment now before your Lordship: In *Reginald Tucker's Case*, the Indictment was, That he and *Thomas Place* apud *Bridgwater*, in Com. *Somerset.* *prædict.* *Compasaverunt*, to kill and depose the King, &c. and to bring their treasonable Purposes to effect, they the said *Reginald Tucker* and *Thomas Place* the same Day and Year, at *Bridgwater* aforesaid, in the County aforesaid, against the King, with a great Multitude of People, array'd in a warlike Manner, viz. with Swords, &c. *se ipsos illicite* & *proditorie insimul ad tunc* & *ibidem congregaverunt* & *assemblaverunt* & *guerram publicam contra dictum Dominum Regem apud Bridgwater prædict.* in Cons. prædict. dicto vicesimo Die Junii Anno primo supradicto proditorie paraverunt ordinaverunt & levaverunt. So in the Indictment of *Gate*, as it is set forth at large in a Plea in Bar of *Dower*, brought by his Wife, he with Force and Arms, apud *Villam de Ware*,

Ware, &c. assembled with a great many Persons, & *Bellum crudele contra dictam Dominam Reginam apud Ware, prædict. ad tunc falso & proditorie publicavit & levavit, ac insuper ad tunc & ibidem falso & proditorie*, proclaimed the Duke of Northumberland, to be Lieutenant-General of their Forces; & *etiam falso & proditorie apud Ware prædict. ad tunc*, proclaim'd the Lady Jane Dudley Queen. This is in *Bendlowe's Reports*, publish'd by Sergeant Rowe, fol. 55. placito 91. So in the Earl of Leicester's Case, *Plowd. Com.* 385. the Indictment is laid much after the same Manner, and many other Indictments, which at present I am unwilling to trouble your Lordship with; and this being one of a new Form and of the first Impression, I hope your Lordship will hold it insufficient. And, my Lord, when they go farther, and say, *Et quilibet eorum proditorie super se suscepit esse unum*, there is no Place or Time alledged where that was done, which of Necessity should be mentioned: For it is a constant Rule in our Books, that what is issuable, ought to have a Place where it may be tryed. Now, this is issuable; and the most material Thing in the Indictment is, for compassing the King's Death. The Overt-Acts are, That *Christopher Knightley* the Prisoner, and two others, did consult to kill the King; and afterwards did agree how to do it, *viz.* by forty Horsemen *Quorum*, these shou'd be four, and every one of them did agree to be one; then comes the other Overt-Act of providing Arms for them. Now suppose they should not prove the last, *viz.* the providing Arms; then, my Lord, they must resort to one of the other Overt-Acts, that these four did consult and agree to kill the King; or that these four did agree, the Manner how to do it, as is laid in the Indictment; and it is plain they must fail of Proof of either of these; for by the not prosecuting any one of the Name of *Christopher Knightley*, but preferring a new Indictment against one *Alexander Knightley*, it appears that *Christopher Knightley* was not there; and the Proving these three others making a Consult and Agreement, is not a Proof of the same Overt-Act, that is laid in the Indictment, as it ought to be by the late Act; unless they can prove that a Consult of Three is a Consult of Four: And if it be answered, that it is alledged, that *Quilibet eorum super se suscepit*, then will that come to be issuable, and the most material Part of the Indictment; and consequently a Place ought to have been laid where it should be tryed; this, my Lord, is a distinct Sentence of it self, it is in a *Parentthesis*, and though you take it away, the Sense of what remains is perfect and intire; and consequently this Sentence is or should be intire of it self, and therefore ought certainly to be express'd. Besides, if your Lordship pleases, it is not positively laid, what these Persons severally undertook to be, there is indeed mention made before of forty Horsemen, agreed upon to set upon the King, then comes the *Parentthesis*, *Quorum iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent Quatuor, & quilibet eorum proditorie super se suscepit esse unum*: It is perhaps express'd fully enough by the Word *Quorum*, that it was agreed these shou'd be four of the forty Horsemen; but there wants the Repetition of the Word *Quorum*, to express what they severally engaged to be; and the Word & cannot join and connect the Sentences: For *forent* and *suscepit* differ not only in Number but also in Mood and Tense, and the Sense is not necessarily coherent; for it might be true, that the

Majority of the Company might agree, these shou'd be four, and yet they themselves might not severally ingage therein, and one or some of them might undertake it, and yet the Company not agree to it; and it cannot be mended by Intendment. There was *Vaux's Case*, in the 4 *Rep.* 44. he was indicted for Murder, for persuading a Man to take *Cantharides*; it was laid, That he *persuadebat eundem Nicholaum recipere & bibere quendam potum mixtum cum quodam veneno vocat. Cantharides*; and the Indictment says, *Quod prædictus Nicholaus nesciens prædictum potum cum Veneno prædicto fore intoxicatum, sed fidem adhibens Dictæ persuasioni Willielmi Recepit & Bibit*; but does not say, *venenum prædictum*, but yet it adds, *Per quod prædictus Nicholaus immediate post receptionem veneni prædicti*, languish'd and dy'd; here, one would think, was a sufficient Implication, that he took and drank the Poison; but it was rul'd, that none of these Words were sufficient to maintain the Indictment; for the Matter of the Indictment ought to be plain, express, and certain, and shall not be maintained by Argument or Implication, and therefore for Want of those Words the Indictment was held insufficient, and the Man again indicted for that Offence, and there seems much more Incertainty in this Indictment, and therefore I humbly pray your Lordship that it may be quash'd.

Sir B. Shower. My Lord, we think the Objection is fully put, and therefore we desire to have their Answer to it.

Mr Att. Gen. We think, my Lord, this Objection will receive a very plain Answer. The Indictment sets forth, That at such a Place the Prisoner at the Bar did imagine and compass the Death of the King: There is a particular Place where the Imagining was, and that they, to accomplish that Treason, in compassing and imagining the Death of the King, did, among others *postea eisdem die & anno apud parochiam prædictam*, meet and consult, &c. so there's the same Place set forth again, wherein they did meet and consult of the Ways and Means, and Time and Place, when, where, and how to assassinate the King: And immediately it follows, & *consenserunt & agreeaverunt, &c.* that forty Men, whereof they were to be four, and every one of them undertook to be one, should do so and so. Now, my Lord, say they, It is not said that the Agreement that there should be forty Men to do it, was at the same Time and Place where they did meet and consult about the Ways and Means: But, my Lord, with submission, it is very plain, that the Agreement for forty Men, and the particular Agreement for them to be of the Number, is but the Effect of the Consultation that is mention'd just before: For it is said, they consulted how they shou'd do it, and they agreed to do it in this Manner; the particular Manner is set forth immediately after that, it is said they did consult of the Manner; so that, my Lord, it is part of the former Sentence; a Particularizing of what they did agree upon at that Consultation; but it is no distinct Overt-Act: If it had been a distinct Overt-Act, then the Cases that have been cited by the Council, do shew, that there should be a particular Time and Place mentioned for every Overt-Act; but this is only a Part of that Overt-Act that was mentioned generally before: This tells you particularly what the Means were they did agree upon, and the Sentence is not compleat till you have gone over this; so that, my Lord, with sub-

submission, it had been very improper when they agreed at such a Time and Place, of the Means and Ways how it shou'd be effected, then to set forth that it was at the same Time and Place where they did consult of the Ways and Means, that cannot be proper; for it is not laid at first, that there was any particular Way proposed, but only in general, they consulted of the Ways and Means; therefore, my Lord, all this that Mr. *Mompesson* has said, will not be pertinent to this Case, it is impossible to have been otherwise; it is but a Part of the Sentence; and it is not compleat till you have gone over the several Particulars: As to the Case of a *Rescus*, that is, the Offence upon which the Matter is to be grounded; the *Verheravit* and *Vulneravit* are not the Rescuing; but where there is not one Sentence compleat, till you come to the End of these Words, there it must be all taken together; so it is here, they consulted of the Way, and agreed this to be the Way, which they set forth in particular: It is join'd to the former Part of the Sentence, and the Whole is not compleat without it.

Mr *Sol. Gen.* With submission, my Lord, it cannot be otherwise, nor can they make it Sense otherwise.

L. C. J. They say you might, Sir *John Holt.* and should have put in, *ad tunc & ibidem.*

Mr *Sol. Gen.* With submission, my Lord, I say it cannot be repeated again: Indeed if you wou'd make it like the Case, as Mr. *Mompesson* wou'd have it, that forty Men did agree to it, and forty Men did it, it were necessary to name Time and Place, as it is in the Case of Murder: That he did agree to murder him, and afterwards knock'd him on the Head, there you should say Time and Place where he agreed, and where he did the Act, for there is an Act done; but in this Case there is no Act done, but only an Agreement that forty shou'd do it, whereof these four were to be Part of the Number. Now, they cry, you do not say what these four were to be for. Yes, we do: The Forty were to do such an Act, and these were to be four of that forty, and every one of them undertook to be one, so that it cannot be express'd otherwise then it is; for what they say of the Indictment's being not in the same Form that other Indictments are, that will be no Argument at all; for it does not follow, that there must be one express'd Form of Indictment; of Right there are divers Forms of Indictments, and all of them good, because Indictments are to be framed according to the particular Case, and they cannot put me an Instance of such a particular Case as this. As to that of the Mistake of the Name of *Knightley*, that unquestionably can be no Objection at all: For how does it appear to the Court, that this is against the same Person that was before indicted by the Name of *Christopher*? there may be another *Christopher* for ought they know: But I will suppose, that the Consult was proved not, as it is laid, that they were to be four; but only that they were to be three of them, it would be well enough against the Prisoner at the Bar, if he be proved to be one.

Mr *Conyers.* First, we have here laid a Time and Place for the Treason alledged in the Indictment, and also for the two Overt-Acts, how, when, and where it was to be done, and the Providing of Arms for it; and for this Particular of the forty Men, that they would have us put the *ad tunc & ibidem* to that, is but Part of the Overt-Act, which

was before alledged; for the first Overt-Act mentioned, is the Meeting and Consulting, and there we lay both Time and Place; that on such a Day, and at such a Place, they did meet and consult of the Way and Manner how to do such an Act: And then we continue on the Sentence, by particularizing how it was to be effected; that they did agree there shou'd be forty Horsemen to do it, whereof they were to be four: This is but a Part of the Overt-Act, which is the Consulting and Agreeing upon the Ways and Means; this particular Means agreed upon, being but the Result and Effect of the Consultation before: So that we conceive there is no Want of Time or Place, upon which to take Issue in this Case.

Mr *Comper.* My Lord, I think, with submission, there is nothing in their Objection, and I take it to have received a full Answer already: Yet I would ask one Thing of the Gentlemen of the other Side, had the Sentence run without the Words *de iis modis & mediis, &c.* which follow after the Word *consultavit*, and before the Words *& aggregavit*; in this Manner, That they did then and there traiterously treat, propose, consult, and agree, that forty Horsemen, or thereabouts, with Guns, and so forth. If then there had been any Colour to think it necessary, that it should be laid in this Manner, That they did then and there traiterously treat, and then and there traiterously propose, and then and there traiterously consult, and did then and there traiterously agree: And if not, then I wou'd desire them to tell me why then and there is more necessary to one Verb *did agree*, than it is to all the Rest, in Sense and common Speaking. The only Use of a Conjunction copulative, is to derive the Force of some Words, in a Sentence foregoing, down to a Sentence following, to avoid Repetition: And here, though after the Consultation be put many Words that relate to that Matter, by Way of Parenthesis; yet the *ad tunc & ibidem* still does refer to all the Verbs following, being joined by the Conjunction copulative; it does not vary the Case at all, the Putting in that Parenthesis; it is notwithstanding but as one Sentence: And the Supposing that the Parenthesis stood out, makes it very plain, there can be no Colour to say there wanted a Repetition of the *ad tunc & ibidem* to every Verb.

Sir *B. Shower.* With submission to your Lordship's Judgment, there is no Answer made to this Objection. I do agree, if there had been several Verbs, and no other Words had intervened, that an *&* wou'd have coupled all together, and you need not have repeated *ad tunc & ibidem* to every one: But here is a Fact after the Verbs, that makes one compleat intire Sentence; and if this of the forty Men were left out, it had been a good Sentence, that they did propose and treat how, where, and when; that's a Sentence of it self, the Consulting and the Treating of the Ways and Means: But then they say, and they did agree and assent that forty shou'd do it: Now there is no Necessity for the Interpreting of these Words, That they shou'd consult and agree at the same Place and Time; there is no Necessity to conjoin this Agreement for the forty Men with the Consultation; they might propose and consult at one Time and Place, and not agree, and afterwards agree at another Time and Place: It is not a Specification, or, as they call it, a specifick Account of the Consultation, nor a necessary Effect of it, so as to make it necessary to join them together; they might meet and consult at one Time and Place,

Place, and at another Time and Place they might agree that forty should do it; and therefore when you say at one Time and Place they did consult and propose, and afterwards they did agree; it is not necessarily imply'd, that it must be at the same Time and Place; and when it is not necessarily imply'd, we think it necessary in Indictments, for Certainty-sake, to have *ad tunc & ibidem* insert-ed again.

Mr *Mompesson*. My Lord, Mr Solicitor says, That as to other Precedents, that does not make it necessary that this shou'd be like them; and that it is no Argument that it ought to be so here. My Lord *Coke*, in *Calvin's Case*, tells us, That by Precedents the Law is known, and that Indictments of Treason are of all Things the most curiously penn'd; and it is common to infer the Law is so, because usually it is so in the Precedents of Indictments. Mr. Solicitor says likewise, That there may be a *Christopher Knightley* besides an *Alexander*; but I cannot take that for an Answer to the Exception I urge, which is the Want of *ad tunc & ibidem* at the *Quorum*, and the *Quilibet*; for the *Quilibet* may come to be in Question as the most material Part of the Indictment, because the Agreement of the Four upon the Meeting of the Four is alledg'd as an Overt-Act. Now, with submission, they must prove the Assembly of the whole Four, or they do not prove the Overt-Act expressly laid: Then as to the *Quilibet suscepit*, which is the most material Part, it has no Time nor Place.

Mr. *Att. Gen.* No sure: We do not need to prove all four, for it is a distinct Offence in each; and if any one undertook, it is well enough against him: and for the Time and Place, we tell you, it is Part of the former Sentence, and makes but an intire One.

Mr *Mompesson*. As for the Residue of the Verbs, if they had been omitted, it had been good Sense; but this is a perfect intire Sentence of itself, when it tells you what they consulted and treated of, as in the Case of the *Rescue* that I put; if it had stop'd there, it had been a good Sentence without the *Vulneraverunt*.

Mr. *Att. Gen.* The *Rescous* is the Offence in that Case, the other is distinct: But here, in this Case, nothing can be plainer than that all is one Act, as we have laid it, That at such a Time and Place they did consult and treat of the Ways and Means; but then there is no Agreement mentioned till after we have said they did consult of the Ways and Means, and did agree that this shou'd be the Way: This is certainly one entire Sentence that shews what the Agreement was upon the Consultation as the Result of it.

Mr. *Comper*. As to what Sir *Bartholomew Shower* says, That we ought to repeat the *ad tunc & ibidem*, unless the Sense of the Words implies a Necessity that the Consultation and the Agreement should be at one Time and Place. My Lord, there can be nothing in that, for it does not arise from the Necessity of the Thing one Way or t'other; but we take it as an intire Sentence, and that the whole Matter is sufficiently connected and laid to one Time and Place, though it might be divided, it must be taken, as alledged, to be one intire Fact, or else it recurs to the same Objection; that *ad tunc & ibidem* must as well be put to every Verb; for 'tis possible they might propose at one Time and Place, and consult at another; and debate at another, as well as agree at another: So that nothing is to be argued from the Necessity of the Thing more in one Case than the other; for one

Man might propose it in one Place, and the Rest might then shake their Heads at it, and then they might again meet and consult at another Place, and afterwards agree at a Third: But when it is said *then and there* they did meet, consult, and agree, it cannot be understood but that the Agreement was at the same Time and Place with the Meeting and Consult.

Sir *B. Shower*. But this can be no Answer that Mr. *Comper* gives now, for proposing, and consulting, and treating, and debating, are all of the same Signification, for one Man's proposing to another; and the other's proposing to him, is consulting, treating, and debating; but now consulting and agreeing are different Things.

Mr *Comper*. So is proposing and consulting: One may propose, but there must be at least Two to consult: There is that nice Difference between them.

Sir *B. Shower*. Every One must agree for himself, and that must be certainly laid with Time and Place, let the Proposal and Consultation be what it will.

L. C. J. Mr *Mompesson* puts that Case in *Dyer* upon an Indictment of Murder, That on such a Day, and at such a Place, the Party made an Assault upon the Persons slain, & *percussit*; but does not say, *Et ad tunc & ibidem percussit*, and for not alledging that the Indictment was held nought.

Mr *Att. Gen.* My Lord, That is a different Case from this, because *insultum fecit*, and the *percussit*, are different Crimes; there is a great Difference between an Assault and a Stroke: But here it is, That they did propose and consult of the Ways and Means, and agreed upon this particular Way; that is the same Thing; it is not an intire Sentence till you come to the End of it, then it is compleat when you shew what was the Effect of the Consultation; what they were agreed upon, and not till then.

Mr *Mompesson*. A Man's holding up his Hand is an Assault, but he must actually Strike, to be guilty of Murder: So a Man may debate, and yet not agree: It is the Agreement that is the Treason.

L. C. J. Read the Indictment.

Cl. of Arr. **D**Ecimo die Februarii anno Regni dicti Domini Regis nunc septimo, & diversis aliis diebus & vicibus, tam antea quam postea, apud Parochiam Sancti Pauli Covent-Garden, predicti, in Comitatu predicti false, malitiose, diabolicè, proditoriè, compassaverunt, imaginati & machinati fuerunt, excogitaverunt, designaverunt & intendebant dictum Dominum Regem nunc occidere, interficere, & murdrare, & fragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regnum Anglie passare, & causare & ad easdem nefandissimas, nequissimas & diabolicas prodiciones & proditorias compassationes, machinationes, & proposita sua predicta perimplend' perficiend' & ad effectum redigend' ipsi iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookewood & Carolus Cranburne, & quam plurimi alii falsi proditores (Jurator predictis ignoti) postea scilicet eodem decimo die Februarii anno supradicto apud Parochiam predictam in Com' predicto, ac diversis aliis diebus & vicibus, tam antea quam postea, ibidem & alibi in eodem com' false, malitiose, adversate, clandestine, proditoriè, ac vi & armis conveniebant, proposuer' tractaver' consultaver' consenser' & aggrever' ad ipsum Dominum Regem nunc ex insidiis & dolo percutiend', Anglicè to assassinate, interficiend' & murdrand' & ad execrabilem, horrendam & detestabilem

testabilem Assassinationem Anglicè Assassination, & Interfectionem ill' citius exequenda & perpetranda postea, scilicet eisdem die & anno ac diversis aliis diebus & vicibus apud paroch' præd' in Com' prædicto proditoriè tractaver' proposuer' & consultaver' de viis, modis & mediis ac tempore & loco ubi, quando, qualiter & quomodo dictum Dominum Regem sic ex insidiis facilius interficerent, & consenser' aggregaverunt & assenser' quod quadragint' homines Equestres aut eo circiter (quor' iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent quatuor, & quilibet eor' proditoriè super se suscepit esse unum) cum Bombardis, sclopis & sclopetis, pulvere bombardico, & globulis plumbeis onerat' & cum gladiis, ensibus & aliis Armis armat' insidiari forent & essent in subseffu, Anglicè in Ambush, ad eundem Dominum Regem in Rheda sua, Anglicè his Coach, existen' quando foris iret iuvadend' Quodque quidem & competens numerus de hominibus illis sic armat' in satellites, Anglicè the Guards, ipsius Domini Regis eum tunc attendend' & secum existen' aggressi forent & eos expugnarent & devincerent, dum alii eorundem hominum sic armat' ipsum Dominum Regem percuterent, interficerent, occiderent & murrarent.

Mr *Mompesson*. The Consult is like the Assault, and the Agreement is like the Stroke.

L. C. J. *Treby*. It is a nice Case as you wou'd have it, but I think it is very natural as the King's Council put it at first; they lay the Consultation of the Ways and Means how it shou'd be done, and then they conclude that thus it shall be done: All which makes but one intire Thing.

L. C. J. They say they met that Day at St. Paul Covent-Garden, that's in the Beginning, and did consult how to kill the King; and they consented and agreed among themselves, that it shou'd be done in this manner: Does not this refer to both Time and Place in the Beginning? It is a continuing on of the same Sentence, and makes all but one and the same Act; it is the Result of the Consultation at that Time and Place.

Sir B. *Shower*. But, my Lord, it might be at another Place: They might consult at one Place, and conclude at another.

Mr *Conyers*. But it is laid to be at the same Place, for no other Place does appear, and it is one continued Sentence.

L. C. J. *Treby*. You wou'd make the Repetition so frequent and reiterated, that it wou'd become absurd.

Mr *Att. Gen.* Indeed I do not know what these Gentlemen wou'd have.

Sir B. *Shower*. We wou'd have this Indictment as all others are, the Precedents are as we say, and we hope this shall pursue 'em, or else be quash'd.

L. C. J. Look ye here, Sir *Bartholomew Shower*; Suppose this Part shou'd not be right, that will not vitiate the whole Indictment.

Mr *Mompesson*. But your Lordship won't suffer them to give Evidence of that Part that is vitious.

L. C. J. Yes, yes; it comes within the first Words of the Time and Place laid; they may give Evidence of it, because this is but a setting forth the Manner agreed upon for the Execution of the Design that was before consulted and treated of; it is comprehended in the former Words; and if they had omitted this out of the Indictment, the Indictment had been never the worse; there had been a sufficient Overt-Act alledged to prove the Compassing and Imagining the Death of the King; for if People at such a Place and Time meet, and propose the Way and

Means how to effect it, do you think the Indictment wou'd not be good enough without laying the particular Means agreed upon? Certainly it had been well enough if this had been omitted. Do you think they cannot give in Evidence this as a Proof of the Overt-Act? Certainly they may.

Sir B. *Shower*. The Question will be, my Lord, then upon the whole, Whether the Conclusion of the Indictment, *contra legiantia sue Debitum*, shall be taken distributively to every Fact, and if so, then there ought to be Time and Place alledge'd to every Fact.

L. C. J. Suppose you lay several Overt-Acts, and prove but one, yet he is to be found guilty of the High-Treason, which is the Imagination, and Compassing the Death of the King, which is the Crime laid in the Indictment; then suppose this was left out of the Indictment, they might give it in Evidence as a Proof of the Overt-Act, that is well laid for Time and Place; and therefore though it be expres'd, and not so fully and particularly laid, we cannot quash the Indictment for it, because the Indictment would have been good, though that had been omitted.

L. C. J. *Treby*. That is certainly true, it is no Cause for quashing the Indictment.

Mr *Soll. Gen.* The Indictments against the Regicides were for Compassing the Death of the King, and they gave in Evidence that he was put to Death, though they charg'd in the Indictment only the Compassing and Imagining the Death of the King.

L. C. J. Ay sure, That is an Overt-Act with a Witness, the Indictment was not laid for Murdering the King, but for Compassing his Death, which is the Treason according to the Act of Parliament of 25th, Ed. the 3d, and as an Overt-Act they gave the Cutting off his Head in Evidence.

Mr *Att. Gen.* The Indictment says, they compass'd and imagined the King's Death, and they agreed to do it in this manner; if this be not all one intire Sentence I know not what is.

L. C. J. As to your Case, Mr *Mompesson*, which you quote out of *Dyer*, it is possible a Man may make an Assault at one Time, and at another Time make an Assault and give a Stroke, but this is all one Act, it does but specify what was generally consulted of and proposed.

L. C. J. *Treby*. Pray, do you think a Man may demur upon a common Action of Battery, where 'tis said first, at such a Time and Place, *Insultum fecit & verberavit, vulneravit*, because there is not a Place set to every Word.

Mr *Mompesson*. Indictments ought to be very curiously penn'd, and what is good in an Action will not be good in an Indictment, with Submission.

L. C. J. *Treby*. But suppose you shou'd it for Cause upon special Demurr.

Mr *Mompesson*. My Lord, I cannot tell what it wou'd amount unto.

L. C. J. You cannot quash the Indictment at this Time, that is not possible, because the Indictment is good as to the rest, supposing this was not so well as it might be.

Mr *Mompesson*. Then, my Lord, I am in your Lordship's Judgment, whether they shall be admitted to give in Evidence this particular Thing.

L. C. J. They may certainly give in Evidence, the Agreement to have Forty Men to kill the King, as a Proof of the Consultation, Agreement and

and Consent to kill the King; and the Consenting to have Forty Horsemen is an Evidence of their treating, proposing and consulting to kill the King. Then for your Objection of *Quilibet suscepit* to be one, that is well enough, it is all still but one Sentence.

Sir B. Shower. One of which is it? for they have not laid in the Indictment what it is, whether it be one of the Four, or one of the Forty.

L. C. J. Whether it be one of the Four, or the Forty, is not material, for cannot one be found guilty and the rest acquitted? the one is not charg'd with the Act of the other, but they are several Offences, and each must answer for himself. In all Indictments, Offences are several. Suppose an Indictment of Conspiracy, and it is laid in the Indictment that Four did conspire, can't you prove that two conspired? no Question you may. It is not certainly necessary that every one shou'd be proved to have conspired. Suppose it were alledged that Four did beat a Man, and does not say *Quilibet eorum* beat him, you may give in Evidence that one did beat him.

Sir B. Shower. No Question of that in Case of a Battery, but in the Case of a Conspiracy there must be more than one.

L. C. J. Nay, I will ask you even in an Action of Conspiracy, where the very Gift of the Action is Conspiring together, cannot two be found guilty and the rest acquitted? In Riots there must be Three or more. It may be you'll lay Ten, but it is sufficient, I hope, if you prove it upon any Three of them.

Mr Att. Gen. The Difference is betwixt Contracts and Crimes, for Contracts they are joynt, but Crimes they are in their own Nature several.

Mr Soll. Gen. Besides, my Lord, though they be out of Time, yet this is not to the Abatement of the Indictment; but to the Evidence; how do they know, but we will give it in Evidence that Christopher Knightley was one.

L. C. J. Treby. Mr Mompeffon moves it as a Caveat against your giving it in Evidence.

Sir B. Shower. If in an Outlawry against diverse, they leave out these Words, *Nec eorum aliquis comperuit*, that is every Day held to be nought, and for that Reason we say, the *Quilibet eorum suscepit* is necessary too, and without being laid cannot be given in Evidence, and if it be laid, it ought to have Time and Place.

L. C. J. Treby. The Default of Appearance must be a several Thing, and when he lays it joyntly *non comperuerunt*, it may be true that all did not appear, if any one made Default; but when you charge Men with a Fact done, though in the plural Number, yet it is a distinct separate Charge upon every one.

Cl. of Arr. Robert Lowick, those Men that thou shalt hear call'd, and personally appear, are to pass between our Sovereign Lord the King, and you, upon Tryal of your Life and Death; if therefore you will challenge them, or any of them; your Time is to speak to them as they come to the Book to be sworn, and before they be sworn. George Ford.

Lowick. I do not except against him.

Cl. of Arr. Hold the Book to Mr Ford.

Cryer. Look upon the Prisoner, you shall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence: So help you God.

Cl. of Arr. Thomas Trench.

Lowick. I have nothing to say against him. (He was sworn.)

Cl. of Arr. John Wolfe.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. James Bodington.

Lowick. I challenge him.

Cl. of Arr. John Raymond.

Lowick. I say nothing against him. (He was sworn.)

Cl. of Arr. George Hawes.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. Thomas Glover.

Lowick. I challenge him.

Cl. of Arr. Matthew Bateman.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. James Partherith.

Lowick. I challenge him.

Cl. of Arr. Joseph Blisset.

Lowick. I challenge him.

Cl. of Arr. Alexander Forth.

Lowick. I challenge him.

Cl. of Arr. Francis Chapman.

Lowick. I challenge him.

Cl. of Arr. Nicholas Roberts.

Lowick. I challenge him.

Cl. of Arr. Thomas Playstead.

Lowick. I challenge him.

Cl. of Arr. John Hall.

Lowick. I challenge him.

Cl. of Arr. William Partridge.

Lowick. I challenge him.

Cl. of Arr. Peter Levisne.

Lowick. I challenge him.

Cl. of Arr. Thomas Moody.

Lowick. I challenge him.

Cl. of Arr. Thomas Ramage.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. Edward Townesend.

Lowick. I challenge him.

Cl. of Arr. William Gunson.

Lowick. I challenge him.

Cl. of Arr. John Wyborne, he did not appear. William Strode.

Lowick. I challenge him.

Cl. of Arr. William Wild.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. William Pitts.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. William Smith.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. Moses Cook.

Lowick. I challenge him.

Cl. of Arr. Benjamin Boltby.

Lowick. I do not except against him. (He was sworn.)

Cl. of Arr. Elias Fletcher.

Lowick. I have nothing to say against him. (He was sworn.)

Cl. of Arr. Cryer countez. George Ford.

Cryer. One, &c.

Cl. of Arr. Elias Fletcher.

Cryer. Twelve Good Men and True, stand together and hear your Evidence.

L. C. J. Now the rest of the Jury that have appeared are discharged.

Cl. of Arr. Cryer, make Proclamation.

Cryer.

Crier. Oyez, If any one can inform my Lords the King's Justices of *Oyer and Terminer*, the King's Serjeant, or the King's Attorney General, before this Inquest be taken of the High-Treason, whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance.

The Names of the Twelve Sworn are these ;

<i>George Ford, Esq;</i>	}	<i>Thomas Ramage, Gent.</i>
<i>Thomas Trench, Esq;</i>		<i>William Wild, Gent.</i>
<i>John Wolfe, Esq;</i>		<i>William Pitts, Gent.</i>
<i>John Raymond, Esq;</i>		<i>William Smith, Gent.</i>
<i>George Hawes, Esq;</i>		<i>Benjamin Bolby, Gent. &</i>
<i>Matthew Bateman, Esq;</i>		<i>Elias Fletcher, Gent.</i>

Cl. of Arr. *Robert Lowick*, hold up thy Hand; which he did. You that are sworn, look upon the Prisoner and hearken to his Cause. He stands indicted by the Name of *Robert Lowick*, late of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Gentleman; for that he, together with *Christopher Knightley*, late of the same Parish and County, Gentleman; *Ambrose Rookwood*, late of the same Parish and County, Gentleman; and *Charles Cranburne*, late of the same Parish and County, Yeoman; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and seduced by the Instigation of the Devil, as false Traytors against the most Serene, most Illustrious, most Mild and most Excellent Prince, our Sovereign Lord, *WILLIAM the III.* by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. their Supreme, True and Rightful, Lawful and Undoubted Lord; the Cordial Love and True, and Due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King, that now is, towards him our said Lord the King, should, and of right, ought to bear, withdrawing and utterly to extinguish, Intending and Contriving, and with all their Strength Purposing, Designing and Conspiring the Government of this Kingdom of *England*, under him our said Lord the King that now is, our right, duly, happily, and very well established, altogether to subvert, change, and alter; as also the same our Lord the King to Death and final Destruction to put, and bring, and his faithful Subjects; and the Freemen of this Kingdom of *England*, into intollerable and most miserable Slavery to *Lewis the French King*, to subjugate and inthral, the 10th Day of *February*, in the Seventh Year of the Reign of our Sovereign Lord the King that now is, and diverse other Days and Times, as well before, as after, at the Parish of *St. Paul's Covent-Garden* aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, and contrive, purpose, design, intend, our said Lord the King that now is, to kill, slay, and murder; and miserable Slaughter among the faithful Subjects of our said Lord the King throughout this whole Kingdom of *England*, to make, and cause, and the same their most wicked, impious, and devilish Treasons, and traiterous Compallings, Contrivances, and Purposes aforesaid, to fulfil, per-

fect, and bring to effect, they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, and very many other false Traitors to the Jurors unknown; afterwards, to wit the same Tenth Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and diverse other Days and Times, as well before, as after; there, and elsewhere, in the same County, falsely, maliciously, advisedly, secretly, and traiterously; and with Force and Arms did meet together, propose, treat, consult, consent, and agree, him our said Sovereign Lord the King, that now is, by lying in Wait and Wild, to assassinate, kill, and murder, and that execrable, horrid, and detestable Assassination and Killing, the sooner to execute and perpetrate; afterwards, to wit, the same Day and Year, and divers other Days and Times, at the Parish aforesaid, in the County aforesaid; traiterously did treat, propose, and consult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what manner, our said Lord the King, so by lying in wait, the more easily they might kill; and did consent, agree, and assent, that Forty Horsemen, or thereabouts; of whom the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, would be four; and every one of them traiterously took upon himself to be one, with Guns, Muskets, and Pistols, loaden with Gun-powder; and Leaden Bullets; and, with Swords, Rapiers, and other Arms, armed, should lye in Wait, and be in Ambush, the same our Lord the King in his Coach being, when he should go abroad to set upon, and that a certain and competent Number of those Men so armed should set upon the Guards of him our said Lord the King then attending on him, and being with him, and should fight with them, and overcome them, whilst others of the same Men so arm'd, him, our said Lord the King, to assassinate, kill, slay, and murder: and they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, their Treasons, and all their Traiterous Intentions, Designs, and Contrivances aforesaid, to execute, perpetrate, fulfil, and bring to effect afterwards, to wit, the aforesaid 10th Day of *February*, in the Seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Rapiers, and Swords, and other Weapons; Ammunition, and Warlike Things, and military Instruments, falsely, maliciously, secretly, and traiterously did obtain, buy, gather together, and procure; and did cause to be bought, obtain'd, gather'd together, and procured with that Intent, them, in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King, that now is, as aforesaid, to use, imploy, and bestow; and the same Premisses the more safely, and certainly to execute, do, and perpetrate, he the aforesaid *Christopher Knightley*, with one *Edward King*, lately of High-Treason, in Contriving and Conspiring the Death of our said Lord the King that now is, duly convicted and attainted, by the Consent and Assent of divers of the Traitors and Conspirators aforesaid, the said tenth Day of *February*, in the seventh Year aforesaid, traiterously did go and come to the Place proposed, where such intended Assassination, Killing, and Murder, of our said Lord the King, by lying in Wait, should be done, perpetrated and committed, to view, see,

and observe, the Conveniency and Fitness of the same Place for such lying in wait, Assassination and killing, there to be done, perpetrated and committed; and that Place being so viewed and observed afterwards, to wit, the same Day and Year, his Observations thereof to several of the said Traitors and Conspirators, did relate and impart, to wit, at the Parish aforesaid, in the County aforesaid, and the aforesaid *Charles Cranburne*, the same Day and Year there in order, the same execrable, horrid, and detestable Assassination, and killing of our said Lord the King, by the Traitors and Conspirators aforesaid, the more readily and boldly to execute, perpetrate, and commit, advisedly, knowingly, and traiterously, did bear and carry among divers of those Traitors and Conspirators forwards and backwards, from some to others of them, a List of the Names of diverse Men of those who were design'd and appointed, our said Lord the King, so as aforesaid, by lying in Wait to kill and murder, against the Duty of the Allegiance of them the said *Christopher Knightley*, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*; and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity, as also against the Form of the Statute in such Case made and provided: Upon this Indictment he has been arraigned, and thereunto hath pleaded not Guilty, and for his Tryal hath put himself upon God and the Country, which Country you are: Your Charge is to inquire, whether he be guilty of the High-Treason whereof he stands indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since, to your Knowledge. If you find him not guilty, you are to inquire whether he fled for it, if you find he fled for it, you are to inquire of his Goods and Chattels, as if you had found him guilty; if you find him not guilty, and that he did not fly for it, you are to say so, and no more; and hear your Evidence.

Mr *Mountague*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment of High-Treason against *Robert Lowick*, Prisoner at the Bar, and the Indictment does charge him with compassing and imagining the Death of the King, and endeavouring to subvert the Government, and inflave this Kingdom of *England*, and bring it under *French* Tyranny and Slavery, and the Indictment sets forth that *Robert Lowick*, the Prisoner at the Bar, the Tenth of *February*, met several false Traitors, and there consulted and treated how to assassinate his Majesty; and agreed, that forty Horsemen to get together, some to attack the Guards, while others were to assassinate the King in his Coach; and the Indictment charges him likewise with getting together Horses and Arms for this Purpose, to this he hath pleaded not guilty. We will call our Evidence, and prove the Fact against him, and we do not doubt but you will do your Duty.

Mr *Att. Gen.* May it please your Lordship, and you Gentlemen that are sworn, this is an Indictment of High-Treason, in conspiring and compassing the Death and Destruction of the King, the Nature of our Evidence against the Prisoner at the Bar is this.

You will hear, Gentlemen, by the Witnesses, that about *Christmas* last a Conspiracy and Design was set on foot to assassinate the King, and accordingly to accomplish it, there were several Persons

sent over from *France* by the late King *James*, who were Part of his Guards, and particularly *Sir George Barclay* was to be the Head of them; he was a Lieutenant of the Guards there, and he was sent over in *January* last, and there were a great many Troopers sent over, who were to be under his Direction, particularly Mr. *Harris*, who will give you an Account, that he was sent over by Order of King *James*, and he was told particularly King *James* had a Service for him to do in *England*, and he hop'd it might be an Opportunity to advance him. He was to observe the Orders of *Sir George Barclay*, and by what Token he should know him; he was to meet him in *Covent-Garden*, and he was told he might find him there twice a-Week in the Square, about six a-Clock, after it was dark; and that he might know him, he told him, he would have his white Handkerchief hanging out of his Pocket; accordingly Mr. *Harris* came over, and Mr. *Hare* came with him, and they came and did meet with *Sir George Barclay*, and they, together with *Sir George Barclay*, and several others here in *England*, Mr. *Porter*, Mr. *Charnock*, and *Sir William Parkyns*, did enter into consultation how to effect it: There were several Meetings about it, and you will find the Prisoner at the Bar was at several Meetings to that Purpose, and they did undertake, among them, to provide so many Men as might make about the Number of Forty, which they thought sufficient for the Execution of this Design.

Gentlemen, you will hear that the Prisoner at the Bar did treat with several Persons to be engaged in it; particularly, about the 5th of *February*, he sent to one *Bertram*, and ask'd him if he would be engaged in a Design for King *James's* Service that was quickly to be executed, without asking of Questions, and afterwards, I think, he undertook he would: So about the 14th of *February* he met him again, and that was the Day before the first Time they intended to attack the King, and then being so near the Time when it was to be executed, he thought it proper to acquaint him with the Thing he had engag'd him in; and he did acquaint him, That the next Morning they were to be ready to attack the King and his Guards, and bid him be sure to get his Boots and other Things ready for that purpose, and he gave him a Guinea in order to it. *Bertram*, it seems, on the 15th of *February* did not come, and the King it seems did not go abroad that Day, so they were disappointed at that Time; but the *Sunday* after *Bertram* met him, and Mr. *Lowick* complained that he had not come upon the *Saturday* according as he had undertaken; and he told him it would have been the same Thing, he would have disappointed them if the King had been in the Field.

Gentlemen, you shall find, That as he thus engaged Mr. *Bertram*, so he was to provide several others; and did declare, That at his own Charge he had got two or three, he complain'd of it as a Hardship put upon him, That whereas Mr. *Harris* had 6 s. a-Day Subsistence, and was only to take care of himself, he, Mr. *Lowick*, had at his own Charges engaged and provided several.

You will find, Gentlemen, that Mr. *Rookwood*, who was tried Yesterday, had several Meetings about it, with Mr. *Lowick* and Mr. *Harris*; they did think it to be a barbarous Thing: But however, they were resolved to obey Orders, and the Prisoner in particular said he would obey Orders, tho' he thought it a very wicked Thing.

Gentle-

Gentlemen, you will find by the Evidence how the Matter was carried on; the Prisoner was to be engaged in it, and did not only imbarque himself in Person, but engaged others, and did treat with them about it. We shall call our Witnesses, who will give you a full Account of it, and then we shall leave it with you, who we question not will do Justice. First call *George Harris*; who appeared and was sworn.

Mr Sol. Gen. Pray will you give an Account to my Lord and the Jury, what you know of the intended Assassination, and what Part the Prisoner at the Bar had in it.

Mr Conyers. Begin from the First, and tell your whole Knowledge as you did Yesterday.

Mr. Harris. On the 14th of January, New Stile, I was ordered to wait on King James at Dinner; after Dinner was over, I was called in, where was Coll. Parker and Mr. Hare at the same Time, and King James told me he was very sensible of the good Service I had done him; and now he had an Opportunity of doing something for me: I was to go into England, and there to be subsisted, and I was to follow the Orders of Sir George Barclay; the King told me I shou'd find Sir George Barclay in Covent-Garden, with a white Handkerchief hanging out of his Pocket, on Mondays and Thursdays between the Hours of six and seven in the Evening, and that was the Sign I was to know him by, and he ordered me to go to Mr. Carroll, that is Secretary to the late Queen, and Coll. Parker went along with me, and he ordered me ten Lewidores, and Mr. Hare as much, which Mr. Carroll gave us; and if that were not sufficient, or if we were Wind-bound at Calis, we had Orders to apply to the President of Calis to be furnish'd with what we wanted: Accordingly we went, and the Wind not serving when we come to Calis, we were forced to stay there, and our Charges were paid to our Landlady by the President of Calis, according to the Order we received at St. Germain's; when the Wind served fair we went on Board, and came to Rumney-marsh, to one Mr. Hunt's House, and from thence he furnish'd us with a Couple of Horses, and we came the Sandy-way to one Mr. Tucker's, and from thence to Mr. Cross's, and from thence to Graves-end, and from thence to London: We came up in the Night-tide, and being late when we came to Town, Sunday-night, we lay at an Inn at the lower-end of Gracious-street; the next Day we went to look for Sir George Barclay, but not finding him in Covent-Garden, according to what King James told us, I admired at it; but one Mr. Birkenhead meeting my Comrade the next Day, said, Sir George Barclay desired to see us, and appointed us to meet him, which we did that Night, where Sir George Barclay ask'd us how the King and Queen, Prince and Princess did; he told us at that Time he had no Money for us, but in a few Days we shou'd have Money; and accordingly he sent us Money. We had five Guineas, but it was at twice; two Guineas at one Time and three at another, and this was for a Month's subsistence at five Shillings a Day, Guineas going then at thirty Shillings. And afterwards when Major Holmes delivered the Horse, upon Saturday the 15th, we had another Guinea, that made up what we had to be six Shillings a Day when we had Horses, and five Shillings a Day when we had none: And as for Mr. Lowick, the first Saturday which was designed for the Assassination, I happened to be at Mr. Counter's Lodgings in Holborn, a Confectioner's; and there I see Mr. Lowick come in.

Mr. Conyers. Who lodg'd there, pray Sir?

Harris. Sir George Barclay and Mr. Counter had Lodgings there; and Mr. Lowick came in there, but I cannot say he stay'd there any Time, I think he went out presently afterwards. The next Week I met Mr. Lowick in Red-lyon Fields and discoursed with him there about this Matter, and I told him what a barbarous and inhumane Thing it was that we should be the Murderers of the Prince of Orange, and that it would render us odious to the World, and that we should be a continual Reproach to our selves; he did agree it was so: But in conclusion Mr. Lowick said he would obey Orders, and he said Sir George Barclay he was sure wou'd not do it without Orders. That Day when we were walking out, we met Sir George Barclay and Major Holmes riding in the High-way up towards Islington, and we spoke to him, for Mr. Lowick told me the Thing was discovered, and his Name was given up, and other Gentlemen, and I think another; and so he told me that one Harrison told him of it, and forewarn'd him that Night from lying in his Lodging; and he told him that he believed it wou'd not be safe for the Rest to lie in their Lodgings, or to that effect.

Mr Att. Gen. When he said he wou'd obey Orders, What was the Discourse about.

Harris. We were talking of murdering the Prince of Orange: And not only that, but I do believe that Mr. Lowick is so sensible that what I say is true, and he is a Man of so much Conscience and Honour, that he will not contradict any Thing that I affirm or have said here. On Saturday the Two and Twentieth we dined at the Castle, a Tavern or a Cook's Shop, at the End of Red-lyon Street. I was much in a Sweat, and he ask'd me what made me so? I told him I had been getting Captain Rookwood's Party ready; and I told him (laughing) that Captain Rookwood said I should be his Aid du Camp, and so I was getting the Men together: Says he to me, you may very well do it, for you have six Shillings a Day, and I have nothing. Mr. Lowick, you know what I say to be true; I know not why you lift up your Hands; but you did tell me I might very well do it, having six Shillings a Day, and you had nothing, and yet brought a Couple of Men at your own Charge, and that their Horses could not be discharged unless you went. These were his Words, my Lord, or to this effect.

Mr Att. Gen. What do you mean by being discharged?

Harris. I mean this, that I believe he paid for them; and they were waiting at a House till he came.

Mr Conyers. Why were they to be discharged that Day?

Harris. The Reason why they were to be discharged that Day, was, because Captain Rookwood had told him before, that the Prince of Orange did not go out that Day; and therefore we went together to walk towards Islington.

L. C. J. What Day was that?

Harris. The second Saturday that it was to have been executed. I was not a Spy upon any Man's Actions: I cannot tell what they did any more than I tell you: I do not wrong you any Way in the World, Sir, I am sure on it.

L. C. J. When was it that you spoke with Mr Lowick about murdering the King?

Harris. It was Monday, Tuesday, Wednesday, or Thursday, I cannot be exact to the Day, but it was

one of these Days, after the first *Saturday*; I cannot be positive what the Day was.

L. C. J. Well, it was between the two Days?

Harris. Yes, it was.

L. C. J. How did you know of that Design of murdering the King?

Harris. I was inform'd of it by Captain *Rookwood* the first *Saturday*, and I met Mr. *Lowick* and had this Discourse about it; and afterwards they informed me that Mr. *la Rue* did not lie at his Lodgings, and the Thing was discovered, and they believed that *Rue* had discovered it: And I desire you'll call Mr. *la Rue* as to this Matter; for I believe he will own it.

Mr. Sol. Gen. How came you to trust him with such a Discourse?

Harris. Because we met there at *Counter's* Lodgings, and we had several times Discourses of it; there was Major *Bernard* and Captain *Rookwood* besides, and I always declared against it as a barbarous and inhumane Thing, not to be answer'd before God or Man, and that we should be odious to all the World if the Thing were effected, as I believ'd it would not be. I wou'd never shew my Head after such a Thing.

Mr. Sol. Gen. Do you remember who began the Discourse of this Matter?

Harris. I cannot tell that. I can't come to every Particular.

Sir B. Shower. You said just now, you apprehended Mr. *Lowick* to be a Man of Conscience and Honour; Pray what were his Sentiments about it?

Harris. His Sentiment was, That he would obey Sir *George Barclay's* Orders; and he was sure Sir *George Barclay* would not do it without Orders.

Sir B. Shower. Did not he declare it to be a barbarous Design?

Harris. I can't remember every particular Thing that he said; for I am not a Spy upon any Man's Actions.

Lowick. When you were talking of that Design that you speak of, pray did I consent to any such Thing?

Harris. I tell you how far you consented; you said you wou'd obey Sir *George Barclay's* Orders, and you was sure he wou'd not do it without Orders.

Mr. Mompesson. Did you see any of Sir *George Barclay's* Orders?

Harris. No, I did not; I was to follow his Orders; but what Orders he had I cannot tell.

Mr. Sol. Gen. What did Sir *George Barclay* tell you you were to do?

Harris. Sir *George Barclay* declared, on the first *Saturday*, that we were his Janizaries, and talk'd of attacking and bringing away the Garter: I cannot say this Gentleman was by then; and afterwards Sir *George Barclay* went out and returned, and came in again into the Room, and declared that we were Men of Honour, and that we were to attack the Prince of *Orange*.

Mr. Mompesson. Did Sir *George Barclay* give the Prisoner at the Bar any Orders?

Harris. I don't tell you he did.

Mr. Mompesson. You say you met Sir *George Barclay* and Major *Holmes* upon the Road going to *Islington*: How do you know the Prisoner was there?

Harris. Why, was not I with him? I am very sorry to come upon this Account; but you know it is Truth all that I say; and I am sure you are sensible I do you no Wrong: He met Sir *George*

Barclay and Major *Holmes*, and he went down and said something to Sir *George Barclay* in the Highway; what it was I don't know; but I stood, and Captain *Rookwood* and Mr. *Bernard* said something to him, which you very well know.

Mr. Att. Gen. What was it?

Harris. I can't tell, Sir.

Mr. Att. Gen. We do not desire you to tell what you can't tell: Is this all you know?

Harris. It is all at present that I recollect.

Mr. Sol. Gen. Then pray swear Mr *Bertram* (which was done.)

Mr. Conyers. Pray will you give an Account to my Lord and the Jury what you know of this intended Assassination, and how far the Prisoner was concerned in it.

Bertram. My Lord, about the Beginning of *February* last, Major *Lowick* came to me, and ask'd me if I wou'd espouse a Thing with him that might be for my Advantage; I told him that I thought I might espouse any Thing that he thought fit to engage in.

Mr. Mompesson. Whom did you tell so?

Bertram. Major *Lowick*: And he told me it was well, and desired me to ask no more Questions: I did not; but it went on till the 14th of *February*, when he desired me to be at his Lodgings at twelve a-Clock. I was so about that Time, but he was not within, and I stay'd till he came in, and he took me up into his Chamber, and told me he believed they should ride out in some little Time; and he told me he believed the King was to be seiz'd in his Coach, and he gave me a Guinea to buy me Necessaries.

L. C. J. What Necessaries?

Bertram. I can't say he nam'd any.

Mr. Att. Gen. But for what Purpose were those Necessaries?

Bertram. I don't know that he named any Thing, indeed.

Mr. Att. Gen. Well; did he tell you when you were to be ready?

Bertram. If you please to give me leave, I'll tell you: He desired me not to be out of the Way; and the next Morning I was to meet him at the Purl-House in *Hart-street*. I did not meet him; and the next Time I saw him, I am not positive whether it was the next Day after the Fifteenth when I was to meet him at *Hart-street*, but did not so; but the next Time I saw him, he ask'd me why I did not meet him according to his Appointment? I told him, I had some Reason for it; and he answer'd me again, That he believed, if the King had been in the Field, I would have done the same; but I have not seen him since, till I saw him at the Bar.

Mr. Att. Gen. Had you no Discourse of Horses that you were to provide?

Bertram. I do not remember any particular Thing more than I have told you.

Mr. Att. Gen. Did he not tell you what the Design was you were to go about?

Bertram. He did not tell me of any other Design than as I tell you, for he believed I knew of it; I thought so at least: The first time I knew of it was from Mr *Charnock*.

L. C. J. What did he tell you was the Design that you should engage in for your Advantage upon *Friday* the 14th, when he gave you the Guinea?

Bertram. He told me, he believed they should ride out very suddenly, and that the King was to be seized in his Coach.

L. C. J. Did he tell you when the King was to be seized?

Bertram. No, he did not tell me when, but this was the 14th, the next Morning I was to meet him at *Harr-street*, but did not.

Mr Sol. Gen. Who did he tell you the King was to be seiz'd by?

Bertram. He did not nominate any one else, for he obliged me not to ask him Questions, nor I did not.

Mr Soll. Gen. Did he name himself to be concerned?

Bertram. He named himself so far, as that he believed he should ride out very suddenly.

Mr Soll. Gen. Was it the next Morning, or the next Day?

Bertram. I cannot say that he named any particular Time.

Mr Att. Gen. Will they ask him any Questions?

Sir B. Shower. No, I think we shall not.

Mr Mountague. Pray, Mr *Bertram*, will you answer me one Question, What did he say to you when he check'd you for not coming according to his Appointment?

Bertram. I took it as a Kind of a Check: He told me, that if the King had been in the Field, he believed I would have done the same.

Sir B. Shower. There is one Thing we must a little examine this Gentleman to: Were not you under a Necessity before that Time that he gave you the Guinea? Pray what Condition were you in?

Bertram. Under Necessity, Sir! I was never very plentiful of Money of late.

Sir B. Shower. Did he never give you a Guinea or two before in Charity, and out of Compassion to your Necessities?

Bertram. He has given me Money several Times before; and I believe if I would have ask'd him for any Money, he would have given it me.

Mr Att. Gen. Was this Money given you for Charity, or for any other, and what Purpose?

Bertram. I did not ask him for any Thing, but he gave it me, and said, There's a Guinea to buy you Necessaries.

Mr. Att. Gen. What was the Discourse before that?

Bertram. I told you, he said, he believed they were to ride out very suddenly, and he believed the King was to be seized in his Coach, and he desired me not to be out of the Way.

Mr Cosper. And when he gave you the Guinea to buy you Necessaries, was it immediately after this Discourse?

Bertram. Sir, it was at the same Time.

Lowick. Did not I give your Wife a Guinea two Months before this?

Bertram. Yes, Sir; I acknowledge I was informed you did, I was not in Town then.

Lowick. Pray let the Court know that.

L. C. J. Did he tell you the King was to be seized in his Coach, before he told you they were to ride out very suddenly?

Bertram. No, afterwards; and then he gave me the Guinea.

Sir B. Shower. His Words are not coupled together, they have no Relation to one another.

L. C. J. No; but he told him they were to ride out very suddenly, and the King was to be seized in his Coach, and gave him a Guinea to buy him Necessaries at the same Time.

L. C. J. Treby. There's no doubt he was engaged in the Design with those other Persons:

Mr Conyers. And afterwards he rebuked him because he had not met him; and he said, it would have been the same Thing, if the King had been in the Field.

Mr Mountague. What Day in the Week was it that you failed him?

Bertram. It was on a Saturday.

Juryman. Pray, my Lord, we desire to know, who he did understand by the King that was to be seized.

L. C. J. What did he call the King?

Bertram. He said nothing but the King.

L. C. J. Who did you understand by that?

Bertram. I leave it to the Court, I am not to interpret Things.

L. C. J. Treby. Did he name the Prince of Orange, or King James? Did you think King James was to be seized?

Bertram. My Lord, I tell you what he said, I am not to interpret his Words.

Mr Att. Gen. Do you believe he meant King James, or this King, that was to be seized?

Bertram. I believed it might be the King here.

L. C. J. Take the Words as they are; he ask'd him before, Whether he would ingage in a Design that might be for his Advantage? On Friday the 14th of February he meets him at his Lodging, and tells him, he was to ride out suddenly, and that the King was to be seized in his Coach, and appointed him to meet him the next Morning, and gave him a Guinea to buy him Necessaries.

Mr Mompeffon. Pray, has not Mr. Lowick given you Clothes, Linnen and other Things at any other Time?

Bertram. Sir, you have been always ready to serve me, I must acknowledge, and you have been very kind to me.

Lowick. If you please to give an Account of my Character, whether ever I was guilty of any bloody Thing.

Bertram. No, Sir.

Sir B. Shower. How long have you known Mr Lowick?

Bertram. I believe I have known him this 20 Years.

Sir B. Shower. What Behaviour has he been of?

Bertram. He has always had very good Behaviour, and the best; he has had the best Character of all Mankind.

Sir B. Shower. Did you ever know him inclined to do a rash Action?

Bertram. Never in my Life.

Sir B. Shower. Did you ever know him do a malicious Action?

Bertram. No, but he had always the Character of a good Man, and was always ready to serve any Man in his Necessities, and to do Good; he has that general Character abroad.

L. C. J. Where does he live?

Bertram. He lived last at *Brownlow street*, but he has no Wife nor Family, and so has no fix'd Being.

L. C. J. What was his Way of Living?

Bertram. He was bred a Soldier, and has been abroad.

L. C. J. Where?

Bertram. In Ireland.

L. C. J. In whose Service?

Bertram. In the Service of King James.

Lowick. He knows particularly, that once I was upon a Party and saved five Officers from being killed in cold Blood.

L. C. J. What Countryman is he?

Bertram. Yorkshire.

Mr *Mompesson*. Was he accounted of a cruel or a bloody Nature?

Bertram. No, of a quite contrary.

Juryman. My Lord, I desire to know for what Cause he gave him or his Wife a Guinea.

Bertram. I know not what that Guinea was for, that he gave me the fourteenth of February, any otherwise than as I have told you.

Mr *Mompesson*. What was the Guinea given to your Wife for?

Bertram. For that Guinea given to my Wife, it was out of his own Kindness and Goodness to my Family and me.

Mr *Att. Gen.* What was the other Guinea for? You are upon your Oath.

Bertram. Indeed, Sir, I cannot tell; he gave it me to buy me Necessaries.

Mr *Att. Gen.* Was there nothing else mentioned what Necessaries those were to be?

Bertram. No, Sir; upon my Oath there was not any Particular mentioned.

Mr *Att. Gen.* What made him so kind to you, pray?

Bertram. We were both born in a Town, and I believe we are near related.

Sir *B. Shower*. You say you are Towns-People, and have been long acquainted, and you knew him in Ireland, pray did you ever know that he saved any People's Lives?

Bertram. I was not in that Action my self, but all that were in it gave that Relation, that he was very favourable, and did save Peoples Lives, particularly one Captain *Harlow*, and brought him and others Prisoners, and I remember the Thing; it was about a Fortnight before the Business of the *Boyne*, upon a Sunday Morning, that they took those Prisoners, and he did persuade several Parties that he commanded, to decline killing, as much as they could: I was not in this Action, but this I heard of all that were in it, and from the Prisoner.

Mr *Soll. Gen.* When he gave you that Guinea, did not he speak any Thing of a Horse that was to be provided for you?

Bertram. Not a Word: I never did see a Horse upon that Account, nor was I Master of a Horse, nor was I told I should have a Horse in any respect whatsoever.

Juryman. How could you ride out, as you say they were to do, without a Horse, or without knowing any Thing of a Horse to be provided for you?

Bertram. I did not know of a Horse.

L. C. J. But he said you were to ride out speedily.

Bertram. No; he said in general, we should ride out suddenly.

Mr *Att. Gen.* Who was there besides your self?

Bertram. No Body.

Mr *Att. Gen.* Then that we must mean you and him. And how were you to ride out without a Horse? Pray mind what you swear?

Bertram. I was to meet him the next Morning, but did not.

Mr *Att. Gen.* Pray what could you understand by that, that you were to ride out suddenly, and had no Horse?

Bertram. That was understood, that if I did ride out, I must have a Horse.

Mr *Att. Gen.* Who should you have it from? had you a Horse of your own?

Bertram. No, I had not.

Mr *Att. Gen.* Did you intend to hire a Horse?

Bertram. No, I did not.

Mr *Att. Gen.* Did not you ask where you were to have a Horse?

Bertram. No, I did not ask, nor inquire, nor was it promis'd me I should have a Horse.

Mr *Att. Gen.* Did he tell you where you were to ride?

Bertram. The next Morning I was to meet him.

Mr *Att. Gen.* For what? to ride out was it?

Bertram. I can't really tell whether it was upon that Account or not.

Mr *Att. Gen.* Whether did he tell you where he was to ride?

Bertram. Indeed he did not.

Juryman. It is very strange that you did not ask him where he was to go, nor ask him for a Horse.

Bertram. I was so senseless, that I neither did ask him about a Horse, nor ever knew of any that was to be provided for me.

Juryman. Did you understand what was meant by the Riding out suddenly?

Bertram. I did take it to be about the Business, the Seizing of the King.

Juryman. Did he compare it to attacking him in the Field?

Bertram. No, he did not; but he said he believed the King would be seized in his Coach; he made no Comparisons.

Mr *Mountague*. Pray Mr. *Bertram*, why did you not meet him? what Reasons had you for not doing it?

Bertram. I thought it not requisite to meet him.

Mr *Mountague*. What, had you no Mind to the Thing?

Bertram. No, I had not; because I thought the Thing very unlawful.

Mr *Att. Gen.* Pray what was that Thing you speak of, that you thought was unlawful?

Bertram. I thought it was about seizing and killing the King.

L. C. J. Pray mind; there is no Body desires you should speak more than the Truth; but on the other side, being upon your Oath, you are to speak the whole Truth; for if you conceal any Part of the Truth, though you have a Kindness for your Countryman Mr. *Lowick*, who has been kind to you, you will forswear your self, for you make a different Representation of the Matter, and make it appear quite otherwise than it is; pray do not strain one Tittle, but let us have all the Truth.

Bertram. I don't believe I strain one Bit.

Mr *Mountague*. Then tell my Lord why you did not meet him.

Bertram. I did believe it was about seizing and killing the King, and I did think it to be illegal.

Mr *Mountague*. Why did you think it was about that?

Bertram. Because Mr. *Charnock* had told me of it before.

Mr *Att. Gen.* How did you know that was what *Lowick* spoke to you about?

Bertram. I did suppose it to be the same, because he desired me at first to ask no Questions, no more did I; but I took it always to be the same Thing.

Mr *Att. Gen.* What did he say to you?

Bertram. He told me he had a Business to propose to me, if I would ingage in, that would be for

for my Advantage, but I must ask no Questions ; talkt of Riding out suddenly, and that the King was to be seized in his Coach, and having heard of it from Charnock, I thought it was the same Business.

Mr *Att. Gen.* Then my Lord, we have one Witness more, call Captain *Fisher*, (*He did not appear.*) If he does not appear, we shall let them go on, and when he comes in, we can examine him afterwards.

L. C. J. Is he a material Witness ?

Mr *Soll. Gen.* We do apprehend he is a very material Witness.

L. C. J. If you think him a material Witness, it will not be proper for them to enter upon their Defence, till they have heard the whole Accusation.

The Court staid for Mr. Fisher's coming for near an Hour, and at last he came in and was sworn.

L. C. J. Who is this ?

Mr. *Att. Gen.* This is one Captain *Fisher*.

Mr *Soll. Gen.* Pray Captain *Fisher*, do you know Mr *Lowick*, the Prisoner at the Bar ?

Capt. *Fisher*. I have not talkt with Mr *Lowick* since the 8th of *February*, and then he talk'd that he wou'd be ready to serve his Master to the uttermost of his Power.

L. C. J. What Master ?

Capt. *Fisher*. King *James*.

Mr *Att. Gen.* What particular Service ?

Capt. *Fisher*. He named no particular Service, but only that he would be ready to serve his Master to the uttermost of his Power.

Mr *Att. Gen.* Where was this ?

Capt. *Fisher*. At the *Cock* in *Bow-street*.

Mr *Att. Gen.* Who was in Company ?

Capt. *Fisher*. There was Mr *Harrison*.

Mr *Att. Gen.* Pray give an Account of what you know of this barbarous bloody Design.

Capt. *Fisher*. I believe there was a Design to seize the Prince of *Orange*.

Mr *Att. Gen.* What do you know of it ? you say you believe it.

Capt. *Fisher*. I believe it by my Knowledge, because I was concerned in it.

Mr *Att. Gen.* By whom was that Design carried on ?

Capt. *Fisher*. By Sir *George Barclay* and Mr *Harrison*.

L. C. J. What was the Design ?

Capt. *Fisher*. We were to fall upon the Prince of *Orange*.

L. C. J. You called him so, the Prince of *Orange* ?

Capt. *Fisher*. Yes, my Lord.

Mr *Att. Gen.* Well, tell us what happened.

Capt. *Fisher*. It was to have been done the 15th of *February*, and we met accordingly the 14th, but the King not going Abroad, it was put off.

L. C. J. Who met on the 14th ?

Capt. *Fisher*. I met only Mr *Harrison* and Sir *George Barclay*, then it was put off till the 22d; upon the 21st, we met at the *Three Tuns* in *Holborne*, and from thence we came to the *Sun Tavern* in the *Strand*, and there was no Body but Mr *Harrison* and I together, and Sir *George Barclay* came to us; I believe there were about 14 or 16 in the House; there Sir *George Barclay* told me, Mr *Lowick* was to meet me and two more at

an Inn by St. *Giles's* Pound, and that we were to go together to seize the Prince of *Orange* the 22d.

L. C. J. Did you meet him ?

Capt. *Fisher*. I did not meet him, it being put off by the King's not going abroad.

L. C. J. This does not affect Mr *Lowick* at all.

Mr *Att. Gen.* It does not, we acknowledge, but at that time which you speak of, the 8th of *February*, had you any Knowledge of the Assassination.

Capt. *Fisher*. There was no Assassination at that Time, at least it was not then declared.

Mr *Att. Gen.* What was your Discourse about then ?

Capt. *Fisher*. There was Notice of the King's preparing to come for *England*.

Mr *Att. Gen.* You say Mr *Harrison* was there.

Capt. *Fisher*. Yes, and talkt very little about the Matter, but only that there were Preparations for the King's coming.

Mr *Att. Gen.* What did *Lowick* say to you ?

Capt. *Fisher*. I have told you all that Mr *Lowick* said to me.

Mr *Att. Gen.* Repeat it again.

Capt. *Fisher*. He said he would be ready to serve his Master, to the uttermost of his Power.

Mr *Comper*. Had you no Discourse about an Act of Parliament.

Capt. *Fisher*. Mr *Lowick* said it was not convenient to talk with more than one at any time, for there was an Act of Parliament on Foot, that under two Witnesses nothing should affect a Man's Life in Treason.

Mr *Att. Gen.* The Act of Parliament was then a making.

L. C. J. When Mr *Lowick* said he wou'd serve his Master, what Discourse had you about it ?

Capt. *Fisher*. Mr *Lowick* said not a Word within, but at the Door he said he wou'd serve his Master to his Power.

Mr *Att. Gen.* What was that, that they wou'd not talk with above one at a time ?

Capt. *Fisher*. Nothing that was thought treasonable Practices should be discoursed of before above one at a time, so I understood it.

Mr *Soll. Gen.* Then my Lord we have done.

Sir *B. Shower*. May it please your Lordship, and you Gentlemen of the Jury ; I am of Council in this Case for the Prisoner at the Bar, and we do hope here is not Evidence sufficient to convict him of High-Treason, the Question is not whether there was a Plot or a Conspiracy to Assassinate the King, or to prepare for an Invasion, but all that you are to consider, Gentlemen, is, whether the Evidence against Mr *Lowick*, be sufficient to convince you, that he did design to Seize and Assassinate the King; there are three Witnesses produced, but we think this last Witness, *Fisher*, his Testimony does not hurt him in the least. We know your Lordship will declare and direct the Jury, that the Evidence in a Case of Treason ought to be plain, not only with respect to the Fact, that it was done ; but also of such Facts as are the Evidences of a Man's Intentions, and those are not to be construed by Strains and Intendments, or Implications ; unless they be such as Evidently, Naturally, and to common Understanding express the Intention, it cannot be good Evidence in Treason : Now we say that

Cap-

Captain *Fisher* has said nothing at all that will affect the Prisoner, for all that he says is, that the Eighth of *February* he said he was ready to serve his Master to the utmost of his Power, and any Words as well as these may be construed to make a Man guilty of Treasonable Intentions; for it might be a Recollection of Favours Received, or it might be a grateful Intent to serve him upon particular Occasions, but that is no Evidence upon this Indictment. Suppose it was to serve him upon the supposed intended Invasion, yet with Submission, that is not Evidence of the Overt-Act laid here; here is no Overt-Act mentioned of preparing Arms, or Encouraging Men, or Seducing the King's Subjects in order to the better restoring of the late King *James*, or the expected Landing of the *French*, or the like. All that's laid to the Prisoner's Charge, is the Compassing the King's Death, and a Design to Assassinate him in his Coach, and in order to the Assassination, he was to buy Arms and Horses; now all that he says is quite of another Nature, of a quite different Strain, and has no Tendency to this Matter, and nothing he says that *Lowick* shou'd say, but is applicable the other Way, and tends more naturally to the Invasion, than to the Assassination. Your Lordship observes there was some notice taken of what Mr *Lowick* shou'd say, concerning the Act of Parliament, that he would not talk with above one at a time; how far when Life is concerned such loose Discourse ought to be enforced before a Jury I must leave to your Lordship; though a Man may be innocent, yet he may be cautious, and the more Innocent, perhaps the more cautious; but that is applicable to the Invasion too, and has no Relation to the Treason in this Indictment more than any other. It shows he was more wary than others were, but it is not applicable to the Fact that he now stands charged with. Then the whole of the Evidence depends upon the Testimony of Mr *Harris* and Mr *Bertram*, and we think they are not two Witnesses to one Thing, and what they say must be strained, and intended, and presumed, to make Evidence of Treason; for what Mr *Harris* says about the Discourses between him and the late King *James*, about receiving Orders from Sir *George Barclay*, and his Passage over from *France*, and the several Stages he and Mr *Hare* travell'd, and the Discourses between Sir *George Barclay* and him; Your Lordship will acquaint the Jury that is no Evidence to affect Mr *Lowick*, nor what *Berkenhead* and *Hare* agreed upon does any way affect Mr *Lowick*, for those Things may be all true and yet Mr *Lowick* innocent of what he stands charged with in this Indictment; he says, that upon the first *Saturday* he saw Mr *Lowick* at the Confectioner's, but he cannot say he staid there at all, there was not a Word spoken by Mr *Lowick* that he remembers then, but what he says that seems to touch, and the only Thing that touches Mr *Lowick*, in all this Evidence is, that upon *Monday, Tuesday, Wednesday or Thursday*, it is a pretty large time, between the Fifteenth and the Twenty Second, he was talking with Mr *Lowick* about the Barbarity of this Business, and that *Lowick* after all, said he would obey Orders; now with Submission, my Lord, to make that to have Relation to the Assassination must be by a forc'd strain'd Intendment, he does not declare what the Orders were, nay, he

does not affirm there were any Orders for the Assassination, but only that he would obey Orders; here's no Order by Writing, no Order by Parole that Mr *Lowick* declared he would obey; as to what *Lowick* declared about his Intention of Riding out and Seizing the King in his Coach; that cannot be intended the Order that he was to obey to Assassinate the King, that Order does not appear, there are no Footsteps of it in all the Evidence, so that there is nothing in that Testimony that will hurt Mr *Lowick*: Then upon the Two and Twentieth when they dined together, Mr *Harris* says, that there was a Discourse of two Men, but it does not appear, nor does the Witness give any account what those two Men were to be for; 'tis true two Men he was to get discharged, but that is not Evidence that these Men were to make a Part of those Forty, neither the Words before nor the Words after can have that Construction; nay it does not appear it was for any Purpose at all, now in the Case of Life, where a Man stands at the Bar, we hope such an Evidence shall not be Construed to make a Proof of a Treasonable Intention, that these were to Assassinate the King, or to make Part of the Forty that were to do it, when it does not appear they were there, nor who they were, nor any sort of Notice taken or given upon what Account they were Provided. And then as to Mr *Bertram's* Evidence, it is palpable that his Evidence and whatsoever he says cannot amount to make one Witness to prove an Overt-Act within this Statute, and that there must be two Witnesses the Law requires; what does Mr *Bertram* say to prove any Man guilty of Treason, but only by Intendment, Thought or Suspicion? It is true, Mr *Bertram's* Evidence would be good enough to commit a Man upon Suspicion of Treason, but to Convict him it cannot be; he says that in the Beginning of *February* he spoke to him, and told him he would employ him in a Business that would be for his Advantage, but he must ask no Questions; this is very dark, for the Meaning of it does not appear what was intended by it; it might be one Thing as well as another, it might be to employ him in his Family, or it might be to send him of a Journey, or it might be the taking of a Farm, but to apply that as an Evidence of a Charge of High-Treason, that we think is very hard, and we hope your Lordship will think so too; but then he comes and tells you further of a Discourse upon the Fourteenth, of his riding out suddenly, and that the King was to be seized in his Coach, but he does not say that he was to seize him, nor that he would be concerned in it, nor that he knew of it, nor did declare at what time it was to be done, nor any thing certain whether it was a Prophecy, or a Dream, or a Story that he related again, or what it was; there is no Connection between the Riding out suddenly and the other Words of seizing the King in his Coach; then he says he gave him a Guinea to buy him Necessaries, the Man acknowledges Mr *Lowick* several times had given him in Charity-Money, Cloaths and other Things, and gave his Wife a Guinea, as you observe, in Charity, but he gave him this Guinea on purpose to buy him Necessaries, and it is hard that a Man's Charity to a Countryman, to a Townsman, to an antient Acquaintance of Twenty Years standing, to a Person that he had been familiar

miliar with formerly, and known to have lived well, should be mis-interpreted and strain'd, to make it a giving him Money as Subsistence, and a Reward for the doing such a Mischievous Bloody Act; We say his Charity to this Man formerly is inconsistent with the Supposition that he cou'd be privy to such a barbarous Design now, and we hope the Jury will consider the Character that that very Man has given to my Client, for the same Witness gives you an Account of his Behaviour all along, that he was not given to Rash and Barbarous Actions, nor guilty of any malicious Thing, nay, that he prevented Mischief, and the killing of People in cold Blood. We must leave it to the Jury's Consideration, and your Lordship's Direction. All these things that they say may be true, and Lowick be not guilty, and the acquitting of Mr Lowick will be no Reflection upon the Witnesses, nor any Discredit to the Testimony that has been given of this Conspiracy; but we hope 'tis doing Justice to this Man, the Witnesses not coming up to the Proof of what is laid in the Indictment. We must beg your Lordship's Patience a little longer, and call some Witnesses to give you an Account how long they have known Mr Lowick, and what his real Character is; they will tell you he is a peaceable good Man, and shew you that his Temper and Inclination was rather to a sober quiet Life than to lead him to such Action, and that they cannot think him likely to be tempted to be concerned in such a Design; and then we must leave it to the Jury. Call Mrs Yorke.

Lowick. I believe there is no Body here that knows me but will give me that Character.

Mrs. Yorke came in and was sworn.

Sir B. Shower. Pray Mrs Yorke how long have you known Mr Lowick?

Yorke. About a Dozen or Fourteen Years.

Sir B. Shower. What Sort of Disposition is he of?

Yorke. He is a Civil Honest Man as ever I saw in my Life, or ever knew of; and I never heard otherwise from any one that knew him.

Sir B. Shower. What was he in his Actions, was he Malicious, or good Natur'd?

Yorke. As good a natured Man as ever I saw.

Mr Mompeffon. Has he the Reputation of a Cruel Bloody Minded Man?

Yorke. Quite the contrary. He lodged in my House half a Year, it is not quite a Year ago since he lay at my House. He was the most obliging Man that ever lay in my House. He was so civil to all the Lodgers, that they admired him for his Goodness, and made them in love with him.

L. C. J. How came he to lodge at your House?

Yorke. He came from his other Landlady, they could not agree; his other Landlady was a Sort of a Shrew, and therefore he did not care for staying there; and I desired his Company because I knew him to be so obliging and civil a Man.

L. C. J. Where is your House?

Yorke. In Bloomsbury.

L. C. J. What is his Way of Living, is he a Man of an Estate?

Yorke. I cannot tell, I did not inquire into that.

L. C. J. Had he no Employment to get his Living by.

Yorke. I do not know any thing of that, I never inquired into it; he paid me very honestly for my Lodging, and he is a very good Man for any thing I know.

Sir B. Shower. Then call Mrs Mosely.

She came in and was sworn.

L. C. J. Well, what do you ask this Gentlewoman.

Sir B. Shower. Pray Mrs Mosely will you tell my Lord and the Jury: Do you know Mr Lowick?

Mosely. Yes, Sir, I do.

Sir B. Shower. How long have you known him?

Mosely. Near twenty Years.

Sir B. Shower. Pray give an Account upon your Knowledge what Disposition and Temper he is of; whether he is Rash, Malicious, Bloody, and Ill-natured.

Mosely. He is a peaceable, vertuous, honest Man, and a Man that I never heard or saw that Creature that could speak any ill Thing of him in my Life; nor I never heard him speak any Thing maliciously of any Creature in my Life to do them a Prejudice: So far from that, that he is a Man has a Character, perhaps, above any Man that I could speak or hear of in my Life. I speak it even above my own Relations, they may have some Passions; but I never see that Gentleman in a Passion in my Life. He has lain in my House several times, and he has had Company come to him, but never any that was Scandalous one Way or other. I never saw him fuddled; nor ever heard him Swear, nor any one accuse him of any of those Things.

Mr Mompeffon. Call Dr William Mew. He did not appear.

Sir B. Shower. The Prisoner has something to say for himself my Lord, but we must submit to your Lordship's Consideration, and the Juries, whether there be any Evidence but what is dark and favours of Suspicion only; suspicious it is, but whether there be any Evidence that is plain and direct as the Law requires in Cases of High-Treason, we must leave it to your Consideration, for we apprehend there is none.

Lowick. My Lord, as to this Business, the Thing that I stand accused of, the Assassination, I know nothing in the World of it, nor never did directly or indirectly; and if I am convicted, and could to save my life be the Death of the poorest Child in the World, I would not save my Life to do it.

L. C. J. Look you, I would put you to make Answer to some Things; you were at Sir George Barclays, at the Confectioner's in Holborn; and it is sworn he came over upon such a Design. Then you were with Mr Harris at Red Lion Fields, and there he was speaking to you of the Horridness of the Design that was to be executed upon the King's Person the Saturday before, and he told you he did dislike it; and thereupon you answered that you would obey Orders, and that Sir George Barclay had Orders for it, otherwise he would not do it.

Lowick. Sir George Barclay never spoke one Word of it to me.

L. C. J. Every Body knows now upon what Design he came over from *France*, and when *Mr Harris* showed Dissatisfaction with the Thing, you made that Answer to his Discourse.

Lewick. He never said one Syllable to me of it. I trust to your Lordship's Judgment, and the Jury's Mercy.

L. C. J. And then I would have you answer to another Thing, when you dined together on the *Saturday* the two and twentieth, what were those two Men that could not be discharged without you?

Lewick. My Lord, I know nothing in the World of two Men.

L. C. J. You went to discharge them, for the King did not go abroad that Day.

Lewick. I know nothing of it.

L. C. J. He swears this, and that's as to him; but then as to *Bertram*, what Design was that, that you were to engage *Bertram* in for his Advantage, and he was to ask no Questions?

Lewick. My Lord, he is a poor Man, and my Countryman, and I have at all Times, from time to time, for this seven Years, helped to subsist him and his Family, that he will not deny, and I have several Times given him both Cloaths and Money.

L. C. J. Then I would ask you again, When he came to your Lodging on *Friday* the 14th of *February*, and you told him the King was to be seized in his Coach, and said that we were to ride out very suddenly, and you appointed him to meet the next Morning; and because he did not meet you blamed him, and said, It would have been the same Thing, if the King had been in the Field. Look you, I would have you give Answer to this if you can.

Lewick. I remember nothing in the World of it, not a Word I assure you, and to the best of my Remembrance, I did not see him in two Days after.

Mr Att. Gen. My Lord, I must beg leave to answer to the Objection that the Council for the Prisoner have made, that there are not two Witnesses to prove the Overt-Act laid in the Indictment, and so the Law is not satisfied. In Answer to that, I desire your Lordship's Favour to observe how the Evidence is, and then we shall see whether there are not plainly two positive Witnesses of the Overt-Act, by agreeing to assassinate the King. The first Witness is *Mr Harris*, your Lordship observes that *Mr Harris* gives an Account that *Mr Lewick* was at *Sir George Barclay's* Lodgings the first Day that it was to have been executed; and that afterwards between the fifteenth and the two and twentieth, those being the first and second Days that this was to be done, when he and *Rookwood*, and the Prisoner *Lewick*, were walking together in *Red Lion Fields*; and there had some Discourse about the intended Assassination, and the Barbarity and Bloodiness of it, and *Mr Harris* and *Mr Rookwood* were averse to it. *Mr Lewick* said he would obey Orders, and he was sure *Sir George Barclay* would not do it unless he had direct Orders for it, that was twice repeated by him, as *Harris* swears: And afterwards *Mr Harris* tells you that the two and twentieth he dined with *Mr Lewick*, and *Mr Lewick* observed that *Mr Harris* came in in a great Sweat, and asked him how it happened, he said he had been about to get ready *Rookwood's* Party that were to seize the King, for he was to have one Party. Says *Mr Lewick* to him, you need not grudge to

do it, you have six Shillings a Day, I have nothing; and yet I, at my own Charge, am to provide two. This is as positive Evidence as well can be of his being privy to the Design; and his engaging People at his own Charge, shows a great deal of Forwardness and Zeal in the Prisoner to the Business. My Lord, I think this is positive and plain Evidence, and not only made out by Inferences and Constructions, as *Sir B. Shower* says, but plain positive Proof. The first Day he was with several of them, and when they discoursed of the Thing afterwards, he declared he would obey Orders; and what could those Orders be but for what they were Discoursing of, and nothing was discoursed of but this Design they were engaged in, and this was to justify the Thing, and take off the Apprehension of the Barbarity of it: This is *Harris's* Testimony. The next Witness is *Bertram*, and he tells you that the fifth of *February* the Prisoner sent for him, and when he came to him, he asked if he would engage in a Business that might be for his Advantage, and ask no Questions; so at that Time he did not acquaint him what the Thing was, but that shows it was a Thing that was to be kept secret at that Time, in regard he did not think fit to acquaint him at the first Instance. But the fourteenth of *February*, when he met him again, the Day before the first Time that it was to be put in Execution; *Bertram* swears he told him that they were to ride out the next Morning, that must be *Lewick* and *Bertram*, for there was no Body else there; and that the Prince of *Orange* was to be seized in his Coach. Was it possible the Prisoner could be ignorant of it? When he engaged him to go upon a Design without asking Questions; sent for him the Day before, acquainted him they were to ride out the next Morning, and that the King was to be seized in his Coach, and bid him be ready against next Morning, and gave him a Guinea at that Time; the Witness says it was for Necessaries, but he does not pretend that it was for Charity, as formerly. And that must be for Necessaries for that Purpose that they were then discoursing of, when he desired him to be ready the next Day, and gives him Money to buy him Necessaries: What can that be, but Necessaries for what he was to be ready for? And then he did not come the next Day, and he tells you why, because he thought it a very wicked and unlawful Thing, and so he disappointed him; and the next Time *Lewick* chid him, and told him he would have served him so if the King had been in the Field. This is plain, though I believe *Bertram* does speak as tenderly as he can, being his Friend and old Acquaintance, and is willing to say as little as he can of him; so that I believe no Body thinks but what *Bertram* says against the Prisoner is true, and what he swears is plain and positive. To show that *Lewick* did engage in the Design, he acquainted him with it the fourteenth, by telling him the King was to be seized, and they were to ride out, and he was to be ready the next Day.

L. C. J. He does not say they were to ride out the next Day.

Sir B. Shower. No, the Words were, We are to ride out suddenly.

Mr Att. Gen. I think he did say they were to ride out the next Morning.

L. C. J. No, Call him in again.

Mr Comper. The Words were, We shall ride out suddenly, and bid him meet him next Morning; and afterwards chid him for not meeting accordingly,

ingly, and told him it had been the same Thing if the King had been in the Field.

L. C. J. If you cannot agree upon the Evidence, you must call in the Witness.

Mr Mountague. My Lord, we are agreed upon the Evidence, it was suddenly.

L. C. J. Well then, there is no Occasion, have you done on both Sides.

Council. Yes, my Lord, we submit it to your Lordship.

L. C. J. Gentlemen of the Jury, this Prisoner at the Bar, *Robert Lowick*, is Indicted of High-Treason, for Compassing and Imagining the Death and Destruction of the King by an Assassination; you have heard what Evidence has been given upon this Indictment. And in the first Place, It is proved to you that there was a Design to assassinate the King; which was to be carried on under the Conduct and Management of *Sir George Barclay*. The Question that you are now to consider of, is whether the Prisoner at the Bar was concerned or engaged in the Prosecution of that Design. There have been two Witnesses produced, who have given their Evidence, and have been very strictly examined, and Observations have been made upon the Testimony they have given.

The first Witness is *Mr Harris*, and he gives you some Account of the Original of this Design. He tells you how he was at *St. Germain's*, and introduced to the late King *James*, who did express a great Kindness for him, and told him that he had an Opportunity of doing something for him that would be for his Advantage: And that he and one *Hare*, who was present at that Time, should go into *England*, (for it seems they were both together introduced by *Collonel Parker*) and should be subsisted in *England*, and thereupon Directions were given them what Course they were to take; which was to go to *Calice*, and to each of them ten *Levidores* were given for their Charges, and they were acquainted that if it happened that they should lie there so long for Want of a Wind to bring them over hither that their Money was spent, Provision should be made for their Supply there. They had farther Directions, that when they came into *England* they should apply themselves to *Sir George Barclay*, and follow his Orders, with Instructions how to find him; being told that *Sir George Barclay* would be walking in *Covent-Garden* every Monday, and every Thursday Night, about the Hours of six or seven a Clock, and that they should know him by a white Handkerchief that was to hang out of his Pocket.

Mr Harris further tells you, That they did come to *Calice* in Order to embark for *England*, and there they happened to stay a considerable Time, even so long that their Money would not defray their Expences there, and they found it true as it was promised them; for the President of *Calice* paid the Reckoning for them at the Place where they lodged; and afterwards they came into *England*, and landed in *Kent*, and came to *Rochester*, and from thence to *London*. About the latter End of *January*, *Old Stile* (for it should seem it was the 14th *New Stile*, which is the 4th, *Old Stile*, they were at *St. Germain's*) he tells you that he did go the first Monday, after their Arrival, into *Covent-Garden*, to look after *Sir George Barclay*, but then mist him. But afterwards his Companion, *Mr Hare*, met with one *Berkenhead*, and complaining that they had not met with *Sir George Barclay* according to the Directions they

had abroad: Whereupon, by the Means of *Berkenhead*, they were brought to the Speech of *Sir George Barclay*, who gave them Reception, and owned that he had Authority to subsist them; but said he had not then Money, but shortly should, and when he had, they should be sure to receive their Subsistence. He tells you, that after this, *Sir George Barclay* gave them Subsistence Money, Paying them at the Rate of five Shillings a Day when they had no Horses, and when they had, six Shillings a Day: So they put themselves altogether under his Command and Conduct. He has given you an Account what Discourse he had with *Mr Rookwood*, from whom he discover'd what the Design was in which he was to be engaged. And the Design to assassinate the King was first intended to be put in Execution on Saturday the 15th of February, at which Day *Mr Harris*, and others, being at *Sir George Barclay's* Lodgings; *Sir George* said they were his *Janisaries*, and afterwards carest them, and said they were Men of Honour, and told them that they were to attack the Prince of *Orange* and his Guards; but it seems the King not going abroad that Day, they lost that Opportunity.

Truly, Then *Mr Harris* began to be a little troubled, and concerned, when he understood the Meaning of his being under *Sir George Barclay's* Conduct. And he says that after that first Saturday the 15th, and before the next Saturday the 22d, he met with *Lowick*, *Rookwood*, and *Bernarde*, and he was complaining of his being engaged in such a Design as this was. He called it then the Murder of the Prince of *Orange*, and said it was a barbarous Thing, and he did not like it, nor *Rookwood* neither; but as for *Mr Lowick*, whether he disliked it, or no, I know not, but he made Answer to him, I will obey Orders: Says he, *Sir George Barclay* has Orders for it, or otherwise he would not do it.

Then you are told further, that after this, on Saturday the 22d, *Mr Harris* dined with *Lowick* at a Cook's at the End of *Red Lion Street*, and being there together, *Harris* being in a Sweat, and was asked the Reason by *Lowick*, he said he had been giving of Orders for the getting some Men together that were to go under *Rookwood*, and *Lowick* told him he might very well do it, for he had Pay 6 s. a Day; but says he, I am to subsist two Men, and have nothing at all. *Mr Harris* wished him to go to *Sir George Barclay*, and complain of it to him, but he said he would not; but it seems, it being then understood by them that the King did not go abroad that Day, *Lowick* said he must go and discharge the two Men, and went about it. This is the Sum and Substance of *Mr Harris's* Evidence against *Mr Lowick*.

The next Witness is *Bertram*, and he tells you that sometime before the fifteenth of February, which was, as I told you, the very first Day that they did design to assassinate the King, *Mr Lowick* sent for him, and told him, that he would put him upon a Business that should be for his Advantage, if he would undertake it without asking any Questions; this was sometime before, but the certain Day *Bertram* does not remember; but he tells you farther, that on Friday the fourteenth of February, he was with *Lowick* at his Lodgings, and he said unto him, that the King, he did believe, was to be seized in his Coach, and we are to ride out suddenly; and then he gave him a Guinea to buy him Necessaries, and withal, bid him meet him at the *Purle-House* in *Hart-street*

next Morning; and *Bertram* tells you, he had understood what this Design was, for he had it before from *Charnock*, and did forbear to go the next Morning, because he did dislike it. After this *Mr Lowick* met him and chid him for disappointing of him, in not meeting him as he directed, for says he, it would have been the same Thing if the King had been in the Field. This is the Sum and Substance of the Evidence that *Bertram* has given against him.

Now *Bertram*, being cross-examined on the behalf of the Prisoner, says he hath known him a great while, and that he is a Man of a peaceable and fair Disposition, very charitable, and that he has given him Money before, and particularly a Guinea to his Wife in his Absence.

Indeed I might have mentioned the Evidence of *Fisher* to you, but that is but circumstantial, and does not come Home to the Case, but being given it may be mention'd, and that is, about the Eighth of February, *Fisher* had some Discourse with *Lowick*, and it seems there was Notice taken of the intended Invasion, and *Lowick* said he would serve his Master faithfully; and that the Witness thought was meant of the late King; and he said at another Time, that he would not discourse with above one at a Time, because of the late Act of Parliament that was then a passing, relating to High Treason, that required two Witnesses. Now, I say, this is not any Proof against the Prisoner, but it is a Circumstance that may shew his Inclination to the late King.

The Council for the Prisoner have insisted upon the Insufficiency of the Evidence that has been given on behalf of the King, and have said, that the late Act of Parliament requires two Witnesses, which is true, but not two Witnesses to any one Overt Act; but if there be two Witnesses, one to one and another to another Overt Act, that is sufficient; but they say that it is not so in this Case.

In the first Place, they object against the Evidence that is given by *Harris*, they say it is short, that must be left to your Consideration; whether the Evidence that is given by *Harris*, concerning *Mr Lowick*, does prove to your Satisfaction, that he consented and agreed to the Assassination of the King, you are to weigh the Evidence, when it is sworn that when *Harris*, *Rookwood*, and the Prisoner were walking in *Red Lion Fields*, and talking of this horrid Design, and *Harris* complained that it was a barbarous Thing to murder the Prince of *Orange*, as they call'd him, you must consider what Answer *Lowick* did make about obeying of Orders; then his subsisting of Men at his own Charge without Pay, and complaining of his having no Pay, and his discharging them the last Day that the Assassination was intended, that I must leave to you, whether or no this is not an Evidence, if you believe the Witness, to satisfy you that he was engaged in this Design.

Then Gentlemen, he has also been desir'd to give an Answer to this Question, and to tell upon what Design he was to employ *Bertram* that should be for his Advantage; but he was to ask no Questions, and afterwards whether he did tell him the King was to be seized in his Coach, and they were to ride out suddenly and bid him meet him the next Morning, and when he did not meet him, he said, It would have been the same Thing if the King had been in the Field. If this be an Evidence of *Mr Lowick's* engaging in and

agreeing and consenting to the Design, then here will be another Witness against the Prisoner besides *Harris*.

Gentlemen, you are to judge of this Matter and of the Evidence. It is true, we are not to put, in the Case of a Man's Life, any forced and violent Constructions upon any Words or Discourses; but if the Evidence be plain and clear, tho' he did not say in express Words, that he did design to assassinate or kill the King; yet, if upon the whole Discourse that past between them it appears plainly, clearly, and satisfactorily to you that he did consent and agree to this Design, or was engaged in it, here's another Witness, I say, to prove him guilty, besides *Harris*; you are to consider the whole Evidence, the subject Matter of Discourse, and if you are satisfied, I say, that he was engaged in such a Design by the Proof of *Bertram*, as well as of *Harris*, then there are two Witnesses, which is as much as the Law requires.

But, indeed, the Council have called several Witnesses to prove that the Prisoner has lived very peaceably and quietly; one Woman says, She has known him twelve Years, and that he lodged at her House, and that he was a Man of great Temper and Candour, and not disorderly, but had a general good Esteem and Character: And then there is another, *Mrs Mosely*, that proves the like, and says, She has known him these twenty Years, and she says no Man has a better Character: And *Mr Bertram* hath said, that he was not of a rash or bloody Temper.

Now, Gentlemen, I must leave it to you, upon the Evidence that you have heard, there are these Witnesses that have been produced, and there are these Circumstances that appear in the Case; if you are satisfied upon this Evidence that has been given, that the Prisoner *Mr Lowick*, did consent to and engage himself in that Design of Assassinating the King, then you are to find him guilty; if you are not satisfied, you are to find him not guilty; you have heard your Evidence, and had best consider of it.

Then an Officer was sworn to keep the Jury, who withdrew, and staid out about half an Hour, and then returned.

Cl. of Ar. Gentlemen of the Jury, answer to your Names, *George Ford*.

Mr. Ford. Here. *(And so of the rest.)*

Cl. of Ar. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Ar. Who shall say for you?

Jury. Foreman.

Cl. of Ar. *Robert Lowick*, hold up thy Hand, *(which he did.)* Look upon the Prisoner; how say you, Is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty, my Lord.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treason committed, or at any Time since?

Foreman. None, to our Knowledge, we do not find any.

Cl. of Arr. Then hearken to your Verdict, as the Court hath recorded it. You say that *Robert Lowick* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, Chattels, Lands or Tenements at the Time of the High Treason committed, or at any Time since to your Knowledge, and so you say all.

Jury.

Jury. Yes.

L. C. J. Discharge the Jury.

Cl. of Arr. Gentlemen of the Jury, the Court discharges you, and thanks you for your Service.

L. C. J. Mr Attorney, Will you have the Prisoners set to the Bar?

Mr Att. Yes, if your Lordship please.

Then the Keeper of Newgate brought Rookwood and Cranburne, and all three were set to the Bar.

Mr Att. Gen. If your Lordship please to give Judgment against the Prisoners that are convicted.

L. C. J. Ask them what they have to say for themselves in Arrest of Judgment.

Cl. of Arr. Robert Lowick, hold up thy Hand; you stand convicted of High Treason, in Conspiring the Death of the King by Assassination, what can you say for your self why the Court should not give Judgment against you, to die according to Law.

[Then the Keeper bid him kneel.]

L. C. J. No, no, he need not kneel; if you have any Thing to say, *Mr Lowick*, we will hear you.

Lowick. I throw my self upon the King's Mercy.

Cl. of Arr. Ambrose Rookwood, hold up thy Hand, *(which he did)* you stand convicted of the same High Treason, for Conspiring the Death of the King by Assassination, what can you say for your self why the Court should not give you Judgment to die according to Law.

Rookwood. All that can be said has been said already, and so I shall say no more.

Cl. of Arr. Charles Cranburne, hold up thy Hand, thou standest convicted of High Treason, in Conspiring the Death of the King by Assassination, what canst thou say for thy self, why the Court should not give the Judgment to die according to Law?

Cranburne. I have nothing to say but what I have said already.

Cl. of Arr. Then Cryer make Proclamation.

Cryer. O, yes, all Manner of Persons are commanded to keep Silence while Judgment is in giving, upon Pain of Imprisonment.

L. C. J. You the Prisoners at the Bar, *Robert Lowick, Ambrose Rookwood, and Charles Cranburne,* you have been indicted, and upon full and clear Evidence have been convicted of High Treason; a Treason that was advanc'd to the highest Degree both of Malice and Mischief against the King and Kingdom; you design'd to assassinate the King with an Intent to subvert the State, and by the introducing of a foreign Power to destroy the antient Liberty and Constitution of *England*.

Our *French* and Popish Enemies, by whom you were employed in this bloody Enterprize, did very well know, that the Wisdom and Courage of his present Majesty has rescued this Kingdom from that Slavery and Oppression which they often threatened to bring upon us; they knew that under his Government we have been protected in the Enjoyment of our Religion, Laws and Liberty for several Years, and that his Majesty is the Head of the Protestant Interest, and the Protector and Preserver of the Liberty of *Europe*, and that upon the Preservation of his

Life and the Safety of his Person, the Good and Happiness of Multitudes of People do depend, which the *French* King's Pride and Ambition has been ready to take hold of any Opportunity to enslave and oppress.

Your being engaged in such a horrid Design against so precious a Life, and to be the bloody Instruments to give that dismal Stroke, which would have brought Misery and Desolation upon so many Men, renders you worthy to undergo a greater and more severe Punishment than by the Law of *England* can be inflicted; but that there is no greater provided for such Criminals, is to be imputed to the antient Honesty and Integrity of *English* Men, who, when they fram'd this Constitution of Government, never imagin'd *England* should produce such degenerate Wretches, as would endeavour by Plots and Contrivances to betray their Country to a foreign Yoak, and subject themselves and their Fellow Subjects to the slavish Dominion of Strangers.

Your Crime being so great, it is now high Time for you seriously to reflect upon it; and tho' you deserve to suffer the greatest of Punishments, yet I have that Compassion for your Persons, that I wish heartily you would make Use of that Opportunity which is now put into your Hands, to repent. And since you are adjudg'd by the Law unworthy to live here, that you will make Preparation to appear at another Tribunal, where you must have another Tryal, and, without an hearty and sincere Repentance, receive a more severe Sentence. I hope this Calamity, and the Judgment that is to fall upon you, will be an Admonition to you to take better Advice in the last Part of your Time which is left you, than you have done in the whole Course of your Lives, and that you will be wiser than to follow the Direction of those Guides whose Principles and Doctrines have so far perverted and corrupted you, as to ingage you in such a bloody Design. I shall leave you to make that Preparation for another World, which is proper for Men in your Condition, and pronounce the Judgment of the Court, which the Law hath appointed and the Court does award;

That all of you be conveyed from hence to the Prison from whence you came, and from thence every one of you is to be drawn upon a Hurdle to the Place of Execution, where you are to be hanged by your Necks, and to be cut down while you are alive, your Privy Members are to be cut off, and your Bowels to be cut out of your Bodies and burnt in your View, your Heads are to be cut off, and your Bodies to be divided into four Parts, and your Heads and Quarters are to be disposed where his Majesty shall appoint. And I pray God to have Mercy on all your Souls.

Cranburne. I humbly desire the Liberty of my Wife and Relations to come to me, and such Divines as I shall desire may have free Recourse to me.

L. C. J. You shall have that Liberty that is allowed to all Persons in your Condition.

Rookwood.

Rookwood. I must beg the same Favour, to have some few Friends and Relations come to see me without a Keeper.

L. C. J. Holt. You shall have a Warrant for your Friends to come to you.

Rookwood. I beg your Lordship that you would please to specify it in the Warrant, because they would not grant hitherto without a Keeper being by.

L. C. J. You mean, you would have your Brother permitted to come to you.

Rookwood. Yes, and some few Relations.

L. C. J. What is usually done in such Cases, let it be done.

Lowick. My Lord, I desire the same Thing, that my Sister may come to me, and that the little Time I have I may be in private with my Friends.

Mr Att. Gen. If your Lordship please, they may give the Names of those they would have admitted to them, and then the Keeper will attend your Lordship for your Direction.

L. C. J. That the Keeper must take care of,

least they allow such a Liberty as may endanger an Escape; for their being alone may prove a dangerous Thing.

Mr Att. Gen. It is reasonable they should tell who they are, before they be admitted.

L. C. J. You allow them, I suppose, to have private Discourse in the same Room, if a Keeper be by.

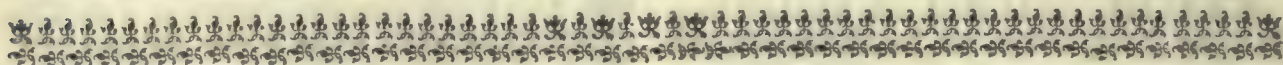
Cranburne. No, my Lord, we never had.

Mr Att. Gen. Such as your Lordship thinks proper to be admitted to them may have Discourse with them in private, if the Keeper be in the Room, but no others but such as your Lordship shall allow; for we know what has been the Effect of a Liberty of Access to some Prisoners.

L. C. J. Let us have a Note of those Names that you would have come to you, and we will give Directions that shall be proper in it.

Cl. of Arr. Sheriff of *Middlesex*, you must take them into your Custody till Execution is done.

Then the Keeper took away the Prisoners.



The TRYAL of PETER COOK, Gent.

Publish'd by AUTHORITY.

Die Sabbati Nono Maii Anno Domini, 1696. Annoque Regni Gulielmi Tertii, Octavo.

At the Sessions-House in the Old-Bailey, London.

Dominus Rex Versus Petrum Cook.

HIS Day being appointed for the Trial of Mr *Peter Cook*, upon an Indictment of High-Treason found against him by the Grand Jury for the City of *London*, upon the Commission of Goal-Delivery of *Newgate*, holden for the said City, upon which Indictment he had been Arraigned, and upon pleading not guilty, Issue had been joined, and the Court having been adjourned unto this Day for the Trial by publick Proclamation in usual manner, the Court was resumed, and the Names of the Men returned to serve on the Jury, having been called over according to the Pannel, and the Defaulters recorded; the Court proceeded as follows.

Cl. of Ar. Set *Peter Cook*, the Prisoner, to the Bar: (*Which was done.*) You the Prisoner at the Bar, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will Challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

Cook. Sir, I desire you would not name them too fast, for my Eyes are very bad.

Cl. of Arr. *John Ewer.*

Cook. Who must I apply my self to, Sir? I desire to know whether he is a Freeholder in *London*?

Cl. of Arr. I know nothing to the contrary, Sir, he is returned as such by the Sheriff; you had best ask him himself, he can best tell.

Cook. Are you a Freeholder in *London*, Sir?

Mr Ewer. Yes, Sir, I am a Freeholder.

Cook. Sir, I challenge you.

Cl. of Arr. *Henry Sherbrook,*

Cook. Sir, are you a Freeholder in *London*?

Mr Sherbrook. Yes, Sir, I am.

Cook. I challenge you. — No, Sir, I beg your Pardon, I do not challenge you.

Cl. of Arr. Then hold Mr *Sherbrook* the Book: (*Which was done.*) Look upon the Prisoner: You shall well and truly try and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, according to your Evidence, So help you God.

Cl. of Arr. *Joseph Billers.*

Cook. Are you a Freeholder, Sir, in *London*?

Mr Billers. Yes, I am.

Cook. I challenge you, Sir.

Cl. of Arr. *John Brand.*

Cook.

Cook. Pray, Sir, don't go too fast; Are you a Freeholder in London, Sir?

Mr Brand. I am no Freeholder in London.

L. C. J. Treby. What say you, Mr Attorney?

Mr Att. Gen. My Lord, I would not have any Body that is not a Freeholder serve; so he was set by.

Cl. of Arr. William Hull.

Mr Hull. My Lord, I am no Freeholder in London.

L. C. J. Treby. Why, what Estate have you?

Mr Hull. What I have, is in Leases.

L. C. J. Treby. What, Leases for Years, or Leases for Lives?

Mr Hull. Leases for Years, Sir.

L. C. J. Treby. Then he cannot serve upon the Jury.

Cl. of Arr. Edward Leeds.

Cook. Hold, Sir, let me see; are you a Freeholder in London, Sir?

Mr Leeds. Yes, Sir.

Cook. Sir, I challenge you then.

Cl. of Arr. Thomas Clark.

Cook. Hold, Sir, I pray let me look upon my Paper. I challenge him.

A Stander-by. He does not appear.

Cl. of Arr. Nathan Green.

Cook. Where is he, Sir? Are you a Freeholder?

Mr Green. Yes, I am, Sir.

Cook. I challenge you.

Cl. of Arr. Thomas Emes.

Cook. Are you a Freeholder, Sir?

Mr Emes. Yes, I am.

Cook. Were you one of Sir John Friend's Jury?

Mr Emes. Yes, I was.

Cook. Then I challenge you for Cause, and I give you my Reason.

Mr Serj. Darnall. I pray, let us hear your Reason; give your Reason for your Challenge.

Cook. It is for being of Sir John Friend's Jury.

Mr Serj. Darnall. Then you challenge him for Cause.

Cook. Yes, that he was of Sir John Friend's Jury.

L. C. J. Treby. Well, Brother Darnall, how is that a Cause of Challenge? You are the Prisoner's Council, let us hear what you say to it.

Mr Serj. Darnall. My Lord, what we have to say to it, is this; Here are some Persons returned upon this Pannel, that were formerly Jurors in a Cause that was try'd for the same Species of Treason that this Gentleman, the Prisoner, is charged with in this Indictment; and I think the Witnesses at that Trial did mention in their Evidence my Client, as being present at those very Consults, about which they gave their Evidence; these Gentlemen gave Credit to those Witnesses, and found the Verdict against the Person then accused. We humbly submit it to your Lordship and the Court, whether we may not for this Cause challenge this Person as not indifferent, it being for the same Cause and Consult, that the other was try'd for.

Mr Att. Gen. Sure Mr Serjeant is not in earnest in this Objection.

Mr Serjeant Darnall. My Client thinks it a very good Objection, that he is not indifferent, and I desire he should be satisfied in it.

Mr Att. Gen. If he thinks so, he may except against him, but if he insists upon it as a Cause of Challenge, we desire you would put the Case, and my Lords the Judges determine it.

Mr Serjeant Darnall. I have told you what the Case is.

L. C. J. Treby. But you hear the King's Council insist upon it, to have you make it out in Point of Law.

Mr Serjeant Darnall. My Lord, I have stated the Case as my Client desired, and we submit it to you.

L. C. J. Treby. Well, there is nothing in it.

Mr Serj. Darnall. Then my Client, if he will not have him serve, must challenge him peremptorily; which he did.

Cl. of Arr. Francis Byer.

Cook. Sir, Are you a Freeholder?

Mr Byer. Yes, I am.

Cook. I challenge you.

Cl. of Arr. James Denew.

Mr Denew. I am no Freeholder.

Cl. of Arr. Henry Hunter.

Cook. Hold, hold, my Lord, I challenge him as being one of Sir John Friend's Jury.

Mr Baker. Nay that was not allowed in Mr Emes's Case; but you challenged him peremptorily, and so you must now, if you have a Mind to it.

Cook. I challenge him.

Cl. of Arr. John Hall.

Cook. Are you a Freeholder in London, Sir?

Mr Hall. Yes, I am, Sir.

Cook. I challenge you.

Cl. of Arr. John Cullum.

Cook. Sir, Are you a Freeholder in London?

Mr Cullum. Yes, Sir.

Cook. I challenge you.

Cl. of Arr. John Cox.

Mr Cox. My Lord, I am no Freeholder in London.

Cl. of Arr. John Hedges.

Cook. Hold, I pray, Sir, let me look upon my Paper; Sir, Are you a Freeholder in London?

Mr Hedges. Yes, Sir, I am.

Cook. I challenge you.

Cl. of Arr. Thomas James.

Mr James. My Lord, my Name is not Thomas.

Mr Sh. Buckingham. He is returned, it seems, by a wrong Name; we did not know it.

Mr Serj. Darnall. Then you cannot swear him.

Cl. of Arr. Thomas Poole.

Cook. Are you a Freeholder in London, Sir?

Mr Poole. Yes, Sir.

Cook. I challenge him, as being of Sir John Friend's Jury.

Mr Att. Gen. That has been over-ruled already.

Cook. I challenge him.

Cl. of Arr. Peter Parker.

Cook. Are you a Freeholder in London?

Mr Parker. Yes, Sir, I am.

Cook. I challenge you, Sir, as being one of Sir John Friend's Jury.

Mr Baker. Nay, you can't offer it again.

Cook. I challenge him.

Cl. of Arr. George Grove.

Cook. Where is he? Are you a Freeholder in London, Sir?

Mr Grove. Yes, Sir.

Cook. I challenge you.

Cl. of Arr. Nathanael Wyersdell.

Cook. Are you a Freeholder in London?

Mr Wyersdell. Yes, Sir, I am.

Cook. I challenge you, Sir.

Cl. of Arr. Samuel Blewit.

Cook. Hold, pray, Are you a Freeholder, Sir?

Mr Blewit.

Mr Blewit. Yes, I am.

Cook. I challenge him.

Cl. of Arr. John Wolfe.

Cook. I challenge him.

Cl. of Arr. Joseph Wolfe. He did not appear, and was said to be no Freeholder.

Cl. of Arr. William Smith.

Cook. Are you a Freeholder, Sir?

Mr Smith. Yes, I am.

Cook. Sir, I challenge you.

Cl. of Arr. Edward Fenwick.

Cook. Are you a Freeholder, Sir?

Mr Fenwick. Yes, Sir, I am.

Cook. I do not challenge him.

Cl. of Arr. Then swear Mr Fenwick. (Which was done.)

Benjamin Hooper.

Cook. Stay, Sir, pray stay a little, where is he?

Cl. of Arr. There he is, Sir.

Cook. Which is the Gentleman? Are you a Freeholder in London, Sir?

Mr Hooper. Yes, Sir.

Cook. I challenge you.

Mr Hooper. I thank you, Sir.

Cl. of Arr. Nathaniel Long.

Cook. Are you a Freeholder, Sir?

Mr Long. Yes, Sir.

Cook. I challenge him, as being of Sir John Friend's Jury.

Cl. of Arr. The Court has adjudged that no Cause of Challenge, therefore I take no notice of it, but as a peremptory Challenge.

Cl. of Arr. Richard Chiswell.

Cook. Are you a Freeholder in London, Sir?

Mr Chiswell. Yes, Sir.

Cook. I challenge you.

Cl. of Arr. John Child.

Cook. Hold, pray, a Moment; I have not crost these last in my Paper, but I challenge this Man, being of Sir John Friend's Jury.

Mr Baker. You have had that answered over and over again, as no Objection; it is nothing but a peremptory Challenge.

Cl. of Arr. William Walker.

Mr Walker. I was one of Sir John Friend's Jury.

Cook. I challenge him for the same Reason.

Mr Att. Gen. But that is no Reason at all.

Cook. Then I challenge him.

Cl. of Arr. John Wells.

Cook. Sir, are you a Freeholder?

Mr Wells. Yes, Sir, I am.

Cook. Sir I challenge you.

Cl. of Arr. John Hibbert.

Cook. Which is he, Sir?

Cl. of Arr. He stands upon your left Hand; the Man in the Black Peruke.

Cook. Are you a Freeholder, Sir?

Mr Hibbert. Yes, I am, Sir.

Cook. I challenge him.

Cl. of Arr. Daniel Wray.

Cook. Stay, Sir, are you Mr Wray?

Mr Wray. Yes, Sir, my Name is Wray.

Cook. Are you a Freeholder in London, Sir?

Mr Wray. Yes, Sir.

Cook. I challenge you.

Mr Wray. I thank you, Sir.

Cl. of Arr. John Pettit.

Cook. Which is he?

Mr Pettit. I am the Man, Sir.

Cook. Are you a Freeholder in London, Sir?

Mr Pettit. Yes, Sir.

Cook. I challenge you.

Cl. of Arr. John Sherbrook.

Cook. I challenge him, as being one of Sir John Friend's Jury.

Mr Baker. But you have heard that denied to be an Exception over and over.

Cook. I challenge him.

Cl. of Arr. Stephen Blackwell.

Cook. Are you a Freeholder, Sir?

Mr Blackwell. Yes, I am.

Cook. I challenge you.

Cl. of Arr. William Hatch.

Cook. Pray give me time to mark them; pray, who is this Man you now call?

Cl. of Arr. William Hatch.

Cook. Sir, Are you a Freeholder?

Mr Hatch. Yes, I am.

Cook. Sir, I challenge you.

Cl. of Arr. Henry Beadle.

Cook. Are you a Freeholder, Sir?

Mr Beadle. Yes, I am.

Cook. I do not except against him. (He was sworn.)

Cl. of Arr. John Stredwick.

Mr Stredwick. My Lord, as I apprehend, I am no Freeholder.

L. C. J. Treby. Why do you apprehend so?

Mr Stredwick. It is my Wife's Estate, not mine.

Cl. of Arr. Then your Wife has a Freehold, it seems.

Mr Stredwick. Yes, she has.

L. C. J. Treby. That is Freehold enough; for you have an Estate for your Wife's Life.

Mr Baker. And after that too, for it is not given over to any Body else, and she wont give it from him.

Cook. Sir, are you a Freeholder in London or no?

Mr Stredwick. I apprehend, Sir, I am not.

Mr Baker. He says he has an Estate for his Wife's Life.

Cl. of Arr. Then he is a Freeholder, what do you say to him?

Cook. Are you positive you are a Freeholder in London upon your Word?

Mr Stredwick. I think not.

Mr Baker. Why your Wife's Estate is your's for your Life.

Cook. My Lord Chief Justice, if your Lordship pleases, here is a Man that says positively he thinks he is no Freeholder, I desire your Lordship's Judgment, whether he be a Freeholder or not?

L. C. J. Treby. Why, let him put his Case, if he make a Doubt of it.

Mr Stredwick. I am not posselt of any Estate my self.

L. C. J. Treby. But is not your Wife an Inheri-
trix?

Mr Stredwick. Yes, my Lord, she is.

L. C. J. Treby. Then you are seized of a Freehold in her Right; and Mr Cook, your own Council will tell you and satisfy you, that that is a Freehold sufficient for this Service.

Mr Baker. His Wife's Father settled it upon her and her Heirs.

L. C. J. Treby. No question, it is a sufficient Freehold if the Wife be living.

Mr Baker. Yes, she is.

Cook. I challenge him.

Cl. of Arr. William Prince.

Cook. I challenge him, as being one of Sir John Friend's Jury.

Mr Prince.

Mr Prince. I thank you, Sir.

Cl. of Arr. *John Simmons.*

Mr At. Gen. We challenge him for the King.

Cl. of Arr. *Robert White.*

Cook. Are you a Freeholder, Sir.

Mr White. Yes, I think so.

Cook. Pray tell me whether you are, or not.

Mr White. Indeed I think so, Sir.

Cook. I challenge him.

Cl. of Arr. *Edward Brewster.*

Cook. Where is Mr Brewster? Are you a Freeholder, Sir, in London?

Mr Brewster. Yes, Sir.

Cook. I challenge him. Pray Sir, I desire to know how many I have challenged.

Mr Baker. You have challenged Thirty Three.

Cook. How many besides those that are of Sir John Freind's Jury.

Mr Baker. You have but two more to challenge, Sir.

Mr Serj. Darnall. I thought you had heard the Opinion of the Court, Mr Cook, that it will not hold as a Cause of Challenge that he was of Sir John Freind's Jury, therefore those are all reckon'd among the peremptory Challenges, and you can challenge but Two more in all.

L. C. J. Treby. Not without Cause, but as many more as you can have good Cause against.

Cl. of Arr. *John Reynolds.*

Cook. I except not against him. (He was sworn.)

Cl. of Arr. *Joseph Brookbank.*

Cook. I have nothing to say to him. (He was sworn.)

Cl. of Arr. *Adam Bellamy.*

Mr Bellamy. My Lord, I am no Freeholder.

L. C. J. Treby. Why, what Estate have you?

Mr Baker. He has Estate enough, I know, for Value.

Mr Bellamy. I have only a Lease.

L. C. J. Treby. A Lease for Years?

Mr Bellamy. Yes, my Lord.

Cl. of Arr. *David Grill.*

Mr Grill. I am no Freeholder, my Lord.

Cl. of Arr. *William Rawlins.*

Cook. I accept of him. (He was sworn.)

Cl. of Arr. *Samuel Roycroft.*

Cook. Are you a Freeholder, Sir?

Mr Roycroft. Yes, Sir.

Cook. I challenge him.

Cl. of Arr. *Thomas Parker.*

Cook. How many have I to challenge, do you say?

Cl. of Arr. But one, Sir; what say you to Mr Parker?

Cook. I do not except against him. (He was sworn.)

Cl. of Arr. *James Robinson.*

Cook. I have nothing to say to him. (He was sworn.)

Cl. of Arr. *Joseph Morewood.*

Cook. I challenge him.

Mr Baker. You have challenged all your Number now.

Cl. of Arr. My Lord, we have gone through the Pannel, we must now call the Defaulters again. *Thomas Clark.*

Mr Clark. Here.

Sir B. Shower. Was he here when he was call'd over?

Mr At. Gen. That's nothing, he is here now.

Sir B. Shower. But if there be a Default of the Jury, and the King's Council have challenged any one, they ought to shew their Cause; therefore we desire that they may shew their Cause why they challeng'd Mr Simmons.

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L. C. J. Treby. The King has Power to challenge without shewing Cause till the Pannel be gone through; but if there be a Default of Jurors when the King challenges, the King's Council must shew Cause.

Sir B. Shower. Here is a Default of Jurors, my Lord.

L. C. J. Treby. No Body is Recorded absolutely a Defaulter, if he comes in time enough to be sworn.

Cl. of Arr. Swear Mr Clark. (Which was done.)

L. C. J. Treby. When there is an apparent Default of Jurors, then they must shew their Cause; but here his Appearance, it seems, was recorded, and so he was no Defaulter; and you might have challenged him for Cause still.

Cl. of Arr. *James Dry.*

Mr Dry. My Name is not James.

Serj. Darnall. Then you cannot swear him: Here are Three mistaken in their Names.

L. C. J. Treby. That is in the Copy in your Brief, Brother, it may be.

Mr Serj. Darnall. No, my Lord, the Officers admit it.

Mr At. Gen. My Lord, we desire those Gentlemen, that say they are no Freeholders, may be sworn to that Matter. (Which was accordingly done.) And several of them that had staid, did deny the having of any Freehold upon Oath, and some were gone away.

L. C. J. Treby. Pray take care to estreat the Issues, and return greater Issues the next time.

Mr F. Rokeby. Truly the Court must put some great Penalty upon them for trifling with the Court in respect of their Duty that they owe to the King and Country, in regard of their Estates.

Cl. of Arr. Pray, let the Officers be called who summoned this Jury, Mr Sheriff.

(Which was done.) And they examined concerning their summoning those who made Default, and the Issues of those who were recorded as Defaulters were ordered to be estreated.

Then the Court not being able to proceed for want of a Jury, they ordered another Pannel to be ready against Wednesday next, to which time, at Seven in the Morning, the Court was by Proclamation adjourned.

Die Mercurii Decimo Tertio Maii, Anno Dom. 1696.

The Court being met according to the Adjournment, the Pannel was called over, and the Defaulters Recorded, and several excused for Absence upon Sicknes, and being out of Town before the Summons. Then Mr. Serjeant Darnall desired before the Jury was called, to move something against the Pannel: And made his Motion thus;

Mr Serj. Darnall. **I**F your Lordship pleases, I have somewhat to offer to you before you go upon this new Pannel; and I confess, I think it is my Duty to the Court, as well as to the Prisoner, to state the Case as it is, and submit it upon the Reason of Law, and the Authorities that I shall offer, whether the Proceedings upon this new Pannel will not be erroneous? My Lord, the Question is, Whether as this

this Case is, the Prisoner has had a Copy of the Pannel of his Jury by which he is to be tried; according as the late Law requires? he had a Copy of the former Pannel, and upon that Pannel Nine were sworn, and their Names all entered upon Record, and made Parcel of the Record. Therefore now the Question is, whether he can be tried upon a new Pannel? We are in a Case that rarely happens; and in a Case of Life and Death, I know your Lordship will be careful not to vary from the ancient Practice; or to make a new Precedent, because of the Consequences. It must be agreed in this Case, that the old Pannel upon which the Prisoner took his Challenges, and of which Nine were sworn, is Parcel of the Record. Now, my Lord, to add a new Pannel, upon which Twelve more shall be sworn, and all this appear upon Record, and the Prisoner tried upon the last Pannel, will not this be Error? I offer this before the Jury be called and sworn, because we desire to be fairly tried; and we design to rest upon the Fact in this Case. If it should appear, That he is tried upon a Pannel that is unduly made and returned, that will be of Evil Consequence one way or other. And can this be duly made, if another appear upon Record before it? And can any Body say it is quasht or abated? Or can it be so? My Lord, in *Stamford's Pleas of the Crown*, p. 155. it is said, *If any of the Pannel die after the Return, and before their Appearance, so that there are not enough left to make the Jury, yet the Pannel shall not be quasht, nor is it abated, but it is Cause to grant a Tales.* And certainly, my Lord, it is a stronger Case, when by reason of Challenges, which the Law gives the Prisoner liberty to make, there are not enough left, that there shall not be a new Pannel, but that a *Tales* shall be granted; for if a new Pannel might be made, it cannot appear who were challenged, or who were admitted. And if your Lordship Pleases to consider the Intention of the Law in giving the Prisoner Power to challenge, is, that he may have an indifferent Jury; but that would be prevented by such a Practice as this; for when it has been discovered upon the old Pannel whom the Prisoner chose, and whom he challenged upon the new Pannel, the Persons challenged may be set first, and those that were chosen may be omitted, or so postponed, that none of them whom he thought equal to try him, can serve upon the Jury. And truly, my Lord, if I am rightly informed, that is the Case upon this new Pannel, some of those that were admitted and sworn are left out, and most of them, I think, are put last in the Pannel whom he thought equal Men to try him, and all those whom he challenged peremptorily, are the first Men in the Pannel. This, my Lord, is the Case before you, and if this be admitted, the Use and End of Challenges, which are in benefit and favour of Life wou'd be defeated. And for Authorities in this Case, besides the Reason and Ground of the Law, many cannot be expected, because it is a Fact that rarely happens. I find none of the ancient Practicers ever knew it, but I find that a *Tales* ought to be granted, so it is said in several Books, as in *Stamford*, 155, 156. when ever upon the Principal Pannel, all the Jury does not appear, or so many of them do not, that there are not enough left to make a Jury, which is our very Case; then in such Case the Pannel shall not be quasht or abated; but a *Tales* granted, so is 14 H. 7. 7. there the Question

was, Whether there should be a greater Number returned upon the *Tales* than were in the Principal Pannel, and there the Difference was insisted upon, and agreed, That where it is between Party and Party, where Life is not concerned, it shall not, but where Life is concerned, and the Prisoner has Power to challenge 35 peremptorily, there the Judge may award as many upon the *Tales* as he pleases, that there may be enough to remain after the Challenges; so that if this old Pannel be not abated; and cou'd not be quasht, and a *Tales* might be granted to consist of any Number, I conceive the Prisoner cannot be tried upon this new Pannel, but it will be Erroneous; and I humbly submit to your Lordships, whether you will proceed upon it.

Sir B. Shower. If your Lordship pleases to spare me a Word of the same Side, with Submission, We think there ought to have been an *Habeas Corpora*, with a *Tales*, such as had been before Sworn, being to be Part of the Jury now, and that is the proper Way to bring the Prisoner to his Trial in this Case; the King's Council cannot expect we should produce many Precedents, for I believe this is the Second of the Kind that ever happened, at least, within Memory, That a Trial in Treason was put off *pro defectu Juratorum*, though I have a Precedent that I think is express in the Case; but we insist in the first Place, That a *Tales* does lie at Common-Law, in the Case of Life; and so the Book that Mr Serjeant cited in *Stamford*, is express; and then we say, that the Answer which we expect, that we are now before Justices of Goal-Delivery, is not sufficient, because the Justices of Goal-Delivery, though they do not usually award Process by way of Writ, but before their coming, they command the Sheriff to have his County ready there, and so in Fact, it is a *Parol Precept*; yet when it is returned, then it is entred upon Record, either *Preceptum est Vice Comiti quod venire faceret*; or, *Ideo veniat Jurata*; and the Jury are entred upon Record: So that take it to be before Justices of Goal-Delivery, yet the Sheriff having returned a Pannel, and that being upon the File, as appears before your Eyes, in Obedience to your Command, and that Copy of the Pannel being delivered to us two Days before *Saturday* last, we humbly submit it to your Lordship, whether by Force of the Common-Law, and of the late Act of Parliament, we ought not to be tried by that Pannel; we insist upon it, that the Act intends, and expressly designed, that not only the Prisoner shou'd have a Copy of the Pannel that the Sheriff returned at any time after, but that he should be tried by the Pannel that we had a Copy of at first; for it is not said a Copy, *toties quoties* the Court shall think fit to award a Precept for a new Pannel, but the Words of the Act are a Copy of the Jury duly returned by the Sheriff; now this we had, and your Lordship knows it is not a returned Pannel till it be in Court, and then it becomes part of the Record: My Lord, I do agree the Justices in some Cases have quasht and set aside Pannels and Juries, and ordered new ones, and I confess there was an extraordinary Case in the Time of King Charles the Second, which was upon the Indictment against *Whitebread*, where after the Jury Charged, and Evidence given, the Jury was discharged, and a new Pannel made the next Sessions, upon which Mr *Whitebread* was Tried and Con-

Convicted; how just or regular that was, I will not insist upon now, but I am sure there were great Complaints of that Practice, and few Precedents can be shewn of the like: But besides, the Parties themselves waved it there, no Objection being taken against it; but we insist upon it in this Case, that this being upon Record, is Part of the Record, and so appears to the Court: If the Record indeed were to be made up upon a Writ of Error, perhaps it wou'd be no Error, because it may be they wou'd leave it out; but here it appears there was a Pannel of Record before you, and this must either be quash'd, or altered, or continued on by Process; you have Power to quash it, if it be unduly returned by the Sheriff. If there be any evil Practices for procuring the Pannel, either by the Prosecutor, or the Prisoner; if there be no Freeholders return'd, or the same happen in any other respect not to be legally done according to the Command or Precept of the Court; but because there is a Default of Appearance of Jurors, no Pannel was ever quash'd upon that Account. Then say we, if it be not quash'd, this Pannel must continue; for, What shall become of it? Why should it not continue? It is not within the Act of Parliament that gives the Justices Power to make a new Pannel, as in the Case of a Grand Jury when they are guilty of Concealments, or refuse to find Bills upon great Evidence, but we have no such Case before you, nor do I know any such Rule as can reach this; so that we take it, there is no Difference between this Case, as before Justices of Goal-Delivery, and other Justices; that Process does lie against the Jury that does not appear even in Treason and Felony, there is no Dispute, and it is very properly so, if it be before Commissioners of Oyer and Terminer; first a *Venire facias*, and then upon Default, a *Habeas Corpora*, that is the proper Way; then take it before Justices of Goal-Delivery, there it is entered upon Record, *Præceptum est Vice Comiti*, &c. and here is a Pannel returned by virtue of this Precept, and some of the Jury do not appear, and so there are not enough to Try the Prisoner after a great many Sworn and Challenged, and this entered upon Record. What shall become of that Pannel, it cannot be quash'd nor abated? My Lord, there is a Case that does warrant that Opinion of a *Tales* in a Case of Felony; and if there may be a *Tales*, then there may be an *Habeas Corpora*, and there are Directions how the Jurors shall be Sworn again, upon their appearance on the *Habeas Corpora*, and that is *Wharton's Case* in *Yelverton* 23.

Mr J. Powell, jun. Do not dispute that, it is plain, that a *Tales* does lie in Felony, upon a Commission of Oyer and Terminer; but can you shew me, Sir *Bartholomew*, any where, that upon a Commission of Goal-Delivery a *Tales* does lie?

Sir B. Shower. Sir, I can only shew the Reason of the Law, and I cannot find that does contradict what we now contend for.

Mr J. Powell. I tell you, Sir *Bartholomew*, there is no *Tales* but with a *Habeas Corpora* to bring in the first Jurors, and that cannot be upon a parol Precept on a Commission of Oyer and Terminer, there goes a *Venire facias*, which is a Writ upon which the *Habeas Corpora* may be grounded, but there is no *Venire facias* upon a Commission of Goal-Delivery.

Sir B. Shower. Why should there not be a Precept in nature of an *Habeas Corpora* for a Jury return'd, upon a Precept as well as on a Writ?

Mr J. Powell. No, it never was done; the Commission of Goal-Delivery is a general Commission that does Authorize the Sheriff to impanel, and have a Jury ready at the Day appointed, for the Delivery of the Goal, to Try the Prisoners; it doth import in it self a general Precept for that Purpose, before Issue joyned, which the Sheriff cannot do in the Case of a Commission of Oyer and Terminer, but must have a Writ of *Venire facias*, after Issue joyned.

Mr Sol. Gen. In all the Cases that they cite, there is a Writ of *Venire facias*, upon which the After-process, by Writ, may be grounded; but here is no Foundation for any future Process by Writ, because it is only by Parol-Precept.

Mr Att. Gen. Sure these Gentlemen don't think what they say; the Pannel is not Part of the Record, and there is no Record of it; nothing but the Clerk's Entry in a Paper, or Note, for his own Memorandum.

Mr J. Rokeby. Brother *Darnal*, have you any Book that says, Justices of Goal-Delivery must award a *Tales* upon Default of the Jurors.

Mr Serj. *Darnal*. No, my Lord, I cannot say so.

L. C. J. Treby. Suppose all the Jury had been challenged, or dy'd.

Mr J. Powell. There could be no quashing of it, but it would fall of it self, for Want of a Jury.

Mr J. Rokeby. If, according to your Doctrine, we must keep to the first Pannel, the Consequence wou'd be, there would be no Tryal at all.

Sir B. Shower. *Stamford* makes no Difference that I can see.

Mr Att. Gen. But these Gentlemen have been told the Difference upon which this Matter is grounded; a *Tales* cannot be without a *Habeas Corpora*, and a *Habeas Corpora* cannot be without a *Venire facias*; but a Commission of Goal-Delivery cannot award a *Venire facias*, because that is not to be awarded till Issue joyned.

Mr B. Powis. The Return of this Pannel before Justices of Goal-Delivery, is an Act of the Sheriff, by virtue of the Commission, and nothing appears of Record till the Jury are Sworn.

Mr J. Rokeby. They object that it is upon Record.

L. C. J. Treby. By the Record, they mean the Clerk's Note.

Mr Att. Gen. If you please to look upon the Indictment, there is no Entry at all, and that is all the Record before you.

Mr J. Powell. Does it appear upon Record, that Nine were Sworn?

Mr Baker. No; there is nothing upon the Record.

Cler. of Arr. It does not appear till the Record is made up, and nothing is entered till Twelve are Sworn.

Mr Serj. *Darnal*. There will be a great Inconvenience, if a Pannel may be changed at any Time.

Mr J. Powell. This is a Case that never happened before, and may be never may again.

Sir B. Shower. The Law will hold the same, in case it does appear upon Record, as well as where it does not: But we say, a Pannel return'd in Court is a Record.

Mr J. Powell. No, it will not; because, when a Jury does appear, and the Twelve are Sworn, then it becomes Parcel of the Record; and therefore *Whitebread's Case* was quite another Case,

and was indeed held to be an extraordinary Case, but that comes not up to this, for there a full Jury was Sworn, and Evidence given.

Mr Serj. *Darnal*. It may be the same Jury will not be returned.

Mr J. *Powell*. But if you have a Copy of the Jury, you are at no Mischief.

Mr Serj. *Darnal*. Some that were in the former Pannel are quite left out.

Mr Sher. *Buck*. There are none left out, but what were not Freeholders, that I know of.

Mr B. *Powis*. He says the Fact is not true, as you have alledged it.

Mr Sher. *Buck*. And Mr. Serjeant *Darnal* has been pleased to reflect upon us, as if we had pack'd this Jury, by altering the Places of the Names, which, my Lord, we do utterly deny, and we only left out those that were not Free-holders.

Mr B. *Powis*. The Sheriff says, he has not postponed any of them, and only left out those that were not Free-holders.

Mr Serj. *Darnal*. If the Law were as plain with us as the Fact in that Case, we should have a very good Case of it.

Mr Sher. *Buckingham*. Mr. Serjeant, I have both the Pannels here; they may be compared.

Mr Serj. *Darnal*. I said no harm, Mr. Sheriff, nor meant any Reflection upon you.

Mr Sher. *Buckingham*. Mr. Serjeant was pleased to say, the excepted Men were put in the Front, and those that were Sworn were put last.

L. C. J. *Treby*. There is nothing at all in the Objection.

Mr J. *Powell*. Really, because it was opened as a Reflection, it will be proper for the Sheriff to clear it.

Mr Sher. *Buckingham*. My Lord, the Answer I give to it, is, That particularly one that was Sworn last Time, is now at the very Beginning of the Pannel; and in general, they are mix'd promiscuously, without any Design or Study in the least. He says we have left out those that served before: I solemnly protest, I know not one Man returned upon the last Pannel that is left out, unless it appeared that he is no Freeholder; and we had no Reason to put in them, that we knew could not serve.

Mr Serj. *Darnal*. That can't appear to us, that they are not Free-holders.

Mr J. *Rokeby*. But it appears to him, and therefore he did well to leave them out.

Mr Sher. *Buckingham*. What I say, I am ready to give upon my Oath.

Mr Serj. *Darnal*. I say there is one *Henry Beadle* left out, and he was one that was Sworn.

Mr Sher. *Buckingham*. I will not say for a particular Man; I protest that I did not know he was left out. If it be so, it was by Mistake; for I know Mr. *Beadle* very well, and I take him to be an honest Man, and very well affected to the Government as any Man.

Mr Serj. *Darnal*. We desire to be tryed by Men that are honest and well-affected to the Government.

Mr Sher. *Buckingham*. There you have of them, Sir.

Mr Serj. *Darnal*. Those that were Sworn are put last of all, and there is not above one of them that is within possibility of coming on again.

Mr Sher. *Buckingham*. It will appear by Mr. *Cook's* Challenges, and the other Pannel, that they stood late before; and *Thomas Clark*, who was Sworn the last Time, stands tenth Man upon the Pannel.

Mr Serj. *Darnal*. He was Sworn after we had gone through the Pannel, and took all our Challenges, not appearing at first.

Mr Sher. *Buckingham*. I tell you they stand for the most Part as they did, for ought I know.

Mr Serj. *Darnal*. There is but one in Threescore and Ten, that can be Sworn now, of them that were Sworn before; and there were Nine of them then Sworn.

Mr Att. Gen. That is a Mistake. Indeed there are a great many added to the Pannel, because there was a Defect the last Time, and therefore now they may perhaps stand later.

Mr Serj. *Darnal*. I do not speak to reflect upon the Sheriffs: I go according to my Instructions.

Mr J. *Powell*. If it had been so, it had been well enough, for you must be contented, the Court must take it as the Sheriff returns it, and you have a Copy of it.

Mr Att. Gen. Here are four of them that were Sworn before, that stood above sixty off in the old Pannel.

Mr Sher. *Buckingham*. The first Man that was Sworn, Mr. *Sherbrook*, stands within the first Twelve now, as well as before.

Mr J. *Powell*. If they had been all new, there had been nothing in that.

Mr J. *Rokeby*. Truly, I can't see but that the Sheriff hath done like an equal, just, fair, and honest Officer.

Mr Att. Gen. They may challenge as they will.

L. C. J. *Treby*. You are to consider, that this happens because you run out as far as your utmost Number, that Time you challenged Thirty-five peremptorily, and divers others for Cause, so as not to leave enough for a Jury; and from that alone arose a Necessity of increasing the Number of the Pannel.

Mr Serj. *Darnal*. It was our Client that challenged them, we do not advise him whom to challenge.

Mr J. *Rokeby*. But you must take the Consequence of it, which causes this Addition to the Pannel.

L. C. J. *Treby*. What do you complain of? they that are returned, are put in the same Order as they were before; they that were Sworn, were (for the most Part) late in the Pannel then, and so they are now. I do not find any Thing done to the Prejudice of the Prisoner.

Mr Serj. *Darnal*. If the Christian Names had not been mistaken, there had been perhaps enough to have been Sworn.

L. C. J. *Treby*. That's a good Argument for a new Pannel, because the Christian Names were mistaken before.

Mr J. *Powell*. It was by Defect of Jurors, and therefore there was an absolute Necessity of a new Pannel.

L. C. J. *Treby*. I am of the same Opinion.

Wharton's Case is well known: It was much cited as to another Point in *Bushel's* Case. It was a Tryal at the King's Bench Bar at Westminster by a Jury of Kent, upon an Indictment of Murder.

And I think you say the Case of *H. 7.* was between Party and Party in Appeal. And I believe *Stamford's* Discourse, in the Place cited, relates chiefly to Appeals.

I shall not deny that a *Tales* may possibly be upon an Indictment before Justices of Oyer and Terminer; though 'tis not usual, nor do you shew, or our experienced Clerks know any such Precedent. I agree, that in the mentioned Cases a *Tales* was pro-

proper ; for in both Cases (*viz.* of Appeal and Indictment removed into the King's Bench) the Process for the Jury was as it ought to be, by Writs of *Venire facias*, &c. upon which a full Jury not appearing, there must be a *Tales*. But in proceeding to Tryal before Justices of Oyer and Terminer on such Indictment as is here, though I will not say but they may proceed by Writ of *Venire facias*, yet I do say, that the more known Course is by Precept, in nature of a *Venire facias*: And the Usage is, that after (and never before) the Prisoner hath pleaded not Guilty, there goes a Precept to the Sheriff, under the Seals of the said Justices of Oyer and Terminer, returnable at such Day as they shall adjourn to, for returning a Jury to Try it, (as was done lately, upon Advice, in the Case of *Rookwood*, &c.) and upon the Return of That, if, after Challenges, there are not enough left to make a Jury, whether those Justices shall issue a Precept in nature of a *Habeas Corpora*, or *Disfringas* with a *Tales*, or another Precept in the same Form as before, and without taking notice of the former, is a Question not in Judgment before us. For, we are about proceeding to a Tryal on an Indictment in this Court of Goal-Delivery, (which is the Court wherein generally all capital Crimes are tried, as well at this Place as at the Assizes) and, I think, here cannot be a *Tales*; I am sure it is not necessary. For, *First*, Here is never any Writ of *Venire facias*, &c. *Secondly*, Nor ever a Precept for returning a Jury to Try a particular Issue: But this Court takes the Pannels of Juries returned by the Sheriff, without any particular Precept to him.

The Course of proceeding by virtue of a Commission of Goal-Delivery, which is the Law in this Case, is this, *viz.* There is, antecedent to the Coming of the Justices, a general Commandment or Precept made, in Writing, to the Sheriff by the said Justices, to return Juries against their Coming, for the Trying of all and singular Prisoners in their Goal, whether they have pleaded before, or shall after. And for that Purpose it requires the Sheriff to summon, out of all Parts of his Country whence the Prisoners come, a great number of Freeholders, not a-kin to the Prisoners, to be at the Time and Place appointed for holding the Court. The Sheriff, by virtue of this general previous Precept, summoneth many for Jurors, and prepares diverse several Pannels of their Names, either at first, or afterwards, as appears necessary, and returneth and delivereth in one or more of these Pannels from Time to Time, as the Court does need, and call for any: This, we know, in Fact, is frequently done where the Sessions of Goal-Delivery lasts several Days, and there is occasion. Though, in Supposition of Law, all these Pannels are returned, and the Tryals thereupon had the first Day of the Sessions; and, in Law, it is intended to be but that one Day only. The Return of this Precept is thus, *viz.* *Executio istius Præcepti patet in quibusdam Pannellis huic præcepto annexis*, and the Pannels are annexed, and there are often filed here divers Pannels upon the same general Precept, though sometimes but One. These Pannels are thus delivered into Court, and a Jury taken out of them, as there is occasion, only upon a *Parol Award*, that is, barely the Court's calling for the same, without Writ or Precept in Writing, or giving any Day for the Doing it. For, this Proceeding is *immediate*, for the speedy Delivery of Prisoners; and the Entry, after setting forth that the Prisoner being arraigned pleads not

Guilty, is, *Ideo immediate veniat inde Jurata*, or *fiat inde Jurata*: And this Court's being instituted for the speedy Delivery of Prisoners, and Warnings being given long before, of their Coming, are the Causes why it has been always held without doubt, that Justices of Goal-Delivery might inquire and try the same Day.

If it fall out, that by reason of Defaults, Deaths, or Challenges, there cannot be a full Jury had out of a Pannel, (as here there wanted three) which is an Accident that the Court cannot know, till they have gone through the Pannel; I think in this Case, that Pannel goes for nothing, is utterly lost and void, and to be cast away or cancelled: For it does not answer the Award of the Court, which was to have a Jury to Try the Prisoner presently. It is meant an effectual Pannel that should afford a full Jury of Twelve unexceptionable Men; and every Pannel that comes short in this, is to be laid aside as a void Thing; and then the Court takes and makes use of another immediately, which may not be deficient, whereby the Award is observed, and the present Service dispatched.

Objection. It is objected, That the old Pannel is Parcel of the Record in Court, and, upon that, Nine were Sworn, and their Names are all enter'd upon Record; and now to add a new Pannel, upon which Twelve shall be Sworn and Try the Prisoner; all this appearing upon Record, it will be Error.

Answer. This Objection stands upon two Mistakes, both arising from not observing the Difference between Precepts and Pannels, in a Court of Goal Delivery and *Venire facias*'s, or Precepts and Pannels in other Courts.

1. It supposes that here will be two Pannels, which will appear to relate to the Tryal of this Prisoner, Mr. Cook.

2. It supposes that both these will become Records, or Parcel of the Record in Court.

If either of these Suppositions prove to be a Mistake, it will destroy the Objection. I think both are Mistakes.

1. Here is not, nor will be, nay, there ought not to be any Pannel purporting to be returned for the Trying of Mr. Cook, or any particular Prisoner or Prisoners. For, the Precept in this Case is (not like a *Venire facias*, which always respects a particular Issue between Parties therein named, but) general, requiring the Sheriff to return Jurors enough to Try all the Prisoners, not naming any. And the Return, which is the Answer to it by a Pannel or Pannels, is as General; the Title of every Pannel being *Nomina Juratorum ad Triandum pro Domino Rege*, and no more; or *Nomina Juratorum ad Triandum inter Dom. Regem & Prisonar. ad Barram*, without naming any of the Prisoners, and it were absurd if it should be otherwise: For the Precept goes to the Sheriff before the Sessions, and his Return is supposed to be made at the Beginning of the Sessions, when it is not known who of the Prisoners will be indicted; or, if indicted, who will plead not Guilty, or Guilty, or a Pardon, or other Plea.

When, for the Tryal of a particular Prisoner (or divers Prisoners that are thought fit to be put upon Tryal by the same Jury) a Jury is about to be taken out of any Pannel, the Clerk, as he goes along, may take a Note in Paper of the Name of every one that is sworn; or he may (and usually doth)

doth) write *Jur.* on the said Pannel, against the Name of every one Sworn: But this Note or Mark is no Part of the Record; it is not *ex Institutione Legis*, it is but a voluntary *Memorandum*, for the Help of his Memory. If he could safely trust to the Strength of his Memory, he need not write at all on this Occasion; I mean, not till a full Jury is Sworn, who try the Prisoner. But then, indeed, the Clerk must (from his Notes or Memory) write the Names of all the Twelve, entering them on the Record of the Indictment, in this manner, *viz.* just after the *Ideo immediate veniat inde Jurata coram prefatis Justic. &c.* adding, *& Juratores Jurata illius, &c. Scil. A. B. &c. Dicunt, &c.* And it is by this only, that the Names of those that are Sworn, come to be of Record; and it is this Entry upon the Body of the Indictment alone, that is the Record, that shews who were Jurors Sworn, to Try this, or that, or other Prisoner, or Prisoners.

So that if the old Pannel were filed, and were a Record, as the Prisoner's Council would suppose, yet it would not thereby be made appear, that the said Pannel was returned, or used for, or in order to the Tryal of this Prisoner.

2. The old Pannel is not filed among the Records of the Court, nor ought to be. When such a Pannel does not produce a Jury, the Clerks may and use to throw it by, as a useless Thing. But, however they use it, we cannot allow it to be a Record. It was received *de bene esse*; it is abortive and comes to nothing. And it is not every Thing that passeth in Court in order to a Record, that comes to be so. A frivolous Plea that is rejected, is not recorded. A Presentment or Bill of Indictment, before it is found, is not a Record: And if an *Ignoramus* be returned upon a Bill of Indictment, it never can be a Record; and thereupon, the Clerks do sometimes throw it away, though sometimes they keep it and put it on the File, only taking care to cross it; but if they do forget to cross it, yet it is not a Record.

By all this it is apparent how great the Difference is between a Precept and Pannels in this Court, and a *Venire facias* and a Pannel returned thereupon, which is ever issued after Issue joyned, and doth always mention the particular Parties and Matter it relates to, and is a Record, and a Ground for an *Habeas Corpora* with a *Tales*, to be returnable at a certain future Day.

But, in this Case, in this Court, it is quite otherwise.

Sir B. Shower. Then, my Lord, since there is a new Pannel, we hope we stand in the same Condition upon the Act of Parliament, to take Exceptions to the Indictment before this Jury Sworn, as we did before the other Jury Sworn, since all that is quite set aside.

L. C. J. Treby. Yes truly, I think that may be.

Mr Att. Gen. But these Gentlemen would have done well to have given notice of their Exceptions.

Sir B. Shower. My Lord, I shall not stand upon an Exception which I think I might take to the Word *Turmas* in the Indictment, which whether it be Troops of Men, or Horses, or what it is does not appear; but, I think, we have an Exception to the chief Overt-Act laid in the Indictment, and that we presume, if my Brief be right, will be sufficient to set aside this Indictment: That Mr. Cook did agree with other Traytors to send Mr. Charnock into France to the said late King James, and King James is never mentioned before

in all the Indictment, that is one Exception that we have, that there is no late King James mentioned in the Indictment before this, if my Copy be right, if it be otherwise, I suppose they will find it: It is laid, That Mr. Cook did agree to send Charnock as a Messenger into France, *eidem nuper Regi Jacobo*, and no *Rex Jacobus* is mentioned before. Then there is another Exception, and that's this: They come and say, That whereas there was a War with France, which is only in the Indictment by Way of Recital or Rehearsal of an History, *Quod cum per magnum Tempus fuit & modo sit, &c.* Mr. Cook the Premises knowing, did compass and imagine the King's Death, and did adhere to the said King's Enemies such a Day. Now, my Lord, I do think that this can never be maintain'd, for that *Cum quoddam Bellum, &c.* being an historical Narrative, is not positive enough: For adhering to the King's Enemies, being one of the Treasons laid in the Charge, there ought to be a War at the Time of the Adhesion, and of Necessity then that ought to be presented by the Jury; for though your Lordships can judicially take notice of War or Peace, yet you cannot take notice of it at such a particular Time, and the Reason is from the Notion that is in my Lord Coke in his third *Institutes*, cap. *Treason*, That Adhesions to Rebels is not Adhesion to the King's Enemies, for a Rebel is not said to be an Enemy; but it must be adhering to such an Enemy, as between whom and the King there was War at that Time, and consequently it ought to be more positively averred in the Indictment, than it here is; but as to the Overt-Act of Mr. Cook's consulting and agreeing to send Charnock over to the said late King James to give him notice of what was agreed upon between them, when King James is not named before, that can never be got over, with Submission.

Mr Baker. It is a Mistake of your Copy, Sir Bartholomew Shower.

Mr Att. Gen. I have looked into the Record, and it is *Jacobo Secundo nuper Regi*, not *Dicto*.

Sir B. Shower. Then, with Submission, my Lord, they cannot try us now, for we ought to have a true Copy of the Indictment.

Mr Baker. Upon demand. But you never demanded it.

Sir B. Shower. Yes, it was demanded.

Mr Baker. Who demanded it?

Sir B. Shower. Our Solicitor Burleigh.

Mr Baker. No, he did not; I gave it him officiously.

Mr Att. Gen. With Submission, my Lord, it is no Objection at all, that their Copy is wrong. That should have been before the Prisoner had pleaded; for the Words of the Act are, That he shall have it so many Days before, to enable him to plead, and he cannot be put to plead unless he have a Copy of the Indictment so long before: And at Rookwood's Tryal it was said by the Court it could not be alledged after Plea pleaded.

Mr Burleigh. The Copy was given to me publicly in Court.

Mr Soll. Gen. Why did not your Solicitor compare it with the Indictment?

Mr Att. Gen. They might have compared it by the Clerk's reading it to them; but they will not admit the Prisoner's Solicitor to see the Original, because the Act expressly says they shall not have a Copy of the Witnesses Names.

Sir B. Shower. The Officer is to deliver a true Copy of the Indictment.

Mr Att.

Mr *Att. Gen.* No; the Party is to demand it by himself or his Agent, and then he is to have it; and if he be denied, he ought to apply himself to the Court, who will order the Delivery of it; but we stand upon it that they cannot take this Exception now after they have pleaded, for the Intent of the Copy is to enable him to plead.

L. C. J. *Treby.* The Copy, by the Act of Parliament, is to be delivered to the Prisoner, his Attorney, Agent, or Solicitor, if they require the same, and here it seems there was no requiring of it, but it was voluntarily given; and now you have lapsed your Time of making the Exception of wanting a Copy, by having pleaded to the Indictment, whereby you have in effect admitted and declared, either that you had a true Copy of it, or that you did not think fit to require one; for the Use of the Copy is to better enable the Prisoner to plead. But when you did plead, you took upon your self to be well able to plead without the Help of a Copy, which you might have had upon the asking for.

Sir B. *Shower.* Then, my Lord, there is another Thing in the Indictment, That in this Overt-Act there is a new Time, and a new Place, and a new Verb, and a new Fact alledged, and no nominative Case: It is alledged, That *Peter Cook*, at first, with others, did so and so: and then the first of July to bring the Treasons aforesaid to effect, there & alibi, &c. (which is very loose, for I know not whence the Venue must come) did traiterously with *Charnock, Freind, &c.* consult to procure *Diversas Turmas & Legiones, &c.* to join with them in England, and then it comes & ulterius such a Day, Year, and Place, did traiterously agree so and so, and not say who: Now this is neither by express Words, nor Rule of Grammar to be referred to the Prisoner at the Bar, it does not say *ipse idem Petrus Cook*; now, my Lord, that the King's Council thought it necessary in every Overt-Act is plain, because those Words are put in every other Clause of the Indictment, in those Clauses that go before, and those Clauses that come after; then if they will take it, that this Clause must refer to the next Antecedent, that will not do, for the next precedent nominative Case is either *Freind* or *Charnock*: So that this is without a nominative Case, and the Precedents in my Lord *Coke's Entries* 361, and all the other Books have the nominative Case repeated, where there is a new Time, and a new Place, and a new Fact alledged: Now it might be true, that the Prisoner at the Bar might be present, and this same Treason might be discoursed of and agitated, and there might be a Consult about this Business, and yet it is not necessarily implied that he must consent and agree to send *Charnock* into France, upon which the great Strefs of the Indictment lies: Therefore we say, these Words having no nominative Case, the Indictment cannot hold.

Mr *Att. Gen.* My Lord, as to this Objection it will receive a very plain Answer. Our Indictment begins and sets forth, that *Peter Cook*, the Prisoner at the Bar, did imagine and compass the King's Death, and did adhere to the King's Enemies, and these are the Treasons: And then it sets forth the Overt-Act, that in Execution of the traiterous Compassings, Imaginations, and Adhesions aforesaid, *Ipse idem Petrus Cook*, together with Sir *William Parkyns*, Mr. *Charnock*, Sir *John Freind* and others, did propose and consult to procure from the French King, Forces to invade this Land;

& ulterius, he and they did agree to send *Charnock* to the late King *James*.

Mr J. *Rookeby.* There's the first naming of *James* the Second, late King of England, and there is no *idem Jacobi* I promise you.

L. C. J. *Treby.* Well, that Mistake is over. Pray go on Mr. Attorney General.

Mr *Att. Gen.* My Lord, as to this Objection of Sir *Bartholomew Shower*, he would have *ipse idem Petrus* repeated over again; and he says that we lay a distinct Overt-Act with a different Time and Place: Now that is a Mistake too; it is not a different Time and Place, but the same Time and Place: And it mentions that *cum R. Charnock, J. Freind, &c. & cum aliis Proditoribus conveniebat, consultabat, &c.* which he says may refer to Sir J. *Freind* or *Charnock*: But if you look into the Frame of the Sentence, that can never be.

Mr J. *Rookeby.* *Petrus Cook* is the nominative Case that governs all the Verbs.

Mr *Att. Gen.* And there is no other nominative Case in all the Indictment, but *Petrus Cook*, except it be in a Parenthesis, and that saves the Rule of Grammar, if there were any Thing in it, that it must refer to the last Antecedent.

Sir B. *Shower.* When it comes to the Clause that he did procure Horse and Arms, there the nominative Case is repeated.

L. C. J. *Treby.* It would not have made it worse, if they had made it so here; but the Question is, Whether it be necessary?

Sir B. *Shower.* Indictments ought to be precisely certain; but this we say is not so.

Mr *Att. Gen.* But here is as much Certainty as to the Person, as can be, that he did consult with such and such about such Things; and further, the same Day did agree with the same Traitors to do so and so.

Mr J. *Powell.* Indictments, it is true, ought to be plain and clear; but I do not see but here is as much Certainty as can be, that he did such a Day consult, and further the same Day did agree with the same Persons.

Sir B. *Shower.* Who did agree, my Lord?

Mr J. *Powell.* He that did consult with them before, and that is *Peter Cook*.

Mr *Att. Gen.* You'd have had us to have put it to every Verb, I believe.

Sir B. *Shower.* In Indictments no Presumption ought to be used, but the Facts ought to be directly and positively alledged.

Mr J. *Powell.* It's true, there should be no Presumption, and there is none here, for certainly this is a plain Assertion of Fact.

L. C. J. *Treby.* Here are two Things that are set forth: First, That *Peter Cook* did meet with Sir *John Freind*, Sir *William Parkyns*, and others, and then and there did consult with them, and consent to procure an Invasion, and joyn an Insurrection thereto. And, Secondly, Further with the said Traitors did agree to send *Charnock* into France. Now, what is the nominative Case to this Agreement? Is it Sir *John Freind*, and Sir *William Parkyns*? That's impossible: For they could not be said properly to meet and consult with themselves, every one of them with his own self and the rest. And then the Number, if it had referred to them, should have been plural, but here it is singular, [*agrevit*] and the Sense is no more than this; That then and there Mr. *Cook* did meet with such Persons, and did consult with them about such and such Matters, and further, did agree with them to do thus.

Sir B. Shower. The Meaning is not to be forced and strained by Inference or Presumption, but it ought to be express and plain.

L. C. J. Treby. Nay, you cannot express it better; you may make a Tautology of it if you will.

Sir B. Shower. The Paragraph is long, my Lord, and therefore requires the more Care to have those Repetitions that are necessary.

L. C. J. Treby. Your Objection to this Paragraph is, that it is too long; but repeating the same Nominative Case to every Verb, would make it much longer.

Sir B. Shower. It cannot be understood to mean *Peter Cook* without Presumption, which ought not to be in an Indictment.

Mr Att. Gen. And as to Sir Bartholomew Shower's first Objection, his Copy is right too, and he mistook the Place.

Sir B. Shower. You shou'd have given me that for an Answer.

Mr Att. Gen. Nay, you should have taken more Care, and not have made the Objection.

L. C. J. Treby. Truly, I think it is hardly possible to have made this better if it had been otherwise than it is.

Mr Serj. Darnall. My Lord, we think we have a good Fact of it, which we rely upon, and therefore do not so much insist upon these Exceptions, tho', in Duty to our Client, we mention that which we think is necessary, and we submit to your Lordship.

Cl. of Arr. Set *Peter Cook* to the Bar. [Which was done.] You, the Prisoner at the Bar, these good Men which you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Tryal of your Life and Death; if therefore you wou'd challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

Cryer. Call Sir John Sweetapple.

Sir John Sweetapple. Here.

Cook. My Lord Chief Justice, if your Lordship please, I am advised —

L. C. J. Treby. Pray Sir speak out that we may hear what you say: And let the Cryer make Proclamation for Silence. [Which was done.]

Cook. My Lord, before the Jury is called, I am advised, that if any of the Jury have said already that I am guilty, or they will find me guilty, or I shall suffer, or be hanged, or the like, they are not fit or proper Men to be of the Jury.

L. C. J. Treby. You say right, Sir, it is a good Cause of Challenge.

Mr J. Rokeby. That will be a sufficient Cause, if when they come to the Book, you object that, and be ready to prove it.

Cook. Which is Sir John Sweetapple? [He was shewn to him.]

Cl. of Arr. There he is.

Cook. I challenge him.

Cl. of Arr. William Walker.

Cook. Sir, have you said any such Thing that you believe me guilty?

Mr Walker. No, Sir.

Mr Baker. My Lord, he is asking of the Juryman the Question.

Mr J. Rokeby. That's a Fact the Prisoner should prove upon him.

Mr Att. Gen. My Lord, he must not ask the Jury that Question, Whether they have declared

before, that they will find him guilty; that is to make them guilty of a Misdemeanor.

Mr Serj. Darnall. Is it any Misdemeanor for me to say, I think or believe such a Man is guilty.

Mr Att. Gen. If he be summon'd to be of a Jury, and declare his Opinion before hand, it is a Misdemeanor.

Mr Serj. Darnall. But suppose it be before he was summon'd?

Mr Att. Gen. If you make any such Objection, you must prove it, and not out of the Juryman's own Mouth.

Mr Serj. Darnall. I think any Man, my Lord, that comes to serve upon the Jury, may be ask'd any Question that does not make him guilty of any Offence or Crime, or liable to any Punishment: Now if any of these Gentlemen that are return'd upon this Pannel, before the Summons have declared their Opinion, that the Prisoner is guilty, or ought to suffer, with Submission, the Prisoner may ask such a Question, Whether he have said so, yea or no?

Mr J. Powell. He cannot upon a *Voyer Dire* be ask'd any such Question.

Mr J. Rokeby. It is not denyed to be a material Objection, but it must be made out by Proof.

L. C. J. Treby. You put it too large, Brother Darnall, you may ask upon a *Voyer Dire*, whether he have any Interest in the Cause; nor shall we deny you Liberty to ask whether he be fitly qualified, according to Law, by having a Freehold of sufficient Value; but that you can ask a Juror or a Witness every Question that will not make him criminous, that's too large: Men have been ask'd, Whether they have been convicted and pardon'd for Felony, or whether they have been whipt for Petty Larceny; but they have not been obliged to answer; for, tho' their Answer in the affirmative will not make them criminal, or subject them to Punishment, yet they are Matters of Infamy; and if it be an infamous Thing, that's enough to preserve a Man from being bound to answer. A pardon'd Man is not guilty, his Crime is purged; but merely for the Reproach of it, it shall not be put upon him to answer a Question whereon he will be forced to forswear or disgrace himself. So Persons have been excused from answering whether they have been committed to *Bridewell* as Pilferers or Vagrants, or to *Newgate* for Clipping or Coining, &c. Yet to be suspected or committed is only a Misfortune and Shame, no Crime. The like has been observed in other Cases of odious and infamous Matters which were not Crimes indictable. But to keep to our Case; 'tis true, a Juror may be challenged being an *Alien*, or being a *Villain*; but where the Matter apparently carries Crime or Shame, it should be proved; the Outlawry should be proved, and so should the being a *Villain*. Yet that is no Crime, tho' it be an Ignominy.

Mr Serj. Darnall. But, my Lord, I take this to be no manner of Infamy at all, there is nothing of Crime, nor nothing of Reproach, but only a declaring of a Man's Opinion.

L. C. J. Treby. Truly, I think otherwise; I take it to be at least a scandalous Misbehaviour, and deservedly ill-spoken of, for any Man to prejudge, especially in such a heinous Matter. I think it is a very shameful Discovery of a Man's Weakness and Rashness, if not Malice, to judge before he hears the Cause, and before the Party that is accused could be tryed. But, it seems, by what the Prisoner

Prisoner says, that he would ask all the Jurors, whether they have not said, that he was *guilty*, or that they would *find* him guilty, or that he should be *hanged*, or the like: Which (presuming him innocent) is to ask whether they have not defamed and slandered him in the highest Degree; and to force them to discover that they have a mortal Hatred to him, and come with a malicious Resolution to convict him: Which, admitting they are not punishable by our Law, yet are Things so detestably wicked and so scandalous, as are not fit to be required to be disclosed by and against themselves.

Mr Serj. *Darnall*. Pray, my Lord, what is more common than for a Man to say, before he is summoned to be upon a Jury, when he hears a Fact reported concerning such a one, to say I believe he is guilty, or I am of Opinion he is, and I am sure he will be hanged, and yet there is no Crime in this.

L. C. J. *Treby*. Truly, Brother *Darnall*, I know not how you may approve of such a Man, but I'll assure you I do not. I take the Question *not* to be concerning a Man's discoursing *suppositively*; as, if upon hearing News, or a Report of clear Evidence, a Man should say, *Supposing this to be true, such a Man is guilty, and I should find him so if I were of his Jury*. This might not be sufficient to set aside a Juror: For this has been a general Discourse among the Subjects upon Occasion of this Conspiracy; and it imports that if Evidence should not be *true* and *clear*, he would acquit him. And so he is, as he should be, indifferent. But if a Man, qualified for a Juror, affirm *positively* that such a Prisoner is guilty, and that he will find him so whatever Evidence or Proof be given or made to the contrary, I think that may be a Misdemeanour punishable as an owning and encouraging of Falshood, Perjury, and Injustice, and a Contempt and Scandal to the Justice of the Kingdom. Tho' I hope and believe that no Man hath so demeaned himself.

Mr J. *Powell*. In a Civil Case it would be a good Cause of Challenge. If a Man have given his Opinion about the Right one way or other, may you not upon a *Voire dire* ask him whether he hath given his Opinion one way or other? I believe it may be askt in a Civil Cause, because he may have been a Referee; but if you make it criminal it cannot be askt, because a Man is not bound to accuse himself; now the Difference lies in the Nature of the Cause, it is not Criminal in a Civil Case for a Man to say he was an Arbitrator in such a Case, and, upon what appeared before him, he was of such an Opinion.

Mr *Att. Gen.* But, my Lord, it is a different Case to give an Opinion about the Right between Party and Party, where a Man has been an Arbitrator and so in the Nature of a Judge, and where a Man is to go upon a Jury in the Case of Life and Death, and before the Evidence given, he declares his Opinion without hearing the Cause.

Sir B. *Shower*. My Lord, we know several of the Tryals have been printed, and the Names of several Persons mentioned, and upon reading of the Tryals or conversing about them, Men are apt to give their Opinions one way or other.

Mr Serj. *Darnall*. It is only an Objection in Case he has done it.

Mr J. *Rookeby*. But, Brother, how can you ask him the Question?

Mr Serj. *Darnall*. If the Court are of Opinion that it is such a Crime that it cannot be askt, as tending to make a Man accuse himself of an infamous Crime, then we submit it to you, and I confess we must not ask it; but we cannot apprehend that there is either Crime or Infamy in it, tho' we think it is an Objection and a good Cause of Challenge.

Mr B. *Powys*. I think, tho' it be not such a Crime as infamous upon which a Man is not to be credited, for that is Infamy in the Eye of the Law, whereby a Man is prejudiced in his Credit; yet however it is a shameful Thing for a Man to give his Judgment before he hath heard the Evidence, and therefore I think you ought not to ask him it, to make him accuse himself, if it be an opprobrious Matter upon him.

Mr Serj. *Darnall*. Truly, my Lord, I always took it to be the Rule, if the Thing asked to the Person returned be not criminal nor infamous, the Party that is askt ought to answer to it.

L. C. J. *Treby*. I would fain know, if you should ask any of the Jury-men this Question, whether he be guilty of all the Crimes that are pardoned by the last Act of Grace, he be bound to answer it?

Mr Serj. *Darnall*. Undoubtedly we cannot ask any such Question; no, not to any one of the Things therein mentioned.

L. C. J. *Treby*. But yet you will force him to discover a Crime (if it be one) that is unpardoned.

Mr J. *Powell*. Certainly you go too far, Brother, for no Man is obliged to charge himself with what is Criminal, but whether this be Criminal to say, *I believe such a one will be hanged*, is of another Consideration.

Mr J. *Rookeby*. But I think it must be proved upon him if any Objection be made.

Sir B. *Shower*. My Lord, it will be no easy Thing to bring Witnesses to prove this Matter, and therefore we would have it from his own Mouth.

Mr J. *Rookeby*. And it is a very hard Matter for a Man to be put upon proving every Discourse that he has had about the publick Affairs of the Time.

Mr *Recorder*. The Reason of your Exception is, that he has declared his Opinion before-hand, that the Party would be hanged or would suffer, that's a Reproach and a Reflection upon a Wise Man so to do; and if they can prove it upon him, let them do it: But whether you should ask him such a Question, Whether he be a Fool or a Knave for the giving an Opinion one way or other, that's the Question before us.

Mr Serj. *Darnall*. My Lord, we do not offer it to the Court as an Objection that he is not a wise Man.

Mr *Att. Gen.* But what a Man does utter imprudently, may occasion a Prejudice against him, and therefore ought to be proved, and not he to prove it himself.

L. C. J. *Treby*. Especially being a Freeholder of London, and taking Notice of what is done in London; and if he does take Notice of the Fact, and does previously give his Opinion of a Matter which he may be called upon a Jury to try, this is an Indiscretion and a Reproach to him, and I think a Misdemeanour.

Mr Serj. *Darnall*. My Lord, I acknowledge it is ill done of him, that is, indiscreetly and not

wisely, and we would have discreet and wise Men upon our Jury.

Mr *Comper*. My Lord, Mr Serj. *Darnall* will make it so little a Thing at last, that it will amount to no Cause of Challenge, if it were even prov'd against him, which we insist it ought to be, it being their Objection, and the Party not being bound to prove it against himself; but truly we think there is more in it than so, because it is an unjust prejudging of a Man before he is tryed and heard, and if so, it is a Thing that he ought not to accuse himself of, and therefore we oppose the asking any such Question.

Mr Serj. *Darnall*. Our Objection is not because it is an Offence to declare a Man's Opinion upon a Fact reported, but because it shews he has a settled Opinion against the Person of his Guilt, and so he is not so equal a Man to try him.

L. C. J. *Treby*. And is that like an honest Man and a Freeholder of *London*, (who ought to be indifferent) to come with a settled Opinion against a Man, when he is to be one of his Jury?

Mr Serj. *Darnall*. Well, my Lord, we have been heard, and submit it to the Judgment of the Court.

L. C. J. *Treby*. Truly, I think it reflects both Dishonesty and Dishonour upon him, and therefore these Questions ought not to be askt. The Question is not whether a Man (if ever such a Man there were) that hath so resolved and declared shall be sworn? No; he is not fit to serve upon a Jury. But the Question is, How this shall be discovered, by his own Oath or by other Proof? I think it ought to be made appear by other Proof, if true. A Man attainted of Felony, Forgery, false Verdict, or Perjury, ought not to serve on a Jury, yet he shall not be examined concerning the same on a *Voire dire*. And if there be in Court a Copy of such Judgment carefully examined and kept by himself, he shall not be forced to answer whether it be a true Copy; tho' his Answer could not subject him to any further Penalty.

Mr Serj. *Darnall*. My Lord, I hope no Gentleman of the Jury has done it.

L. C. J. *Treby*. I hope no Freeholder of *London* is so indiscreet or so unjust. But if any Man in this Pannel have any particular Displeasure to the Prisoner, or be unindifferent, or have declared himself so, I do admonish and desire him to discover so much in general; for, it is not fit, nor for the Honour of the King's Justice, that such a Man should serve on the Jury.

Mr Serj. *Darnall*. We hope so too. We hope that all that are returned upon the Jury are discreet and impartial Men.

Cl. of Arr. Well, Sir, what say you to this Gentleman Mr *Walker*?

Cook. I challenge you, Sir.

Cl. of Arr. *Nathanael Long*.

Sir *B. Shower*. My Lord, we think he may ask if they have a Freehold or no; because the Law requires that Qualification, and the Prisoner not being able to prove the Negative, it puts the Proof of the Affirmative upon the Person himself.

Mr *Att. Gen*. What does Sir *Bartholomew* mean? would he have the Jury-men bring their Evidences with them to prove their Freehold?

L. C. J. *Treby*. No sure, Mr *Attorney*; but to ask the Question was allowed him the last Time, and we will not deny him the same just Favour now.

Cook. Are you a Free-holder, Sir, in *London*, of the Value of 10 l. a Year?

Mr *Long*. Yes, Sir.

Cook. Were you of the Grand-Jury when the Bill was found against me?

Mr *Long*. No, Sir.

Cook. I challenge you, Sir.

Cl. of Arr. *William Carbonell*.

Mr *Carbonell*. My Lord, I am no Free-holder.

L. C. J. *Treby*. What, does he say he has no Freehold?

Cl. of Arr. Yes, my Lord.

L. C. J. *Treby*. Then he must be set aside.

Cl. of Arr. *Joshua Foster*.

Mr *Foster*. My Lord, I am no Freeholder in *London* neither.

Mr *Att. Gen*. My Lord, we desire they may be sworn whether they have a Freehold or not.

Cl. of Arr. Hold Mr *Carbonell* and Mr *Foster* the Book. (Which was done severally.) You shall true Answer make to all such Questions as shall be askt you by the Court. So help you God.

Mr *Att. Gen*. Ask him if he hath not a Freehold in *London*?

Mr *Carbonell*. No, I have not.

Cl. of Arr. Have you or any Body in Trust for you a Freehold in *London* of the Value of 10 l. a Year?

Mr *Carbonell*. No, Sir.

Cl. of Arr. *Joshua Foster*, have you or any in Trust for you any Estate of Freehold in *London* of the Value of 10 l. a Year?

Mr *Foster*. No, Sir.

Cl. of Arr. *Joseph Billers*.

Cook. I desire they may be called in the Order as they are in the Pannel; you have not called *John Ewen*, who is next.

Cl. of Arr. I do call them in Order: As for Mr *Ewen*, one has made Oath that he is sick, and is not able to come hither. What say you to Mr *Billers*? There he stands.

Cook, Sir, are you a Freeholder of 10 l. a Year, within the City of *London*?

Mr *Billers*. Yes, Sir.

Cook, Was you of the Grand-Jury, Sir, when the Bill was found against me?

Mr *Billers*. No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Child*.

Cook, Sir, are you a Freeholder within the City of *London*?

Mr *Child*. Yes, Sir.

Cook. Of 10 l. a Year?

Mr *Child*. Yes, Sir.

Cook. Were you of the Grand-Jury, when the Bill was found against me?

Mr *Child*. No, Sir.

Cook. I challenge you.

Cl. of Arr. *Edward Leeds*.

Cook, Sir, are you a Freeholder within the City of *London*, of 10 l. a Year?

Mr *Leeds*. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr *Leeds*. No, Sir.

Cook. I challenge you.

L. C. J. *Treby*. What Question was that he ask'd him?

Cl. of Arr. Whether he were one of the Grand Jury that found the Bill.

L. C. J. *Treby*. A very proper Question: For an Indicter ought not to be a Tryer.

Cl. of Arr. *Thomas Clark*.

Cook.

Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year?

Mr Clark. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me.

Mr Clark. No, Sir.

Cook. I challenge you.

Cl. of Arr. Nathan Green.

Cook. Are you a Freeholder, Sir, within the City of London, of the Value of 10 l. a Year.

Mr Green. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Green. No, Sir.

Cook. I challenge you.

Cl. of Arr. Henry Sherbrooke.

Cook. I have nothing to say against him.

Cl. of Arr. Then hold Mr Sherbrooke the Book. (Which was done.) Look upon the Prisoner. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoner at the Bar, (whom you shall have in Charge) according to your Evidence. So help you God.

Then Mr Sherbrooke was put into the Place appointed for the Jury.

Cl. of Arr. Henry Dry.

Cook. Sir, are you a Freeholder in the City of London, of the Value of 10 l. a Year.

Mr Dry. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Dry. No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. Joseph Morewood.

Cook. Sir, have you a Freehold in London, of the Value of 10 l. a Year.

Mr Morewood. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Morewood. No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. Richard Greenway.

Cook. Are you a Freeholder of 10 l. a Year in London?

Mr Greenway. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Greenway. No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. John Sherbrook.

Cook. Sir, are you a Freeholder in the City of London, of 10 l. a Year?

Mr Sherbrook. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Sherbrook. No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. Thomas Emmes.

Cook. Are you a Freeholder, Sir, within the City of London of 10 l. a Year?

Mr Emmes. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Emmes. No, Sir.

Cook. I challenge you.

Cl. of Arr. Samuel Jackson.

Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year?

Mr Jackson. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me.

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Mr Jackson. No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. Henry Hunter.

Cook. Are you a Freeholder, Sir, in London of the Value of 10 l. a Year?

Mr Hunter. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Hunter. No, Sir,

Cook. I challenge you.

Cl. of Arr. John Deacle.

Cook. Sir, are you a Freeholder within the City of London, of the Value of 10 l. a Year?

Mr Deacle. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Deacle. No, Sir.

Cook. I challenge you.

Cl. of Arr. John Cullum.

Cook. I accept of him. (He was sworn.)

Cl. of Arr. Thomas Shaw.

Cook. I accept of him. (He was sworn.)

Cl. of Arr. George Joyce.

Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year?

Mr Joyce. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Joyce. No, Sir.

Cook. I challenge you.

Cl. of Arr. Richard Young.

Cook. I have nothing to say against him. (He was sworn.)

Cl. of Arr. John Hedges.

Cook. Sir, are you a Freeholder within the City of London, of 10 l. a Year?

Mr Hedges. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr Hedges. No, Sir.

Cook. I challenge you.

Cl. of Arr. John James.

Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year?

Mr James. Yes, Sir.

Cook. Were you of the Grand-Jury that found the Bill against me?

Mr James. No, Sir.

Cook. I challenge you.

Cl. of Arr. Thomas Poole.

Cook. Sir, are you a Freeholder within the City of London of 10 l. a Year?

Mr Poole. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Poole. No, Sir.

Cook. I challenge you.

Cl. of Arr. Peter Parker.

Cook. Sir, are you a Freeholder in the City of London of 10 l. a Year?

Mr Parker. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Parker. No, Sir.

Cook. I challenge you.

Cl. of Arr. William Wilkinfon.

Mr Wilkinfon. My Lord, I am no Freeholder in London.

(To which he was sworn.)

Cl. of Arr. Henry Mitchell.

Cook. Hold, Sir, here Thomas Man in my Pannel is next.

B b 2

Cl. of Arr.

Cl. of Arr. There is Oath made that he is sick in Bed. What say you to Mr. Mitchell?

Cook. Sir, have you a Freehold of 10 l. a Year in the City of London?

Mr Mitchell. No, Sir. *(To which he was sworn.)*

Cl. of Arr. Richard Ryder.

Cook. Sir, Have you a Freehold of Ten Pounds a Year in the City of London?

Mr Ryder. Yes, I have, Sir; but I live in a Parish that never serve upon any Juries, nor ever did in the Memory of any Man.

Cl. of Arr. But have you a Freehold of 10 l. a Year?

Mr Ryder. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Ryder. No, Sir.

Cook. Sir, I challenge you.

Cl. of Arr. Richard Temple.

Mr Temple. My Lord, I am no Freeholder. *(To which he was sworn.)*

Cl. of Arr. Peter Walker.

Cook. Sir, are you a Freeholder of the City of London, of Ten Pound a Year?

Mr Walker. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Walker. No, Sir.

Cook. I challenge you.

Cl. of Arr. Thomas Pistol.

Mr Pistol. I am no Freeholder. *(To which he was sworn.)*

Cl. of Arr. John Hunt.

Mr Hunt. My Lord, my Name is mistaken; my Name is William Hunt.

L. C. J. Treby. Then you must go on to another.

Cl. of Arr. John Hardret.

Mr Hardret. I am no Freeholder of Ten Pound a Year. *(To which he was sworn.)*

Cl. of Arr. John Hammond.

Cook. Are you a Freeholder, Sir, of Ten Pound a Year, in London?

Mr Hammond. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Hammond. No, Sir.

Cook. I challenge you.

Cl. of Arr. John Cooper.

Cook. I accept of him. *(He was sworn.)*

Cl. of Arr. Josselin Roberts.

Cook. Sir are you a Freeholder within the City of London of Ten Pound a Year?

Mr Roberts. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Roberts. No, Sir.

Cook. I challenge you.

Cl. of Arr. Jonathan Micklethwait.

Cook. I have nothing to say against him. *(He was sworn.)*

Cl. of Arr. Richard Chiswell.

Cook. Sir, are you a Freeholder within the City of London of Ten Pound a Year?

Mr Chiswell. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Chiswell. No, Sir.

Cook. I challenge you.

Cl. of Arr. Joseph Thompson.

Cook. Sir, are you a Freeholder of the City of London, of Ten Pound a Year?

Mr Thompson. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Thompson. I was returned upon the Grand Jury, but did not serve.

Cook. I challenge you.

Cl. of Arr. Edward Brewster.

Cook. Sir, are you a Freeholder of the City of London, of Ten Pound a Year?

Mr Brewster. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Brewster. No, Sir.

Cook. I challenge you.

Cl. of Arr. George Gooday.

Mr Gooday. My Lord, I am no Freeholder. *(To which he was sworn.)*

Cl. of Arr. Abraham Hickman.

Cook. Sir, Are you a Freeholder of the City of London, of Ten Pound a Year?

Mr Hickman. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Hickman. No, Sir.

Cook. I challenge you.

Cl. of Arr. George Grove.

Cook. Sir, Are you a Freeholder of the City of London, of Ten Pound a Year?

Mr Grove. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Grove. No, Sir.

Cook. I challenge you.

Cl. of Arr. Nathanael Wyersden.

Cook. Sir, Are you a Freeholder of the City of London, of Ten Pounds a Year?

Mr Wyersden. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Wyersden. No, Sir.

Cook. I challenge you. My Lord, I desire to know how many I have excepted against.

Cl. of Arr. One and Thirty.

Mr Burleigh. Write, write.

Cl. of Arr. Samuel Blewitt.

Cook. Sir, Are you a Freeholder of the City of London, of Ten Pound a Year?

Mr Blewitt. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Blewitt. No, Sir.

Cook. I challenge you.

Cl. of Arr. John Wolfe.

Cook. I accept of him. *(He was sworn.)*

Cl. of Arr. William Smith.

Cook. Sir, Are you a Freeholder of the City of London, of Ten Pound a Year?

Mr Smith. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr Smith. No, Sir.

Cook. I challenge you.

Cl. of Arr. John Bickley.

Mr Bickley. My Lord, I don't look upon my self as a Freeholder.

L. C. J. Treby. Why so, Sir?

Mr Bickley. I have a Lease for One and Fifty Years, my Lord, of my House, and there is a very little Piece of Ground adjoining to it that was very convenient for me to lay to my Lease; there is no Way to it but through my House; it is a Thing that never was let for any Thing, and it is not worth the Building.

L. C. J. *Treby*. What Estate have you in it? Do you pay a Ground-Rent for it?

Mr *Bickley*. My Lord, I bought that little Piece of Ground for the Conveniency of my Lease.

L. C. J. *Treby*. But did you purchase it for Term of Years, or to you and to your Heirs?

Mr *Bickley*. Nay, I bought it for ever, my Lord.

L. C. J. *Treby*. Then you have a Freehold in it. What's the Value of it?

Mr *Bickley*. Truly very little, my Lord.

L. C. J. *Treby*. I don't know any Body can judge of the Value of it but your self. Is it worth Ten Pound a Year?

Mr *Bickley*. My Lord, I can't value it at Ten Pound a Year, it never cost me Forty Pound.

L. C. J. *Treby*. Then for Estate you are well enough, but for Value you are a little under.

Cl. of Arr. *Thomas Collins*.

Cook. I accept of him. (*He was sworn.*)

Cl. of Arr. *John Watson*.

Cook. I do not challenge him. (*He was sworn.*)

Cl. of Arr. *Benjamin Hooper*.

Cook. I accept of him. (*He was sworn.*)

Cl. of Arr. *John Wells*.

Cook. Sir, Are you a Freeholder of the City of London, of Ten Pound a Year?

Mr *Wells*. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr *Wells*. No, Sir.

Cook. I challenge you.

Cl. of Arr. *John Hibbart*.

Cook. Sir, Are you a Freeholder of the City of London, of Ten Pound a Year?

Mr *Hibbart*. Yes, Sir.

Cook. Were you of the Grand Jury that found the Bill against me?

Mr *Hibbart*. No, Sir.

Cook. I challenge you.

Cl. of Arr. Mr *Cook* you have challenged your full Number. Call *Daniel Wray*. (*He was sworn.*)

Cl. of Arr. *John Pettit*. (*He was sworn.*) Cryer Countez.

Henry Sherbrook.

Cryer, One, &c.

Cl. of Arr. *John Pettit*.

Cryer. Twelve good Men and true, stand together and hear your Evidence.

The Names of the Twelve sworn are as follow:

<i>Henry Sherbrook</i>	}	<i>John Wolfe,</i>
<i>John Cullum,</i>		<i>Thomas Collins,</i>
<i>Thomas Shaw,</i>		<i>John Watson,</i>
<i>Richard Young,</i>		<i>Benjamin Hooper,</i>
<i>John Cooper,</i>		<i>Daniel Wray, and</i>
<i>Jonath. Micklethwait,</i>		<i>John Pettit.</i>

Cl. of Arr. Cryer, Make Proclamation.

Cryer. O Yez, If any one can inform my Lord, the King's Justices, the King's Serjeant, the King's Attorney-General, or this Inquest now to be taken of the High-Treason whereof *Peter Cook*, the Prisoner at the Bar, stands indicted, let them come forth and they shall be heard, for the Prisoner now stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or they forfeit their Recognizance.

L. C. J. *Treby*. You must make Room for those Twelve Gentlemen that are sworn, that they may

be at ease; and for those that are not sworn, their Attendance may be spared.

Cl. of Arr. *Peter Cook*. Hold up thy Hand. (*Which he did.*) Gentlemen you that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted in London, by the Name of *Peter Cook*, late of London, Gentleman; For that whereas an open and notoriously publick and most sharp and cruel War, for a great while hath been, and yet is by Land and by Sea, carried on, and prosecuted, by *Lewis* the French King, against the most Serene, most Illustrious and most Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. All which time, the said *Lewis* the French King, and his Subjects, were and yet are Foes and Enemies of our said Lord the King that now is, *William* the Third, and his Subjects, he the said *Peter Cook*, a Subject of the said Lord the King that now is, of this his Kingdom of England, well knowing the Premises, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traytor against the said most Serene, most Mild and most Excellent Prince, our Sovereign Lord *William* the Third, now King of England, his Supreme, True, Rightful, Lawful, and undoubted Lord, the Cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of the said Lord the King that now is, towards him our said Lord the King, should bear, and of Right is bound to bear, withdrawing and utterly to extinguish, intending and contriving, and with all his Strength purposing and designing the Government of this Kingdom of England, under him our said Lord the King that now is of Right duly, happily, and very well established, altogether to subvert, change and alter, and his Faithful Subjects, and the Freemen of this Kingdom of England, into intollerable and miserable Servitude to the aforesaid French King to subdue and enthrall; the First Day of July, in the Seventh Year of the Reign of our said Lord the King that now is, and divers Days and Times, as well before as after, at London, in the Parish of St. *Peter Cornhil*, in the Ward of *Lime-street*, Falsely, Maliciously, Devilishly, and Traiterously did Compass, Imagine and Contrive, Purpose and Intend, our said Sovereign Lord the King that now is, then his Supreme, True, Rightful and Lawful Lord, of and from the Regal State, Title, Honour, Power, Crown, Empire, and Government of this Kingdom of England, to depose, cast down, and utterly deprive, and the same our Lord the King to Death and final Destruction to bring, and the aforesaid *Lewis* the French King, by Armies, Soldiers, Legions, and his Subjects, this Kingdom of England to invade, fight with, conquer and subdue, to move, incite, procure and assist, and a miserable Slaughter among the Faithful Subjects of our said Lord King *William*, throughout this whole Kingdom of England, to Make and Cause. And further, That the said *Peter Cook*, during the War aforesaid, to wit, the aforesaid first Day of July, in the seventh Year aforesaid, and divers other Days and Times before and after, at London aforesaid, in the Parish and Ward aforesaid, to the said Foes and Enemies of the same our Lord the King, did adhere, and was assisting: And his aforesaid most wicked and devilish Treasons, and Traiterous Compassings, Con-

Contrivances, Intentions, and Purposes aforesaid, to fulfil, perfect, and bring to Effect, and in Prosecution, Performance, and Execution of that traiterous adhering, he the said *Peter Cook*, as such a false Traitor, during the War aforesaid, to wit, the same first Day of *July*, in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in *London* aforesaid, falsely, maliciously, advisedly, secretly, and traiterously, and by Force and Arms, with one *Robert Charnock*, Sir *John Freind*, and Sir *William Parkyns*, Knights, (which said *Robert Charnock*, Sir *John Freind*, and Sir *William Parkyns*, were lately severally duly Convicted and Attainted of High-Treason, in Contriving and Conspiring the Death of our said Lord the King that now is) and with divers other false Traitors to the Jurors unknown, did meet, propose, treat, consult, consent, and agree to procure from the aforesaid *Lewis* the *French* King, of his Subjects, Forces and Soldiers, then and yet Foes and Enemies of our said Sovereign Lord *William*, now King of *England*, &c. great Numbers of Soldiers and Armed Men, this Kingdom of *England* to Invade and Fight with, and to Levy, Procure, and Prepare great Numbers of Armed Men, and Troops, and Legions against our said Lord the King that now is, to rise up and be formed, and with those Foes and Enemies, at and upon such their Invasion and Entry within this Kingdom of *England*, to join and unite, Rebellion and War against our said Lord the King that now is, within this Kingdom of *England*, to make, levy, and carry on; the same our Lord the King so, as aforesaid, to Depose, and him to Kill and Murther: And further, with the said false Traitors, the same first Day of *July*, in the Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, traiterously did consult, consent, and agree to send the aforesaid *Robert Charnock* as a Messenger from him the said *Peter Cook*, and the same other Traitors, as far as, and into the Kingdom of *France*, in Parts beyond the Seas, unto *James* the Second, late King of *England*, to propose to him, and to request him to obtain from the aforesaid *French* King the aforesaid Soldiers and Armed Men for the Invasion aforesaid to be made, and Intelligence and Notice of such their traiterous Intentions and Adherings, to the said late King *James* the Second, and the said other Foes and Enemies, and their Adherents, to give and shew, and them to inform of other Things, Particulars, and Circumstances thereunto referring, for the Assistance, Animating, Comforting, and Aid of the said Foes and Enemies of the said Lord the King that now is, in the War aforesaid: And to stir up and procure those Foes and Enemies the readilier, and more boldly, this Kingdom of *England* to invade; the Treasons, and traiterous Contrivances, Compassings, Imaginings, and Purposes of the said *Peter Cook* aforesaid, to perfect and fulfil; also the same first Day of *July*, in the Seventh Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, He the said *Peter Cook*, divers Horses, and very many Arms, Guns, Muskets, Pistols, Rapiers, and Swords, and other Weapons, Ammunition, and Warlike Matters, and Military Instruments, falsely, maliciously, secretly, and traiterously, did obtain, buy, gather together, and procure; and to be bought, gathered together, obtained and procured, did cause, and in his Custody had, and detained to that Intent, to use the same in the

said Invasion, War, and Rebellion against our said Lord the King that now is, him our said Lord the King, of and from the Regal State, Crown and Government of this Kingdom of *England*, to depose, cast down, and deprive, and him to kill and Murther; and the Designs, Intentions, and all the Purposes of him the said *Peter Cook* aforesaid, to fulfil, perfect, and fully to bring to effect, against the Duty of his Allegiance, and against the Peace of our said Sovereign Lord that now is, his Crown and Dignity, as also against the Form of the Statute in such Case made and provided.

Upon this Indictment he has been arraigned, and thereunto has pleaded not Guilty, and for his Trial hath put himself upon God and his Country, which Country you are, your Charge is to inquire whether he be guilty of the High-Treason whereof he stands Indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any time since; if you find him not guilty, you are to inquire whether he fled for it; if you find that he fled for it, you are to inquire of his Goods and Chattels as if you had found him guilty; if you find him not guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr *Mompesson*. May it please your Lordship, and you Gentlemen that are sworn, this is an Indictment for High-Treason against *Peter Cook*, the Prisoner at the Bar, and the Indictment sets forth, That whereas there has been an open and cruel War for a long time, and still is between his Majesty King *William*, and the *French* King, the Prisoner at the Bar not weighing the Duty of his Allegiance, the first of *July* in the Seventh Year of the King's Reign, did compass and intend to depose and deprive the King of the Title, Honour, and Dignity of the Imperial Crown of this Realm, and likewise to put the King to Death, and did adhere to the King's Enemies; and to fulfil these Treasons, he did consult with *Charnock*, and several other Traytors who were mentioned there, and some of whom have been found guilty of Treason, and executed for it, to send over to the late King *James*, to persuade the *French* King to send over Soldiers and Arms to invade this Kingdom, and to raise an Insurrection and Rebellion in it, and to deprive and put the King to Death, and to compleat these Treasons, it further sets forth, That the Prisoner at the Bar did provide several Arms and Horses, and this is laid to be against the Duty of his Allegiance, against the King's Peace, Crown and Dignity, and against the Form of the Statute in that Case made and provided; to this he has pleaded not guilty, and for Trial put himself upon the Country, and, Gentlemen, if we prove these Facts laid in the Indictment, its your Duty to find him guilty.

Mr *Att. Gen.* May it please your Lordship, and you, Gentlemen of the Jury, the Prisoner at the Bar stands indicted for High-Treason.

Cook. My Lord Chief Justice, if your Lordship pleases, before the Witnesses are examined against me, I intreat you that they may not be both in Court together, that one may not hear what the other swears, tho' I suppose it is the same thing; for they have been together both now and the last Day.

L. C. J. *Treby*. Mr *Cook*. I must tell you it is not necessary to be granted for asking; for we are not to discourage, or cast any Suspicion upon the Witnesses, when there is nothing made out against them; but it is a Favour that the Court may grant, and does grant sometimes; and now does it to you; though it be not of necessity: They shall be examined apart, but at present this is not the Time of Examination; for the King's Council are now to open the Evidence before they examine the Witnesses; but when the Time comes for the Witnesses to be called and examined, the Court will, in favour to you, take care that your Request be complied with.

Mr *Att. Gen.* May it please your Lordship, the Prisoner stands indicted for High-Treason, in compassing and imagining the Death and Destruction of his Majesty, and likewise in adhering to his Majesty's Enemies, these are the Treasons specified in the Indictment: The Overt-Acts that are laid to prove these Treasons are, That he with several other Traitors, named in the Indictment, did meet and consult, and agree to send over *Charnock* into *France*, to invite the *French* King to make an Invasion upon the Kingdom, and did provide Arms for that Purpose.

Gentlemen, the Nature of the Evidence that you will have produced to prove the Prisoner guilty of these Treasons lies thus: It will appear to you that there has been for some time a Conspiracy carried on by several Traitors, and wicked Persons, to subvert the established Government of this Kingdom, and destroy the Constitution of *England*, by a foreign Invasion of the *French*. You will hear that this Conspiracy was laid wide, and consisted of several Parts, one Part was that of *Assassinating* his Majesty's Royal Person, and that was to be done first, as a Preparation and Encouragement to the *French* to invade the Kingdom: the other Part was the inviting the *French* King to invade us, and the Prisoner at the Bar is accused of being concerned in that Part that relates to the Invasion of this Kingdom, by a *French* Power; and though it may be the other Part, that of *Assassinating* the King, be the blackest Part of the Conspiracy, yet if the Prisoner at the Bar has been engaged in the inviting a Foreign Power to invade the Kingdom, my Lords, the Judges, will tell you, in Point of Law, that is as much an Overt-Act of the compassing the Destruction of the King and the People of *England*, and the Subversion of our ancient good Constitution, as if he had been concerned immediately in the other Part, the *Assassination*.

But now, Gentlemen, that the Prisoner was engaged in inviting the *French* to invade us, you will hear proved by several Witnesses, that there having been a Design last Year, just before his Majesty went to *Flanders*, to expose his own Person for our Protection, and the Protection of the Liberties of *Europe*, there was a Conspiracy to Murder him before he went to *Flanders*, which, it seems, they were not ripe for then; but immediately after he was gone to *Flanders*, you will hear there were formal Meetings of several Gentlemen and Persons of Quality, among whom the Prisoner at the Bar was one: There was a Meeting in *May*, last Year, after the King was gone to *Flanders*; and this was at the *Old King's-Head* in *Leaden-Hall-Street*; and there were pre-

sent, my Lord of *Aylesbury*, my Lord *Montgomery*, Sir *William Parkyns*, Sir *John Freind*, Mr *Charnock*, (all which Three last have suffered the Punishment of the Law for their Treason already;) and there were also Mr *Cook*, the Prisoner at the Bar, Mr *Porter* and Mr *Goodman*; these Men did meet together, to consider of the best Ways and Means of encouraging and inviting the *French* King with an Armed Force to invade this Kingdom; they considered that that was a proper Opportunity, and did treat of several Arguments that might persuade to it: First, that the King was gone to *Flanders*, and so was not in Person here to defend us; and that the Troops, to make good such Defence, were in a great measure drawn thither, to assist the Allies against the *French* Power; they did think likewise, that at that Time there was a great Discontent and Dissatisfaction in the Nation, though I think in that they were greatly mistaken; and I believe and hope they will always find themselves so, to think that the People of *England* are so little sensible of that which is the Means of their Preservation, as to hearken to any Discontents to encourage a *French* Power to come into *England* to destroy our Religion and Liberties; that indeed they did apprehend, though they were mistaken, and I believe they always will, when they go upon that Ground.

Gentlemen, These Persons thinking this a proper Opportunity, did agree to send a Messenger into *France* upon this Message, To go to the late King *James*, and persuade him to desire and prevail with the *French* King to assist him with Ten Thousand Men, 8000 Foot, 1000 Horse, and 1000 Dragoons; and to encourage him, they promised their Assistance here, as soon as he came over; and undertook, that between them, they could furnish, and would raise 2000 Horse to meet him at his Landing, and join upon such an Invasion.

Gentlemen, At this Meeting this was agreed upon by all that were there, whereof the Prisoner was one; and they did agree to send Mr *Charnock*, (who has since been executed, and a principal Incourager of the Design, and Actor in it;) he was the Messenger that was appointed to go upon this Errand, and Mr *Charnock* was resolved to go, but desired another Meeting of these Gentlemen, to know if they continued in their former Resolution, that he might have all the Assurance that was reasonable to give the *French* King Incouragement to make the Invasion: Accordingly another Meeting was had of most of the same Persons that were at the Meeting before; particularly the Prisoner at the Bar was at that Second Meeting, which was in *Covent-Garden* at one Mrs *Mountjoy's*, who keeps a Tavern next Door to Sir *John Fenwick's* Lodgings; there they met upon the same Design, and upon Consultation had, and the Question ask'd, they did agree to continue in the former Resolution, and upon that immediately Mr *Charnock* went into *France* to solicit Forces from thence to invade us; but it happened, as it seems, that the *French* King's Forces were otherwise employed, so that he could not spare so many at that time; and this Return was brought by *Charnock* to the Gentlemen that employed him; that he had spoke with the late King, who gave him that Answer, That the *French* King could not spare so many Men at that Time, but he thank'd them for their Kindness.

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Gentlemen; This will be the Nature of our Evidence, to show, that the Prisoner at the Bar was concerned in that Part of the Conspiracy which relates to the *French* Invasion; and if he be guilty of that, in point of Law, he is as much guilty of the Conspiracy, to depose and murder the King, as if he had been concerned in the other Part of Assassinating his Royal Person; and I believe no Body can think that those that were to act in the Assassination, would have attempted to ingage in such a desperate Design, if it had not been for the encouragement of the *French* Invasion that was to second them afterwards if they succeeded; so that no Body can extenuate the Crime of the Invasion, because as to the Horridness of the Attempt, it is less Black than the other; they are both Crimes of a very high Nature, and equally High-Treason; and if we prove the Prisoner guilty of this Part, we hope you will find him guilty.

Mr *Soll. Gen.* My Lord, we will call our Witnesses and prove the Matter, as it has been opened. Call Captain Porter and Mr Goodman.

Mr *Serj. Darnall.* Now, My Lord, we must desire that that may be done which our Client desired before, and which your Lordship was favourably pleased to promise, that the Witnesses may be examined a-part.

L. C. J. *Treby.* Let it be so: Who do you begin with?

Mr *Soll. Gen.* We begin with Captain Porter, my Lord.

L. C. J. *Treby.* Then let Mr Goodman withdraw.

Mr *Baker.* Let Mr Goodman go up Stairs, and we will call him presently.

Mr *Soll. Gen.* Swear Captain Porter: (which was done.) Captain Porter, Do you know Mr Cook, the Prisoner at the Bar?

Capt. Porter. Yes, my Lord.

Mr *Soll. Gen.* Do you remember a Meeting of some Gentlemen at the King's-Head-Tavern in Leaden-Hall-street.

Capt. Porter. Yes, I do, Sir.

Mr *Soll. Gen.* Then pray give an Account of the Company that were there, the Time when, and what pass'd.

Capt. Porter. My Lord, the last Year we had two Meetings; the First was in May, the other was the latter End of May, or the Beginning of June; the First was at the King's-Head in Leaden-Hall-street; there were my Lord of Aylesbury, my Lord Montgomery, Sir John Fenwick, Sir John Freind, Sir William Parkyns, Mr Charnock, Mr Cook and my self; Mr Goodman came in after Dinner; at this Meeting it was consulted which was the best Way and the quickest to restore King James, and hasten his Return into England; several Discourses and Proposals there were; at last it was agreed to send Mr Charnock to the late King to borrow of the *French* King Ten Thousand Men, 8000 Foot, 1000 Horse, and 1000 Dragoons, to be sent over into England to assist the King's Restoration. Says Mr Charnock thereupon, this the King can do without your sending, and I would not go upon a foolish Errand. What will you do to assist in this Matter? The Company desired him to promise King James, that if he would send Word when he Landed, and where, they would be sure to meet him at his Landing with a Body of 2000 Horse.

Mr *Att. Gen.* Was the Prisoner at the Bar in the Company, and present at this Resolition?

Capt. Porter. Yes, he was.

Mr *Att. Gen.* Did all the Company agree to it?

Capt. Porter. Yes, they did.

Mr *Att. Gen.* What Signs were there of their Agreement? did they stand up severally and declare their Agreement, or how?

Capt. Porter. My Lord of Aylesbury and Sir John Fenwick did rise up, and desired Captain Charnock, that he would go upon this Errand: And when the Question was ask'd severally of all there present by Mr Charnock, whether he might assure the King of what they had told him? Every one said yes, you may; and Mr Cook kneel'd indeed upon a Chair, and said, Yes, you may.

Mr *Att. Gen.* Did he give his Consent to it?

Capt. Porter. Yes, he answered in those very Words.

Mr *Soll. Gen.* Do you remember any Meeting of any Company at Mrs Mountjoy's?

Capt. Porter. Yes, that was a second Meeting.

Mr *Soll. Gen.* Pray tell my Lord and the Jury, how you came to meet there then, what Company were there, and what pass'd.

Capt. Porter. Mr Charnock desired another Meeting, to see if the Gentlemen kept to their former Resolution; and we met at Mrs Mountjoy's eight or ten Days after, and there were most of the Company that was at the first Meeting, and there all that were present did assure Mr Charnock that they kept to their first Resolution, and would abide to what was agreed upon at the former Meeting.

Mr *Att. Gen.* Who were present at the second Meeting?

Capt. Porter. The Prisoner at the Bar was there at that second Meeting.

Mr *Att. Gen.* What was that second Meeting for, do you say?

Capt. Porter. It was to give Mr Charnock Assurance, that we were agreed to stand by the Resolution taken at the first Meeting.

Mr *Att. Gen.* What did Mr Charnock do afterwards?

Capt. Porter. I went away from them; there was Sir William Parkyns, Sir John Freind and Captain Charnock went to the Queens-Head Tavern in Fleet-street, and Captain Charnock told me he would go in two or three Days, and I believe did so.

Mr *Att. Gen.* When did you see him afterwards?

Capt. Porter. When I was a Prisoner upon the Account of the Riot in Drury-Lane; about two or three Days after I came to Newgate he came to see me, and said he had been in France; and that King James thank'd us for our kind Offer, but the *French* King could not spare so many Men that Year; and he told me he had been with my Lord of Aylesbury, and the rest of the Gentlemen that had employ'd him to go over, and had delivered them the several Messages that he was ordered to do from the King.

L. C. J. *Treby.* Captain Porter, who were present at that second Meeting, do you say?

Capt. Porter. My Lord of Aylesbury, Sir John Freind, Sir William Parkyns, Captain Charnock, Mr Cook and my self; I cannot tell whether my Lord
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Montgomery or Mr Goodman were at that second Meeting or no.

Mr Att. Gen. Capt. Porter, I would ask you another Question: You were concerned in the Assassination with those other Persons that engaged in it; Pray what Safety did you propose to your selves after the Assassination was over?

Capt. Porter. My Lord, I ask'd Sir George Barclay what we shou'd do after the Fact was committed: Says he, you need fear nothing, I will go away that Night, I have a Ship ready, and the King will be Landed in five or six Days afterwards; if you'll but keep your selves close for so many Days, all will do well.

Mr Soll. Gen. If the Prisoner or the Council will ask him any Questions, my Lord, they may do it.

Sir B. Shower. Pray Sir, can you recollect what time of Day this was that this Debate and Resolution were had at the *Old Kings-Head* in *Leaden-Hall-street*.

Capt. Porter. Truly Sir Bartholomew, I can't tell.

Sir B. Shower. Pray, by what means do you recollect that this was in the Month of May?

Capt. Porter. Because Capt. Charnock was absent at the *Dog-Tavern* Riot, which was the Tenth of June.

Sir B. Shower. Was it not in April.

Capt. Porter. No, Sir; to the best of my Remembrance it was in May.

Sir B. Shower. What makes you think it was in May rather than April?

Capt. Porter. I have told you, Sir, because both Meetings were before the *Dog-Tavern* Riot, the Tenth of June, and Mr Charnock was not there at that time; but he told me afterwards he had been in France, and there were eight or ten Days Difference between the two Meetings.

Mr Att. Gen. My Lord, if they have done with him, I wou'd ask him one Question, to settle this Matter in point of Time. Capt. Porter, Was the King gone to Flanders when you had these Meetings?

Capt. Porter. The King was gone, Sir, before the first Meeting.

Mr Att. Gen. The King did not go till several Days in May; was Mr Goodman there?

Capt. Porter. He was at the first Meeting, but I can't tell whether he was at the Second or no.

Mr Serj. Darnall. Pray what time was Mr Goodman there at the first Meeting?

Capt. Porter. He came up after Dinner at the first Meeting.

Mr Baker. Then call down Mr Goodman, who came in, and was sworn.

Mr Soll. Gen. Mr Goodman. Pray will you give my Lord and the Jury an Account what you know of an intended Invasion upon this Kingdom; what were the Circumstances of it, and who were concerned in it.

Mr Goodman. My Lord about the Middle of May last, or thereabouts, Captain Porter sent to me, and told me there was a Meeting of some Gentlemen of our Acquaintance at the *King's-Head* in *Leaden-Hall-street*; and he desired me that I wou'd be there, because it was about Business: I told him I did not know whether I cou'd be there at Dinner; but however, I wou'd not fail of coming thither after Dinner; and accordingly I came. When I came into the House, I

sent up my Name to Capt. Porter, and he came down and brought me up Stairs, and there I saw my Lord Montgomery, my Lord of Aylesbury, Sir John Fenwick, Sir William Parkyns, Sir John Freind, Mr Charnock, and that Gentleman at the Bar, Mr Cook: When we were there, the Discourse was, that we did think King James's coming was retarded, and we wou'd do any thing to facilitate his Restoration.

Cook. My Lord Chief Justice.

L. C. J. Treby. What say you, Mr Cook,

Cook. My Lord, If your Lorship pleases, I desire the Jury may not be talk'd to by any Body; and I understand there are some talking with the Jury.

L. C. J. Treby. Fie upon it, we will lay any Body by the Heels that do so, they must neither be disturbed, nor instructed by any Body.

Cook. My Lord, I am informed there was somebody talking to them, and telling them this was the same Case with Sir John Freind.

L. C. J. Treby. Do you but show us the Man, and we will find another Place for him; we will send him to the Goal, I'll assure you.

Mr Burleigh. This Gentleman, my Lord, did hear such a Discourse to the Jury (pointing to a Gentleman there) who stood up.

My Lord, I cannot positively swear to the Man, but I did hear some Discourse that it was the same Evidence as in the former Trial.

L. C. J. Treby. If you can show us who it was, we will take Care to punish him: I suppose he stands Corrected; and if we knew who he was, he shou'd stand Committed.

Mr Att. Gen. Pray, Mr Goodman, begin again, and tell what pass'd at that Meeting, because the Jury were interrupted from hearing by People's buzzing about them.

Mr Goodman. My Lord, When Captain Porter brought me up into the Room, I told you what Gentlemen I found there; after we were set down, there was a Consultation, that considering the French King's Wars retarded the Affair of sending back King James, and the Means of restoring him to the Crown, it was fit we shou'd find out some Way or Method to facilitate his Restoration, and it was thought convenient to have a Messenger to send over to King James with Proposals for that Purpose; to this effect, as near as I remember, That if King James cou'd prevail with the French King to furnish Ten Thousand Men, whereof 8000 to be Foot, 1000 Horse, and 1000 Dragoons, we wou'd endeavour to meet him at the Head of as many Horse as we cou'd raise, to sustain those Forces at their Landing: This was debated in order to come to a Resolution; and much Difficulty there was how many the Number should be; the Man pitched upon to be sent, was Mr Charnock; and after some Debate, how many Thousand Horse could be raised: Says Mr Charnock, don't let me go over upon a foolish Errand, but let me know what I have to say exactly: Thereupon it was concluded by all, that Two Thousand Horse should be the Number we cou'd promise, and the King might depend upon them; and if we brought more, so much the better; and Sir John Freind said, I believe he has so many Friends here, that if he came himself, he might be welcome; but that we did not think fit to trust to; and no Body wou'd advise any such thing; when the Resolution of the Thing and the Number was thus

fixed, Mr Charnock ask'd whether it were with all our Consents? and that he might assure the King, that this was our Resolution thereupon? We all rose up, and said to him, *Yes, you may, yes, you may*, every one particularly; and I remember one Thing particularly concerning the Prisoner Mr Cook, That he kneel'd upon the Chair when he said, *Yes, you may*; and his Elbows were upon the Table: This is all that I know of that Meeting. There was to be another Meeting, as Captain Porter told me; but I had Business in the City; but whatsoever he promised on my Behalf, as to the Quota of Men, I wou'd be sure to make it good; and I was not at the second Meeting.

Mr Att. Gen. Did you see Mr Charnock afterwards?

Mr Goodman. Yes, I did, when he came back; and he told me the Thing was not accepted, for the French King cou'd not spare Men, and that he had been with the several Gentlemen to carry them the Complements that he had in Charge from King James, who returned them Thanks for their good Affection; and among the rest, he did me the Honour to return me Thanks too.

Sir B. Shower. Pray, Mr Goodman, let me ask you a Question: When it was that you saw Mr Charnock after this?

Mr Goodman. It was in *Arundel-street*, at his Lodgings.

Sir B. Shower. But I ask you, Sir, when it was? Was it before or after the Tenth of June?

Mr Goodman. It was after the Tenth of June, Sir.

Sir B. Shower. How long after, pray?

Mr Goodman. I believe it was a Month after the Tenth of June.

Sir B. Shower. Did you see him here in England before Mr Porter was discharged from the Riot, and came out of *Newgate*?

Mr Goodman. I believe I did see him before Captain Porter was discharged, long.

Mr Serj. Darnall. Who were the Persons that were present at that Meeting?

Mr Goodman. My Lord *Montgomery*, my Lord of *Aylesbury*, Sir *John Fenwick*, Sir *John Freind*, Sir *William Parkyns*, Mr *Charnock*, Captain *Porter*, and the Prisoner at the Barr, Mr *Cook*.

Mr Serj. Darnall. Were you at Dinner with them, Sir?

Mr Goodman. No, I came in after Dinner.

Mr Serj. Darnall. Pray what House was it, do you say, this Meeting was at?

Mr Goodman. It was at the *Kings-Head* in *Leaden-Hall-street*.

Sir B. Shower. Can you tell what Day of the Week it was?

Mr Goodman. No, nor the Day of the Month.

Sir B. Shower. Was you ever in the Company of these Gentlemen at any other time?

Mr Goodman. No, this was the only time that I heard of this Consultation; I was not at the second Meeting.

Cook. If your Lordship pleases, may I ask Mr Goodman any Questions?

L. C. J. Treby. Yes, by all Means ask him what you will.

Cook. Mr Goodman, You are upon your Oath: but did you ever hear me speak ten Words in your Life? was you ever in my Company in any House, before or since?

Mr Goodman. Yes, Sir; I was in your Company at the *Cock* in *Bow-street*, where you came in accidentally.

Cook. Did you ever hear me talk of the Government, or any Thing of that Nature?

Mr Goodman. What the Discourse was of, I cannot particularly say, but I am certain you was there: And as to the Consultation that I now speak of, I remember very well you gave your Consent in that Manner as I have told the Court.

Mr Att. Gen. My Lord, we have done at the present.

L. C. J. Treby. Then, Brother Darnall, what say you for the Prisoner?

Mr Serj. Darnall. May it please your Lordship, and you Gentlemen of the Jury: I am of Counsel, in this Case, for the Prisoner at the Bar, Mr Cook, who stands Indicted of a very great Offence, no less, Gentlemen, than High-Treason; and if he be Guilty, his Punishment will be as great: But because the Punishment and the Offence are both very great, the Law requires exact positive Proof, and that by two credible Witnesses. There have been two indeed that have been produced to you; and if you believe both of them, after what we shall offer to you against them; and if what they swear be true, the Prisoner is guilty: But if we satisfy you that either of them is not to be credited, so that you do not believe both of them, he must be acquitted.

There is no doubt, Gentlemen, but there has been a Villainous Horrid Plot; there is no question of it; and it was, as it has been opened, basely to Assassinate one of the bravest Men living; and to make the happiest People in the World, if they know when they are so, the most miserable People upon Earth, by bringing them under French Tyranny and Slavery. Many of the Traitors have been brought to just Punishment for this Treason; nay, they have own'd the Fact at their Deaths, so that there is no question of the Truth of it; and therefore, Gentlemen, every honest Man will endeavour to bring such as are plainly guilty, of such an abominable Conspiracy, to just Punishment; but yet they will be as careful not to let an innocent Man suffer; that, Gentlemen, every honest Man will take care of, and especially such as are upon their Oaths: It concerns a Jury highly to be satisfied, that he is not innocent, whom they bring in guilty; for it is better that Twenty guilty Men shou'd escape, than one innocent Man suffer.

But, Gentlemen, if my Brief be true, we shall give you such an Account of one of these Witnesses; first, as to the Man himself; that he is not a Man to be credited as a Witness; and then besides that, as to the Evidence he gives in this Case; (I say, if my Brief be true) it is false, and we shall prove it so; and when you have heard our Evidence, if you are satisfied that one of these Witnesses is not to be credited, or that what he swears is not true, you are to acquit the Prisoner.

Gentlemen, Here has been one Mr Goodman produced as a Witness, one that never was produced before at the Trial of any of those that have suffered, so that the Truth of their Guilt does not at all depend upon his Evidence, nor does it give any Credit to it. This is this Gentleman's first Entry upon this Stage; and yet (if my Brief be true) this is not the first bloody

or cruel Part that he has acted; for we have a Record of Conviction against him, whereby it will appear to you, that he was indicted (for Endeavouring to poison two Great Dukes) for giving forty Guinea's to an *Italian Empirick*, one *Amydei*, and promising two Hundred Pounds more when it was effected, to poison the late Duke of *Grafton*, and the present Duke of *Northumberland*; and we shall shew you, that he was convicted of it, and fined a Thousand Pound for the Offence; which, considering the Meanness of his Circumstances at that Time, was as much as Twenty thousand Pounds; for he could as well have paid Twenty as One then; and it appears too, that Mr *Goodman* (nay, it will not be denied by him himself) was in this horrid Plot; and he that wou'd be concern'd to poison two Dukes in a Family, to which he had so many Obligations—

Mr *Goodman*. My Lord, I desire Leave to speak to this Matter that the Serjeant mentions.

Mr Serj. *Darnall*. Pray, Sir, let me go on; you may talk anon; I have seen the Copy of the Record of Conviction, and have it ready to produce.

Mr *Att. Gen.* Mr *Goodman*, be quiet, and stay till by and by; you will be defended, no Doubt on it; but in the mean Time let them go on, and don't interrupt them.

Mr Serj. *Darnall*. I say, my Lord, he that wou'd be concern'd in so vile an Act, as a Contrivance to take away the Lives of two great Dukes, (who were, in effect, his young Masters) that he shou'd go to poison them in a Family to which he had been so much obliged; and then, he that wou'd be concerned in so horrid a Plot as this was, to destroy his Country, and take away the Life of the King; sure it will be no difficult Thing to think that this Man will not stick at the little Prisoner's Life at the Bar, especially when he has so great a Temptation to it, as to save his own Life by it.

But perhaps some of you may doubt whether it is to save his own Life or no: But I believe there are none of you would give any Credit to him, if you thought so: Therefore, to satisfy you of that Fact, we shall produce you Evidence of his own Opinion of that Matter, beside the General known Circumstances he lay under; As, That he was long in Prison before he charged the Prisoner with any Thing, and the Prisoner was at Liberty, went every Day abroad for a Week after Mr *Charnock's* Tryal, and never absconded one Minute, but lived publickly, openly and visibly to all his Friends, and all Strangers: But besides, Gentlemen, that Mr *Goodman* knew he must dye, and justly, and deservedly for this horrid Plot and Treason himself; and had no other Way left to save his Life, but to come in thus as an Evidence and Accuser, which we think will shake his Credit with you.

I say, besides all this, (if my Brief be true) we shall prove that he has said himself, That either he must hang *Peter Cook*, or he must be hang'd himself. Thus, Gentlemen, he swears to save his own Life, by taking away another's.

This, Gentlemen, is as to the Man himself, that he is not to be credited. But now further, as to the Evidence that he has given; He tells you that he came into the Tavern in *Leaden-Hall-street*, and that there he found such Company; he owns he came in after Dinner; and that the other Gentleman, Mr *Porter*, owns too; he says there were present at this Meeting, my Lord *Montgomery*, my

Lord of *Aylesbury*, Mr *Cook*, and several other Gentlemen; but (if my Brief be true) we shall prove by three Witnesses, that he was not there till they were gone; and that will make an End of all the Pretence of his Evidence.

Mr *Att. Gen.* Nay, then we shall never have done.

Mr Serj. *Darnall*. I'll assure you, Sir, I have the Names of three Witnesses in my Brief, to prove that my Lord of *Aylesbury*, my Lord *Montgomery*, and Mr *Cook*, were gone before he came in, tho' if any, or either of them were gone, it destroys his Testimony; and if we prove this to you, I would be loth to be one of the Jury that should take away the Prisoner's Life upon this Evidence; no, if he were the vilest Man alive, and much less the Life of the Prisoner at the Bar; for we shall prove (if my Brief be true) he is a Man of Morals, a Man of Virtue, one that has a great Love for his Country; and this we shall prove by Evidence undeniable, Persons of Quality in their Country, such as serve their Country in Parliament, as their Representatives; we shall shew it by such Evidence, that there will be no Room to doubt of it: He is a Man without any Stain or Blot upon him, 'till this Accusation; he is the eldest Son of his Father, and Heir to a great Estate; his Father is a great Officer, and a great Getter under this Government, and can it be imagin'd, or believ'd, that such a Man would be guilty of the worst of Treasons, to destroy the Religion he professes, to overturn the State, to ruin his own Estate, himself and his Posterity, which must be the Consequence of it? Nay, if two good Witnesses cou'd be produc'd to testify it, and if we had not had so much to take off the Credit of *Goodman*, I cou'd hardly believe it of any Man that was in his right Senses; he must have been a Mad-man if he had done it, one that stood so well with the present Government, and of a Family never tainted with Disloyalty.

Certainly, Gentlemen, when we make out this to you against Mr *Goodman*, the Prisoner can be in no Danger of his Life, from Mr *Goodman's* Evidence, tho' he is an unfortunate Man to come under such an Accusation; but I cannot believe that any Jury, upon such a Man's Evidence, will brand an honest Family with the foulest, vilest, blackest Treason that ever was hatch'd; no, Gentlemen, you are Men of Ability and Understanding, and that is it we rely upon; we doubt not but that you will consider the Evidence, and consider your Oaths, and not let the Prisoner's Blood lie at your Doors; therefore we shall go on and call our Witnesses to make out what I have open'd.

Sir *B. Shower*. My Lord, we desire to call our Witnesses, and I shall reserve my self to make some Observations after we have given our Evidence: Mr Serj. has open'd as much as we can prove, and we will now produce our Evidence; First we will shew the Conviction of *Goodman*: Mr *Burleigh*, where is the Conviction?

Mr *Burleigh*. Here it is, Sir.

Sir *B. Shower*. Where had you it, Sir?

Mr *Burleigh*. Out of the Treasury at *Westminster*.

Sir *B. Shower*. Is it a true Copy, did you examine it there?

Mr *Burleigh*. Yes, it is a true Copy, I did examine it with the Record.

Sir *B. Shower*. Then read it, Mr *Tanner*.

Cl. of Arr. Reads— *Michaelmas Term: Tricesimo secundo Caroli Secundi.*

L. C. J. Treby. Read the Record in English to the Jury.

Cl. of Arr. (Reads.) Be it remember'd, that Sir Robert Sawyer, Knight, Attorney-General of our Lord the King that now is, who for the same our Lord the King in this part sueth, came here in the Court of our said Lord the King, before the King himself at Westminster, on Thursday next after three Weeks of St. Michael, the same Term; and for the same our Lord the King, brought here into the Court of our said Lord the King, before the said King, then and there, a certain Information against Cardell Goodman, late of the Parish of St. Martin in the Fields, in the County of Middlesex, Gentleman, which Information follows in these Words, *Scilicet, Middlesex scilicet*, Be it remember'd that Sir Robert Sawyer, Knight, Attorney-General of our said Lord the King that now is, who for the same our Lord the King, in this Behalf sueth, in his own proper Person came here into the Court of our said Lord the King, before the King himself at Westminster, on Thursday next after three Weeks of St. Michael that same Term, and for the same our Lord the King, gives the Court here to understand and be inform'd, That Cardell Goodman, late of the Parish of St. Martin in the Fields, in the County of Middlesex, Gentleman, being a Person of a wicked Mind, and of an ungodly and devilish Disposition, and Conversation, and contriving, practising, and falsely, maliciously and devilishly intending Death, and Poisoning and final Destruction unto the Right Noble Henry, Duke of Grafton, and George, Duke of Northumberland, and that the aforesaid Cardell Goodman, his most wicked, most impious, and devilish Intentions, Contrivances and Practices aforesaid, to fulfil, perfect, and bring to Effect, the Thirtieth Day of September, in the six and Thirtieth Year of the Reign of our Lord Charles the Second, now King of England, &c. and diverse other Days, and Times, as well before as after, at the Parish of St. Martin in the Fields, in the County of Middlesex, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, and devilishly, by unlawful Ways and Means, did solicit, persuade, and endeavour to procure one Alexander Amydei, to prepare and procure two Flasks of Florence Wine, to be mix'd with deadly Poison, for the Poisoning of the aforesaid Right Noble Henry, Duke of Grafton, and George, Duke of Northumberland, and his most wicked, most impious, and devilish Contrivances, Practices and Intentions aforesaid, to fulfil, perfect, and the more to bring to Effect, the aforesaid Cardell Goodman, the Day and Year aforesaid, at the Parish aforesaid, in the County aforesaid, falsely, unlawfully, unjustly, maliciously and devilishly, did promise and agree, to give unto the aforesaid Alexander Amydei, forty Pieces of Guinea-Gold, of the Value of forty Pound, of lawful Money of England, if he the said Alexander Amydei wou'd prepare, procure and provide, two Flasks of Florence Wine, to be mix'd with deadly Poison, for the Poisoning of the aforesaid Right Noble Henry, Duke of Grafton, and George, Duke of Northumberland; and if the aforesaid Poison with the Wine aforesaid to be mix'd, shou'd effect the Death of the aforesaid Henry, Duke of Grafton, and George, Duke of Northumberland; that then he the said Cardell Goodman, wou'd give unto the said Alexander Amydei, the Sum of one Hundred Pounds, and that beyond Sea he wou'd maintain the said Alexander all the Days of him

the said Alexander, to the evil and most pernicious Example of all others in the like Case offending, and against the Peace of our said Lord the King that now is, his Crown and Dignity, &c. Then here is Process pray'd by the Attorney General against Mr Goodman, who comes, and by his Attorney pleads not Guilty, and here is Issue joyn'd.

Sir B. Shower. Well, see for the Verdict.

Cl. of Arr. There was a Tryal at Nisi Prius, and the Jury find that the said Cardell Goodman is guilty of the Premises in the Information specify'd as by the Information is supposed against him.

Sir B. Shower. Now read the Judgment.

Cl. of Arr. Thereupon it is consider'd, that the said Cardell Goodman do pay to the King, the Sum of One Thousand Pounds, for his Fine, impos'd upon him for the Occasion aforesaid, and that the aforesaid Cardell Goodman be committed to the Marshalsea of this Court, in Execution for his Fine aforesaid, that he be safely kept there, till he pay his Fine aforesaid; and before that the said Cardell Goodman is deliver'd out of the Prison aforesaid, he shall give Security to behave himself well, during his Life, and also shall give Security for the Peace to be kept towards the said Lord the King, and all his People, and particularly towards the Right Noble Henry, Duke of Grafton, and George, Duke of Northumberland.

Mr Serj. Darnall. So, you hear the Record of the Information, Conviction and Judgment, for a very horrid, abominable Crime.

Mr Att. Gen. But I desire they may now go on, and read the whole of the Record.

Cl. of Arr. Reads. And afterwards, to wit, on Friday next after eight Days of St. Hilary, in the thirty sixth, and thirty seventh Years of the Reign of our said Lord the King that now is, before our said Lord the King at Westminster came the aforesaid Sir Robert Sawyer, Knight, Attorney-General of our said Lord the King that now is, and acknowledged that the said Cardell Goodman has satisfy'd to our said Lord the King that now is, of the Judgment aforesaid against him, in Form aforesaid given, therefore the said Cardell Goodman is thereof acquitted; And so forth.

Mr Serj. Darnall. Call Mr Charles Edwards, William Cock, Christopher Crawford, Mary Crawford, and Mr Huntley.

Edwards appear'd upon a Habeas Corpus, directed to the Keeper of Newgate, where he was a Prisoner.

Mr Baker. Where is the Warrant of his Commitment? What is he committed for?

Tokefeild. He is committed for Suspicion of Treason, and treasonable Practices.

Mr Baker. Is he not committed for High-Treason?

Tokefeild. No, Sir, he is not.

Mr Serj. Darnall. What Discourse had you with Mr Goodman, concerning the Prisoner at the Bar, what did you hear him say?

Mr Baker. He is not sworn yet, it seems this Gentleman was Dundee's Chaplain in Scotland.

Mr Att. Gen. If he be not sworn, he can give no Evidence.

Mr Serj. Darnall. My Lord, we desire he may be sworn.

L. C. J. Treby. Swear him. (Which was done.)

Mr Serj. Darnall.

Mr Serj. *Darnall*. Pray Sir, will you tell the Court, and the Jury, what you know of any Discourse of Mr *Goodman's*, concerning the Prisoner at the Bar.

Edwards. My Lord, I desire to know, being ignorant of the Law, whether I am brought here by the common Course of Justice or not?

Mr Serjeant *Darnall*. Sir, we have Subpœna'd you for the Prisoner at the Bar, to give Evidence of the Truth of your Knowledge here upon Oath.

L. C. J. *Treby*. Would you have us tell you how you came here? We suppose you came by due Process of Law, as a Witness.

Edwards. Then, my Lord, I desire to speak but one Word; that 'tis a strange Thing to me to consider, how Words should be carried away that were privately spoken; as if it were to expose me to the Reproaches of all my Friends; it is a Thing that I did never expect to hear of again: However, seeing I am called here, and obliged upon my Oath to declare what I know, I, by God's Grace will, to the uttermost of my Power, tell what has pass'd in this Matter.

L. C. J. *Treby*. Don't make any Apology for telling the Truth: You are obliged by your Oath to do it, and the Court expects it from you.

Edwards. Among other Discourses that pass'd betwixt Mr *Goodman* and me, I ask'd him when Mr *Cook* was to be arraigned, and when he was to be tryed: Says he, he is to be arraigned upon Monday, and he is to be tryed upon Thursday. I ask'd him whether it was for the Assassination-Plot, and he told me no. For what then? Said I: As being concerned in sending Mr *Charnock* into France? Who are the Evidences against him, said I? Said he, Captain *Porter* and my Self. Said I, I believe two Witnesses will be found Good, or by Way of Demonstration in Law; and I pity the poor Gentleman's Case. Says he, he swore against me. How comes it then, said I, that he is not come off, and has not a Pardon, and would divulge no Body else?

L. C. J. *Treby*. Who had not a Pardon do you mean?

Edwards. Mr *Cook*. I ask'd how he had not a Pardon? Says he, he would give an Account of no Body else but me, and that was the Reason he had no Pardon. Said I to him, Who are the Evidences against him? Says he, Captain *Porter* and my Self. And after this, says he, he or I must perish; or, he or I must suffer; I believe the Word was suffer: But, says he, 'tis a foolish Thing to be hang'd. All that's said of a Man that is hang'd, is, That he hang'd handsomely, or he dy'd bravely. That's all the Discourse that I can remember.

Mr Serjeant *Darnall*. He said it was a foolish Thing to be hang'd; and Mr *Goodman*, it seems, had no Mind to be hang'd; and I believe so too: But he must not hang my Client, to save his own Life.

Edwards. Now, by the same Oath that I have Sworn, I knew nothing of being brought hither, till my Words were carry'd away privately from me, and has been consulted of, and returned to me back again; and I was far from suborning or carrying away a Discourse privately to make any Advantage of it.

Mr Serjeant *Darnall*. Now we will call *Crawford*, and *Huntley*, and *Cock*.

Mr *Att. Gen.* I desire that Gentleman that was last examin'd, may not go away.

[*Crawford*, *Huntley*, and *Cock* were Sworn.]

Sir *B. Shower*. Set up Mr *Crawford* (which was done). Pray, Sir, will you recollect your self: Do you remember when my Lord of *Aylesbury* and Captain *Porter* din'd at the King's Head.

Crawford. Yes: It was about a Twelve-month ago.

Mr Serjeant *Darnall*. What Company was there?

Crawford. My Lord of *Aylesbury*, Sir *John Freind*, Sir *John Fenwick*, Sir *William Parkyns*, Captain *Porter*, and Two or Three more, I did not know their Names.

Sir *B. Shower*. How many were there that din'd there?

Crawford. I think about Eight in all.

Sir *B. Shower*. Was the Room shut while they were there, or did the Servants and Drawers go up and down commonly?

Crawford. Yes they did go up and down commonly.

Sir *B. Shower*. After Dinner, did any Body come to them while they were there?

Crawford. No, not during my Lord of *Aylesbury's* Stay, and my Lord *Montgomery* went away with him?

Sir *B. Shower*. About what Time did my Lord of *Aylesbury* go away?

Crawford. I think it was about Four a-Clock.

Sir *B. Shower*. How can you tell it?

Crawford. I did attend upon them the most Part of the Time.

Sir *B. Shower*. Did you see him go away?

Crawford. Yes, I did.

Sir *B. Shower*. Was that Gentleman, Mr *Goodman*, there, when they went away?

Crawford. I did not see him there, to my Remembrance: No Body came in there before they went away, saving their own Servants.

Mr Serj. *Darnall*. Do you know Mr *Cook*, the Prisoner at the Bar? Was he one of the Gentlemen that were at your House?

Crawford. Yes: I did not well remember or recollect, till I saw him on Saturday last.

Mr *Att. Gen.* Was he one that went away?

Crawford. I do not remember truly, Sir.

Mr *Att. Gen.* Pray, how long was it after Dinner that they went away?

Crawford. I think it was not an Hour.

Mr *Att. Gen.* Was you there all the Time, from the Time of the Dinner?

Crawford. No, not all the while I was not in the Room, but going to and fro.

Mr Serj. *Darnall*. You say Mr *Goodman* did not come up till after they were gone?

Crawford. No, I did not see him.

Mr *Att. Gen.* Did you see him at all?

Crawford. No, I did not see him at all.

Mr *Att. Gen.* Just now it was said he did not come till they were gone, and now it seems he did not see him at all.

Crawford. I do not know that he was there at all.

L. C. J. *Treby*. But, Brother *Darnall*, you open'd it, that Mr *Goodman* came after my Lord of *Aylesbury* was gone, and now you will prove it that he came not at all.

Sir *B. Shower*. My Lord, we do not pretend to falsify his Evidence for any Thing more than is material for the Prisoner: We say Mr *Goodman* was not in the Room where they din'd till those Persons

Persons went away; if in any Particular we disprove him, it is sufficient for us: If we can shew that he was not there till three of those that he has nam'd were gone away, that answers our End. We are not concerned if he came at four, five, or six a-Clock, and discours'd with *Charnock* till twelve a-Clock at Night.

Mr *Att. Gen.* Pray reserve your Remarks, but only observe now what he says, that Mr *Goodman* came not at all thither, and that is more than you pretended to open.

Mr *Conyers.* How many were there that were there at Dinner?

Crawford. About Eight.

Mr *Conyers.* How many do you name that you know?

Crawford. My Lord of *Aylesbury*, Sir *John Friend*, Sir *John Fenwick*, Sir *William Parkyns*, and Captain *Porter*, there were several others; two or three more, but I did not know their Names.

Mr *Conyers.* Did you see Mr *Goodman* come in at any Part of the Day afterwards?

Crawford. I do not know that Mr *Goodman*.

Mr *Comper.* Mr *Crawford*, you say, that for an Hour after Dinner you were sometimes in the Room and sometimes out; when you were out of the Room, were you always in the Passage up to the Room?

Crawford. No, I was not.

Mr *Comper.* Cou'd any Man come in or out without your seeing?

Crawford. I should have known him above Stairs when I came in again.

Mr *Comper.* Why, you say, there were two or three above that you did not know.

Crawford. I knew them by Sight, if not their Names.

Mr *Comper.* Were you always in Sight then?

Crawford. No, Sir, I tell you I was up and down.

Sir *B. Shower.* Was there any Body came in before my Lord of *Aylesbury* went out, that is, any Body besides those that din'd there?

Crawford. No.

Sir *B. Shower.* My Lord, we are not contending now about a Man's coming up without his Knowledge; but whether any such Man as Mr *Goodman* came up and stay'd there, during the Consultation, and we insist upon it; there was no Body there till my Lord of *Aylesbury*, my Lord *Montgomery*, and Mr *Cook* were gone, but those that din'd there: Now I would ask a Question again of him, Was there any Body but who din'd there, till my Lord of *Aylesbury* went away?

Crawford. No, there was not.

Mr *Att. Gen.* Why do you say so? How do you know that?

Crawford. I did not see any Body.

Mr *Soll. Gen.* Did you attend upon other Rooms, as well as that, at the same Time?

Crawford. Yes, I did.

Mr *Soll. Gen.* Then how is it possible that he can swear that Mr *Goodman* was not there?

Sir *B. Shower.* Do you remember when my Lord of *Aylesbury* and they went away?

Crawford. It was about Four a Clock.

Sir *B. Shower.* Were you there in the Room when they went away?

Crawford. I went out with my Lord to the Coach.

Sir *B. Shower.* Did you see him come down Stairs; or did you go up Stairs then?

Crawford. I went up Stairs when the Coach was called.

Sir *B. Shower.* Was then any Body there but such as din'd there?

Crawford. I did not see any Body there but those that din'd there.

Mr *Comper.* But, my Lord, he does not know all that din'd there neither.

L. C. J. *Treby.* Mr *Crawford*, you say my Lord of *Aylesbury* and others went away about Four a Clock: Pray how long did the Rest of the Company stay there?

Crawford. I cannot remember. They stay'd there pretty late: It is a pretty While ago.

L. C. J. *Treby.* About what Hour did they part?

Crawford. I cannot remember what Time the Rest went away: Our House is fuller at Night than at Noon; and I waited upon other Companies. It was pretty late before they went away, that I am sure.

L. C. J. *Treby.* But he cannot remember whether it were Five, or Six, or Twelve, that they went away, only he can remember the Hour of Four, that my Lord of *Aylesbury* and they went away.

Mr *J. Rokeby.* Was it Light, or was it Dark when they went away?

Crawford. It was Dark.

L. C. J. *Treby.* Did you attend the Company after my Lord of *Aylesbury* was gone?

Crawford. I went up and down into that Company as I did into others.

L. C. J. *Treby.* Was you there several Times after my Lord of *Aylesbury* was gone?

Crawford. Yes, I was there once or twice after my Lord of *Aylesbury* was gone, I am sure.

L. C. J. *Treby.* And did you never see Mr *Goodman* there?

Crawford. No, I never saw Mr *Goodman* in my Life, before I saw him on *Saturday* last.

Sir *B. Shower.* Which is Mr *Huntley*?

Huntley. Here I am, Sir.

Sir *B. Shower.* Pray recollect your self, and tell my Lord and the Jury what you remember of any Company that were with Mr *Porter*, at the King's Head, and who din'd there.

Huntley. My Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Friend*, Mr *Porter* and Mr *Charnock*.

Sir *B. Shower.* That was the Company, you say, that din'd there: Did Mr *Goodman* dine there?

Huntley. No, Mr *Goodman* did not dine there.

Sir *B. Shower.* Pray, Sir, recollect your self: When did any of this Company part, or go away?

Huntley. My Lord of *Aylesbury* and my Lord *Montgomery* went away about Four a Clock.

Sir *B. Shower.* Sir, how do you know that?

Huntley. I went down Stairs after them; I was above Stairs when they parted from the Rest of the Company.

Mr *Serj. Darnal.* Pray mind, Sir: Was Mr *Goodman* there at that Time before they went away?

Huntley. No, he was not.

Sir *B. Shower.* Are you sure of that, upon the Oath you have taken?

Huntley. Yes, I take it upon my Oath, he was not there.

Sir *B. Shower.* Did you attend them at Dinner?

Huntley. Yes, I did attend them at Dinner.

Sir *B. Shower.* Did you attend them all the While they were there?

Huntley. I was call'd frequently, and was in and out of the Room very much after Dinner.

Sir B. Shower. Do you think if a fresh Man had come in after Dinner, you should not have known him?

Huntley. Yes, I should have known him.

Mr Att. Gen. Pray, Friend, let me ask you one Question. Was Mr Goodman there at all that Day?

Huntley. That I don't know; I did not see him at all.

Mr Soll. Gen. Did you attend upon any other Rooms that Day?

Huntley. No, I attended only upon that Company.

Mr Soll. Gen. Were you in the Room all the Time?

Huntley. No, I went up and down.

Mr Soll. Gen. What Time did the last of the Company go away?

Huntley. It was about Darkish; it was pretty late to the best of my remembrance.

Mr Att. Gen. Pray, did any Body come to those Gentlemen after Dinner?

Huntley. No, Sir.

Mr Att. Gen. Did you ever see Goodman before now?

Huntley. Never in my Life, to my Knowledge.

Mr J. Rokeby. Did all the Company, but my Lord of Aylesbury, and my Lord Montgomery, stay till it was Duskyish?

Huntley. That I don't know.

Mr J. Rokeby. Did you know all the Company that was that Day at Dinner?

Huntley. I knew all but One.

Mr J. Rokeby. And who was that?

Huntley. That was Mr Charnock.

Mr J. Rokeby. And yet you can't tell whether there was any Body else that you did not know, how then can you tell that Goodman was not there?

Sir B. Shower. He did not know him at that Time, but he might remember him afterwards.

Mr Conyers. Did not the same Company use to meet at other Times, at your House?

Huntley. Not to my Remembrance.

Mr Conyers. How then came you, if they never had us'd to meet there, to know all these People's Names?

Huntley. I have seen Sir John Freind there, and Sir William Parkyns.

Mr Conyers. Was Sir John Freind there, or no?

Huntley. Yes, he was.

Mr Conyers. My Lord, he was the only Man that was not nam'd before: You did not name Sir John Freind before, as I heard: But pray, did you ever see Mr Charnock there, but at that Time?

Huntley. No, I did not.

Mr Conyers. How came you to know it was Mr Charnock?

Huntley. I knew very few of them before that Time; and I ask'd their Servants the Names of all those Persons that were there?

Mr Conyers. Did you know Mr Porter, pray?

Huntley. Not before that Time: I did see Mr Porter, and I knew him again when I saw him, his Black told me his Name that Day.

Sir B. Shower. You, Huntley, I would ask you one Question more; Was the Door shut, or no?

Huntley. No, it was not.

Sir B. Shower. Did the Servants go up and down as they us'd to do?

Huntley. Yes, Sir.

Mr Att. Gen. Sir Bartholomew would make it that there was no Consultation at all.

Sir B. Shower. They were very mad Folks if they would consult at that Rate with the Door open. Pray call Mr William Cock, (who was sworn.)

Mr Att. Gen. Sir John Freind has own'd it, that's dead.

Sir B. Shower. Sir John Freind's Confession is nothing to the Prisoner.

Mr Att. Gen. Mr Serjeant Darnall did open, that the Confession of those that dy'd, was an undeniable Proof of the Conspiracy: But go on with your Evidence.

Mr Serjeant Darnall. Pray, Mr Cock, will you recollect your self, about the Time when Captain Porter, and some other Gentlemen, din'd at your House.

W. Cock. Yes, very well.

Mr Serjeant Darnall. Pray, Sir, can you tell who din'd there at that Time?

W. Cock. There were my Lord of Aylesbury, my Lord Montgomery, Sir William Parkyns, Sir John Fenwick, Sir John Freind, Mr Charnock, Captain Porter, and Mr Cook.

Mr J. Rokeby. Was that all the Company?

W. Cock. Yes, it was.

Mr J. Rokeby. One of them said there were Eight.

L. C. J. Treby. And he has nam'd Eight, Brother.

Mr Serjeant Darnall. Can you remember when any of the Company went away, and who went away first?

Cock. My Lord of Aylesbury and my Lord Montgomery went away in a Hackney-Coach; and their Servants were frequently in the Room, and waited afterwards in another Room, after that they had waited at Table at Dinner; and tho' the Door was shut, as it used to be when any Company is there, yet no Body was forbid to come there at all.

Mr Att. Gen. Do you remember when Mr Goodman came there?

Cock. I never saw Mr Goodman in my Life before to Day.

Mr Serjeant Darnall. Did any Body come to this Company before my Lord of Aylesbury went away that did not Dine there?

Cock. I did not see any Body there at all: And my Lord of Aylesbury was about buying a Hogshead of White-wine, but we could not agree about the Price: And when my Lord of Aylesbury went away, I went down with my Lord, and waited upon him to the Coach; and I told my Lord, I hoped he would buy the Wine still. But he answered, he could not tell whether he should or no.

Mr Serjeant Darnall. Who else went with my Lord of Aylesbury?

Cock. My Lord Montgomery. I don't remember any Body else.

Mr J. Rokeby. Did all the Rest of the Company go away at once?

Cock. Truly, my Lord, I can't say they did.

Mr J. Rokeby. By what Time did the Rest go away?

Cock. I believe it might be Eight or Nine a Clock.

Mr Serjeant Darnall. You saw my Lord of Aylesbury when he parted: Was Mr Goodman there then?

Cock. I did not see him.

Mr B. Powis. Did Mr Cook stay till the last?

Cock.

Cock. That I can't tell truly.

Mr B. Powis. I find they all Swear to Four a Clock of my Lord *Aylesbury's* going, and go no further.

Mr Att. Gen. Pray, Sir, let me ask you a Question or two: Did you ever see *Mr Goodman* before now?

Cock. No, I do not remember I did.

Mr Att. Gen. When you went into the Room after Dinner, did you look about the Room to see whether there were any new Company?

Cock. I did look about the Room several Times, and so did my Servants, to see if there were any Thing wanting.

Mr Att. Gen. Can you take it upon your Oath, that he was not there whilst my Lord of *Aylesbury* stay'd?

Cock. I do: And can take it upon my Oath, he was not.

Mr Att. Gen. Then if you can, pray distinguish the Time when he came in.

Cock. I do not remember that ever I saw him in my Life before to Day.

Mr Att. Gen. Why are you not as positive that he was not there at all, as that he was not there before my Lord of *Aylesbury* went away?

Cock. He might come in, and I not see him.

Mr Att. Gen. Might he not as well come in before they went away, as after, to come in and you not see him?

Cock. No, I do not think he cou'd.

Mr Att. Gen. Why do you think so?

Cock. Because the Servants were all about, and they did not go to Dinner till Two a Clock: And I believe those Gentlemen that I named, came in a Quarter of an Hour's Time to Dinner.

Mr Att. Gen. We do not say he came there before Dinner: But could he not come in after Dinner, before my Lord of *Aylesbury* and my Lord *Montgomery* went away, without your seeing him?

Cock. Yes, Sir.

Sir B. Shower. Then heark ye, Sir, I wou'd ask you one Question: Did you see him, upon your Oath, or not?

Cock. No, I did not.

Sir B. Shower. Might not *Mr Goodman* come in to them without your seeing him?

Cock. It is possible; but I don't think it was so.

Mr J. Rokeby. How then can you be positive that he was not there till my Lord of *Aylesbury* went?

Mr Soll. Gen. You say you may be positive he was not there before my Lord of *Aylesbury* went: Can you be as positive now, that he was not there before *Mr Cook* went?

Cock. I do not know when *Mr Cook* went.

Mr Soll. Gen. How can you be then positive he was not there before my Lord of *Aylesbury* went?

Cock. There were no more than what dined there when my Lord of *Aylesbury* went away.

Mr Conyers. Pray, Sir, let me ask you a Question: Were you in the Room at any Time after Dinner?

Cock. Yes, I was Sir.

Mr Conyers. Pray, Sir, How many Times after Dinner, were you there?

Cock. I believe half a dozen Times.

Mr Soll. Gen. And yet you do confess that *Mr Goodman* might come in after Dinner before my Lord of *Aylesbury* went, and you not see him?

Sir B. Shower. Ay, but he could not stay there without his seeing him; if he was so often in the Room: You don't take *Mr Cock's* Evidence right.

Mr Att. Gen. You named eight Persons that dined at your House: Did you know them all personally before that Day?

Cock. Yes, my Lord, the most of them at least.

Mr Att. Gen. Did they use to meet at your House?

Cock. Commonly *Sir John Freind* did once a Week. *Mr Charnock* I knew when I was a Drawer, and so I did *Sir William Parkyns*: The Rest I knew by hearing their Names.

Mr Att. Gen. Did you know them before that Day, Sir, I ask you?

Cock. I had seen *Captain Porter* several Times before that Day; but I cannot say at my own House.

Sir B. Shower. Do you remember the Treaty about the Hoghead of White-wine?

Cock. Yes, Sir, very well.

Sir B. Shower. Were you by when my Lord of *Aylesbury* went away, and spoke with him about it?

Cock. Yes, I was; and told him, I hoped he would buy the Wine still.

Sir B. Shower. Can you be positive that any Body was there before my Lord of *Aylesbury* went away, that could stay there any Time, and did not Dine there?

Cock. I believe not, Sir; for I came in half a dozen Times after Dinner, and I believe if I had heard *Mr Goodman's* Name, or seen him there, I should have remembred it; but I did not see any Body but those that dined there.

Mr Cowper. Where was you when my Lord of *Aylesbury* went away? Where did you meet him going away?

Cock. Upon the Stairs: Seeing my Lord of *Aylesbury* and my Lord *Montgomery* coming down, I met them.

Mr Cowper. Where did you meet them? At the Middle, or the Top of the Stairs?

Cock. My Lord of *Aylesbury* was at the Top of the Stairs.

Mr Cowper. Did you meet him just coming out of the Room?

Cock. Yes, Sir, I saw the Coach that was called for my Lord; and so I went up Stairs, and met my Lord at the Top of the Stairs coming down.

Mr Soll. Gen. Now how can you be positive who was in the Room when he came out of the Room?

Cock. I went up into the Room after my Lord of *Aylesbury* went away.

Mr Soll. Gen. How long after my Lord of *Aylesbury* went away?

Cock. It was presently after.

Mr Soll. Gen. How long before my Lord of *Aylesbury* went away, had you been in the Room?

Cock. I had been there just before.

Mr Serjeant Darnall. Call *Thomas Peachy*, (who appear'd and was Sworn.)

Sir B. Shower. My Lord, we shall prove that after the Plot broke out, and after *Mr Porter* had made his Discovery, there was no Disturbance of *Mr Cook* till a good While after *Charnock's* Tryal; and *Mr Cook* was so far from being sensible, or conscious of any Guilt, that he never absconded, but continued for three Weeks in his Father's House, where he was taken by a Messenger. Pray *Mr Peachy* will you tell my Lord, and the

the Jury, where Mr *Cook* was taken, and when, and by whom?

Peachy. He was taken at his Father's House by a Messenger, about Seven a Clock in the Morning.

Sir *B. Shower*. What Day of the Week was it he was taken?

Peachy. Upon a Sunday Morning, in his own Room, in his Father's House, at Seven a Clock in the Morning.

Sir *B. Shower*. Did People come to him as they used to do?

Peachy. Yes; and he went frequently abroad as he used to do, and did never abscond from his Father's House.

Mr Serjeant *Darnall*. Pray Swear Mr *Treganna*. (which was done.)

Sir *B. Shower*. Mr *Treganna*, pray do you remember how long after the Plot broke out did you see Mr *Cook*?

Treganna. After Mr *Charnock's* Tryal, a Week, he was at my Chamber; after the Plot broke out, he was concerned in a Tryal at *Winchester* Assizes, upon an Issue out of *Chancery*, Mr *Nicholls* was the Clerk in Court, and went down to manage it at the Assizes; and Mr *Cook* came to me a Day or two after *Winchester* Assizes was over, and ask'd me if I had any News from the Assizes? This was long after the Plot broke out: And I remember particularly, that I saw him twice after the Plot was discovered, at my Chamber.

Sir *B. Shower*. Swear Mr *Nicholls*, (which was done.)

Sir, Pray will you tell my Lord and the Jury what you know of Mr *Cook's* appearing abroad after the Plot was discovered?

Mr *Nicholls*. I was sent down to the Tryal: I was present, and did attend at two Tryals indeed, and I suppose Mr Baron *Powis* may remember that I attended at two Tryals at *Winchester* Assizes.

Mr *B. Powis*. Possibly you might, Sir: I can't tell all the Attendance at the Assizes.

Mr *Nicholls*. And after my return from *Winchester* Assizes, Mr *Cook* was with me several Days, both at my Office and Chamber, and at his Father's Office: And I remember particularly, that he threatned me that I was in Trouble when I was at *Winchester*, and therefore I remember it very well.

Sir *B. Shower*. Mr *Nicholls*, you know Mr *Cook* very well; pray what are his Morals?

Mr *Nicholls*. Upon Occasion of the Cause in *Chancery* that went to Tryal, I have had the Knowledge of Mr *Cook* five or six Years; I always believed him to be as temperate a Man as ever I met with: I think in five Years Time I was not above once with him in a Tavern.

Sir *B. Shower*. Did you ever hear him Swear?

Mr *Nicholls*. No, never; nor vent a Curse: I believe he drank as little as any Man, and was as godly a Man. I never heard him speak a foul Word.

Sir *B. Shower*. How do you know that, Sir, that he was so godly a Man?

Mr *Nicholls*. Upon Occasion of this Cause, I was several Times at Sir *Miles Cook's*, and at Mr *Cook's* Lodgings there, and we were to go about Business, and after he was dress'd, he has made me stay while he went into his Closet and said his Prayers. And he told me further, that he never went out of his Father's Doors without saying his Prayers; and I was forc'd to stay at the Door while he perform'd his Devotions, as he told me, and I believe he did.

Mr Serjeant *Darnall*. Now, my Lord, we will call some other Witnesses to prove his good Af-

fection to his Country, how he continually desired Success to the Fleet, and to the Army.

Sir *B. Shower*. So that really he had an Aversion to it.

Swear Mr *Hamond*, (which was done.)

Mr Serjeant *Darnall*. Pray, Sir, will you give an Account what you know of the Prisoner, concerning his Judgment, and concerning his Morals?

Hamond. I have been for some Time acquainted with Mr *Cook*, the Prisoner at the Bar, and to the Best of my Observation, I always took him to be a conscientious Man, and I have heard him declare great Detestation of a *French* Force: And three or four Days before he was taken into Custody, I ask'd him what he heard of Intelligence? He said he heard what was in the publick Prints, and heard no more, and knew no more; and he had a great Abhorrence of the Conspiracy, and thought it a very monstrous Thing. I never heard him speak a disrespectful Word of the King's Person or Government in my Life. And I say again, I have heard him several Times declare, in common Conversation, that he had an Aversion to *French* Power, and he had a dread of it.

Mr Serjeant *Darnall*. What have you heard him say about our Fleet, or Army?

Hamond. My Lord, I have heard him very much wish Prosperity and Success to our Fleet.

Mr *J. Rokeby*. What Fleet, pray Sir?

Hamond. To our Fleet, King *William's* Fleet against the *French*. Things to this Purpose he has frequently said.

Mr Serjeant *Darnall*. Then Swear Mrs *Hunt*, (which was done) but she was not examined.

Sir *B. Shower*. My Lord, we leave it here. But I must beg the Favour, that if they give any new Evidence, and there be Occasion, we may have liberty to answer it. And I have an Observation or two to make when the Evidence is over.

Mr *Att. Gen.* My Lord, if they have done with their Evidence, I beg leave to observe, that there is something arises upon that Evidence, that will give us occasion to call a Witness or two more. My Lord, the first Witness which they call'd was *Edwards*, and he is in Custody upon Suspicion of High Treason in *Newgate*, and he gives an Account of some Discourse that he had with Mr *Goodman*; and for that, it will be necessary for us to call Mr *Porter* again and Mr *de la Rue*, to shew that this *Edwards*, the Witness, as he is committed for Suspicion of High Treason, so he was in the Conspiracy for the Assassination; he was one in the List that was brought back by *Cranburne* from Mr *Charnock* to Captain *Porter*, as one of *Charnock's* Men, and he is in Custody for it. Then as to the other Matter, they have called three Witnesses to prove, That Mr *Goodman* was not in this Place at this Time. The Council indeed opened it, that he was not at the Tavern till after my Lord of *Aylesbury* and my Lord *Montgomery* were gone away; but their Evidence goes further, That he was not there at all: And the Master of the House says, he was not there to his Knowledge at any Time. So that if their Evidence prove any Thing, they prove that he was not there at all; they do not remember that they saw him there: So that the Question will be, whether Mr *Goodman* was there at that Time, and it will be necessary to call Mr *Goodman* again, and Mr *Porter*, to confront these Witnesses, who will tell you when he came in: And particularly as to my Lord of *Aylesbury*, that he went with him to the Stairs-

head, and my Lord would not let him go further, but he went back again when my Lord of *Aylesbury* went down Stairs. We will begin with the Witnesses, as to this *Edwards*.

Swear Mr *de la Rue*, (which was done.)

Mr *Conyers*. Mr *de la Rue*, Pray do you know Mr *Edwards* that was here?

Mr *de la Rue*. He goes by several Names; I know him by the Name of *Douglas*: And last Monday I came into the *Press-Yard*, and saluted him by the Name of *Douglas*, and he said he had taken his own Name again, by which he was known at *St. Germain's*, and that was *Edwards* or *Richards*, as I remember, or some such Name.

Mr *Conyers*. When was he at *St. Germain's*?

Mr *de la Rue*. About three or four Years ago.

Mr *Conyers*. Pray look upon him, see if you know him.

Mr *de la Rue*. I know him very well, there he stands, that is the Person in the black Wig; he was reputed at *St. Germain's* to be my late Lord *Dundee's* Chaplain.

Mr *Att. Gen.* What Name did he go by at *St. Germain's*?

Mr *de la Rue*. I can't very well tell: But he said he had taken his own Name again; and I think he said it was *Edwards* or *Richards*.

Mr *Conyers*. Did he go formerly by the Name of *Douglas*?

Mr *de la Rue*. Yes, here in *England*: Mr *Porter* knew him to go by that Name.

Mr *Att. Gen.* What else do you know of him?

Mr *de la Rue*. The List that Mr *Cranburne* carried from Mr *Porter* to Mr *Charnock*, and which he brought back again from Mr *Charnock* to Mr *Porter*, had in it, among the other Names, the Name of *Douglas*, which I understood to be that Gentleman.

Mr *Att. Gen.* Did he go by that Name at that Time?

Mr *de la Rue*. Yes he did.

L. C. J. *Treby*. Pray repeat that again, Sir, that we may understand it, and see whether it be Evidence.

Mr *de la Rue*. Why, Sir, the List that Mr *Cranburne* brought from Mr *Charnock* to Mr *Porter*, at the Foot of the List which Mr *Porter* had sent to him, there were other Names written, as I believe, in Mr *Charnock's* Hand; and among those Names there was the Name of *Douglas*, which I understood to be this Mr *Edwards*, as he calls himself. And moreover, when Mr *Porter* went out of Town, going to *Doctors Commons*, I called at Mr *Charnock's*, and he had a great deal of Company with him, four or five Troopers, and among the Rest this *Edwards* or *Douglas* was there sitting by him. Here is a Gentleman that I see upon the Bench, I think he is a *Scotchman*, that knew him at *St. Germain's* as well as I. I think his Name is *Mackdonnel*.

Mr J. *Rokeby*. What Country-man did you take this *Edwards* to be?

Mr *de la Rue*. A *Scotchman*, and Chaplain to my Lord *Dundee* that was killed in *Scotland*.

Mr *Serjeant Darnall*. Did you see this Gentleman in *France*, Sir?

Mackdonnel. I never was in *France* in my Life.

Mr *Att. Gen.* You can't ask him the Question: You know it tends to make him either accuse or excuse himself of a Crime. Pray call Mr *Porter* again. But in the mean Time, till he comes, we'll

examine Mr *Goodman*, because he is here. Mr *Goodman*, you were by, and heard what these Drawers said concerning your being at the *Old King's Head* in *Leadenhall-street* that Day. Pray give an Account when you came in, whether you saw my Lord of *Aylesbury*, and what passed between you at my Lord of *Aylesbury's* going away?

Mr *Goodman*. Mr *Porter* brought me up; and when I came in they were all sitting; and after Salutation I sat down: And when they had consulted some Time, they came to a Resolution, as I have told you already. The Fellows are so far in the Right of it, that my Lord of *Aylesbury* and my Lord *Montgomery* went away first; for I took my Leave of them at the Head of the Stairs. Says my Lord of *Aylesbury* to me, Pray avoid Ceremony, we will go away privately as we came, in a *Hackney-Coach*. And as to the Master of the House, who says, he does not know me, I have dined several Times there; four or five Times with Sir *John Freind*: And one particular Day above all the Rest, I remember I was not well, and I went down Stairs to the Bar, and said, I pray can you get me a little Brandy. He said, yes; he would help me to some of the Best in *England*. And he brought me up some which I liked very well; and thinking he had a Quantity of it, I ask'd him what I should give him a Gallon for a Parcel. But he said, he had but a little: And I am sure he has seen me there five or six Times.

Mr *Att. Gen.* Then set up that Master of the House *Cock* again, (which was done.)

Come, Sir, You hear what Mr *Goodman* has Sworn, and mind it; you are upon your Oath. You said just now, that you never saw Mr *Goodman* before.

Cock. No, upon my Word, Sir: I don't know that ever I saw him before.

Mr *Att. Gen.* Do you remember nothing of his being with Sir *John Freind* at your House?

Cock. No, upon my Word, Sir.

Mr *Att. Gen.* Nay, you are upon your Oath, Nor do you know nothing of your giving of him Brandy?

Cock. No, upon my Oath, I do not remember any such Thing.

Mr *Att. Gen.* That is a very safe Way of Swearing, I profess.

Mr *Conyers*. He remembers the particular Time when he was Sick, and you offer'd to sell him some Brandy.

Mr *Att. Gen.* No, he ask'd him what he should give him for it a Gallon. But, Mr *Cock*, did you ever see *Goodman* in your House since my Lord of *Aylesbury* and they were there?

Cock. No, upon my Word, Sir, I did not: And I never had but two Gallons of Brandy in my Life at a Time: And I never had any Cask, or any Thing of that Nature, to sell any out of.

Mr *Att. Gen.* Who used to be with Sir *John Freind* at your House?

Cock. There used to be Mr *Richardson*, and Justice *Cash*, and Col. *Cash*.

Mr *Goodman*. Mr *Richardson* was there that Day: I could almost have remembered the particular Day, but I cannot be positive; only we were in the same Room where the Consultation was, at the further Part of the Room.

Mr J. *Rokeby*. You Friend, the Master of the House, you hear what Mr *Goodman* says: He says he was with Sir *John Freind* at your House, and being not well, he ask'd for some Brandy, and you told him, you'd give him some of the best in *England*.

land. And he propounded to you then to sell him some of it; but it seems there was no Bargain made. Do you remember any such Thing of one that was with Sir John Freind, that spoke of buying of Brandy when he was sick?

Cock. No, upon my Word I do not.

Mr Att. Gen. Then set up Mr Porter (who stood up.) Pray Mr Porter, look upon that Man in the Black Peruke; what Name did he use to go by?

Mr Porter. He used to go by the Name of Edwards.

Mr Att. Gen. Had he any other Name?

Mr Porter. Yes, Douglas.

Mr Att. Gen. He has so many Names, that we don't know which is his true Name. Mr Porter, pray what else do you know of him touching his being concerned in the Conspiracy?

Mr Porter. I know not any thing of my own Knowledge; but his Name was put down in the List that Mr Charnock sent me of his Men, and Mr De la Rue read his Name there.

Mr Soll. Gen. Mr Porter, you were a Witness upon the Trials of Sir John Freind and Sir William Parkyns; did you give Evidence that Mr Goodman was in the Room at the same time when the Consultation was?

Mr Porter. Yes, Sir.

Mr Att. Gen. Well, you hear that these People have sworn, that Mr Goodman did not come till my Lord of Aylesbury went away; nay indeed, that he was not there at all.

Mr Porter. My Lord, upon my Oath he was there before my Lord Aylesbury went away, and Mr Goodman bowed, and took leave of my Lord as he went out of Doors.

Mr Att. Gen. What time did my Lord of Aylesbury go away?

Mr Porter. It was about an Hour and a Half, or two Hours after Dinner, and he was in the Room when my Lord went away, for he took his Leave of him at the Door.

Mr Cowper. Do you remember the Manner of Mr Goodman's coming in?

Mr Porter. Mr Goodman sent up his Name to me, and I told the Company, and promis'd for him, that he was a very honest Man, and much in King James's Interest; and then with their Consent I went down and brought him up.

Mr J. Powell. How long time do you think there was between Mr Goodman's coming in, and my Lord of Aylesbury's going away?

Mr Porter. I cannot tell that, I do not remember exactly how long it was,

Mr J. Powell. Was it a quarter of an Hour, or half an Hour?

Mr Porter. A great deal longer, for we had discoursed of the whole Business after Mr Goodman came into the Room.

Mr Conyers. How long were they there after Mr Goodman came in?

Mr Porter. It was very near two Hours after he came in, before they went away; they did not go away till six a Clock, and he came in at Four as near as I can remember.

Mr Att. Gen. Then, my Lord, we have done.

Sir B. Shower. Then I beg the Favour of a Word or two, my Lord, May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the Prisoner at the Bar, and I must beg your Lordship's Patience, and your Favour, Gentlemen, to make a few Observations

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upon the Evidence that has been given; for we humbly insist upon it in point of Law, that here is not sufficient Evidence before you to convict the Prisoner. You are, Gentlemen, to have respect and regard to your Consciences and the Oaths which you have now taken, to give a Verdict, and make true Deliverance between the King, and the Prisoner; you are not to go according to your own private Opinions, nor according to publick Fame, nor according to common Report, nor according to the Verdicts in other Cases, nor according to the Confessions or Dying Speeches of Criminals who have been Executed, whether made by themselves, or by others for them, but you are to go by the Testimony of Credible Witnesses, and if you have not the Evidence of two Credible Witnesses before you, my Lords the Judges will inform you how the Law stands. That by the Statute of Edward the Sixth, and the new Statute for Trials of Treasons, there must be two Witnesses to prove the Prisoner guilty of the Overt-Act of the Treason that is laid in the Indictment; and whether there have been two Credible Witnesses produced before you, is the Question that you are to consider upon your Oath and Conscience; that is, whether you are satisfied here be two such as the Law requires. The Question is not merely whether Mr Cook be guilty, but whether in your Consciences he be legally proved guilty; whether there be Evidence to satisfy your Consciences, according to the Laws of the Land, that he is guilty; and we insist there is not; and therefore I beg leave to recapitulate what has been sworn against him, that we may see how far it reaches, and wherein it is defective.

Gentlemen, Mr Porter he swears that about the Beginning or middle of May, he cannot tell which, there was this Meeting at the Old Kings-Head Tavern in Leaden-Hall-street; in which, I wou'd observe to you, that he confines himself to a certain Month; the Reason is very plain, and therefore I ask'd him whether it was not in April; for if he had said it had been then, there had been no danger to the Prisoner, because of the Act of Indemnity, therefore he was careful to fix it in May; and he would not lay it in June, for the Tenth of June is a famous Day; and then, or soon after Newgate had him; he was confined there for a Riot on that Day, and so they have restrained it to a Month, and the only Month that he is capable of swearing to, as to any Act done the last Year till they came in January to the Assassination Plot, which the Prisoner is not accused to have had any Concern in; but it shou'd seem he cannot tell what Day of the Week, or of the Month, but about the Beginning or the Middle of May Eight Persons dined at this Place, and then after Dinner Mr Goodman came in, and they discoursed about this Matter.

First, Gentlemen, we insist upon it, that it is very improbable that English Protestants of pious Conversation and good Morals, should agree, as he says, to send such a Message to the late King, to invite over a French Popish Force; we may easily see the horrid and mischievous Consequences that wou'd have followed such a Practice, such as must affect every English-man with a Concern, so that it is improbable a Man of Virtue and Piety cou'd engage in such an Enterprize; and if it be improbable, you will never believe it, unless the Conviction or Proof be irresistible: And if you have

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any other Reasons to distrust this Man's Truth, then we hope you will go upon the Side of Probability; and not let popular Prejudice, Common Fame, or any thing else but legal and Undeniable Evidence have the Ascendant over you. If you are not satisfied that Mr *Cook* did assent (as from the Character of the Man it is not probable he should) to send *Charnock* into *France*, to persuade King *Lewis* and King *James* to send Ten Thousand Men to invade our Country, then he is not guilty.

In the next Place, Gentlemen, he is not guilty we say in the Eye of the Law, if they have not two Witnesses; and for that we say you have but one, or but one that is to be believed; and if you have but one that is to be believed, that in Law is but one, and consequently my Client is not guilty; so the King's Council agree, that if there be but one Witness, he cannot be convicted, the Law is plain in the Case. Now to make it out that here is but one Witness at most, we have offered you several Objections, and made them out by Evidence, against the Testimony of Mr *Goodman*; that he is not a Person fit to be believed; and if he be out of the Case, then does Mr *Porter*'s stand alone, and all will amount but to one Witness, suppose it should be granted that his Testimony were true.

First, We have read a Record of Conviction against him, of a Crime, one of the Greatest next unto Treason, that is known in our or any other Law. That he hired a Man to poison two Dukes, Branches of a Noble Family, to which he had such great Obligations, as all Mankind do know, and he himself cannot but acknowledge; and if there were not that Aggravation in it, of his Obligations to that Family, yet to lie in wait to Murder and Poison, is such an Offence as any Age can seldom show the like. And the Objection is not so very easily answered as they would have it; nor can it be so soon passed over as they think, by saying He is a Witness of a Confederacy with which the Prisoner is accused, a Crime greater than the Thing objected. It is true, none can bear Testimony in such a Business, but he that is a Party: But, we say, if these Persons who come and set up themselves for Witnesses, were not *probi Homines*, and did not appear to be Persons of indifferent Credit between Man and Man, and did not stand impartial in the Eye of the World in other respects before, then they are not to be believed, as to what they charge themselves and others to be guilty of. Now, if Mr *Goodman* stand convicted of such an Offence as this that is alledged against him, tho' he is pardoned by the Act of Parliament, or Satisfaction acknowledged upon the Record, though it be even the very next Term, yet that does not purge him from the Infamy and Disgrace, or from the Imputation of being concerned in so Villainous a Design. It is impossible that he should be a good Witness that would be engaged in such a Matter; especially when we have those various Witnesses, and such a concurring Testimony, that what he has Sworn is absolutely false.

Gentlemen, if there were nothing but his own Testimony in the Case, there could be no Question at all in it: And as to Captain *Porter*'s Testimony about his being there, we have produced three Witnesses, who, if they be of Credit, then Mr *Goodman* is not to be believed, but is falsified throughout; for, it is not the Question, whether

Mr *Cook* went away before the Consultation and the Resolution; for, if my Lord of *Aylesbury*, or my Lord *Montgomery* went away, Mr *Goodman* is falsified in that, and consequently you ought not to believe him in the rest; for he actually swears, that my Lord of *Aylesbury*, my Lord *Montgomery*, and those other Gentlemen, were all present, and at the Consult, and did consent and agree to the Resolution, by using these Words; *Yes, you may; Yes, you may.* Now, we say, there are three Witnesses that swear, That my Lord of *Aylesbury* was gone before he came there. I do not care whether he came there, or not; that is not material: For if there were no Body there when my Lord of *Aylesbury* was there but those that were at Dinner, then Mr *Goodman* was not there at any such Consultation, as they would insinuate was at that Time, in that Place, and that Company.

My Lord, we have proved to you Mr *Cook*'s Abhorrence and Declaration, which, we think, ought to go a great Way in satisfaction of his Innocence, at least to induce you to the favourable Side; for, Gentlemen, you are not brought hither to Convict a Man only, but to Try and Examine him; and is your Duty to Acquit, as well as Convict, according as the Evidence stands: It is your Duty to go according to your Consciences, and to declare whether he be Guilty, or not Guilty, upon the Evidence you have before you: You are to examine the Truth of the Fact in all its Circumstances, and upon your own Consciences to declare, whether he is Guilty or not Guilty; now we propose it to you, and submit it to your Consciences, that here are three Witnesses, that speak upon their Oaths, against whom there is no Objection, that ever they were guilty of lying in wait to Poison any Body, nor in any Plot for an Assassination, nor any Conspiracy for inviting an Invasion from *France*, nor any other Objection against them, but they stand upright in the Face of the World, and they three swear, That he was not there at that time. The Answer that we expect, is, That he might be there, and they not see him: And because it was possible he might be there, and they not see him, therefore it is no Evidence: But, my Lord, because it may be so, is no Evidence that it is so; that's no Objection; for you will take it as the Nature of the Thing will afford, and the Matter itself allow. Now there can be no better Evidence than this; that they went in and out continually; the Drawers, and the Master of the House five or six times himself, were in the Room, and they say, there was no such Person there. Why then it is very improbable, if not impossible, that any such Man should be there. The one swears, he came down from my Lord of *Aylesbury* just before he went away; and another says, he followed him out of the Room; and the Master says, that he met my Lord of *Aylesbury* at the Stairs-head. All which falsifies Mr *Goodman* in that Particular, that he was with my Lord of *Aylesbury* at the Stairs-head, when he went away. These are incompatible; and if we falsify him in any one Thing, he is not to be believed in any other.

Then, Gentlemen, we offer to your Consideration an Answer to another Objection: They say these Witnesses seem to swear, that he was not there at all. We are not concerned whether he was there afterwards, or not: If you are satisfied, that he was not there, as our Witnesses swear, while my Lord of *Aylesbury* was there, that's enough.

But

But then they make an Objection, how comes the Master of the House to remember my Lord of *Aylesbury's* going away, more than any Body else? Gentlemen, you know the Nature of the Thing shows, not only that it was more probable the Master of the House should make his Observations near the time of Dinner, rather than afterwards at Night, when there is more Hurry: But it is more probable he should take notice of it from the Quality of the Person, from the Discourse he had with him about the White-wine, which was a good *Medium* to refresh a *Vintner's* Memory, it being a Matter in his own Trade, and that might make him call it to Mind.

Therefore, Gentlemen, we think these three Witnesses stand free and clear in their Credit; and being so, are inconsistent with Mr *Goodman's* Testimony; and, we hope, in favour of Life, the Credit inclines on their Side, especially when the Question is, whether a Man shall be executed for *Treason* who never fled for it, who was never charg'd with any *Treason* or *Treasonable Practices* before; nay, not so much as with any particular *Crime* or *Immorality*? And whether three Witnesses shall be believed, against whom there is no Objection, rather than Two, against One of which there are such Objections.

My Lord, we are not now debating or attacking the Evidence of the *Plot*, or arraigning the former Judgments against the *Conspirators* that have suffer'd; but, Gentlemen, we are putting you now upon a serious Enquiry, (as God and your own Consciences shall incline you) whether our Client be guilty or not guilty upon this Evidence; that is, whether Mr *Goodman* swears true, or not. We hope that we have given you sufficient Satisfaction, that upon Mr *Goodman's* Part the Evidence is insufficient; and we hope you will accordingly find our Client not guilty.

Mr *Att. Gen.* If Mr *Cook* have any thing to say himself, I desire he may say it now, before we begin.

Sir *B. Shower.* No, pray go on, Sir.

L. C. J. *Treby.* Mr *Cook*, wou'd you say any Thing your self, before the King's Council sum up?

Cook. The little I have to say, my Lord, I'll speak now, or by and by, which you please.

L. C. J. *Treby.* You must do it now, because after they have summ'd up, there is nothing more to be said by you.

Cook. My Lord, I thank God, I have lived a Life, I hope, as good as any Man, and have often received the Blessed Sacrament; I have done it constantly, and shall do it speedily, by the Grace of God, as soon as I can have a Minister come to administer it to me. I did offer it to my own Father, when he came to me, and told me, *If I would confess this Thing I should not come to Trial*: I told my Father, I would not for Ten Thousand Worlds take away the Blood of an innocent Man to save mine. I thank God, I am in a very good Way to die; I have, for at least this last Year, frequently received the Blessed Sacrament; and how I have liv'd, every Body in the Court that knows me can tell my Life and Conversation has been as regular as any Man's, and I am as ready to die to morrow, if Occasion was for it. (I thank God) as any one; I will receive the Blessed Sacrament upon it; and it is not for Life that I would do any thing that is wrong or unjust: I do love my Nation, and I love the Quiet of the Nation; I never was for disturbing the Government that now is; and I

ever was against Foreign Forces or an Invasion, for I never thought of one, or heard of it, but with Abhorrence and Detestation: And I do assure faithfully, I shou'd be sorry to disparage Mr *Porter's* Evidence, because I would have every Body that was concerned in that Horrid and Barbarous Crime to suffer; in God's Name, let them all suffer. I thank God, I never knew any Thing of it, nor of a *French* Invasion: And I would say more of it, but that I would not hurt Mr *Porter's* Evidence, whose Discovery of that bloody Business has done so much Service. As for Mr *Goodman*, as I hope to receive the Blessed Sacrament, and may I perish when I do it, if I speak an Untruth; I would not for any Thing, no, not for the Good of my Country, have innocent Blood spilt; I would lay down my Life to serve my Country, but I would not have my Blood be lightly lost; and how little a Man soever I am, my Blood will lie as heavy upon the Nation as any the weightiest Man's can do. I do not doubt your Lordship's Justice, nor the Jury's, but I pray, my Lord, observe; though it is usual not to own Things at the Bar, yet I do not make this Denial as of Course, but out of Truth; and I assure you, in the Presence of the whole Court, if I should suffer for this, I must at my last Moments either confess or deny something: And, I say, I do assure, in the Presence of the whole Court, and I will take the Blessed Sacrament upon it, that I must, at my Death, deny this whole Matter, and that ever I did see Mr *Goodman* at all there; I do not think I saw him; I do not remember I saw Mr *Goodman* at all, except once in *Germain-street*; when the Coach broke, and that must be but in passing by neither, and he would have hurt or kill'd the Coachman, and we kept him from it; and I walk'd with him half the Length of *Germain-street*, before I knew who Mr *Goodman* was. If ever a one of those Gentlemen, that are Men of Credit and Honour, can say I was any ways so inclined, or that they ever saw me, or knew me, that I ever bought a Pistol or a Blunderbuss, or the like, may God sink and strike me dead; and the Blessed Sacrament, which I intend to receive, be my Curse and Damnation, if I knew of King *James's* Coming, till after the whole Town rang of it: I had no Hand in the Invasion; and, besides my Abhorrence of introducing foreign Force, I desire your Lordship and the Jury to consider the Circumstances of my Case, that I had but a very small Allowance from my Father, and therefore it is not probable I shou'd take upon me to join with my Lord of *Aylsbury*, and my Lord *Montgomery*, and those other Gentlemen, to send Mr *Charnock* into *France*, to invite over a Foreign Force: And I call God to witness I had no Hand in it. I beg your Lordship's Pardon for all this Trouble; I would not hurt Mr *Porter's* Evidence, for the Reasons that I have told you; but this is for my Life, and I don't so much value that as I do Truth and Sincerity; and I shall receive the Blessed Sacrament, if I die, that I never did do so. Indeed I never did take the Oaths, nor did I ever refuse them, because they were never offer'd me; but I wou'd take the Oaths now if they were offer'd me. My Lord, I beg your Pardon for this Trouble.

L. C. J. *Treby.* Have you done, Sir? Have you said all you would say?

Cook. Yes, my Lord.

L. C. J. *Treby*. Then, you Gentlemen of the King's Council, will you conclude?

Mr *Soll. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the King, and I could have been very glad that this Gentleman's Defence that he has made had been stronger than in Truth it has been: And I should have been very glad too that his Council had been able to have made it better for him; but that he and they may be satisfied as much is done as the Case will bear; they have had all the Liberty in the World to make his Defence they could desire, nay, more than in Strictness could be allow'd them.

Gentlemen, our Evidence is very positive against the Prisoner at the Bar, and for the highest Crime that the King's Subjects can be guilty of, by the Confession of the Gentleman himself and of his Council. We have, I say, two positive Witnesses against him; they say they are not legal ones: I must own, if we have not two Witnesses, we have never an one; for whatsoever falsifies Mr *Goodman's* Testimony, falsifies whatsoever Mr *Porter* has sworn. Now, the Evidence that Mr *Porter* has given against him, is this: He says, There was to be a Meeting at the *King's-head Tavern* in *Leaden-hall-street*, and there they consulted of the Methods to bring back King *James* hither; and it was thought the best Way to send to King *James* to invite the *French King* to send 1000 Horse, 1000 Dragoons, and 8000 Foot, to land here in this Kingdom, where they would meet him with 2000 Horse. They pitch'd upon a very proper Messenger, Mr *Charnock*, a Person that has been attainted, and has suffer'd for High Treason; he was to be sent into *France* upon this Errand; Mr *Cook*, the Prisoner at the Bar, was one of the Persons that were there at that Time, and he was consenting to this Message; and Mr *Porter* gives you a particular Token relating to the Prisoner, for he remembers the Prisoner did kneel upon the Chair, and lean'd his Elbows upon the Table when he consented.

Mr *Porter* goes further, and tells you, That Mr *Charnock* would have another Meeting, to know and see whether all the Company were of the same Mind they had been; and, That afterwards they met at Mrs *Mountjoy's* House, and there the Prisoner at the Bar was present, and consenting to the same Thing: Thereupon Mr *Charnock* went into *France*, and came back again, and said, The *French King* could not spare so much Force. Mr *Goodman* gives the same Evidence that Mr *Porter* had given: It's true, he was not at Mrs *Mountjoy's* Tavern, but he tells you withal, He spoke with Mr *Charnock* when he came back from *France*, and *Charnock* return'd him the same Answer that he did to Mr *Porter*, That the *French King* could not spare so many Forces. This is the Evidence in short, Gentlemen, that is given against the Prisoner; and if this Evidence be true, then is he guilty of the Crime for which he is indicted.

Against these Witnesses they have produced, first, a Record of Conviction against Mr *Goodman*, and that was for Hiring one *Amydia* to poyson the Duke of *Grafton*, and the Duke of *Northumberland*: They have produc'd the Record, whereby it appears, he was Convicted and Fined 1000*l.* and was to find Security for his good Behaviour during Life; and he was to lye in Prison till the Fine paid, and Security given: But it happens, in that very Record it appears there was Satisfaction acknowledg'd upon that, even the very

next Term; and that gives a great deal of Suspicion to believe, that the Evidence that was given was not much credited; for, tho' the Council for the Prisoner has said, that it was the Payment of the 1000*l.* that was the Satisfaction; no, it is not so, it is a Satisfaction of the whole Judgment, for finding Security as well as the Fine. They say he was not able to pay the Fine; and there is nothing appears of the other Parts of the Judgment being complied with, but the whole Judgment is set aside.

But all this does not make a Man *no Legal* Witness; if they thought this Conviction tended to set aside his Evidence, they would have produc'd it at another Part of the Tryal, than where they did: That is, when Mr *Goodman* was first call'd to be sworn as a Witness, then they should have produc'd this Record, and said he had been no Witness: But they knew well enough that that was no Exception against the Legality of his Evidence, but tends only to his Credit, and nothing else. Now, tho' it be a black Crime to endeavour to poyson another, yet that does not totally destroy any Man's Credit; if it did, then the other Gentleman, Mr *Porter*, has confess'd himself guilty of a greater Crime than that for which Mr *Goodman* is convicted by this Record; for, he owns himself one that was in that Design of Assassinating the King. And Mr *Goodman* owns himself too guilty of a greater Crime than what's objected to him, which is that of *High Treason*; and I hope, if he may be believ'd, when he owns himself guilty of *High Treason*, which is a greater Crime than Poysoning a private Subject; or guilty of such a Design as the Assassination of the King, which Mr *Porter* has charg'd himself with, and notwithstanding which, they have not offer'd that as an Exception against Mr *Porter's* Evidence, (for they very well know, his Evidence has been receiv'd and credited :) Mr *Goodman* may be credited, tho' guilty of the Crime objected to him: And the constant Practice in all Tryals of this kind hath been, that it does not take away the Witness's Evidence, however it affects his Credit, which in this Case is supported by the concurrent Testimony of Mr *Porter*. And so then, I say, we have two legal Witnesses (notwithstanding all the Exceptions) to prove Mr *Cook* guilty of the Crime for which he is indicted.

Then they go on further, and produce other Witnesses: First, they produce one *Edwards*, a Person that is committed for *High Treason* himself, and under Suspicion of his being, to be one of those that was to have a Hand in the Assassination; but his Evidence goes no further, than that Mr *Goodman* told him he was to be a Witness against Mr *Cook*, and either he the Witness, or Mr *Cook* must suffer; and, That it was a foolish thing to be hang'd. My Lord, there is nothing at all in this Matter that takes away Mr *Goodman's* Evidence: It is very plain Mr *Goodman* had forfeited his Life, and must do something to save it, and I think he could not do a better Service to entitle himself to the King's Mercy, than to discover those that were equally guilty with himself. 'Twas his Duty to have done it, if he had not been in Danger; and if he hath done no more than what was his Duty, I hope that is no Objection against his Testimony.

They have produced likewise a Drawer of the *King's-head Tavern*, one *Crawford*, and he says, he attended in this Room while this Company was there.

there. But then he goes a little further than the Council or the Prisoner would have had him; for they called him to prove, that Mr Goodman was not there when my Lord of Ailesbury, my Lord Montgomery, and Mr Cook were there. But when the Drawer comes, he knows nothing of Mr Goodman's being there at all: He says, Mr Cook was there, but not Mr Goodman; and yet he does acknowledge, that Mr Goodman might be there, and he not see him come up. He acknowledges he attended upon other Company as well as this; so that it is plain in the Nature of the Thing, and his own Confession, that Goodman might be there. This cannot take off the positive Evidence of Mr Goodman and Mr Porter, who both swear, That Goodman was there.

But then they produce another Drawer, and that is one Huntley; and he gives the same Account, only indeed he says, He was there all the while they were at Dinner; But that is nothing, because it is acknowledg'd both by Mr Porter and Mr Goodman, That he was not there at Dinner-Time, but he might be there after Dinner, and yet Huntley could not see him at Dinner: He tells you likewise, he pass'd up and down in the Room afterwards, and did not see Mr Goodman there; but yet he might be there, and he not see him.

Then they produce the Master of the House, and he gives much the same Evidence in Effect which his Servants do, That he did not see Mr Goodman there all the while; but he says something that is a little incredible; He can be positive that Mr Goodman was not there while my Lord of Ailesbury was there, but he cannot be positive that he was not there afterwards. He tells you, he met my Lord of Ailesbury and my Lord Montgomery upon the Middle of the Stairs coming down, and he is sure Mr Goodman was not in the Room at that Time. Now, is that possible that he could be sure of that, when he owns, (and cannot but own) That Mr Goodman might go into the Room and he not see him? So that he has made a Strain in his Evidence that it is very little to be credited, which was not designed so much for the Advantage of Mr Cook as for the Advantage of somebody else: And, in itself, it is almost an impossible Thing that it should be true, by what he offers as the Reason of his Evidence.

But then, Gentlemen, you are to consider, that all these three Witnesses, if they swear true, do falsifie not only Mr Goodman, who swears, That he was there; but they likewise falsifie the Evidence of Mr Porter, and for that Reason I ask'd Mr Porter the Question, Whether he did not give the same Evidence against Sir John Freind? And if what he swears now be not true, neither was it true when Sir John Freind was try'd, for he was the only Witness at that Time against Sir John Freind, for this Meeting; and therefore these Mens Testimony tends to overthrow both Witnesses as well as one: And I must tell you, that if Mr Goodman be not a legal Witness, because he has sworn a Thing that is not true, then Mr Porter is not a good Witness, who has sworn the same Thing, viz. That Mr Goodman was there; and then you ought to acquit the Prisoner, because there is no Witness against him at Law; for, there is the same Evidence against Mr Porter that there is against Mr Goodman as to this Matter.

Then, Gentlemen, as for the Character of Mr Cook, they say he is a good English Protestant, I

hope he is so; but it is plain, that Religion does not vary the Case: 'Tis within the reach of every Man's Memory that is here, that the same Things have fallen upon other Gentlemen that have had the same Character, particularly Sir John Freind and Sir William Parkyns, who both said the same Things, in the same Place, That they were True Protestants of the Church of England. But that is no Manner of Evidence that will be Weight against positive Oaths.

Now, Gentlemen, it is fit likewise you should reflect upon another Thing: What is it that should engage Mr Porter and Mr Goodman, or invite either of those two Gentlemen to give a false Evidence against the Prisoner at the Bar? It does not appear that there was any Injury done by him to them, to provoke them to it; so that it could be for nothing but for the sake of Truth.

It has been further said on the behalf of Mr Cook, That he abhorred the French, and any Invasion upon his Country, and the like: It is a Matter that is easily said; and it has been said by others that have been in the same Place where he now stands; That they hated all Plots, and they might punish them if ever they caught them. But these are only Sayings, and nothing else. If there can be any Constructions made of the Evidence given by these two Witnesses, that does not directly prove the Indictment, then the Prisoner ought to be acquitted: But if there can be no other Construction made, but only, That there was a plain Design to send Charnock into France, to King James, to perswade him to prevail with the French King, to come and invade us with a Foreign Force: And if our Witnesses are legal Witnesses, (as, I doubt not, my Lords the Judges will tell you they are; if there be no Exception to the Credit of Goodman, but only that he was in such a Design of Poysoning the two Dukes, which is really no Objection of Discredit to his Testimony;) then, with Submission, I think there is no Room left for you, Gentlemen of the Jury, to doubt, but that the Prisoner is as guilty of this Crime laid to his Charge, as any others that have been try'd and condemn'd for the same. And so, Gentlemen, I leave it to you.

L. C. J. Treby. Mr. Conyers, and Mr Comper, will you say any Thing to this Matter.

Mr Conyers, and Mr Comper. No, my Lord, we submit it entirely to your Lordship's Direction; we have done on all Sides, we think.

L. C. J. Treby. Gentlemen of the Jury, the Prisoner at the Bar, Mr Cook, stands indicted here for High Treason; there are laid in the Indictment two Sorts of Treason; the one is, Compassing and Imagining the Death of the King, the other is, adhering to the King's Enemies. The Evidence to prove these Treasons seems to be joynt; for, as to that of Compassing and Imagining the King's Death, as well as to the other, the Overt Acts are meeting and consulting about the Treason, and then agreeing and resolving to invite and procure an Invasion from France, and to meet that Invasion with an Insurrection here. And the Evidence is apply'd entirely to prove these Acts.

Gentlemen, that these are proper Overt Acts of Compassing the King's Death, I need not inform you, the Law is very well known; and the Prisoner's own Council do acknowledge, that these are sufficient Overt Acts of Compassing and Imagining the King's Death: So that all which they defend

defend him by is, the Improbability of the Testimony given against him.

Now, Gentlemen, you are to consider and weigh well the Evidence that has been given. By Law, it is true, as they observe, there must be *two* Witnesses. Here is no Defect of Number; that's acknowledg'd too, here are two Witnesses; but the Question is, whether here be two Witnesses that deserve Credit, and upon whose Testimony you can find that the Prisoner is guilty. The Witnesses, Gentlemen, are Mr Porter and Mr Goodman.

First, For the Matter of their Testimony, it is positive from them both; that you'll do well to observe. Mr Porter tells you, That in *May* last, (which is now just a Twelve-month) there was a Meeting of eight Persons, that is, my Lord of *Ailesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *William Parkyns*, Sir *John Freind*, Mr *Charnock*, Mr *Cook* the Prisoner at the Bar, and the Witness himself Mr Porter; and this was at the *King's-head* Tavern in *Leaden-hall-street*, and there these eight dined, and this was in Order to consult about an Invasion, together with an Insurrection intended to be made for the Restoring of the late King. After Dinner comes in Mr Goodman, he says, and then they pursued this Consultation, and came to a Resolution, to send Mr *Charnock* into *France*, and the Message was agreed upon which he should carry; and he was to go to the late King, and sollicite him to obtain 10000 Soldiers from the *French* King, whereof 8000 should be Foot, 1000 Horse, and 1000 Dragoons. These were to make up the 10000 Men to invade this Kingdom. And they resolved also, when this Force should land, they should meet and assist this Invasion with a joynt Force, that should consist of 2000 Horse. And to acquaint and assure him of this, was the Message. But, he says, That Mr *Charnock* was very cautious in it, and would not presently go upon this Errand, but he would have further Assurance that they were in Earnest, and would make good what they did send him to propose, therefore he would have a second Meeting; and a second Meeting was had, and that was at Mrs *Mountjoy's* Tavern, and there they did renew the same Resolution, and there were present my Lord of *Ailesbury*, Sir *William Parkyns*, Sir *John Fenwick*, Sir *John Freind*, Mr *Charnock*, the Prisoner at the Bar, and himself; he does not know or remember whether my Lord *Montgomery*, or Mr Goodman was there. He says, Mr *Charnock* did accordingly go into *France*, and he did return and bring back King *James's* Thanks to them, but their Desire could not be comply'd with; and he had his Share of the Complements.

Now comes Mr Goodman, and he says, That about the same Time, viz. *Mid-May*, Mr Porter acquainted him, there would be a Meeting of some of King *James's* Friends, at this Tavern in *Leaden-hall-street*. He says, That he did tell Mr Porter, he doubted he should not be there at Dinner, but he would come as soon as he could after Dinner; and according to Appointment, he did come after Dinner, and there was this Consultation and Resolution that Mr Porter speaks of, and says, That Mr *Charnock* afterwards told him, he had been in *France* with the late King, and brought back the same Answer that Mr Porter speaks of; and he had the Honour of Thanks from the late King too.

Gentlemen, I must observe one Thing to you, which does go very much towards the Confirm-

ing what these Witnesses say, and that is the Agreement in their Testimonies, tho' they were examin'd *apart* at the Desire of the Prisoner: You will find they agree in these several Circumstances, in the Time, that it was this Time twelve-months; in the Place, that it was at this Tavern; in the Number of Persons that were there, which was Eight before Mr Goodman came in; in the Number of Horse, Foot, and Dragoons that were to be brought from *France*, and in those Horse that were to meet them here; and besides, in those Words of Discourse upon the Consultation and the Resolution. And there is one Circumstance more in which they do agree, and which is very particular; That when they came to deliver their Consent to this Message that Mr *Charnock* was to carry, the rest sate, and Mr *Cook* the Prisoner did kneel upon the Chair, and lean'd upon the Table. And this both of them do agree in. And after all the many Questions ask'd in their separate Examination, I do not find they disagree in any Part of their Evidence. So that, Gentlemen, there can remain no Question now, but Whether these two Witnesses are Men of Credit; or, whether there has been oppos'd to them any such Evidence as will make you believe, that (if not both) at least one of them has forsworn himself. They do produce nothing against Mr Porter, whatsoever may have been produc'd at former Tryals against his Credit: Perhaps what has been before, has satisfied the Objectors, and there is nothing appears against his Credit; but he is not only a competent but a very clear, good, credible, and undoubted Witness.

But against Mr Goodman they offer several Things which they say amount to a violent Presumption, that he is not to be look'd upon as a credible Witness: And first, they produce a Record of a Conviction upon an Information against him, for attempting to poison two Noble Dukes: This he was convicted of, and fin'd 1000 *l.* and ordered to find Sureties for his good Behaviour during his Life. But, to this it is answered, that it appears in the same Record, that Satisfaction was acknowledged of the 1000 *l.* and all the rest of the Judgment the very next Term, and he was forthwith discharged, and that without Paying the Money, which ('twas observ'd) the Prisoner's Council said Mr Goodman was not able to pay at that Time, no more than he could 20000 *l.* and thereupon the King's Council say, that the Government was convinc'd that he was wrong'd by a causeless Prosecution, and the Evidence against him was found not to be credible. And besides, Mr Goodman stands pardoned by several Acts of Pardons, as well as other Subjects.

Then they produce one *Edwards*, who is a Prisoner here, and committed for Suspicion of High-Treason, and for Treasonable Practices: He is, no doubt of it, a Witness for all that: For that is but an Accusation upon him, and does not take away his Credit. He tells you of a Discourse that he had with Mr Goodman, and that Goodman ask'd him when the Prisoner was to be try'd; and he told him he wou'd be try'd such a Day; and when it was ask'd what it was for, it was answer'd, not for the Assassination, but for sending Mr *Charnock* into *France*. He ask'd then who were the Witnesses against him? Mr Goodman said, Mr Porter and himself. And further said, that he understood that Mr *Cook* had sworn against him (though he would give an Account of no Body else) and had no Pardon, and either he must

must hang, or himself. And then he talk'd lightly of the Business of Hanging, and said it was a foolish Thing to be hang'd, for all that People wou'd say, was, that such an one hang'd *handsomely* or dyed *bravely*. This indeed is a Sort of Discourse as if Mr Goodman did apprehend himself in Danger from Mr Cook's Evidence; and yet I cannot see that it does at all falsifie the Evidence of Mr Goodman: He may be a true Witness, and yet he might say he was to give Evidence against Mr Cook, and it was in Mr Cook's Power to give Evidence against him, and that truly; and if both were in the Guilt, they were in Danger of one another. But for a further Answer, the King's Council have produced Mr *De la Rue*, who says, that he knew Mr *Edwards*, and that he was a *Scotch Man*, and reputed Chaplain to the Viscount of *Dundee*, that he went formerly by the Name of *Dowglas*, and by that Name he was set down and described in the List that Mr *Charnock* sent to Captain *Porter*; and to that Name he answer'd in the *Press-Yard* lately. Now it is certain, that Mr *Charnock's* putting of his Name in that List, is no Evidence of his being guilty in Mr *Charnock's* Treason. But his going by two Names doth justly lay him under some Suspicion. But the Evidence that the Prisoner seems to rely upon most, is what Evidence has been produc'd against Mr Goodman in that Point of Fact, by the Master and the two Drawers; the first of the Drawers Name was *Crawford*, and he does tell you, that about twelve Months ago there was this Company at Dinner there: My Lord of *Aylesbury*, my Lord *Montgomery*, Sir *John Freind*, Sir *John Fenwick*, Sir *William Parkyns*, Captain *Porter*, Mr *Charnock*, and the Prisoner, though he did not then know his Name, or the Name of one or two more of them. I observe by the Way, that his Testimony so far does verifie theirs, that there were eight of them there, but he says he did not see Mr Goodman there, nor any but those that dined there. And my Lord of *Aylesbury* went away, as he thinks, about Four a Clock. He cannot say that the Prisoner was there, or was gone at that Time before Mr Goodman came in; for he did not see Mr Goodman there at all, he was not in the Room all the Time, but he was to and fro attending till my Lord of *Aylesbury* and my Lord *Montgomery* went away in a Coach that was called, and when they were gone, the rest of the Company staid there a good while; being urged to tell how long, at last he said it was dark, and that agrees with Mr *Porter*, who says, it was about nine a-Clock when they went away. He says he was there once or twice after my Lord of *Aylesbury* went away, but he never saw Mr Goodman that he remembers at all, till last *Saturday*, in all his Life. As to this, the King's Council say, that it is only a *negative* Evidence, and in which a Man cannot be absolutely *positive*, but can only speak according to his Observation and Memory, which might not be perfect, and Mr Goodman might be there in the mean Time of his going in and out: That is possible; and so it must be left to you to consider of it.

Then there is *Huntley* the other Drawer, and he says my Lord of *Aylesbury* went away about that Time, and that he did not see Mr Goodman there at all, nor ever in his Life till now; neither does he remember that any Body came to them after Dinner, and if any fresh Man had then come in, he thinks he should (going often in to them) have known him; and says, that he

attended this Company only: And he had seen Sir *John Freind* and Sir *William Parkyns* there before.

Then Mr Cook, the Master of the House, was produced, and he names all the eight Persons that did dine there, and so far he confirms the King's Evidence: He thinks that my Lord of *Aylesbury* and my Lord *Montgomery* went away privately (as it seems they had come) in a Hackney Coach, and that it was about 4 a-Clock; and he says, he did not see Mr Goodman there, and he does not know that he ever saw him till now: But when he was cross-examined by the King's Council, he does acknowledge that he might possibly come in after Dinner, and before my Lord of *Aylesbury* went away, and he not see him, because he was not there all the Time; he says, Sir *John Freind* used to dine at his House, and came to his House once a Week; and he had seen some of the rest, but they did not frequent his House as Sir *John Freind* did: He says, the Company din'd about Two a-Clock, and the last of them staid till about Eight or Nine, and that the Door was shut as is usual when Company is in a Room, but no Body was forbid to come there.

But to establish the Credit of the Evidence on the King's Part, they did produce Mr Goodman and Mr. *Porter* again: Mr Goodman does acknowledge so far to be true, that my Lord of *Aylesbury* went away first; but says, that himself was not wholly a Stranger to this House, for he had dined there four or five Times with Sir *John Freind*, and particularly one Time, he being sick, and asking for some Brandy, the Master of the House said he would help him to some of the best in *England*, and Mr Goodman would have bought some of him. But the Master seems not to own that, and says, he does not remember any Thing of it.

But then comes Mr *Porter* again, and he says positively, that Mr Goodman was there, and that he did speak with the Company, and complemented my Lord of *Aylesbury* when he went away, and went Part of the Way towards the Stairs with him; and he does well remember it by this Token, that when Mr *Porter* was told Mr Goodman was below, he mentioned him in the Company as a trusty Man, that was fit for the Conversation; and then Mr *Porter* went and fetch'd him up, and Mr Goodman was there near two Hours, and they discours'd all this Matter in that Time in the Presence of the Prisoner and the rest; and he says it was about six a-Clock before my Lord of *Aylesbury* and my Lord *Montgomery* went away, and then there was Opportunity enough for this Discourse, and Consult that they speak of.

The Prisoner has offered another Sort of Evidence: First, the Confidence of his own Innocence, that he was abroad three Weeks after this Conspiracy was discovered; and they have produced Mr *Treganna*, Mr *Peachy*, and Mr *Nichols*, who prove that he never absconded, but was abroad and appeared openly (for three Weeks after) till such Time as he was taken. This the King's Council say is no Proof that he is not Guilty, and their Evidence untrue. They say he might have a Confidence, and the rather because he is not charged with the Assassination; for, at that Time these Witnesses speak of nothing was discovered and publick but the Assassination; for it was before Sir *John Freind's* Tryal; and then was the great Discovery of the Secret of the Invasion.

Then he shews further as to his Conversation, that he is a Man of a very sober Life, never was

known to swear, that he drinks but little, and is a *Godly* Man, and often says his Prayers. As to that, the King's Council on the other Side tell you, that has been pretended to by other People too; and the Question is not about *Religion*, but *this Fact* that you are now to try. Whether he be so Religious or no as he pretends, or whether he be sincere in his Devotion, that is not so much the Matter now, but the Question is, whether he has offended in this Kind as he stands accused. They produce a Gentleman, one Mr *Hammond*, and he says that he is a very Conscientious Man, and particularly is a great Lover of his Country; and he has often heard him declare a Detestation of an Invasion by a *French* Force, and wish Success to the Fleet; but *that* which he remembers chiefly, was about the Time of the Discovery of this Plot. The King's Council answer to this, that a Man may use such kind of Expressions, perhaps to cover his Guilt; and in the Reply to Sir *Barth. Shower's* Observations, it was taken Notice of by Mr *Solicitor*, (what we all cannot but remember) that the like Evidence was given as to Sir *John Freind*, that he did detest an Invasion, and was present at the Common-Prayer when King *William* was pray'd for, and declared against Plots; and that if they caught him in the Corn they might put him in the Pound. These Things a Man might say, and it is the lightest Evidence that can be given, being Discourses out of Mens own Mouths, who will never proclaim their own Guilt; and therefore it is the weakest Defence that can be offered. But, Gentlemen, you are to consider the other Evidence that has been produc'd by the Prisoner, given by several Witnesses, and who are upon their Oaths now as well as the King's Witnesses. And his Council say their Witnesses, but particularly the three upon whom they chiefly rely, have no Objection made out against them; and no Man's Testimony ought to be *presumed* to be false. And it must be taken Notice of, that they can speak only according to their Belief, grounded on their Observation and Memory, that they did not, so far as they observed or remember, see Mr *Goodman* there, as 'twas most probable they should if he had been. But 'tis possible they might overlook or forget; the rather for that they were not of the Company, but in and out, up and down; and Mr *Goodman* was not there at Dinner when their Attendance was fixt and constant.

It ought to be considered also, that here are several Circumstances, some of which seem very pregnant. It is agreed on all Hands, that the Prisoner dined there with those other seven Persons, concerning Four of whom we must conclude nothing; but concerning three of them we in this Court may take Notice, they are Attainted of High Treason, and so it is evident that the Prisoner was for a long Time a Companion of three Traytors, and had a Conversation with them. I do not find that he had any Occasion to be there; nor any of the rest of the Company. Concerning my Lord of *Aylesbury*, indeed it is said he proposed to treat about a Hoghead of White Wine. But that seems to be casual, and not the End of his Coming and Dining with this Company there. But, be that how it will, that relates to his Lordship alone. But, for the others, I do not find they do pretend any Occasion of Meeting there; and therefore it leaves it the more suspicious: And 'tis the more so, because

it was managed so privately and cautiously. They were not attended according to their Qualities. The Lords went away together in a Hackney Coach that was called, as they had come thither in another. The rest thought fit to stay there till it was dark; and as soon as it was so, went away. There was some extraordinary Cause for all this. It did import the Prisoner to shew, that it was for some good Cause and Purpose.

And further, it is observable that this House was a Place which, as the Master says, none of this Company did use to resort to, except Sir *John Freind*; which makes it probable (this being a House that Sir *John Freind* frequented and none of the others) that *He* bespoke this Place, and brought the rest thither: And if it were so, that makes it more probable that there was such a Treason there to be hatch'd, as is evidenced by the King's Witnesses; for you may remember, and it appears by the Record in this Court, that Sir *John Freind* was indicted and attainted (not for the Assassination, but) for the Treason for which the Prisoner is now a Trying, an Invasion that was to be supported with an Insurrection. Now if Sir *John Freind* was chiefly acquainted with this House, and brought this Company together, it is very probable it was about this Business which Sir *John Freind* was so concerned in. And that he is Attainted for it, appears upon the Record before us; which should be read, but that the Prisoner's Council admit it, and are so far satisfied in it, that they won't Arraign the Verdict; nay, they did acknowledge that there was a Plot; and there was no Doubt of it, there was *such* a Plot.

Now then, Gentlemen, here it is certainly proved by these two Witnesses, (and not gain-said by the Prisoner's own Witnesses) that there was such a Meeting, and that the Prisoner was there; and they both have positively sworn that this Treason was committed there. You have heard what has been objected to their Credit; they have delivered their Testimony upon their Oaths; and so, Gentlemen, are you upon your Oaths: If you are satisfied, and can take it upon your Consciences, that these two Witnesses are, or any one of them is, forsworn (if such Distinction can possibly be made in this Case) then you are to acquit the Prisoner; but if you are satisfied, and think they have sworn true, you are to find him Guilty.

Mr *J. Rokeby*. Nay, if one be forsworn, both are; for the Evidence is entirely in all Parts the same; and if Mr *Goodman* be perjured, Mr *Porter* is so too.

Sir *B. Shower*. Forsworn and Perjured are hard Words; we only say mistaken.

Mr *J. Rokeby*. Well, that Objection goes to one as well as t'other.

L. C. *J. Treby*. It must be so, since they speak of the same joint Matter, *viz.* their being together in Company. If Mr *Porter* says true, when he swears that Mr *Goodman* was there with him and the rest, Mr *Goodman* must say true when he swears that he was there with Mr *Porter* and the rest. There was one Thing that I forgot: Sir *B. Shower* observed, that it might be an Invention of Captain *Porter*, because he fixeth it in Point of Time to the Month of *May*, that he does not say it was in *April*; for that then it would be within the Pardon, which extends to *April* 29. last Year; nor would he lay it in *June*, for then he was in *Newgate*, and others of them were

were dispers'd by reason of a Riot committed in *Drury-lane*; and this Sir *B. Shower* alledges, was a Piece of Skill and Contrivance: But, really, this is a Piece of Ingenuity in himself: For, besides that the King's Witnesses affirm positively that it was in *May*, and remember it by a certain Token, *viz.* That it was within a very few Days after the King went beyond Sea, one or two of the Prisoner's Witnesses (*Crawford* I am sure) did say that this Meeting was this Time Twelve-month, and you know we are now near mid-*May*.

Mr Serjeant *Darnall*. If you believe our Drawers for Part, you must believe them for all.

Mr *Att. Gen.* No, not so: My Lord speaks only where they concur with our Evidence. It were strange to expect we should disbelieve or doubt what the Witnesses on both Sides affirm to be true: But, I do not think it would be to the Advantage of the Prisoner, if what his Council propoeth were agreed to, *viz.* That the Drawers (and their Master too) should be believed for all they say, provided equally that the King's Witnesses should, in like manner, be believ'd for what they say. For, the main Thing controverted, is, Whether Mr. *Goodman* were at this Meeting. These Witnesses for the Prisoner say, they did not see him there; at least they do not remember it. Mr. *Porter*, and Mr. *Goodman* himself says, he was there. Now, these Things agreed, and admitted, would make a very consistent clear Evidence, that Mr. *Goodman* was there, though the Master and Drawers did not observe, or do not remember his being there.

Then an Officer was Sworn to keep the Jury, who withdrew to consider of their Verdict, and about three Quarters of an Hour after, returned into Court.

Cl. of Arr. Gentlemen, answer to your Names. *Henry Sherbrook.*

Mr *Sherbrook*. Here. And so of the Rest, &c.

Cl. of Arr. Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Set *Peter Cook* to the Bar, (which was done.) *Peter Cook* hold up thy Hand, (which he did.) Look upon the Prisoner; how say you, Is he guilty of the High-Treason whereof he stands Indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the Treason committed, or at any Time since?

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court has recorded it: You say that *Peter Cook* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods or Chattels, Lands or Tenements at the Time of the High-Treason committed, or at any Time since to your Knowledge, and so you say all.

Jury. Yes.

Cl. of Arr. Gentlemen, the Court dismisses you, and thanks you for your Service.

Then the Court adjourned till five a Clock in the Evening.

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POST MERIDIEM.

About six a Clock, the Court being, by Proclamation, resum'd, the Prisoner, convicted, was brought to the Bar, in order to Judgment.

Cl. of Arr. *Peter Cook*, hold up thy Hand (which he did), thou stand'st convicted of High-Treason, for compassing and imagining the Death of his Majesty King *William* the Third, and for adhering to the King's Enemies: What can'st thou say for thy self, why the Court should not give thee Judgment to die according to the Law?

Cook. My Lord Mayor, my Eyes are very bad, therefore I desire your Lordship would be pleased to take this Paper, and that it may be read.

Cl. of Arr. Have you any Thing to say in Arrest of Judgment?

Cook. I desire my Paper may be read.

[*It was handed up to the Court, and then delivered down to Mr Attorney General and the King's Council, but not openly read.*]

Mr Recorder. Mr *Cook*, the Court have read your Paper you sent up, and have communicated it to the King's Council; if you have any Thing to move in Arrest of Judgment, this is your Time, and we will hear you; but as for any Representation of your Case to any others, that must be considered of afterwards, you are now called to your Judgment.

Cook. I did not know that I might offer any Thing afterwards, but if your Lordships think fit to communicate that to my Lords Justices, I submit it to you.

Mr Recorder. Mr *Cook*, there is nothing appears upon this Paper that is Matter of Law, and so not serviceable to you now, and therefore what you desire in it, the Court will consider of afterwards.

Cook. I do not understand the Law, my Lord; but I have heard the Court ought to be of Council for the Prisoner, and I desire I may not suffer by my Ignorance.

Mr Recorder. I declare it, for my Part, I know nothing that you can have any Advantage of, in Arrest of Judgment; if I did, you should not lose the Benefit of it, and you have had your Council assigned, who have pleaded for you without restraint; and if there had been any Matter of Law that would have availed you in Arrest of Judgment, no doubt, they would have laid hold of that Advantage for you.

Cook. I can't tell, my Lord, what is Matter of Law.

Mr *Att. Gen.* Your Lordship observes, they took all the Objections that they could to the Indictment, but there was none that they could fix.

Cl. of Arr. Then Cryer make Proclamation; (which was done on both Sides of the Court.)

Cryer. Oyez. All Manner of Persons are commanded to keep Silence while Judgment is in giving, upon Pain of Imprisonment.

Cook. My Lord, may I have my Paper again?

Mr Recorder. If you think it may be of any Service to you to leave it with the Court, you may do so; or if you desire it, you shall have it again.

Cook. I desire your Lordship to keep it.

Mr Recorder. I will receive it, and it shall not be buried, I assure you.

Cook. I don't hear what the Court says.

Mr Recorder. You say you did not hear what was said to you: If you desire to have your Paper

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again,

again, you shall have it; but if you desire to have it communicated Above, the Court will consider it, and take care of that too.

Cook. I desire your Lordship would do it.

Then the Recorder proceeded to give Judgment.

Mr Cook, I think it useful to the Publick, and also at this Time to you, to observe, That the Reign of the late King *James*, was, throughout, one intire Design and Project form'd, in conjunction with the *French King*, totally to subvert our Religion, Laws, and Liberties, which grew so apparent to the Subjects of these Nations, in so many Instances of fatal Consequence, manag'd in such a Method, and advanc'd so far, that the People of these Kingdoms, of all Qualities, Ranks, and Degrees, did find it absolutely necessary for the Preservation of themselves and the neighbour Nations now in Alliance with us, to pray in Aid of the then Prince of *Orange*, as a Person not only nearly allied to this Crown, but also intirely in the Interest of these Kingdoms, and those neighbouring Princes, and Countries that lay exposed to the Violence and ambitious Insults of *France*. And the Love which that noble Prince did bear, not only to us, but to our Neighbours also, disposed him to embrace that Invitation, upon whose Arrival here, that Predecessor, from Motives that were invisable, declin'd the Kingdom and the Government, and left the People to themselves; whereupon his present Majesty was necessarily and rightfully placed upon that Throne he so well deserved: And this is now that King, for whose Preservation all good People have associated, and spare neither Lives nor Treasure to support and to continue in the Government; and this is that King whom you have traiterously conspired, not only to dethrone, but also to destroy; and this is that People that you would have to swim in Blood, and lose their Religion, Liberty, and Property. These Matters need a History to relate at large, I only touch them shortly, to move good Men to rejoyce in their Deliverance, and to move you seriously to reflect upon the Heinousness of your Crime.

Mr Cook, you are an *English Man*, and must needs know, that in this Place we frequently condemn to Death, Clippers, Coiners, Thieves, and Robbers, and other such like Criminals, and that justly and necessarily too, for the Preservation of the Innocent, and for the common Good. Of what Condemnation must you, and such as you, be worthy then, who have so horridly endeavour'd and design'd the fatal Ruin and Destruction of your own native Country, and to render your Fellow-Subjects a miserable Prey, and at the Best to become Slaves and Vassals to a foreign Prince?

Let me also mind you, That nothing is more sure, than that after this, you must receive a Judgment in another World; and if that pass against you too, that Sentence will be most Terrible, and your Sufferings without End: And therefore I do advise you to imploy the few Days you have yet to live, in Preparation for your future Happiness, which cannot be duly done without a full Confession of this, as well as other Crimes you have been guilty of: I therefore charge it to you, as your Duty, and leave it with you at your utmost Peril, that you honestly and faithfully discover all you know of this inhumane and traiterous Conspiracy, and all the Persons that you do know to be guilty of it: This will be the greatest Service you can do in this World, and will be the best preparatory Step that you can take towards a better.

And, Sir,

There now remains no more for me to say, but to pronounce that Sentence on you which the Law directs: And that is this,

That you, Peter Cook, be taken hence to the Place from whence you came, and thence be drawn upon a Hurdle to the Place of Execution, where you are to be hang'd by the Neck, and cut down before you be dead; that your Bowels be taken out, and your Privy Members cut from your Body, and both burnt in your Sight; that your Head be cut off, and your Body divided into four Quarters, which Head and Quarters are to be at the King's Disposal; and God Almighty have Mercy upon your Soul.

Cook. I beg, if your Lordship please, that I may have my Relations and Friends come to see me, and some Divines, the better to prepare me for another World.

Mr Recorder. *Mr Cook*, if you'll give the Names of those that you would have come to you, to the Officer, Care shall be taken in it; and you will not be denied any reasonable Helps that may be had for your Preparation for Eternity.

Mr Att. Gen. It is not fit he should be deny'd any reasonable Help; but in the mean Time there is Reason for the Government to be cautious, upon the Account of what has notoriously past in the Case of some others.

Mr Recorder. If he give in the Names, it will be considered of, and Care taken that nothing be done, but what is reasonable and safe.

Then the Prisoner was taken from the Bar, and the Court proceeded to what was remaining of the Business of the Sessions.

The TRYAL of ALEXANDER KNIGHTLEY

Publiſh'd by A U T H O R I T Y.

De Termino Paſche Anno Regni Regis Gulielmi Tertii Octavo.

In Banco Regis.

Die Jovis Triceſimo Aprilis, Anno Domini 1696.

THIS Day the Keeper of *Newgate* brought to the Bar of the Court of *Kings Bench*, *Alexander Knightley*, by Virtue of a Writ of *Habeas Corpus*, Iſſuing out of that Court for that Purpose, to be Arraigned upon an Indictment of High Treason, found against him at the Sessions of *Oyer and Terminer*, holden for the County of *Middlesex*; which Indictment by Writ of *Certiorari* was removed into the *Kings Bench*. The Return of the *Habeas Corpus* was delivered, and then the Prisoner was Arraigned thus.

Cl. of Ar. Alexander Knightley hold up thy Hand (which he did.) Thou standest Indicted by the Name of *Alexander Knightley*, late of the Parish of *St. Paul Covent-Garden* in the County of *Middlesex*, Gent. For that you not having the Fear of God in your Heart, nor weighing the Duty of your Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traytor against the most Serene, most Illustrious, and most Excellent Prince, our Sovereign Lord *William the Third*, by the Grace of God of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. Your supreme, true, rightful, lawful, and undoubted Sovereign Lord, the cordial Love and true and due Obedience, Fidelity, and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King should bear, and of right ought to bear, withdrawing, and utterly to extinguish, intending and contriving, and with all your Force purposing and designing the Government of this Kingdom of *England*, under him our said Lord the King that now is, of right duly, happily, and very well-established, altogether to subvert, change, and alter, as also the same our Lord the King to Death, and final Destruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Slavery to *Lewis the French King* to subdue and inthral, the tenth Day of *February*, in the seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of *St. Paul Covent-Garden*, aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and Traiterously you did compass, imagine, and contrive, purpose, design, and intend, our said Sovereign Lord the King that now is, to slay, kill, and murther, and a miserable Slaughter among the faithful Subjects of our said Lord the King, throughout this whole King-

dom of *England*, to make and cause; and your said most wicked, most impious, and devilish Treasons, and traiterous compassings, contrivances and purposes aforesaid, to fulfil, perfect, and bring to effect, you the said *Alexander Knightley* afterwards, to wit, the same tenth Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, traiterously, and with Force and Arms, with very many other Traitors to the Jurors unknown, did meet, propose, treat, consult, consent, and agree, him our said Lord the King that now is, by lying in wait and deceit, to assassinate, kill, and murther, and that execrable, horrid, and detestable Assassination and killing, the sooner to execute and perpetrate, afterwards, to wit, the same Day and Year, and divers other Days and Times at the Parish aforesaid, in the County aforesaid, traiterously you did treat, propose, and consult with those Traytors, of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what Manner, our said Sovereign Lord the King, so by lying in wait, might be slain and killed, and that you did consent, agree, and assent with the same Traytors, that forty Men on Horseback, or thereabouts, of whom you the said *Alexander Knightley* were to be one, with Guns, Muskets, and Pistols, charg'd with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Arms, armed, should lie in wait and be in ambush, the same our Lord the King in his Coach being when he should go abroad to attack, and that a certain and competent Number of those Men so arm'd, upon the Guards of our said Lord the King, him then attending, and being with him should set upon, and should fight with them and subdue them, whilst others of the same Men so armed, him our said Lord the King should assassinate, kill, slay, and murther; and you the said *Alexander Knightley*, your Treasons and all your traiterous Intentions, Designs, and Contrivances aforesaid, to execute, perform, fulfil, and bring to effect, afterwards, to wit, the aforesaid tenth Day of *February*, in the seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, diverse Horses, and very many Arms, Guns, Muskets, Rapiers and Swords, and other Weapons, Ammunition, and warlike Things, and military Instruments, falsely, maliciously, secretly, and traiterously you did obtain, buy, gather together, and procure, and to be

be bought, obtain'd, gathered together, and procured, did cause with that Intent to use, employ, and bestow them in and about the detestable, horrid, and execrable Assassination, Killing, and Murther, of our said Lord the King that now is, as aforesaid; and the same Premises, the more safely, and surely to execute, do, and perform, you the said *Alexander Knightley*, with one *Edward King* late for High-Treason, in contriving and conspiring the Death of our said Lord the King that now is, duly convicted and attainted, by the Consent and Assent of divers of the Traitors and Conspirators aforesaid, in the said tenth Day of *February* in the seventh Year aforesaid, traiterously did go and come to the Place propos'd, where such intended Assassination, Killing, and Murther of our said Lord the King, by lying in wait should be done, performed, and committed, to view, search, and observe, the Conveniency and Fitness of the same Place for such lying in wait, assassination, and killing, there to be made, performed and committed, and that Place so being seen and observed, afterwards, to wit, the same Day and Year, your Observations thereof to some of the said Traitors and Conspirators, you did relate and impart, to wit, at the Parish aforesaid, in the County aforesaid, against the Duty of your Allegiance, and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in this Case made and provided. How sayst thou, *Alexander Knightley*, art thou guilty of the High-Treason whereof thou stands indicted, or not guilty?

Knightley. Not guilty.

Cl. of Arr. Culpit, How will you be Try'd?

Knightley. By God and my Country.

Cl. of Arr. God send you a good Deliverance.

Knightley. With Submission to your Lordship, I did not expect, in this weak Condition that I am in; to be brought at this Time to the Bar; That having taken me off extremely from the Application that I should have otherwise made of my self to my Defence; but seeing there is no Mercy to be had here, I will endeavour to have Patience, and undergo my Fate as well as I can.

L. C. J. Holt. Mr *Knightley*, you have no Reason to find fault; for when I was acquainted you were ill, and desired a Physician, I ordered one to be sent to you; and Yesterday in the Afternoon you sent Word you were so sick, that you could not be brought hither to Day; but your Doctor was with me last Night, and upon Discourse with him, I did apprehend you were not so ill, but that, especially considering the Weather, you might very safely be brought to the Bar to Day.

Knightley. The Gentleman that brought me the Copy of the Indictment found me very ill, and I have been ill ever since this Day sevensnight.

L. C. J. Holt. Well, now let us see what Time we shall appoint for the Tryal.

Mr Att. Gen. When your Lordship pleases to appoint.

L. C. J. Holt. I think you cannot Try it till *Wednesday* fortnight.

Mr Clark. That Day is free, my Lord.

L. C. J. Holt. It being upon a *Certiorari*, the *Venire facias* must be returnable upon a common Day; and there must be fifteen Days between the *Teste* and the Return.

Mr Att. Gen. May it not be *Tuesday* then, that the Jury appear?

L. C. J. Holt. You cannot have it before *Wednesday*, for that is the Return-day.

Mr Clark. *Tuesday* fortnight is appointed for the Tryal between *Pride* and the Earl of *Bath*.

Mr Att. Gen. Then it must be upon *Wednesday*, for there must be fifteen Days between the *Teste* and the Return.

L. C. J. Holt. Well, take back your Prisoner; and bring him here again on *Wednesday* fortnight, you shall have a Rule for it.

Then the Prisoner was carried back.

Die Mercurii Vicefimo Maij, 1696. In Banco Regis. Dominus Rex versus Knightley.

THIS Day being appointed for the Tryal of the Prisoner, he was brought to *Westminster-Hall*, and the Jury were call'd over as soon as the Court appeared in the Hall, and the Defaulters recorded; and about Eleven of the Clock the Prisoner was brought to the Bar.

Clerk of the Crown. Alexander Knightley, hold up thy Hand, (*which he did*.) Those good Men that thou shalt hear called, and personally appear, are to pass between our Sovereign Lord the King and thee, upon the Tryal of thy Life and Death: If therefore thou would'st challenge them, or any of them, thy Time is to speak unto them as they come to the Book to be Sworn, before they be Sworn.

L. C. J. Holt. Mr. *Knightley*, I perceive you have a Desire to speak something; let us hear what you have to say.

Knightley. I humbly beg your Lordship's Leave, that I may speak before the Jury be called. What I have to say, I beg I may have your Leave to read, because I have a bad Memory.

(*Reads.*) MY Lord, I hope to save the Jury and the Witnesses against me a great deal of Trouble, and design to take up very little of your Lordship's Time: But in the first Place I think my self obliged to thank your Lordship for your great Indulgence, in granting me so much Time between my Arraignment and Trial; the greatest Part of which I have employed to appear before the great Tribunal of Heaven.

I speak in the Face of the World here, That I am convinced I cannot hope to be happy hereafter, without a just Abhorrence of, and a sincere Repentance for that Crime for which I here stand Indicted.

And since Confession is an essential Part of Repentance, I do acknowledge I was to have been concern'd in some Part of the barbarous Assassination, and was unhappily surprized into a Consent to act in it, though in my Heart I did abominate the Fact as much as any Man living; but under some honourable and fair Pretences I was drawn in at first, and then of a sudden became so far engaged, that by a mistaken Notion of Honour, I thought I could not retreat without the Infamy of Cowardise.

My Lord, I humbly crave your Lordship's Permission, to acquaint you, how that some time since I was brought before some of the Lords of his Majesty's most Honourable Privy Council, where I do assure your Lordship I did freely own and fully discover my being concerned in that horrid Design; and I here openly confess the same with

with that Sorrow and Repentance as becomes a Man of Honour and Conscience.

My Lord, there is one Circumstance particular in my Case, I most humbly beg leave to insist upon, and urge to your Lordship in my behalf, which is, that it was upon my Confession (as I conceive) that Mr *Harris*, now a principal Evidence against me, was first discovered; so that my own Confession has been a great Means to take away my Life.

I expect after a few Words now in this solemn Court to receive from your Lordship the Sentence due upon the Conviction, from my own Mouth, of a Crime for which I cannot in modesty hope, so much above my Deserts, the King's most Gracious Pardon; yet the Greatness of my Offence does not rob me of all Thoughts of Mercy, whilst I throw my self absolutely and entirely at his Majesty's Feet for it; and I humbly beg of your Lordship as a Privy-Councillor, that you would represent my unfortunate Case to their Excellencies the Lords Justices of *England*, as an Object of his Majesty's Favour.

And now, my Lord, I shall not detain your Lordship and the Court any longer, but my next Words Convict and lay me under the just Sentence of Death: So to my Indictment I beg Leave to plead guilty, and throw my self entirely upon the King's Mercy, and do desire my former Plea to my Indictment may be withdrawn.

Cl. of the Crown. Thou hast been Indicted and Arraigned of High-Treason, in compassing and imagining the Death and Destruction of the King; how say'st thou *Alexander Knightley*, art thou guilty of the High-Treason whereof thou stand'st indicted, or not guilty?

Knightley. Guilty, my Lord.

Cl. of the Crown. Art thou content to withdraw thy Plea Not guilty?

Knightley. Yes, Sir.

Cl. of the Crown. Do you plead to the Indictment guilty or not guilty?

Knightley. I am guilty.

Mr *Att. Gen.* Then my Lord we desire, since he relinquishes his Plea of Not guilty, that you will record his Confession; and since he has confessed the Indictment, we have nothing more to do but wait the Judgment of the Court.

L. C. J. Holt. We shall not give Judgment now.

Mr *Att. Gen.* If the Prisoner have any thing to say for himself, your Lordships I suppose will hear him to it.

L. C. J. Holt. But I say we cannot by the Course of the Court give Judgment now, for after a Person is convicted here, whether by Confession or Verdict, he ought to have four Days from the Time of such Confession or Verdict, to move in Arrest of Judgment, if there be so many Days of the Term remaining, if not, then the longest Time that can be had in the Term is allow'd: In *Stanley's* Case it was otherwise practised, Judgment was given the same Day, that was in the time of the Popish Plot, and is a Case not to be imitated, because not justified by any Precedent before that time or since, but it has been always observ'd to have four Juridical Days for moving in Arrest of Judgment, if so many remain of the Term.

*Die Lunæ Vicesimo Quinto Die Maii
An. Dom. 1696.*

Being the last Day of the Term, the Prisoner was brought from Newgate to the King's Bench-Bar.

Mr *Att. Gen.* If your Lordship please, I desire the Judgment of the Court to be pronounced upon Mr *Knightley* upon his Conviction.

Cl. of the Crown. *Alexander Knightley* hold up thy Hand; (which he did.) thou hast been Indicted and Arraigned for High-Treason in compassing and imagining the Death of the King, and adhering to the King's Enemies; what canst thou say for thy self, why Judgment should not be given against thee to die according to the Law?

Knightley. I have nothing more to say, my Lord, than what I have said.

Cl. of the Crown. Cryer, make Proclamation for Silence. Which was done on both Sides the Court.

Cryer. O Yez: Our Sovereign Lord the King straitly charges and commands all manner of Persons to keep silence while Judgment is in giving, upon pain of Imprisonment.

L. C. J. Holt. Mr *Knightley*, You are by your own Confession convicted of High-Treason in designing the Murder of the King and the Subversion of the whole State of *England*, in promoting an Invasion from the *French*, its most antient and inveterate Enemies.

It hath appeared before your Arraignment, not only by the Evidence that hath been given at former Trials; but even by the Signs of the Times and the Manner of some Mens Actings, that there hath been for some Years last past a Train of Plots and Conspiracies against this Government, and when the various Means which the Conspirators did project among themselves for its Ruin proved ineffectual, it was at last resolved among some of the Conspirators to assassinate the King, as the most certain Way of accomplishing their End.

In which Design you were deeply engaged and was an active Instrument in the carrying it on, being sent to view the Ground on both Sides the Water, and with others that were sent with you reported your Opinion, which was the most convenient Place to attack the King and his Guards.

And though you did the last time you were at the Bar, urge by way of Extenuation of your Crime, that you being engaged in the Interest of the late King, and thereby supported, you was surprized into this barbarous Design, which being proposed to you, you thought your self obliged in Honour to engage in it; which is so far from an Extenuation, that it is an high Aggravation: For Men of honourable Principles, tho' most zealously disposed to the Advancement of any particular Interest, yet always detest the Use of base and vile Means. Therefore when the Assassination of the King was proposed, you had an Opportunity to have retreated with Honour, and might have refused to be further concerned; but you rather pursued this wicked Enterprize with great Zeal.

And tho' you are by your Profession a *Roman Catholick*, and may for that Reason think that your Crime is mitigated, because you acted in the behalf of a Prince of your own Religion, which you hoped thereby to introduce: Notwithstanding all which, your Offence is highly aggravated in respect of the Ingratitude and Folly with which it is attended. For there is no *English* Papist that is Master of any Property, but he is interested in the Preservation of this Government, to which the whole Party of them hath been, and still are continually obliged for its Moderation and Justice; for instead of being exposed to the Severity of those Laws to which they are obnoxious, they have had the same Indulgence in the Enjoyment of their Religion, and the same Protection, and as much Benefit in the Distribution of the Common Justice of the Realm, as any other of the King's Subjects; therefore none of them could ever expect to mend their Condition under a *French* Domination. But the contrary is foreseen by all considering Men; for the *English* Papist, as well as Protestant, would have been reduced to a most dismal State if you had obtained your End.

For it is against all the Rules of Reason, and the Experience of all Ages, to imagine, that the *French* King would spare *English* Papists more than Protestants; for it is not Zeal to Religion, or Affection to the Interest of the late King, that hath excited him to invade *England*, but it's his Pride and Ambition to conquer the three Kingdoms, and to reduce this to be a Province to *France*: Indeed the Pretence of restoring the late King, and introducing the *Papish* Religion may serve to delude some warm and unwary Zealots to engage in his Assistance, who do not consider, that if they should be successful they would be as certainly destroyed as others, but with more Disadvantage to themselves. For after they shall have survived the Liberty of their Country, have embred their own Hands in their Countrymen's Blood, they will be at the Mercy of their Conqueror, who can never think it his Interest to trust them, but will despise them for being such villainous Traitors to their own Country. Nay, rather, these *Englishmen*, who by their Courage and Resolution shall endeavour to defend their Country, though they should be unfortunately vanquished, will meet with a much better Reception, for they will have given Assurances that they may be confided in, when the others have by such a wicked Treason given a Demonstration to the contrary.

There being then nothing to be said that can palliate such a Crime as that of which you are convicted; but you having taken a different Course the last time you were at the Bar from what you took at first, you have relinquished your Plea of Not guilty, and have confessed the Indictment; I wish out of Charity to your Person it was as sincere as (I think it) it was prudent in you; for after several Convictions of others that were your Accomplices, you could not be a Stranger to the Evidence upon which they were grounded, you must therefore in all probability have expected to have undergone the same Fate. If your Confession be a real Effect of your Repentance, you will reap the Advantage of it in the next World, but what Consequence it will have in this I cannot say, *For the Heart of the King is in the Hand of the Almighty, which as the Rivers of Water, he turneth whithersoever he will.* Live therefore for the time to come in expectation of a speedy Death, and prepare your self to appear before another Judgment-Seat; to the making of which important Preparation I shall dismiss you, first discharging the Court of the Duty now incumbent upon it, in giving that Judgment which the Law hath appointed. And the Court doth award,

That you be conveyed from hence to Newgate, the Prison from whence you came, and from thence you are to be drawn upon a Hurdle to Tyburn; where you are to be hanged by the Neck, and while you are alive to be cut down, your Privy Members are to be cut off, and your Bowels to be cut out of your Body and burnt in your View; your Head is to be cut off, and your Body is to be divided into four Parts, and your Head and your Quarters are to be disposed where his Majesty shall appoint. And I pray God to have Mercy upon your Soul.

Knightley. My Lord, I am truly sorry for what I have done, and I humbly thank your Lordship, and the rest of the Judges for your Favour to me.

Then the Prisoner was carried back to Newgate.

The TRYALS of Joseph Dawson, Edward Forseith, William May, William Bishop, James Lewis, and John Sparkes: For several Piracies and Robberies.

Admir. Angl. ff.

The Sessions of Oyer and Terminer, and Goal-Delivery, held for our Sovereign Lord the King, for the Jurisdiction of the Admiralty of England, at Justice-Hall in the Old-Baily, in the Suburbs of the City of London, on Monday the 19th Day of October, in the Eighth Year of the Reign of our said Sovereign Lord King William the Third, over England, &c. before the Right Honourable Edward Russel, Esq; Henry Priestman, Esq; Sir Robert Rich, Knight and Baronet; Sir George Rooke, Kt. Sir John Houblon, Kt. and James Kendall, Esq; Commissioners for Executing and Exercising the Office and Place of Lord High Admiral of England, respectively assigned and deputed; the Right Worshipful Sir Charles Hedges, Kt. Doctor of Law, Lieutenant in the High-Court of Admiralty of England, Commissary-General of Our Sovereign Lord the King, and President and Judge of the said Court; the Right Honourable Sir John Holt, Kt. Lord Chief Justice of the King's-Bench; Sir George Treby, Kt. Lord Chief Justice of the Common-Pleas; Sir Edward Ward, Kt. Lord Chief Baron of the Exchequer; Sir Tho. Rokeby, Kt. and one of the Justices of the King's-Bench; Sir Samuel Eyre, Kt. another of the Justices of the King's-Bench; Sir John Turton, Kt. another of the Justices of the King's-bench; Sir John Powell, Kt. one of the Justices of the Common-Pleas; Sir Littleton Powis, Kt. one of the Barons of the Exchequer; William Bridgeman and Josias Burchet, Esqs; Secretaries of the Admiralty of England; Thomas Lane, William King, and John Cooke, respectively Doctors of Laws; and others His Majesty's Justices named in the said Commission.

IS Majesty's Commissioners being then and there met, the Commission was read, and Proclamation made for Attendance: After which, the Gentlemen of the Grand Jury were called and sworn, and received their Charge from Sir Charles Hedges, Knight, Judge of the High Court of Admiralty, who set forth

unto them the Nature of the Commission, the Extent of the Jurisdiction of the Court, and the subject Matter of their Enquiries.

Then the Witnesses for the King being sworn, the Grand Jury withdrew, and after a little Time returned, finding *Billa vera* against Henry Every, not yet taken, Joseph Dawson, Edw. Foreseith, William May, William Bishop, James Lewis, and John Sparkes, Prisoners, for Feloniously and Piratically taking, and carrying away, from Persons unknown, a certain Ship called the *Gunsway*, with her Tackle, Apparel, and Furniture, to the Value of 1000*l.* and of Goods to the Value of 1100*l.* together with 100000 Pieces of Eight, and 100000 Chequins, upon the High Seas, ten Leagues from the Cape St. Johns near Surat in the East-Indies. Then Dawson, Foreseith, May, Bishop, Lewes, and Sparkes, were brought to the Bar, and their Indictment was read.

Joseph Dawson confessed that he was Guilty, but the rest pleaded Not Guilty, and put themselves upon their Trials; and thereupon the Petty-Jury was called, and the Persons, whose Names follow, were Sworn.

William Walker,	}	Benjamin Dry,
John Child,		John Sherbrooke,
Edward Leeds,		Samuel Jackson,
Thomas Clarke,		Thomas Emms,
Nathan Green,		Henry Hunter,
Henry Sherbrooke,		John Hall.

Then the King's Learned Council opened the Indictment, &c. and Dr Newton made a Speech; which is as follows:

My Lord, and Gentlemen of the Jury,

THE Prisoners are Indicted for Piracy, in Robbing and Plundering the Ship *Gunsway*, belonging to the Great Mogul, and his Subjects, in the Indian Seas, to a very great Value.

And the End was suitable to their Beginning; they first practised these Crimes upon their own Country-men, the English, and then continued them on to Strangers and Foreigners: For the Ship in which this Piracy was committed, was an English Vessel, called *The Charles the Second*, belonging to several Merchants of this City, designed for other Ends, and a far different Voyage, which by these Criminals, with the Assistance of one Every, their Captain, in all these Villanies, was seized near the Groyn in Spain, in May 1694, from which Place, having first, by Force, set Captain Gibson the Commander on Shoar, they carried off the Ship, and with it committed many and great Pyracies, for several Years (as will appear in the Course of the Evidence) in most of the Parts of the known World, with-

out Distinction upon all Nations, and Persons of all Religions.

Their last Piracy was this in the Indies, the greatest in it self, and like to be the most pernicious in its Consequences, especially as to Trade, considering the Power of the Great Mogul, and the natural Inclination of the Indians to revenge: But they are now brought hither on their Tryal, and if the Matters they are charged with, shall be proved, to receive that Judgment from you, their Crime deserves; and that is Piracy, which by so much exceeds Theft or Robbery at Land; as the Interest and Concerns of Kingdoms and Nations, are above those of private Families, or particular Persons: For suffer Pirates, and the Commerce of the World must cease, which this Nation has deservedly so great a Share in, and reaps such mighty Advantage by: And if they shall go away unpunished, when it is known whose Subjects they are, the Consequence may be, to involve the Nations concerned, in War and Blood, to the Destruction of the innocent English in those Countries, the total Loss of the Indian Trade, and thereby, the Impoverishment of this Kingdom.

The Witnesses for the King, viz. John Dan, and Philip Middleton, were then called and sworn, and in the Opinion of the Court gave a full Evidence against the Prisoners, which was very clearly summ'd up by the Lord Chief Justice Holt; the Tenour whereof is particularly set forth in the following Trials: But the Jury, contrary to the Expectation of the Court, brought in all the Prisoners Not Guilty, whereupon the Sessions was adjourned to Saturday the 31st of October following, and the Prisoners were committed upon a new Warrant for several other Piracies.

*Die Sabbati, tricesimo primo Octobris,
Annoq; Regni Regis Willielmi Tertii
Octavo, Annoq; Domini, 1696.*

THE Court being sat (at which were present Sir Charles Hedges Judge of the High Court of Admiralty, the Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr Justice Rookby, Mr Justice Turton, Mr Justice Eyres, and Mr Baron Powis, Dr Lane, Dr King, and Dr Cook) the Court proceeded in this Manner.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes. All Manner of Persons that have any Thing more to do at this Sessions, draw near and give your Attendance: And you Sheriffs of the City of London, return the several Precepts directed to you, and returnable here this Day, upon Pain and Peril that shall follow thereon.

[Then the Grand Jury were called over, and the Appearance mark'd.]

Cl. of Arr. Make Proclamation.

Cryer. O yes, &c. The Lords the King's Justices charge and command all Persons to keep Silence, while the Charge is giving.

The Judge of the Admiralty's Charge to the Grand Jury upon this Occasion.

Sir Charles Hedges. Gentlemen of the Grand Jury, THE Opinion which this Court had of the good Intentions, Abilities, and Integrity

of the last Grand Jury, was so fully answered at our late Meeting in this Place; that I am confident all good English men, who were Witnesses of their Proceedings, will concur in giving them publick Thanks, for the good Services which they then performed: I wish that all others, who were concerned in the Dispatch of that Day's Business, had the like Pretence to have the same; the Publick Justice of the Nation, would not then have lain under any Manner of Reproach, neither would you have had this farther Trouble. But seeing that it hath so happen'd, it is become absolutely necessary that a farther, and a strict Enquiry should be made after those Crimes which threaten, and tend to the Destruction of our Navigation and Trade, and therefore I am assured of your Patience, whilst I shew you briefly,

1. What the Crimes are, which you are to enquire after.
2. How far the Jurisdiction, and your Power in making these Enquiries doth extend.
3. What is the Duty incumbent on you in this Behalf.

1. As to the Crimes, I shall not repeat what was mentioned touching all the Particulars thereof, at the Opening of this Sessions; but confine my Discourse to those, which I find by the Calendar will, at this Time, necessarily fall under your Examination, and those are Piracies.

Now Piracy is only a Sea-Term for Robbery, Piracy being a Robbery committed within the Jurisdiction of the Admiralty; if any Man be assaulted within that Jurisdiction, and his Ship or Goods violently taken away without a legal Authority, this is Robbery and Piracy. If the Mariners of any Ship shall violently dispossess the Master, and afterwards carry away the Ship it self, or any of the Goods, or Tackle, Apparel, or Furniture, with a felonious Intention, in any Place where the Lord Admiral hath, or pretends to have Jurisdiction; this is also Robbery and Piracy; the Intention will, in these Cases, appear, by considering the End for which the Fact was committed, and the End will be known, if the Evidence shall shew you what hath been done.

2. Now the Jurisdiction of the Admiralty is declared, and described in the Statute, and Commission, by Vertue of which we here meet, and is extended throughout all Seas, and the Ports, Havens, Creeks, and Rivers beneath the first Bridges next the Sea, even unto the higher Water-mark.

The King of England hath not only an Empire and Sovereignty over the British Seas; but also an undoubted Jurisdiction, and Power, in Concurrence with other Princes, and States, for the Punishment of all Piracies and Robberies at Sea, in the most remote Parts of the World, so that if any Person whatsoever, Native or Foreigner, Christian, or Infidel, Turk or Pagan, with whose Country we have no War, with whom we hold Trade and Correspondence, and are in Amity, shall be robbed or spoiled, in the narrow Seas, the Mediterranean, Atlantick, Southern, or any other Seas, or the Branches thereof, either on this, or the other Side of the Line, it is Piracy within the Limits of your Enquiry, and the Cognizance of this Court.

3. Concerning the Duty incumbent upon you in making your Enquiries, and Presentments, you may

may consider that there is a great Trust and Authority committed to you, and therefore it will be expected that a suitable Care should be had, and your Power executed according to a well regulated Discretion: As you are, on the one Hand, to take Care that the Court be not troubled, nor any Man put in Hazard of his Life, through any frivolous, or malicious Prosecution; so, on the other Side, and more especially in the Cases of great, and publick Offences, you are to use your utmost Endeavours, that Justice, the Support of Government, be not obstructed by any partial Proceedings.

You are not obliged in all Cases to require a clear and full Evidence, but only to examine till you find, and are satisfied in your Consciences, that there is sufficient and just Cause to put the Party accused upon his Tryal. You cannot convict, but may in Effect acquit the greatest Criminals, and therefore if you do but find Proofs enough to create a Presumption against the Party accused, when the Case seems odious, and is of great Consequence and Importance, your safest Way is to put it in a proper Method for the Petty Jury, who are to receive full Satisfaction from the Evidence that shall be given in the Presence of the Party; and according to that Evidence, have Power to determine whether guilty, or not guilty, condemn, as well as acquit.

And upon this Occasion, seeing many who are upon that Service are present, it seems fit that they should also know that they have no Power to do more or less than what is agreeable to the Evidence: They are not to interpose in Points of Law, or to be swayed by any Consideration whatsoever, but what shall arise from the Proofs judicially made; they are indeed Judges of the Fact, but they are not Arbitrary; they are as much restrained by the Dictates of Conscience informed and convinced by reasonable Proofs, as the Judges on the Bench are by the Rules of Law.

No Man can believe just as he lists, and therefore a Determination, or Judgment at Will and Pleasure will never be thought to deserve the Name of a Verdict: For whatever may be pretended, the World will not be persuaded that a Jury hath pursued the Dictates of Conscience, unless some reasonable Grounds for its Proceedings shall appear, and therefore, whenever it shall happen that notorious Malefactors escape unpunished, notwithstanding, that in the Opinion of most good Men, there was a full and sufficient Evidence for their Conviction, it is to be wished, and indeed it seems to me to be necessary, in Cases that relate to the Laws of Nations, that the Reasons which induced such a Determination, should be given for the publick Satisfaction, otherwise, since Foreigners look upon the Decrees of our Courts of Justice as the Sense and Judgment of the whole Nation, our Enemies will be glad to find an Occasion to say, that such Miscreants as are out of the Protection of all Laws, and Civil Governments, are abetted by those who contend for the Sovereignty of the Seas. The barbarous Nations will reproach us as being a Harbour, Receptacle, and a Nest of Pirates, and our Friends will wonder to hear that the Enemies of Merchants and of Mankind, should find a Sanctuary in this ancient Place of Trade. Nay, we ourselves cannot but confess, that all Kingdoms and Countries who have suffered by *English* Pirates, may, for Want of

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Redress in the ordinary Course, have the Pretence of Justice, and the Colour of the Laws of Nations to justify their making Reprizals upon our Merchants wheresoever they shall meet them upon the Seas. If a Jury happens in these Cases to be too severe, there is Room for Mercy, and I am confident, that upon a just Representation, the Innocent never failed of obtaining it; but for a Fault, Neglect, or Errour on the other Hand, there is no Relief for injured Foreigners, but by their Carrying out, as we may be sure they will, for themselves, such a Satisfaction, upon our Merchants as they shall think fit, whenever they shall have an Opportunity; and so our whole Nation must unavoidably suffer both in Reputation and Interest, and all as it were through our own Default.

I hope what hath been said upon this unexpected Occasion, will not be looked upon as intended to influence any Jury; I am sure it is far from being so designed; Religion, Conscience, Honour, common Honesty, Humanity, and all Laws forbid such Methods: There is no Doubt but the Judge as well as the Jury-man then best discharges his Duty, when he proceeds without Favour or Affection, Hatred or Ill-will, or any partial Respect whatsoever.

Every Man ought to be extremely tender of such a Person as he has Reason to believe is innocent; but it should be considered likewise on the other Side, that he who brings a notorious Pirate, or common Malefactor to Justice, contributes to the Safety, and Preservation of the Lives of many, both bad and good, of the good by Means of the Assurance of Protection, and of the bad too by the Terror of Justice. It was upon this Consideration that the *Roman* Emperours in their Edicts made this Piece of Service for the publick Good, as meritorious as any Act of Piety, or Religious Worship.

Our own Laws demonstrate how much our Legislators, and particularly how highly that Great Prince King *Henry* the 5th, and his Parliament thought this Nation concerned in providing for the Security of Traders, and scowring the Seas of Rovers and Free-booters. Certainly there never was any Age wherein our Ancestors were not extraordinary zealous in that Affair, looking upon it, as it is, and ever will be, the chief Support of the Navigation, Trade, Wealth, Strength, Reputation and Glory of this Nation.

Gentlemen, our Concern, as our Trade is, ought in Reason to be rather greater than that of our Fore-fathers; we want no Manner of Inducements, no Motives to stir us up, whether we consider our Interest or Honour, we have not only the sacred Word, but also the glorious Acts of the best of Kings, which sufficiently manifest to us, that the Good and Safety of this Nation, is the greatest Care of his Life; let every Man therefore who pretends to any Thing of a true *English* Spirit, readily, chearfully follow so good, so great, so excellent an Example, by assisting and contributing to the utmost of his Power and Capacity at all Times towards the carrying on his noble and generous Designs for the common Good, and particularly at this Time, by doing all that he can, to the End that by the Administration of equal Justice, the Discipline of the Seas, on which the Good and Safety of this Nation entirely depends, may be supported and maintained.

F f 2

Then

Then the Witnesses being sworn in Court, the Grand Jury withdrew to hear their Evidence. And in the mean Time T. Vaughan and J. Murphey, Tim. Brenain, were Arraigned, whom the Keeper of Newgate, by Order, brought to the Bar.

W. Bishop, hold up thy Hand. (Which he did.)
James Lewis, hold up thy Hand. (Which he did.)
Jo. Sparks, hold up thy Hand. (Which he did.)

Cl. of Arr. T. Vaughan, Hold up thy Hand; (which he did.) Thou standest Indicted, &c.

Art thou Guilty of this High Treason whereof thou standest Indicted, or not Guilty?

T. Vaughan. Not Guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

T. Vaughan. By God and this Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. J. Murphey, Hold up thy Hand, (which he did.) Thou standest Indicted, &c.

How sayest thou, Jo. Murphey, Art thou Guilty of the High Treason whereof thou standest Indicted, or not Guilty?

J. Murphey. Not Guilty.

Cl. of Arr. How wilt thou be tried?

J. Murphey By God and the King.

Officer. You must say, by God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. Bring Tim. Brenain to the Bar, (who was brought accordingly.)

Cl. of Arr. Tim. Brenain, have you any Copy of your Indictment?

Tim. Brenain. Yes.

Cl. of Arr. When had you it?

Tim. Brenain. This Day se'ennight.

Cl. of Arr. Tim. Brenain, hold up thy Hand, (which he did.) Thou standest Indicted, &c.

How sayest thou? Art thou Guilty of the High Treason whereof thou standest Indicted, or not Guilty?

Tim. Brenain. Not Guilty.

Cl. of Arr. How wilt thou be tried?

T. Brenain. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Mr Mompesson. Will your Lordships please that he may be tried now?

L. C. J. Treby. Does he desire to be tried now?

Mr Mompesson. Yes, my Lord, there is no Evidence against him, and he is sick.

Mr Soll. Gen. We are not now prepared for the Trial.

L. C. J. Treby. If the King's Council and the Prisoner be agreed, with all my Heart.

L. C. J. Holt. He may be tried with the rest.

Then T. Vaughan, and J. Murphey, and T. Brenain, had Notice to prepare for their Tryals on Friday next, at Two of the Clock in the Afternoon.

Then the Grand Jury came into Court.

Cl. of Arr. Gentlemen of the Grand Jury, are you agreed in your Bills?

Grand Jury. Yes.

Cl. of Arr. Billa vera against Joseph Dawson, Ed. Forefeth, W. May, W. Bishop, James Lewis, and J. Sparks, for Piracy and Robbery.

Cl. of Arr. Keeper of Newgate, Set Joseph Dawson, Ed. Forefeth, Will. May, Will. Bishop, Will. Lewis, and Jo. Sparks, to the Bar. (Which was done accordingly.)

Cl. of Arr. Joseph Dawson, hold up thy Hand. (Which he did.)

Ed. Forefeth, hold up thy Hand. (Which he did.)

W. May, hold up thy Hand. (Which he did.)

Then the Indictment was read, and set forth,

That Henry Every, alias Bridgman, Joseph Dawson, Edward Forefeth, William May, William Bishop, James Lewis, and John Sparks, late of London, Mariners, on the 30th of May, in the 6th Year of the Reign of our Sovereign Lord King William, and the late Queen, did, against the Peace of God, and our said Sovereign Lord the King that now is, and the late Queen, by Force of Arms, upon the high and open Seas, in a certain Place, about three Leagues from the Groyn, and within the Jurisdiction of the Admiralty of England, Piratically and Feloniously set upon our Charles Gibson, a Subject of our said Sovereign Lord the King, that now is, and of the late Queen, being then and there Commander of a certain Merchant-ship, called, The Charles the Second, carrying Forty Pieces of Ordnance, belonging to certain Subjects of the said King and the late Queen, (to the Jurors as yet unknown.) And then and there put the said Charles Gibson in bodily Fear of his Life. And then and there, within the Jurisdiction aforesaid, Feloniously and Piratically did steal, take and carry away from the said Charles Gibson, the said Ship, called, The Charles the Second, her Tackle, Apparel, and Furniture, of the Value of One Thousand Pounds, Forty Pieces of Ordnance, of the Value of Five Hundred Pounds; One Hundred Fuses, of the Value of One Hundred Pounds; Fifteen Tun of Bread, of the Value of One Hundred and Fifty Pounds; and two Hundred Pair of Woollen Stockings, of the Value of Ten Pounds, in the Possession of the said Charles Gibson then being; the Ship, Goods, and Chattels of the Subjects of our said Sovereign Lord the King, and the late Queen, (to the Jurors unknown) against the Peace of our said Sovereign Lord the King, and the late Queen, their Crown, and Dignities, &c.

How say'st thou, Joseph Dawson, art thou Guilty of this Piracy and Robbery, or not Guilty?

Jos. Dawson. I am ignorant of the Proceedings.

Officer. He pleads Ignorance.

Cl. of Arr. You must plead Guilty, or not Guilty.

Jos. Dawson. Guilty.

Cl. of Arr. How say'st thou, Ed. Forefeth, art thou Guilty, or not Guilty?

Ed. Forefeth. Not Guilty.

Cl. of Arr. How wilt thou be try'd?

E. Forefeth. By God and my Country.

Cl. of Arr.

Cl. of Arr. How say'st thou, *Will. May*, art thou guilty, or not guilty?

W. May. Not guilty.

Cl. of Arr. How say'st thou, *W. Bishop*, art thou guilty, or not guilty?

W. Bishop. I desire to hear the whole Indictment read again.

L. C. J. Holt. You have heard it just now, and may hear it again if you desire it.

W. Bishop. The former Indictment.

L. C. J. Holt. No, there is no Occasion for that, this is an Indictment for a Fact distinct from that.

Cl. of Arr. This is a new Indictment, not the old One. Art thou guilty of this Piracy and Robbery, or not guilty?

W. Bishop. Not guilty.

Cl. of Arr. How say'st thou, *James Lewis*, art thou guilty, or not guilty?

Ja. Lewis. Not guilty.

Cl. of Arr. How say'st thou, *J. Sparks*, art thou guilty, or not guilty?

J. Sparks. Not guilty.

Cl. of Arr. How wilt thou be Try'd? (*As of the Rest.*)

J. Sparks. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cryer. O Yes, &c. You good Men of the City of London summoned to appear here this Day, to try between our Sovereign Lord the King, and Prisoners at the Bar, answer to your Names as you are called, and save your Issues.

Cl. of Arr. *Jo. Degrave, Benjamin Hatly, Jo. Ayres, &c.*

L. C. J. Holt. Have you any of the former Jury in this Pannel?

Cl. of Arr. Yes, my Lord.

Councillor *Coniers*. We shall except against them for the King.

L. C. J. Holt. If you have return'd any of the former Jury, you have not done well; for that Verdict was a Dishonour to the Justice of the Nation.

Cl. of Arr. You, the Prisoners at the Bar, these Men you hear called, are to pass between our Sovereign Lord the King, and you; if therefore you will challenge any of them, you are to challenge them as they come to the Book to be Sworn, and before they are Sworn.

Then they were called over, and some being challenged for the King, and some by the Prisoners, the Persons Sworn in this Jury were these.

<i>J. Degrave,</i>	}	<i>Alex. Pollinton.</i>
<i>J. Ayres,</i>		<i>J. Glover.</i>
<i>G. Broom,</i>		<i>Nath. Carpenter.</i>
<i>T. Hicks,</i>		<i>Jo. Bickley.</i>
<i>R. Meakins,</i>		<i>Nath. Troughton.</i>
<i>J. Sheljwell.</i>	}	<i>Hum. South.</i>

Cl. of Arr. Make Proclamation.

Cryer. O yes, If any one can inform my Lords, the King's Justices, the King's Serjeant, the King's Attorney General, or his Majesty's Advocate in his High Court of Admiralty, before this Inquest be taken, of the Piracy and Robbery whereof the Prisoners at the Bar stand indicted, let them come forth and they shall be heard, for the Prisoners stand at the Bar upon their Deliverance; and all others may depart.

Then the Grand Jury came into Court again, having found two other Bills against the Prisoners at the Bar, one for Piratically taking away a *Moorish Ship*, and another for committing Piracy on two Ships belonging to *Denmark*.

And then the Grand Jury was adjourned to *Friday* next, at two a Clock in the Afternoon.

Cl. of Arr. *Ed. Foreseth*, hold up thy Hand, (and so of the rest): You that are Sworn look upon the Prisoners, and hearken to their Cause, they stand indicted, &c.

Mr Whitaker. May it please your Lordships, and you Gentlemen of Jury, The Prisoners at the Bar stand indicted for Felony and Piracy, for that they, about the 30th of *May*, in the 6th Year of the Reign of his present Majesty King *William*, did make an Assault on Captain *Gibson*, commander of the Ship *Charles* the Second, and put him in fear of his Life, and Piratically stole away the Ship and all the Furniture; and this is laid to be against their Duty and Allegiance, and against the Peace of our Sovereign Lord the King, his Crown and Dignity, to which Indictment they have pleaded not guilty. We shall go on to call our Witnesses, and prove the Charge against the Prisoners at the Bar, and doubt not but you will do your Duty.

Then *Dr. Littleton*, Advocate-General to his Majesty, in his High Court of Admiralty, spake as follows.

Gentlemen of the Jury,

YOU have heard the Indictment opened, and we shall now call our Witnesses, who will relate to you what enormous and horrid Crimes the Prisoners at the Bar have committed in the Prosecution of the Fact laid in the Indictment: Crimes, that the bare Intention, had they not taken Effect, would have merited the highest Punishment: But this is not their Case, for they were not disappointed of their wicked Lusts and Desires, for as their Crimes are great, so have they been consummate as well as voluntary and malicious. I may well say, that their Wickedness has been as boundless and as merciless as the Element upon which their Crimes have been committed; nor is there any Part of the World that hath not been sensible of their Rage and Barbarity.

Therefore, Gentlemen, as you are Lovers of Christianity, as you are Lovers of Honesty, nay, as you are Lovers of your selves, who bear the Character of honest Men, if we prove this Charge against the Prisoners, you must and ought to find them guilty, remembering that the doing Justice upon wicked and profligate Men, is the greatest Mercy and Protection to the Good and Honest. We shall therefore proceed to call our Witnesses, not doubting but that you will act like honest Men, for the Honour and Welfare of your Country, without having any respect to the dishonourable Proceedings of the former Jury.

Mr Whitaker. Call *Jo. Graver*. (He appeared and was Sworn.) Let him stand up.

Mr Sol. Gen. *Mr Graver*, pray will you give my Lords and the Jury an Account what you know of the Prisoners running away with the Ship *Charles* the Second.

J. Graver. I was second Mate in the Ship at that Time. There was violent Hands laid on me, and I was seized, and a Pistol clasp'd to my Breast, and carry'd away.

Mr Sol.

Mr *Soll. Gen.* Who did it? Begin before.

J. Gravet. I was seized by the Carpenter of the Ship, he took me by the Throat, and clap'd a Pistol to my Breast.

L. C. J. Treby. Begin where the Ship was lying.

L. C. J. Holt. You was a Mate in this Ship: Now pray give an Account of the whole Matter.

J. Gravet. I was upon my Watch upon the Deck.

Prisoners. Pray speak up.

J. Gravet. And there was a Boat came from the *James Galley*, with People in her: And as soon as the Boat came, the Carpenter seized me, and took me by the Throat, and clap'd a Pistol to me, and said, if I resisted I was a dead Man. They took me, one by one Arm, and another by the other, and led me to my Cabin; and one with a Pistol stood at my Cabin-door, till they were got two Leagues without the *Groin*. Then *Every* came to speak to Captain *Gibson*, who was then sick, and was guarded on both Sides; and when he had done speaking with him, and was returned from Captain *Gibson*, he came to me again, and said, I suppose you do not intend to go with us: I said, I would not. Then I, and the Rest that would not go with them, had Liberty to go ashore; and I would have gone to my Coffer and taken my Cloaths, but they would not let me; and told me I should carry no more than my Cloaths on my Back.

Mr *Soll. Gen.* Did any of the Prisoners at the Bar say so?

J. Gravet. That I cannot tell.

Mr *Coniers.* Then go on.

J. Gravet. Then I went to *Every*, and I had some of my Cloaths, he was so kind to give me them; he gave me a Coat and Waistcoat, and his Commission that he left behind him; and *W. May* took me by the Hand and wished me well home, and bid me remember him to his Wife.

Mr *Coniers.* Was there Liberty for any of them that would, to go ashore?

J. Gravet. Captain *Gibson* told me so, and there were about seventeen went off.

Mr *Coniers.* No Matter what Captain *Gibson* told you, you say you went off: Might any one that would, go?

J. Gravet. That I cannot tell.

Mr *Coniers.* You say there was about Seventeen went off; would the Boat hold more?

J. Gravet. Yes, Sir.

Mr *Comper.* Did you see any hindered that would have gone off? Were any of the Prisoners at the Bar there?

J. Gravet. No.

Mr *Soll. Gen.* Do you know *Ed. Foreseth*, &c.

J. Gravet. I know some of them.

Mr *Coniers.* Name the Men that you say you know.

J. Gravet. *Joseph Dawson*, *W. May*, *J. Sparks*.

Mr *Soll. Gen.* They belonged to what Ship?

J. Gravet. To the *Charles*.

Mr *Coniers.* Was there not a Boat came from the Ship *James*, before you went away? Was there any of the Prisoners at the Bar that came in that Boat?

J. Gravet. There were about Twenty six that we had Account of.

Mr *Coniers.* From what Ship did they come?

J. Gravet. From the *James*.

Mr *Coniers.* Were any of the Prisoners at the Bar any of them?

J. Gravet. Indeed, Sir, I cannot tell.

Cl. of Arr. Call *T. Druit*, (who appear'd, and was Sworn.)

Mr *Soll. Gen.* Mr *Druit*, was you aboard the Ship called the *Charles* the Second, when she was carried away?

T. Druit. No, Sir.

Mr *Soll. Gen.* Do you know any Thing of the carrying of that Ship away?

T. Druit. I was not in that Ship: I was Mate of the *James*. And about Nine came One from aboard the *Charles* the Second, and ask'd me for the drunken Boatswain? and I reply'd short; and he went away again, and said the Ship was going to be run away withal. Whereupon I went with ten Men to recover the Ship; and after I had advised with the Commander, I ordered the Pinnace to be Mann'd; and when I came, the Last that went into the Boat was *Pike*; and I bid them put back, and they would not, but went away to the Ship *Charles*.

Mr *Coniers.* How many were there that went away in that Boat?

T. Druit. About Five and Twenty.

Mr *Coniers.* Did you know all the Men? Were any of the Prisoners at the Bar there? Look on them.

T. Druit. Yes, my Lord, there was *Ed. Foreseth*, *W. Bishop*, and *Ja. Lewis*.

L. C. J. Holt. What Boat did they go away with, the *James* Boat?

T. Druit. Yes, my Lord.

L. C. J. Holt. Then they came from the *James* to the *Charles* the Second. Name their Names again.

T. Druit. *Ed. Foreseth*, *Ja. Lewis*, and *W. Bishop*.

Mr *Soll. Gen.* You saw them go off, did you not?

T. Druit. It was so dark that we could not see them.

Mr *Comper.* Were these three Men sent?

T. Druit. They were sent.

Mr *Comper.* Or did they go of their own Head?

T. Druit. No, I do not say so. But I went to command them back again, and they refused.

Mr *Comper.* Did they make any Answer?

T. Druit. No, they only went away damning and sinking.

Mr *Coniers.* Were there any Guns sent after them?

T. Druit. Yes.

Mr *Coniers.* What was it for?

T. Druit. It was to bring them back again.

Mr *Comper.* And they would not come back?

T. Druit. They did not come.

Mr *Comper.* Then they would not come?

Cl. of Arr. Call *David Creagh* (who was Sworn.)

Prisoner. This Man is a Prisoner for Piracy, my Lord.

L. C. J. Holt. What if he be?

Prisoner. I do not understand Law; I hope your Lordship will advise us.

L. C. J. Holt. I will do you all Right. If he be so, that is no Objection against him; he may be a good Witness for all that.

Cl. of Arr. He is not a Prisoner for Piracy, but for Treason.

L. C. J. Holt. Tho' he be a Prisoner for Treason, he is not Attainted. What is his Name?

Cl. of Arr. *David Creagh*.

Mr *Soll. Gen.* What do you know about the Prisoners running away with the Ship *Charles*?

D. Creagh.

D. Creagh. Upon the 7th of May 1694. I came to the *Groin*, in company with the Boatswain and several others, on board the *Charles*; and when I was going in to the Captain of the *Charles*, Captain *Gibson*, I found Mr *Every*, the Carpenter, and some others, drinking a Bowl of Punch: And after I was come from the Captain, I came and sat down with them; and Mr *May* drank an Health to the Captain, and Prosperity to their Voyage: And we not knowing their Design then, thought it was to our lawful Captain, and Prosperity to the Voyage he was designed for.

L. C. J. Holt. What was your Voyage?

D. Creagh. It was to the *Spanish Indies*. And afterwards the Company broke up, and retired, and went to their Cabins. And when we were in our Cabins, we heard a great Noise above Deck; and Captain *Humphreys*, that commanded the Gally, called to us, to tell us his Men were run away with the Boat, and were gone to Captain *Gibson*. To which *Every* answered, That he knew that well enough: So the Men came aboard: And as I was coming out of my Cabin, to see what the Matter was, I was met by *Every*, the Carpenter, and two *Dutchmen*; and they obliged me to retire again to my Cabin. And Captain *Humphreys* fired two Guns at us. But we presently got out of reach of the Guns, and proceeded on the Design. And I came out of my Cabin, and went on the Quarter-deck, where I met *Every* and the Carpenter together; *Every* was conning the Ship.

L. C. J. Holt. What is the Meaning of that?

D. Creagh. That is, to direct in the Steering of her. So *Every* took me by the Hand, and ask'd me if I would go with him? And I answer'd, I did not know his Design. He said, there were but few that knew it. Says I, tell me who do know it, that if you will not tell me your self, I may ask them that can tell me. But he said, we should all know by to morrow Morning eight a Clock. I told him, that would be too late to repent of the Design? The Carpenter stood by him, and said, Do you not see this, Cock? Yes, says I, I do. Says he, this Man, and old *May*, and *Knight*, I can trust with any Thing; they are true Cocks of the Game, and old Sports-men. Then said I, I suppose they know your Design. Yes, says he, they do; and if it were a Thing of ten Times the Consequence, they should know it. Upon this, the Carpenter came to me, and said, If you do not go down, I will knock you on the Head. And as I was going down, I met with *W. May*, the Prisoner at the Bar. What do you do here? says he. I made him no Answer, but went down to my Cabin; and he said, God damn you, you deserve to be shot through the Head, and he then held a Pistol to my Head. Then I went to my Cabin, and presently came Orders from *Every*, that those that would go ashore, should prepare to be gone. And when the Captain was got out of Bed, who was then very ill of a Fever, *Every* came and said, I am a Man of Fortune, and must seek my Fortune. Says Captain *Gibson*, I am sorry this happens at this Time. Says he, if you will go in the Ship, you shall still command her. No, says Captain *Gibson*, I never thought you would have served me so, who have been kind to all of you; and to go on a Design against my Owners Orders, I will not do it. Then, says *Every*, prepare to go ashore. Upon which, the Captain, and several others of us, went into the Boat. When we were by the Ship's Side, I heard them order the Doctor to be secured; but if there was any more would

go into the Boat they might: And we came into the Boat to the Number of Sixteen: And they gave us four Oars in the Pinnace, and set us a-drift.

L. C. J. Holt. Where did he set you?

D. Creagh. He set us aboard the *James*, my Lord.

L. C. J. Holt. That is, you were turned off from this Expedition.

D. Creagh. Yes, my Lord.

Mr Coniers. Was there any Room for more in the Boat?

D. Creagh. Yes there was.

L. C. J. Holt. Was there Liberty for any more to go?

D. Creagh. Yes, my Lord.

Mr Soll. Gen. What do you know of the Prisoners at the Bar?

D. Creagh. I know only *W. May*.

Mr Comper. What Time past from the Coming of the Boat, to the Time of your going off?

D. Creagh. About two Hours, Sir.

Mr Comper. Was there any Guns fired in that Time?

D. Creagh. Yes, Sir, one or two from the *James* by Captain *Humphreys*.

Mr Comper. Was this done in the Ship with Silence? Or was there any Uproar, or Opposition?

D. Creagh. No: There could be no Opposition. For the Men came from the whole Squadron, and came upon us and surprized us, being assisted by those that belonged to the *Charles*.

Mr Comper. But did no Body make Opposition to their going? Did not Captain *Gibson*?

D. Creagh. No, Captain *Gibson* could not, being Sick.

L. C. J. Holt. But he went ashore?

D. Creagh. Yes, my Lord.

L. C. J. Holt. Was any Body stop'd that would go?

D. Creagh. No, my Lord, none but the Doctor.

Mr Soll. Gen. Now call *Jo. Dan*, (who appeared and was Sworn.)

Mr Coniers. What Ship were you aboard of at the *Groin*?

J. Dan. The *Charles* the Second.

Mr Coniers. Now, pray give my Lord and the Jury an Account what you know of the Taking away of the Ship *Charles* the Second, and what past there.

J. Dan. Yes, Sir: We came to the *Groin*, and had been there about three or four Months, and we had been about eight Months out of *England*, and we lay for our Wages, and there was no Wages to be got. But inasmuch as we wanted Wages, *Every*, and several others, contrived to carry this Ship away. So that Night, which was *Sunday*, they went ashore; and when they came aboard again, made some Men privy to it, whom I know not. And the *Monday* following, I think, the Packet went out in the Morning, and the Night being fair, was ordered to give Notice: And they came to the *Dove*, and about Nine or Ten her Boat broke off, and she haled us: For they told Captain *Humphreys* they were coming to run away with our Ship. So he hales the *James*. And presently some of the Officers came and ordered their Pinnace to be man'd, and it was so. And when they gave this Order, there was *Every* and Twenty five or Twenty six Men. And as they came aboard, our Cables were cut, and ready to go. And coming under the Castle, we cut all the Boats but

but two, and stood out to Sea about two or three Leagues. And there *Every* went to Cap. *Gibson*, and as they said, to ask him if he would go with them, or not? He said, no. Then he said, he must prepare to go ashore; and he did so, and several others with him. And the Word was given about, that they that would go ashore might go; but whether these Men heard it or no, I cannot tell; and no Man's Name was mentioned to be stopt, but the Doctor. And when they went away, they cry'd, there was Water in the Boat, and they desired a Bucket of us, to heave it over, and we gave them one; and away they went, I think, about 15 of them, and no more did offer to go as I saw, nor did I see any hinder any that would go: And afterwards, they that went off, went about their Business, and we about our Business. And we came to the Isle of *May*, and Victual'd our selves there. And there we met with three *English* Ships, out of which we took some Necessaries for our selves, and among the rest several Men, nine Men we took out of them.

Mr *Soll. Gen.* Were the Prisoners at the Bar in the Ship, when they went away?

J. Dan. Yes.

Mr *Soll. Gen.* Name them.

J. Dan. Ed. Forefeth, W. May, J. Lewis, Jo. Sparks, W. Bishop.

Mr *Coniers.* Which of them was aboard the *Charles*, that belong'd to her?

Jo. Dan. W. May, and J. Sparks, and Ed. Forefeth, Ja. Lewis, and W. Bishop, came from the James.

Mr *Comper.* Was it not generally understood, that they were going to run away with the Ship, when they came to Cap. *Gibson*?

J. Dan. Yes, Sir, they knew to be sure.

Mr *Soll. Gen.* Did you know that they assented to it?

J. Dan. No, Sir, I did not hear them say so.

Mr *J. Eyers.* Did they desire to go ashore with the rest?

J. Dan. I saw none hindered.

L. C. J. Holt. Was *Ed. Forefeth* in the Ship then?

J. Dan. Ed. Forefeth was in the Ship then.

L. C. J. Holt. Was he at the *Isle of May*, taking in Necessaries with you?

J. Dan. Yes, Sir.

L. C. J. Holt. What did he do in the Company?

J. Dan. He was in the Ship, and came from the *James*.

L. C. J. Holt. And so did *Bishop*, and so did *Lewis*.

J. Dan. Yes, my Lord, these three, and the other two belong'd to the *Charles*.

Mr *Whitaker.* Did any of the Ship's Crew go ashore at the *Isle of May*?

J. Dan. Yes, Sir, I think so.

Mr *Soll. Gen.* But I think, you say, that the Word was given about, that any might go that would.

Mr *Coniers.* Go on with the Proceedings after you were at the *Isle of May*.

J. Dan. After we had victual'd we took in some Men.

Prisoners. We have been tryed for that already, my Lord.

L. C. J. Holt. Go on.

J. Dan. After we had been there, and took in what we had Occasion for; our Quarter-Master said, he would give them Bills for what he took of them. Then we went to the Coast of *Guinea*, and took several *Negroes*, and carried them away

with us. And afterward we went to the *Island of Princes*, where lay two *Danes*, and we fought them, and took them; and after we had taken them, some of the Men went ashore at the *Island of Princes*, and others went along with us; and we brought the Ships to *Vandepo*, and burnt one, and carried one with us. Then we came to *Cape Lopes*.

L. C. J. Holt. Where is that?

J. Dan. Under the Equinoctial Line. And there we fired a Shot through the little one to sink her, for the Men could not agree, and so we could not carry her with us. We went about the Cape, and touch'd at *Madagascar*.

Dr *Littleton.* Had not these Men their Part and Share of the Plunder?

L. C. J. Holt. You go too fast, Sir.

Mr *Coniers.* What was the next Ship you met with, after you had rounded the Cape?

J. Dan. The next was a small Vessel, about 30 or 40 Tun, and we put her ashore, and took a small Matter out of her, and let her lie. And there we put this Gentleman, Mr *May*, ashore. And we seeing three *English* Ships a coming, we left him there, and went to the *Equinoctial Line*: And afterwards, for Want of Bread and Water, we came again, and took another small Vessel, and some Rice and Pody out of her, and sunk her, and then went to the Cape again, and took in *W. May* again; and met another Vessel, and took Rice and Meal out of her, and sunk her too. And then we went to the *Red Sea*, to a Town called *Meat*, and the People would not trade with us, and we burnt it. And thence we went up to the *Red Sea*, as far as we could. And going up the *Cape Adin*, we met with two *English* Privateers more, and they came and joyned with us.

L. C. J. Holt. You call them Privateers, but were they such Privateers as you were?

J. Dan. Yes, my Lord. I suppose they had Commissions at first, but I suppose they did not run so far as that.

Mr *Coniers.* Did you go all on the same Design?

J. Dan. Yes, they sailed on with us, and we made the best of our Way, and came up into the *Red Sea* in a little Time, and came to an Anchor at *Bobs Key*, and had lain there but a Night and a Day, and there came up three *English*-men more from *America*, and they likewise conformed with us; and we lay there about five Weeks; and in that Time we expected the Fleet to come down.

Mr *Coniers.* What Fleet?

J. Dan. The *Moorish* Fleet, that came from *Mocha*. They past us on *Saturday* Night unseen, and we took a Vessel which gave us an Account that they were gone. And then we followed them, and about three Days after we made Land, we came up with one of them of about 2 or 300 Tuns, and we fired a Broad-side at her, and small Shot, and took her, which, after we had taken her, we plundered, and took out some Gold and Silver.

Mr *Coniers.* And what did you do with it?

J. Dan. We brought it aboard our Ship.

Mr *Coniers.* Did you share it?

J. Dan. Not then, but after we took the other Ship.

Mr *Coniers.* What was that other Ship?

J. Dan. After we had taken her, we put some Men aboard to keep her with us; and about two Days after, we were lying at Anchor at *St Johns*, and there was a great Ship called the *Gunsway*; and

and we weigh'd Anchor, and fought her about two Hours, and took her, and put some Men aboard her, and plunder'd her. And after we had done as much as we thought convenient, we sent her to *Surat* with the People in her. And then we stood further to the *Indian Coast*, and shared our Money about a Week after.

L. C. J. *Holt*. That was a brave Prize, was it not, the best you had all the Voyage?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. Did you all share?

J. *Dan*. Yes, all that were in the Ship.

L. C. J. *Holt*. You have given a good Account of this Matter. Was *Ed. Foreseth* there?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. What did he do? Was he active?

J. *Dan*. I did not see him act.

L. C. J. *Holt*. Had he a Share?

J. *Dan*. Yes, my Lord, he had.

L. C. J. *Holt*. Was *W. May* there?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. What did he do there?

J. *Dan*. He could do but little then; he had his Share.

L. C. J. *Holt*. And when you took him in again, what did he do? Did he do his Business as a Seaman?

J. *Dan*. Yes, my Lord, till he was sick.

L. C. J. *Holt*. Was *W. Bishop* there?

J. *Dan*. Yes, my Lord, he was among the rest.

L. C. J. *Holt*. What did he do? Did he consent and agree to what was done?

J. *Dan*. He had Share of the Money.

L. C. J. *Holt*. Did *Ja. Lewis* share too?

J. *Dan*. He had a Share, as far as was allowed by the Company.

L. C. J. *Holt*. Did *J. Sparks* share with you too?

J. *Dan*. Yes, my Lord, as far as the Company thought fit to give him.

Mr *Cowper*. When you say, *as the Company thought fit*, what do you mean? How did they share it?

J. *Dan*. Some had 1000*l*. some 500, others 3000.

Mr *Cowper*. Had all the Prisoners some Share?

J. *Dan*. Yes, Sir, all had some Share.

Mr *Whitaker*. What did you do with the *Charles the Second*, after the Voyage?

J. *Dan*. We left her at *Providence*.

L. C. J. *Holt*. If any of you Prisoners at the Bar will ask him any Questions, you may.

Mr Justice *Turton*. What Provisions were aboard the *Charles* when she was taken away?

J. *Dan*. I cannot tell.

Mr Justice *Turton*. What Quantity of Bread was there?

J. *Dan*. A pretty deal; I cannot tell the Quantity.

Mr Justice *Turton*. And were there any Guns aboard her, and small Arms?

J. *Dan*. Yes, my Lord, there were.

W. *May*. My Lord, may I speak for my self?

L. C. J. *Holt*. If you will ask him any Questions you may; You shall be heard again to speak for your self by and by.

W. *May*. I desire he may be askt where I was taken sick?

L. C. J. *Holt*. He asks you where he was taken sick?

J. *Dan*. I cannot justly tell that, I think it was at *Allibore*, at the Coast of *Guinea*.

W. *May*. I did not lie down with it?

J. *Dan*. No; you did not, but your first being taken sick was at *Allibore*.

W. *May*. My Lord, I desire you will ask him whether he thinks I had any Knowledge of the going away of the Ship?

L. C. J. *Holt*. You hear what he says, What do you say?

J. *Dan*. I know nothing of that.

L. C. J. *Holt*. You were there, and you had a Share of the Prize; you drank an Health to the Success of your Voyage.

W. *May*. I hope, my Lord, you will not be angry for asking Questions.

L. C. J. *Holt*. No, no body is angry, you may ask what Questions you will.

Then Philip Middleton was called and sworn.

Mr *Coniers*. Pray tell what you know of taking away the Ship *Charles the Second*?

P. *Middleton*. I cannot say any Thing of running away with the Ship; for I was asleep then: but afterwards, in the Morning, they called up all Hands; and the Captain said, every Man should share alike, only he would have two Shares.

L. C. J. *Holt*. Who said so?

P. *Middleton*. Cap. *Every*. From thence they went to *Bonyvis*, and took in some Salt; and from *Bonyvis* they went to the *Isle of May*, and there they took three *English* Ships, and plundered them; and they took the Governour aboard their own Ship till they had done (for then they could demand what Victuals they had a Mind to) and then they sent him away again: And from the *Isle of May* they went to the Coast of *Guinea*, where they put out *English* Colours, to make the Natives come aboard to trade, and when they came aboard, they surprized them, and took their Gold from them, and tied them with Chains, and put them into the Hold; and when they came to a Place called the *Island of Princes*, they gave seven of them away for Slaves: And then they went to *Vandepoe*, where they clean'd their Ship; and from *Vandepoe* they went to *Cape Lopes*, and from *Cape Lopes* to *Annibo*, and from *Annibo* about the Cape; and at *Madagascar* they watered their Ship, and got Provisions, and Cows to salt up; and from thence they went to *Joanna*, and from *Joanna* they went to take a Junk, and took Rice out of her, and sunk her; and from thence they went to the *Equinoctial Line*, and because they were short of Water and Rice, they went back again to *Joanna*: And the Wind being contrary, they went to *Commeroe*; and there they met a small *French* Vessel, and they took her, and sunk her; and then went to *Joanna* again, and there took in Mr *May* again: And then went to *Meat*; and because the Natives would not trade with them, they burnt their Town: And then they went to *Bobs Key*, by the Mouth of the *Red Sea*: But before that, they met with an *English* Vessel, that was on the same Account that we were, and we rode there a Night or two; and they saw there another Sail a coming, which proved to be another *English* Vessel: And in the Morning they saw two more, *May*, *Farrel*, and *Wake*, were the Captains: And on *Saturday Night* all the *Mocha* Fleet passed by: And on *Sunday Morning* they took another Vessel, that told them the said Fleet was gone by; and so they consulted whether they should follow them, or stay there: And then they went after them and overtook them, and took one that was about three or four Hundred Tun, and took Gold and Silver out of her;

and sent Men aboard her to plunder and keep her. And next Day they spied another Sail, and got up their Anchor, and stood to her, and took her; she was called the *Gunsway*; they killed several Men aboard, and when they had taken and plundered the Ship, they left the Men aboard to go to *Surat* again. And then they went to *Rachipool* in the *East-Indies*, and got Water and Necessaries; and from thence to *Degorees*, and watered again; and then to *Dascaran*, where they set about 25 *French* Men ashore, and 14 *Danes*, and some *English*: For they were afraid, if they came to *England*, and were caught, they should be hang'd, and they thought themselves there secure. From that Place they went to *Ascension*, and then to the Island *Providence* in the *West-Indies*: And then they wrote a Letter to the Governour, to know if he would let them come in, and said they would present the Governour with 20 Pieces of Eight, and two Pieces of Gold, if he would let them come in; and the Captain, because he had a double Share, he offered 40 Pieces of Eight, and four of Gold; and with that they sent some Men down, *Adams* and others, with the Letter: And they came again, with a Letter, from the Island, that they should be welcome, and come and go again when they pleased.

Mr *Conyers*. Look on the Prisoners at the Bar, were they all there?

L. C. J. *Holt*. Do you know *Ed. Forefeth*? Was he there? Did he belong to the *Charles the Second*?

P. *Middleton*. He came from the *James*.

L. C. J. *Holt*. Was *W. May* there?

Ph. *Middleton*. He was aboard the *Charles*.

L. C. J. *Holt*. Was *W. Bishop* there?

Ph. *Middleton*. *W. Bishop* came from the *James*.

L. C. J. *Holt*. Was *J. Lewis* there?

Ph. *Middleton*. Yes, he came from the *James*.

L. C. J. *Holt*. Was *Jo. Sparks* there?

P. *Middleton*. Yes, he was aboard the *Charles*.

L. C. J. *Holt*. Had all the Men their Shares?

Ph. *Middleton*. Yes, such as the Company thought fit to allow them, all of them.

L. C. J. *Holt*. Had these Men their Shares of the several Prizes they took?

Ph. *Middleton*. Yes, they had.

L. C. J. *Holt*. Were they active in the taking of the Prize?

Ph. *Middleton*. They were, as far as I saw.

L. C. J. *Holt*. Were not divers others set ashore, besides *Cap. Gibson*?

Ph. *Middleton*. I never heard any repine, or wish they had been ashore, or that they had never come along with the Ship.

L. C. J. *Holt*. But do you know of any others that were set ashore?

Ph. *Middleton*. Yes, a great many, Mr *Gravet* and several others.

Mr *Cowper*. I think, you said, some *French* and *English* were set ashore in the *Indies*.

Ph. *Middleton*. Yes, Sir.

Mr *Cowper*. Were they set ashore willingly?

Ph. *Middleton*. They desired to be set ashore.

Jury-man. He says, in the Morning *Cap. Every* called them above Deck, and gave Leave to any to go ashore, that were not willing to go with them; we desire to know whether any of the Prisoners were there at that Time?

Ph. *Middleton*. I know not that, all Hands were called up.

Mr Justice *Turton*. What Number of Persons were aboard, when the Dividend was made?

Ph. *Middleton*. About a Hundred and Sixty.

Mr Justice *Turton*. What might the Shares be?

Ph. *Middleton*. Some a Thousand Pound, some Six Hundred, some Five Hundred, and some less, according as the Company thought they deserved.

Mr Justice *Turton*. Had not you a Share?

Ph. *Middleton*. Yes, what the Company thought fit, and they told me that would serve to put me out an Apprentice, and that I should never go near my Friends.

Mr Justice *Turton*. How much was that you had?

Ph. *Middleton*. Above an Hundred Pound.

Mr *Conyers*. What became of it?

Ph. *Middleton*. *Jo. Sparks* robb'd me of it.

L. C. J. *Holt*. The King's Council have done with the Evidence, and therefore now is your Time for to speak, if you have any Thing to say for your selves. *Ed. Forefeth*, What have you to say?

Ed. Forefeth. My Lord, I desire you would call Mr *Druit*, and ask him whether I was one of the Pinnaces Crew.

L. C. J. *Holt*. You hear what he says?

T. *Druit*. Yes you were, and I commanded you to come back, and you refused.

E. Forefeth. Did not you command me to go?

T. *Druit*. Yes, and I afterwards commanded you to come back, and you refused.

E. Forefeth. You did not command me back.

T. *Druit*. Yes I did, and fired at you, and shot through the Boat.

E. Forefeth. I held Water with my Oar, that was all I could do.

L. C. J. *Holt*. What did you command him to do?

T. *Druit*. To rescue the Ship.

L. C. J. *Holt*. Instead of rescuing the Ship, you run away with her. He commanded you back, and you refused to come back.

E. Forefeth. I could not bring her back my self, nor come back, unless I should leap over Board.

L. C. J. *Holt*. Have you any more to say?

E. Forefeth. My Lord, when I was in the Boat, I knew not who was in it, nor how many. When I came aboard the *Charles*, the Sails were loose, and I was in a very sorry Condition; they cut the Boat off, and put her a-drift, I could not get into her, she was gone in a Minute's Time, I did not know which Way or what Men there were in her, nor heard nothing till two a-Clock the next Day. And I hope, my Lord, as we are but poor Sea-faring Men, and do not understand the Law, you will take it into Consideration.

L. C. J. *Holt*. But all you Sea-men understand that Law, that it is not lawful to commit Piracy, and he that doth deserves to be hang'd.

E. Forefeth. My Lord, I never did.

L. C. J. *Holt*. Did you think it no Piracy to rob?

E. Forefeth. I was forc'd to do what I did.

Mr J. *Eyres*. You all compell'd one another.

E. Forefeth. My Lord, I was sent of an Errand. I hope as we are poor Men in this Condition, you will take it into Consideration.

L. C. J. *Holt*. We shall. Have you any more to say?

E. Forefeth. No, my Lord.

L. C. J. *Holt*. *W. May*, What do you say?

W. May. Here is one of the King's Evidence, that testifies that I knew nothing of the Ship's going away, and I believe very few knew it, I believe not above nine or ten.

L. C. J. *Holt*. None of them say you were at the Consult. But one says that you said, *God damn you, you deserve to be shot through the Head*; and held a Pistol to him.

W. *May*. I never was any higher than the under Deck, I was coming up the Hatch-Way, and Captain *Every* was standing, and Commanding the Ship.

L. C. J. *Holt*. *Every* was no Officer, he had nothing to do to command; he was under Captain *Gibson*, and took the Ship from *Gibson*.

W. *May*. My Lord, I know nothing of the Ship's going away.

L. C. J. *Holt*. You should have stuck to Captain *Gibson*, and endeavoured to suppress the Insolence of *Every*. Captain *Gibson* was the Commander, you ought to have obeyed him; and if any had resisted him, or gone to put a Force upon him, you should have stood by him.

W. *May*. I was surprized.

L. C. J. *Holt*. How?

W. *May*. By Cap. *Every*, and knew nothing of it.

L. C. J. *Holt*. You were zealous from the Beginning, and said to one, *Damn you, you deserve to be shot through the Head*.

Mr J. *Turton*. And one says you drank a Health to your good Voyage.

W. *May*. Presently after I heard this Rumour, I came up the Hatch-way, and Cap. *Every* says, *You, May, I believe you do not love this Way, pray get down to your Cabin*. So I went to my Cabin, which one that is now at *Virginia* could testify; which I hope will be considered, that I cannot have my Witnesses for me.

L. C. J. *Holt*. What have you more to say? Have you any Witnesses to call?

W. *May*. I stay'd in the Cabin a considerable Time. I was thinking, I must leave my old Captain without seeing him; and I begg'd them to give me Leave to come to him; and there was two Men stood with naked Cutlases, and would not let me come to him. We had some Confabulation together, and I begg'd the Favour to come in, and at last they permitted me; and the Doctor was Anointing the Commander's Temples. And as I was coming along, I had my Hand cut; and I went to the Doctor, to desire him to bind up my Hand. When I came out again, they began to hurry the Men away. Here was Mr *Gravet*, the second Mate, who is now one of the King's Evidence; and I told him he should remember me to my Wife, I am not like to see her; for none could go, but who they pleased: For when those Men were in the Boat, they cryed to have a Bucket, or else they should sink, they having three Leagues to go: And I do not know how they could go so far with more, when their Boat was like to sink with those that were in her, as some of the King's Evidence have testified.

L. C. J. *Holt*. Who will you call?

W. *May*. Mr *Dan*. (Who appear'd.)

L. C. J. *Holt*. Mr *Dan*, answer the Question, Whether there was calling for a Bucket several Times by the Men that were in the Boat.

J. *Dan*. They did call, and a Bucket was given them to pump with.

L. C. J. *Holt*. You were willing to be rid of them.

W. *May*. I have more to say. Afterwards, if I should have denied to go with them, I might have been kill'd by them; and I knew not whether it

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be better to be accessory to my own Death, or to suffer by the Law of the Nation.

Sir Ch. *Hedges*. You seem to say that you were under a Constraint and Terror. Did you make any Complaint or Discovery so soon as you had Liberty, or at your first coming into the King's Dominions?

W. *May*. Yes, at *Virginia*.

S. C. *H.* Where did you first arrive in England?

W. *M.* At *Bristol*.

S. C. *H.* When you came to *Bristol*, did you discover it to any Magistrate?

W. *M.* When I came to *Bristol*, I had a Design to discover it to the Lords of the Admiralty.

L. C. J. *H.* Did you go to a Magistrate?

W. *M.* I was several Days in the King's Collectors House, and did discover the whole to him; and at *Providence*.

L. C. J. *H.* You speak now of *Providence*, but in England who did you discover it to?

W. *M.* I was taken sick, and could not go abroad.

L. C. J. *H.* You might have sent to the Mayor of *Bristol*.

W. *M.* I knew nothing of it, I intended to declare it to none but the Lords of the Admiralty. I knew no Man there, but two Men that were Fellow-Trademen in *Virginia*. I came from *Virginia* by the first Ship; and if that Ship had come away before the Fleet, I had been at Home long before. I lay sick at *Bristol* four or five Days, and the fifth Day I got Passage for *London* in the Coach; and was taken three Miles off *Bath* by the King's Messenger, by one who betrayed me, and I was carried back to *Bath* again. And there was the Duke of *Devonshire*; and there they examined the whole Matter, in every particular, as I have now declared to the Court. And my Lord desired the Messenger should take me away again, and see me safe to *London*, which was all he said to me. I have more to say, as to my being put ashore at *Joanna*. I had no Place to go to, but lay in a lamentable Condition, I could not put Water to my Mouth without Help, and remained useless of Hands or Feet, despairing of my Life. I desired to go ashore, to see if the Air would do me any good; and I went ashore at *Joanna*, with another Man, *Gunning*, and others for Refreshment. So the second Day we went in, there appears three Ships, which were *East-India* Men. Captain *Every* being surprized by these Ships, hastened his Men and Water aboard to get out to Sea, that he might not be surprized in the Road without his Men on Board, who were come ashore for the Sick. And I told them, I will not go with you, I will rather trust to the Mercy of my Country-men, or the Mercy of the *Negroes*; I should endanger my Life, if I go aboard; if I stay, no Question my Country-men will have Compassion on me; and if I have committed any Thing worthy of Death, they have Authority to put me to Death according to the Law of the Nation. And I applied my self to Mr *Edgcomb*, when he came ashore, and he gave me scurrilous Language. But I replied, I am a weak Man, for me to stay behind is Death; I had rather suffer Death by the Laws of my Country, than to be left to the Mercy of these *Negroes*. Mr *Edgcomb* says, I will take you down with me, and will hang you there too.

L. C. J. *H.* Where?

G g 2

W. M.

W. May. At *Bombay*, where he said I should be tried. His Mate, and several other *English-men* came to see me, and brought me one thing or other to refresh me. And at last, at Night he sent his Doctor and Purser to me, who said, the Captain is just now sending his Boat for you. I replied, I am ready, here is all I have in the World, and he goes away about two a Clock in the Morning. And I remained seven or eight Weeks at the Mercy of those *Negroes*, and had perished, but that a *Negro* hearing an *English-man* was there came to me; he lived at *Bednal-Green*, and spoke *English* very well. He went from *England* in the Ship *Rochester*, taken at *Guinea* some time before. The Captain commanded this *Negro* to go for the Long-boat, and turn her adrift; which he does, but goes away with her himself; and in the Fight, says, the Ship blew up by an accidental Fire, and several were lost. This *Negro* I got to look after me, and he did really feed me, and got me all Necessaries belonging to me: And by that means I saved my Life. Now when Captain *Every* came in again, I could not go nor stir.

L. C. J. Holt. Do not call him Captain, he was a Pirate.

W. May. He commanded me, I was forced to obey him.

L. C. J. Holt. For that Matter call *Graves* again, because you and he were very kind together; you shook Hands with him, and bid him farewell, and remember you to your Wife. Mr *Graves*, Do you remember when you went into the Boat? Did *W. May* take his leave of you, or was he unwilling to be left behind?

J. Graves. When we had liberty to go out of this Ship, this Man, *W. May*, took me by the Hand and wished me well home; and bid me remember him to his Wife, and was very merry and jocund, and knew whether they were going.

Mr J. Turton. Did he express any Inclination to go with you?

J. Graves. No, my Lord, not at all.

L. C. J. Holt. Have you any more to say?

W. May. Yes, my Lord, I remained in this Condition till I came to *Providence*; and the King's Evidence can testify what I say. I only beg Mercy of this Honourable Bench, to consider my weak State and Condition that I have been in.

L. C. J. Holt. Have you done?

W. May. Yes, my Lord.

L. C. J. Holt. Then the next *W. Bishop*, What have you to say?

W. Bishop. I belonged to the Ship *James*, and at the *Groyn* the Men began to complain about Wages, and that was the first Beginning of the Disturbance about this Plotting. We were shipped out of *England*, in Sir *James Hubland's* Service, to the *Spanish West-Indies*. Upon this Mutiny among the Men for their Wages, several Men went aboard the King's Ships, and desired to be entertained on Board any of them to go for *England*; and we all went away again to the Ship because we could not be entertained. But this Design of *Every's* I did not know of. On the 17th Day Captain *Humphreys* calls, and says, my Men are gone aboard the *Charles*, I think. And he calls out, says he, Mr *Druit*, Man the Pinnace. I being then on the Deck; at Night, the Men all quiet, as I thought, I went into the Pinnace,

and I was no sooner in, but in comes 15 or 16 more that knew of the Design; but I was then sent, and knew it not. And they put off the Boat, and overpower'd us; and several of us would have gone aboard again, and they would not suffer us. And when we came aboard the Ship *Charles*, they had cut the Cables, and the Sails were loose, and several Men went from the *Charles* to the *James* in a Boat; and they commanded the Innocent to do what they pleased, with Pistols and Cutlases; and they commanded me to go into the Hold, to do what they pleased. And I not knowing of this Matter, the Men that were in the Boat called, hand the Buckets, or we shall sink. And I heard afterwards, that none went ashore, but whom they pleased, that is, *Every* and his Crew. And I not knowing of it, could not go; and if I had known it, I had not been admitted to go. Then we were carried two Leagues without the *Groyn*.

L. C. J. Holt. Have you any Witnesses to call?

W. Bishop. The King's Evidence is my Witness; he commanded me to go into the Boat.

L. C. J. Holt. Will you ask him any Questions?

W. Bishop. No, my Lord.

L. C. J. Holt. *James Lewis* What have you to say?

J. Lewis. I had been in *France*, a little before the Ship came to the *Groyn*, a Prisoner there; but I knew nothing of *Every's* Design. By the Command of our Officer I went aboard the Boat, and as soon as we were in her, we were overpower'd, and carried away; they took the Oars out of our Hands, and carried us to the Ship *Charles*. And when we came aboard, they put the Boat a drift, and then they commanded me into the Fore-Castle; they had Arms but we had none, and so were forced to obey them. When the Boat was going off, I heard a Noise of crying out for a Bucket. And when we were gone from the *Groyn*, we were forced to do what they would have us; it was against my Consent, and against my Will.

L. C. J. Holt. *Jo. Sparks*, What say you?

J. Sparks. When Captain *Humphreys* called to them that were gone into the Boat, I was asleep; but with the Noise of *Graves's* crying out, He is coming, I awaked; and all put the Candles out for fear I should see them. And when the Men were come aboard, I went on the Deck, and they throw'd the Hammocks and knock'd me down.

L. C. J. Holt. Who did it?

Jo. Sparks. The Hammocks they brought from the other Ships. I durst not do any otherwise than they bid me; I was innocent of the Thing. I ask'd what they were going to do, and they said they were going for *England*.

L. C. J. Holt. Who told you so?

J. Sparks. *John Dan*.

L. C. J. Holt. *J. Dan*, Did you tell *J. Sparks* the Ship was going for *England*?

J. Dan. I do not remember. I saw him all the Night.

L. C. J. Holt. I would ask you if he had no Share of the Plunder.

J. Sparks. I was forced to take it.

L. C. J. Holt. *Phil. Middleton*, You had some Share, had you not?

Phil. Middleton. Yes, my Lord.

L. C. J. Holt.

L. C. J. *Holt*. What became of it?

Phil. Middleton. They took it away from me.

L. C. J. *Holt*. Who took it from you?

Phil. Middleton. *J. Sparks* robb'd me of it by Night.

L. C. J. *Holt*. Did he take all away?

Phil. Middleton. Yes, all that I had there, Two Hundred Seventy odd Pieces of Gold; it was in a Belt.

J. Sparks. He took out his Money and shewed it to the Troopers, and they made him drunk and got it from him; and the next Morning he said they took it from him.

Phil. Middleton. I was forc'd to say so, because if I had said he had it, he would have made no more but to cut my Throat.

L. C. J. *Holt*. Have you any more to say?

J. Sparks. No, my Lord.

Mr *Soll. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the King against the Prisoners at the Bar. They are arraign'd for a very high Crime, a Robbery upon the Seas. It was not a less Crime because committed on the Sea, but rather the more. These Men had a Trust reposed in them to assist their Captain in his Voyage; but instead of that, they resist their Captain, turn him out, and run away with the Ship. They could not find Shelter in any other Part of the World, and I hope you will make it appear such Crimes shall not find Shelter here, more than in other Parts of the World. These are Crimes against the Laws of Nations, and worse than Robbery on the Land: For in Case of a Robbery on the Land, we know who is to pay it; but in a Robbery by Sea, it often happens that innocent Persons bear the Loss of what these Men do. It has been very plainly proved against the Prisoners, That the Ship *Charles* was run away with from the *Groyn*. And it is as plain by two Witnesses, That all the Prisoners at the Bar were in this Ship; by three that *W. May* in particular was one of them; and by one that *W. May* was so far concerned, that because *J. Gravel* seem'd to dislike it, he said he deserved to be shot through the Head: So that he that would make himself the most innocent of the Five, is most Guilty.

Now they have only this to say for themselves, that they were forced to do what they did. But it has been proved to you that they were not forced; it was said, All might go that would. And it is not proved on their Side, that any one of the Prisoners did seem to dissent from their going away. It is proved that they all made use of this Ship to very bad Purposes; that they took and plundered several Ships, and shared the Booty. We do not produce this to prove them guilty, but to shew that they made use of this Ship to this very Purpose. Now if you allow what they say, that they were forced to go away; then you must never convict, at any time, one or two Highway-men that robs in the Company of four or five; for they may say too that they were over-power'd, and forced by their Company. It is so, not only in Case of Robbery, but in all other Crimes also. They have said a great deal indeed, but without any manner of Probability of Truth. They have produced no Witnesses for themselves, to prove any thing they have said. And the Witnesses for the King have given Testimony without any Exception.

And, I hope, you will vindicate the Credit of the Nation, and find them guilty as the Evidence has proved them.

L. C. J. *Holt*. Gentlemen of the Jury, These five Prisoners, *E. Forseth*, *W. May*, *W. Bishop*, *Ja. Lewis*, and *J. Sparks*, are indicted for a Piracy and Robbery committed on the High Seas, some distance from the *Groyn*, in taking and carrying away a Ship, and several Goods therein contained; she was call'd the *Charles* the Second. This was done in *May* last was two Years, 1694. You have heard what Evidence has been given on this Indictment against the Prisoners.

It has appeared that this Ship was bound in a Voyage to the *West-Indies*. Two of the Prisoners, *W. May*, and *J. Sparks*, were Seamen then on board this Ship, and engaged in the Voyage; the other three were not Mariners in that, but in another Ship, called the *James*, that lay, at that time, near the *Groyn*; but they came aboard the Ship *Charles* before, and continued on board her when she was carried away.

That there was a Piracy committed on the Ship *Charles*, is most apparent by the Evidence that hath been given; that is, a Force was put on the Master and some others of the Seamen on board her, who because they would not agree to go on a piratical Expedition, had Liberty to depart, and be set ashore. But the Ship was taken from the Captain, who was possessed of her for the Use of the Owners, and was carried away by *Every* and others of his Crew that remained on board her; and others came from the *James*, which taking was a Piracy that is manifested by the Use they did put her to, for they did afterwards commit several other Piracies with her, and took several *English* and *Danish* Ships, and then went to several Islands, Countries and Places, as to the Isles of *May* and *Princes*, to *Madagascar*, and then to *Joanna*, and afterwards to *Meat*, and then to the *Red-Sea*; and at the entrance of the *Red-Sea* committed more Piracies, in the manner as you have heard, and has been very particularly described to you. So that I must tell you, beyond all Contradiction, the Force put on the Captain, and taking away this Ship, called the *Charles* the Second, was a Piracy; and for that particular Fact these Prisoners are now charged.

The Matter you are now to enquire after, is, whether all the Prisoners were guilty of this Piracy, or which of them.

As for *Ed. Forseth*, *Bishop* and *Lewis*, it hath appeared to you, that they, with others, were aboard the Ship *James*; and that there was a Report spread about of a Plot against the Captain of the *Charles* the Second, and a Design to carry that Ship away. To prevent which, there were some of these Men sent out in a Boat, by the Captain of the *James*, to this Ship to assist Captain *Gibson*, but instead of preventing this Piracy, they stayed behind and went along with these Men that carried away the Ship.

As to *W. May* and *J. Sparks*, that were of this Ship's Crew, they continued on Board, and were Parties in all those Piracies.

There was a Consult, it seems, by some particular Persons, of which *Every* was the Ring-leader, how to effect this Design, Captain *Every* as they call him; though he was no Captain, but was under the Command of Captain *Gibson* that had the Conduct of this Ship.

It's true, it is not proved to you that these Men were at that Consult; for, it seems, they were too many, for they were about 160 that remained on board when the Ship was carried off.

Now for *W. May*, *Jo. Graver*, second Mate, that was aboard, and though he had a Pistol clapt to him to prevent any Resistance, yet had liberty to depart; and upon his going off discoursed with *May*, who shook Hands with him and bid him farewell, and remember him to his Wife. And therefore it is evident that *W. May* was under no Force to stay; he stay'd with his good Will, and did consent to the Piracy. And then another Witness is *D. Creagh*, who says, that *May* was so zealous in the Matter, that he said to him, *God damn him, he deserves to be shot through the Head.*

Sparks was on Board the Ship and had a design'd End, and no Compulsion was used towards him, but since had Liberty to depart; but the staying behind by the rest, is a great Evidence to induce you to believe they were Parties in the Design; for why else should not they go ashore as well as others, since there doth not appear any restraint upon them to stay, especially when a general Word was given, that those who would go on Shoar should go on the Deck, and a Boat was ready to carry them off.

They say, they wanted a Bucket in the Boat, and they gave them one to lave out the Water; that is a plain Evidence they were willing to be rid of those that were not willing to engage with them; and if they had not approved of the Design, they were not hindered from going in the Boat. As for those that came from the *James*, there was no manner of Force on them, but they were sent from the Captain to assist the Captain of the *Charles*; for those two Ships having lain near together at the *Groyn*, there was some Intelligence of such a Design in agitation, and these three forsook their own Ship; *Every* declared his Design to some: And he told them what Shares they should have; and because he was their Captain and Commander, he thought himself intitled to a double Share.

And then you have heard what was done in the whole Progress of this wicked Design, every one of these Men had their Share, even this *W. May*, though he was sick for some time, and was set ashore at *Joanna*, and at the Ship's return taken in again, yet he had his share of all the Prizes. *W. Bishop* had his share, *James Lewis* had his share, and *John Sparks* had his share; and, says this young Man *Philip Middleron*, I had my share, which was above an hundred Pound, which was thought by them to be a good Share for a Boy; and *Sparks* took him at a Disadvantage, and having an Opportunity, took it from him.

Now if there be a Piracy committed, though contrived but by one Man, yet if others do concur in it they are equally guilty.

Now tho' these Prisoners tell you, there was a Force upon them, it is a meer Suggestion, without any manner of Evidence; but there is Evidence of their consenting and confederating in this wicked Enterprize.

Indeed there hath been a Trial before, which you have all heard of; for the City and Nation have discoursed of it; consider therefore the Evidence. You have a great Trust reposed in

you, for you are not to act arbitrarily, but you are accountable to God Almighty, to whom you are sworn, and to the Government for the Verdict you give. If you are not satisfied in your Consciences that the Evidence is sufficient to find these Men guilty, in God's Name, acquit them.

But if you are satisfied in the Sufficiency of the Evidence to convict them, you must find them guilty.

Cl. of Arr. Cryer, swear an Officer to keep the Jury; which was done, and the Jury went out to consider of their Verdict. And in the mean time, the six Prisoners were again arraigned upon two several Indictments, the one for piratically taking away a *Moorish* Ship, and the other for committing Piracy upon two *Danish* Ships. To both which Indictments *Joseph Dawson* pleaded guilty; the other five pleaded not guilty, and put themselves upon their Trials.

Then the Jury having been withdrawn a little while returned into Court.

Foreman. If there be any Evidence to prove that *John Sparks* consented to the running away of the Ship, we desire it may be heard again.

L. C. J. Holt. He was with them at the carrying off the Ship, and at the taking of the several Prizes, and had his share afterwards. What is Consent? Can Men otherwise demonstrate their Consent, than by their Actions?

Juryman. But we understand, my Lord, that he was tried upon his consenting to carry away the Ship.

L. C. J. Holt. What do you mean by consenting? If a Ship be carried away with Force from the Captain, divers Piracies are committed with her, one continues aboard and receives a Share of the Profit of the several Piracies; is not that an Evidence of Consent to the piratical Design? Was it not proved that many went out of the Ship, that were not willing to go on that Design? And that was with the Leave of the rest that remain'd.

Mr F. Eyres. And one stood on the Deck, and said with a loud Voice, That they that will not go may have Liberty to go Ashore.

Mr Conyers. No Man was hindred but the Doctor, being a useful Man.

L. C. J. Holt. When a Ship is run away with, and People are aboard that Ship so run away with, that proves their Consent, unless they can produce Evidence to the contrary.

Mr F. Turton. The Captain was in his Bed sick of a Fever at that time, and was not willing to go with them, and they sent him away from them.

Mr F. Eyres. And every Man had his Share.

Then the Jury consulting together a very little time, agreed on their Verdict.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names, *Jo. Degrave.*

J. Degrave. Here (and so of the rest.)

Cl. of Arr. Gentlemen, Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Set *Ed. Foreseth* to the Bar. *Ed. Foreseth*, hold up thy Hand (which he did.) Look upon the Prisoner; Is *Edward Foreseth* Guilty of the Piracy

Piracy and Robbery whereof he stands indicted, or not Guilty.

Foreman. Guilty.

Cl. of Arr. Look to him Keeper. What Goods and Chattels, &c.

Foreman. None that we know of.

Cl. of Arr. W. May, hold up thy Hand (which he did.) Is W. May Guilty, &c. or not Guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c. W. Bishop, hold up thy Hand (which he did.) Is W. Bishop Guilty, &c. or not Guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c. J. Lewis, hold up thy Hand (which he did.) Is J. Lewis Guilty, &c. or not Guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c. Jo Sparks, hold up thy Hand (which he did.) Is Jo. Sparks Guilty, &c. or not Guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c.

L. C. J. Holt. Gentlemen, You have done extremely well, and you have done very much to regain the Honour of the Nation, and the City.

Then the Court adjourned to Friday next the 6th of November two of the Clock in the Afternoon. On which Day Ed. Forefeth, &c. were tried upon two other Indictments for several Piracies.

An Abstract of the Tryal of Ed. Forefeth, James Lewis, William May, William Bishop, John Sparks, (Joseph Dawson having pleaded Guilty upon his Arraignment) at the Sessions-House in the Old-Baily, Friday, Novemb. the 6th 1696, where were present Sir Charles Hedges, Judge of the High-Court of Admiralty, the Lord Chief Justice Holt, Lord Chief Justice Treby, with several others of his Majesties Judges and Commissioners.

After several Challenges made by the Prisoners, of the Persons returned upon the Jury, these Twelve Gentlemen were sworn, viz.

Roger Mott	}	John Watson
John James		Benjamin Hooper
Richard Rider		John Hibbert
William Hunt		Richard Chiswell
John Hammond		Daniel Ray
Abraham Hickman		William Hatch.

THE N the Clerk read the Two Indictments upon which they were tried, viz. One for Seising, Robbing and Carrying away Two Ships belonging to Denmark, on the 30th of August, 1694. The other for that they, on the 28th of September, 1695. in a Place 40 Leagues distant from Surat, did Forcibly and Piratically set upon a Moorish Ship, and take away her Tackle and Goods, to a great Value.

Then Dr. Newton, one of his Majesties Advocates, spoke to the Jury, as followeth.

My Lord, and Gentlemen of the Jury,

The Crime the Prisoners at the Bar stand charged with, and which has been opened to you, upon the Indictments, is Piracy; which is the worst Sort of Robbery, both in its Nature and its Effects, since it disturbs the Commerce and Friendship betwixt different Nations; and if left unpunished, involves them in War and Blood: For sovereign Powers and Nations have no Courts of Justice afterwards to resort to, as the Subjects of Princes have, in their own Countries, for Redress or Punishment; but they can only have recourse to Arms and War, which how expensive, and how dangerous they are, and what Calamities and Ruin they carry along with them, no Person can be a Stranger to. So that those who bring not such Criminals to Judgment, when it lies in their Power, and is their Duty to do so, are answerable, in a great Measure before God and Man, for all the fatal Consequences of such Acquittals, which bring a Scandal on the publick Justice, and are often attended with publick Calamities.

It is not therefore, Gentlemen, to be supposed, that wise or honest Men, (and there are none who would be thought to be otherwise) who love their Country, and wish its Peace and Prosperity, would be guilty in that kind.

Gentlemen, This Piracy was begun in Europe, carried on through Africa, and ended in the remotest Indies; so that, in a manner, all the World is concerned in this Trial, and expects and demands Justice of them, if they are guilty, at your Hands.

Then the Witnesses were produced to prove the Facts charged upon the Prisoners, viz. Jo. Dan, David Cray, Phil. Middleton, and others; who fully proved against them, That the Prisoners, with several other wicked Persons, not yet taken, did forcibly take away the Ship Charles the Second from the lawful Commander, Captain Gibson, with a piratical Design. And in the said Ship did afterwards commit several Piracies; at the Isle of May they took three English Ships. From thence they went to the Coast of Guinea, and when some of the Natives came on board with their Gold, to trade with them, they took away their Gold, and carried them away for Slaves. And then went to the Isle of Princes and took two Danish Ships, and took out what was in them, viz. 40 Pound Weight of Gold-dust, and other Merchandise; and they offered to restore one of the Ships to the Master after they had robbed her, but the Master he said she was insured, and he would not take her again. And afterwards they burnt one of the Ships, and carried away the other. Then they went to Bobs Key, at the Mouth of the Red-Sea, waiting for the Mocho Fleet, which one Night past by them unseen; but were informed the next Day that they were gone. And then calling a Council they agreed to follow them; and accordingly went after them, and came up with one of them, which was about 250 Tun, and with small resistance took her, and put some Men on board her, and took out Gold and Silver out of her to the Value of 30 or 40000 l. with other Merchandise. And afterwards met with the Ship called the Gunsway, and robbed her likewise of all her Furniture, to a very

a very great Value. And about a Week after they shared all the Prizes they had taken; and some had a thousand Pound, some had eight Hundred, some seven Hundred, some five Hundred, every Man in the Ship his Share, as they thought they deserved. And it was particularly proved by the Evidence against the Prisoners that they had their Shares. *The more particular Relation of which is already Printed at large, in the foregoing Trial.*

When the King's Evidence had done, the Prisoners were permitted to say what they could in their Defence; but the same appearing to be very weak, the L. C. J. *Holt* summ'd up the Evidence; and the Jury going out to consider their Verdict, after a short stay, brought them in all Guilty.

Then the Court adjourned to the 10th of November following.

After the Tryal of John Murphey was over, the Pirates were brought to the Bar.

Cl. of Arr. *Joseph Dawson*, you by your own Confession are convicted of Piracy and Robbery. What have you to say why Sentence of Death shall not be passed upon you according to Law?

Jos. Dawson. I submit my self to the King and the honourable Bench.

Cl. of Arr. *Edward Foreseth*, What have you to say, &c.

Foreseth. I am an innocent Man; and went on to justify himself, &c.

Judge of the Admiralty. You and the rest of the Prisoners at the Bar have had a very fair Trial, and been fully heard upon your Defence; but the Jury your Country-men, upon whom you put your selves to be tried, have found you guilty. So that the insisting upon your Justification cannot now avail you any thing, the Verdict being given; but if you have any thing to offer in Arrest of Judgment, or can shew any Cause why the Court should not proceed to give Judgment according as the Law directs, against Persons convicted of Piracy, you shall have Liberty to speak, and will be heard.

Foreseth. I desire to be sent into India to suffer there.

Cl. of Arr. *William May*, What have you to say, &c.

William May. My Lord, I being a very sickly Man, never acted in all the Voyage. I have served my King and Country this thirty Years, and am very willing to serve the *East-India* Company where they please to command me; and desire the honourable Bench to consider my Case, and if I must suffer, I desire to be sent into India to suffer there.

Cl. of Arr. *William Bishop*, What have you to say, &c.

William Bishop. I was forced away; and when I went was but 18 Years old, and am now but 21, and desire Mercy of the King and the Court.

James Lewis. I am an ignorant Person, and leave my self to the King's Mercy.

John Sparks. I leave my self to the King's Mercy, and to the honourable Court.

Judge of the Admiralty. *Joseph Dawson*, you stand convicted upon four Indictments, by your own Confession, for Piracy and Robbery. And you *Edward Foreseth*, *William May*, *William Bishop*, *James Lewis* and *John Sparks*, having put your selves upon your Trials according to the Customs and Laws of your own Country, have been found guilty upon three several Indictments, for the same detestable Crimes committed upon the Ships and Goods of *Indians*, of *Danes*, and your own Fellow-Subjects.

The Law for the Heinousness of your Crime hath appointed a severe Punishment, by an ignominious Death; and the Judgment which the Law awards, is this, That you and every one of you be taken from hence to the Place from whence you came, and from thence to the Place of Execution, and that there you, and every one of you be Hanged by the Necks, until you, and every one of you be Dead: And the Lord have Mercy upon you.

According to this Sentence, Edward Foreseth and the rest were Executed, on Wednesday, November the 25th 1696, at Execution-Dock, that being the usual Place for the Execution of Pirates.



The TRYAL of Sir JOHN FENWICK, Bar.

Veneris 6. die Novembris, 1696.

Admiral *Ruffel* acquainted the House of Commons, That his Majesty had given leave to lay before the House several Papers in the Nature of Informations of Sir *John Fenwick*, in which he and several other Persons of Quality were named; and desired that they might be brought up to the Table and Read, and that he might have an Opportunity to justify himself,

or if he did not, that he might fall under the Censure of the House. And Mr Secretary *Trumbal* being present did say, That he had his Majesty's Leave to lay those Papers before the House, and if the House pleased he would bring them up to the Table.

And accordingly (the House shewing a general Inclination for it) they were brought up to the Table and read, (being the Account he gave of the last Plot under his own Hand, and his Examination taken by Mr *Vernon*, afterwards upon

on his Trial produced;) and after the same was Read, the House ordered, That Sir John Fenwick should be brought immediately before them, and that no Person should in the mean time speak with him, or give or receive any Paper from him. And the House further ordered, That the Lord Cutts, Sir Henry Hobart, and Mr Norris, Three of their Members, should see their Order executed.

And in the mean time adjourned to the Afternoon.

About Five a Clock in the Afternoon Sir John Fenwick was brought with a strong Guard (which the Lord Cutts had taken care for) to the House, and being brought to the Bar, Mr Speaker spake to him thus.

Mr Speaker. Sir John Fenwick, the House understand that you have shewed some Inclinations to make a Discovery of the Designs and Practices of the Enemies of the Government; you have now an Opportunity to do it, and the House require it from you, That you make a full and ample Discovery of all you know of that Matter.

Sir John Fenwick. Mr Speaker, I suppose the House is not ignorant of my Circumstances; I am Indicted of High-Treason, and have been arraigned: What I have done to serve the King and Nation his Majesty knows, it hath been communicated to him by his Privy-Council. I do not know but what I say may hurt my self; and therefore I desire that I may have some Security for my self; and I am willing to tell the full of all I know.

Mr Speaker. Sir, if you please to withdraw for the present the House will send you their Pleasure.

Sir John Fenwick withdrew. Was called in again.

Mr Speaker. Sir John Fenwick, since you withdrew, the House have considered of what you said at the Bar. They do not think what you said is an Answer to what they require; they do expect a full and candid Confession from you of what you know, and they think that the best Way for you to obtain the Favour of the House is to deal ingenuously with them.

Sir John Fenwick. Sir, I am in the Hands of the Law, and I would not do any thing that his Majesty might be angry with me, for I do not know it is with his Majesty's Consent: I have acquainted him fully with all I know of the Matter; this is all the Account I can give you at this time. 'Tis a dangerous Point that I am under; I know not but I may come to my Trial in a few Days, and what I may say may rise up against me in a Court of Judicature: I humbly propose it to the House, if they do not think it a hard Case for me to make any Confession here, when his Majesty hath all that I know. I shall be very ready to do what this honourable House pleases to command me, but I desire this House will consider my Circumstances; I would not offend the King, nor offend this House.

Thereupon Mr Speaker again spake to him to withdraw. And being withdrawn, the House debated, whether they should acquaint him with their having those Papers of Information. But they did not think fit to do it for this Reason, because they thought those Papers were a Contrivance, and made by others for him; and that the best way to get the Truth out of him would be for him to tell his own Story. Besides, if the

House should let him know they had those Papers, he would only refer to those Papers, as he had lately done, when he was examined by the King and Council.

'Twas also debated, whether there should be any threatening Words used towards him; but they thought that not proper; for his Confession ought to be free and natural. It was also debated, Whether they should take notice of his Majesty's Consent; but that was not thought fit; being thought derogatory to the Privileges of the House: So the House ordered him to be called in again, and Mr Speaker delivered the Sense of the House to him in these Words.

Sir John Fenwick at the Bar.

Mr Speaker. Sir John Fenwick, The House has considered of what you have said, to excuse your making a Discovery of your Knowledge of the Designs and Practices of the Enemies of the Government, and they think what you stand upon is only an Excuse; they think you have no Reason to apprehend the King should be angry with you for making any Discovery to this House, this being the proper Place to enquire of all things that do relate to the King and Government, especially his Majesty's Safety; and you ought to discover to them what you know: As to what you stand upon, that you should not be prejudiced by what you discover here, I am commanded to tell you, they do take notice by what you have said here, that you have already, notwithstanding what you say, discovered it to the King and Council; and they command me to tell you, that you have no Reason at all to apprehend, that you shall suffer any thing if you make a full and free Discovery here, no Man that ever did so, and dealt candidly with this House, ever did: 'Tis in your Power to deserve the Favour of the House; 'tis required by the House, that you make a Discovery, and this is the last time that you are like to be asked to do it.

Sir John Fenw. Mr Speaker, I know not what Answer to make to this House, I would not willingly offend it; what I have informed the King of is a great deal, and a Man would have some little time to recollect himself; and I have been kept a very close Prisoner, and had no conveniency of Pen, Ink, and Paper; 'tis hard to remember just of a sudden, and I would willingly be secure his Majesty will not be angry with me; I was in hopes that his Majesty would have informed the House himself, he hath all that I know; my Circumstances are hard, I am in danger every Day to be Tried, and I desire to be secured, that what I say shall not rise up in Judgment against me; 'tis hard to make me to accuse my self under these Circumstances, and very hard to put me on it now.

Mr Speaker. As to what you say relating to the fear of his Majesty's Displeasure, and the other Excuse, you have had your Answer already; as to what you say relating to time, if you will now declare what you know and remember, the House will take it into Consideration, whether they will give you farther time to make up the rest.

Sir John Fenw. Sir, his Majesty hath all exactly, 'tis impossible for me to inform you of it without accusing my self; I do not really know what to ask but a little time, if they would please to give it me.

Mr. *Speaker*. Sir, you know already what the House require of you.

Sir *J. Fenwick*. I do: But 'tis no Excuse that I have made: What I have told is Truth, to the best of my Knowledge: I am not very good at Speaking, and if I might have a little Time, I shall do what they please to command me.

Mr. *Speaker*. If that be all you have to say, if you please to withdraw, you shall know the Pleasure of the House.

Sir John Fenwick withdraws. Is called in again.

Mr *Speaker*. Sir *John Fenwick*, this House have considered what you stood upon when you were here last, that your Memory was bad, and that you desired Time, but the House think it a Matter of great Moment to the King and whole Nation, That those that are their Enemies should be discovered as soon as possible; and this being a Matter within your Knowledge, the House do not think fit to give you Time; but if they find by your Discovery, that you deal candidly and ingenuously with them, and have told them as much as you know upon your Memory, they will consider of your Request of giving you Time for the Rest.

Sir *J. Fenw*. When first I spake to the Privy-Counsellor, I propos'd it to him, Whether I might have a Pardon without being an Evidence against any Man, and in that Case I would serve the King so as to tell him all that I knew. It was upon Honour that I did it to him, and he took the Words in Writing from me, and sent them to the King in *Flanders*: The King's Answer was, That he made no Objection as to my being an Evidence, nor his giving me a Pardon; but that I could expect no Pardon till he knew what I could say; upon that, I was encouraged to do what I did for his Majesty's Service: And I have found in all my Business since, whatever I do or say, the Answer is, 'Tis not Satisfactory, and I am where I was. When this was done, there was a Message sent to me from the Lords Justices, That this was not Satisfactory, and I must tell all I know: Now when a Man hath told all he knows, and this must still be the Answer, 'tis very hard. The King's Answer was, That I should more fully make good what I had said. Sir, I did afterwards explain what I had informed that honourable Person, and still it was not Satisfactory. I hope I shall not find this from this Honourable House; I am upon my Life, and I hope this House will consider of it: I know this House is good Security if I had it, but till I have it I am under these Circumstances, and I may at last be told all is not Satisfactory: I desire the House will please to consider of it.

Mr *Speaker*. Sir, you know the Pleasure of the House, you know what they require of you.

Sir *J. Fenw*. I am very unwilling to offend the House; but these are very hard Circumstances, to be told, when I have done all I can, 'Tis not Satisfactory.

Mr *Speaker*. Sir, you know what the House does expect; you must either give them Satisfaction in it, or withdraw.

Accordingly he withdrew.

And a Motion was made for Leave to bring in a Bill to Attaint Sir *John Fenwick* of High-Treason,

and after a Debate thereupon, the House divided.

Yeas — 179.

Noes — 61.

So it passed in the Affirmative.

Luna 9. die Novembris, 1696.

The Bill for Attainting Sir *John Fenwick* of High-Treason was presented to the House, and after a long Debate of several Hours, the Question was put for the second Reading of it; whereupon the House divided.

Yeas — 196.

Noes — 104.

So it passed in the Affirmative, and Friday Morning was appointed for it.

The same Day the House Ordered, That Sir *John Fenwick* should have a Copy of the Order for reading the Bill the second Time, and a Copy of the Bill, and that he should be allow'd Pen, Ink, and Paper.

And further Ordered, That Mr. Attorney General, and Mr Solicitor General, should prepare and produce the Evidence against him on Friday Morning.

And Mr *Speaker* this Day acquainted the House that he had received a Letter from Mr. *Fuller*, which he thought fit to acquaint the House with; but upon a Question for reading of it, it passed by a very great Majority in the Negative; so that there was no Division upon that Matter, but the Letter was writ in the Words following.

SIR,

I Presume that no Person whatever, in the Interest of the present Government, hath been more actually engaged with Sir *John Fenwick* than my self, it being my Fortune several Times to bring Letters to him from the late King and Queen at St. Germain's, and to carry his Answers: I have also been with him at private Consults of the late King's Adherents, as my Informations assert; so that if I may be Serviceable to the detesting his Treasons, I shall be very ready to serve the Government, and to demonstrate my Integrity, I am, Sir,

Your Honour's most humble

and devoted Servant,

W. Fuller.

Martis 10. die Novembris, 1696.

Sir *John Fenwick* sent the Speaker a Letter in these Words.

SIR,

Newgate, Nov. 10.

I Would have address'd my self in the humblest Manner I could to the Honourable House of Commons, from whom I received a Copy of a Bill against me with their Order; but my Keeper will not carry any Paper from me but to your self, to whom I durst not presume to send a Petition to deliver for me. Therefore I beg the Favour you will please to acquaint the House, that it is my humble Petition to them, That they would give Leave for my Council Sir *Francis Pemberton*, Sir *Tho. Powys*, and Sir *Barthol. Shower*, to come to me, with my Solicitor, Christopher Dighton, to advise with alone. The Keeper will not so much as let me send the Copy of the Bill and Order to my Solicitor, so it is of no Use

Use to me: I humbly beg they will please to give Order, that I may have all Assistance that is necessary for me, and that you will pardon this Trouble from, Sir,

Your most humble Servant,

JOHN FENWICK.

Upon this Letter they did readily order that he should be allowed two Council to make his Defence, and that they might be alone with him; and after some Debate, did give Leave that he might have the Solicitor he desired, tho' it was said, his Solicitor was a very great Jacobite; and it was insinuated, That he was suspected to be concerned in the Escape of *Goodman*; but it was also said, That he had been made use of as his Solicitor to prepare for his Tryal, and before that, in other Matters, and so that it might not be thought that there was any Hardship upon him, in that respect the House thought fit to allow Mr. *Dighton* to be his Solicitor.

Jovis 12. die Novembris, 1696.

A Petition was presented from Sir John Fenwick, as follows.

To the Honourable the Knights, Citizens, and Burgesses in Parliament assembled,

The humble Petition of Sir John Fenwick, Bar.

Sheweth,

That there being a Bill of Attainder brought into this House for the Attainting of your Petitioner of High Treason, and your Petitioner is advised, That there are many weighty Reasons to be offered against the said Bill;

Your Petitioner therefore most humbly prays, That your Honours will be pleased to hear him by his Council against the Passing of the said Bill at the Bar of this Honourable House; and to appoint such Time for the same, as to your Honours shall seem meet. And your Petitioner shall ever pray, &c.

J. FENWICK.

Which Prayer of his Petition was granted.

Veneris 13. die Novembris, 1696.

Sir John Fenwick was brought to the House (by Order) from the Prison of *Newgate*; and there being a very great Company of Strangers, both in the Lobby and Speaker's Chamber; and the House being full of Members, to prevent the Inconvenience that such a Number of People crouding in might occasion, the Lobby was Ordered to be cleared of all Persons that were not concerned, and also the Speaker's Chambers, and that the Back-door of the same should be lock'd, and the Key laid upon the Table: But it having been said, That the Lords did admit the Members of this House to hear their Debates; there was private Intimation given the Serjeant to let them remain in the Speaker's Chambers, when others were removed.

Then Sir John Fenwick was Ordered to be brought to the Bar: But it being a Proceeding of that Nature, that none of the antientest Members could give a Precedent, it was necessary to settle some Preliminaries; and the first Question that was moved, was, Whether the Mace ought to lie upon

the Table when Sir John Fenwick was in the House, or whether the Serjeant ought not to stand by him with it at the Bar?

Mr Smith. Sir John Fenwick being a Prisoner, the Mace ought to be at the Bar, and then no Member can speak.

Mr Boyle. This Hearing, of any Thing I can think of, is most like the Hearing of an Election, and then the Mace is upon the Table, and every one has Liberty to speak and ask Questions.

Mr Chanc. of Excheq. The Mace ought not to be upon the Table, because he is a Prisoner: The Sheriffs of London can't have him in Custody here, and so they deliver him into Custody of the Serjeant.

Mr F. Howe. That Argument would be good, if he could not be in Custody of the Serjeant unless he had the Mace in his Hand.

Mr Brotherton. The Mace ought to be upon the Table, because the Bill is to be read.

Mr Chr. Musgrave. The Mace ought to be upon the Table. Never any Bill was read but the Mace was upon the Table.

Col. Granville. If the Mace be not upon the Table, it would be a great Hardship to the Members that they cannot speak, and a great Hardship upon the Prisoner that he can't ask any Questions. My Lord Torrington was brought Prisoner from the Tower, and upon Account of his Quality the House did not let him go to the Bar: But while he was in the House the Mace was upon the Table, and he gave an Account of the whole Campaign, and every Body was at Liberty to ask what Questions they pleased.

Mr Att. Gen. The Matter is very new; and I think 'tis necessary you resolve upon the Method before you call in the Council, that you may acquaint the Council with it; I think it not proper that the Mace should be upon the Table, because he is a Prisoner, though it may not be necessary that the Serjeant should have it upon his Shoulders all the Time, but he may ease himself. I believe you will ask Sir John Fenwick what he has to say, but no Questions to make him accuse himself: And I humbly propose it to you, That after the Council is called in, they may open the Nature of the Evidence against Sir John Fenwick; and then, Whether you will permit them to go on, or they shall withdraw, and the House will consider what Questions shall be asked.

Col. Mordant. I hope the Questions will be taken down upon a Paper by the Speaker, and then read to us, that we may see if they be right, and so asked by the Speaker.

Sir Will. Williams. If the Mace is not upon the Table our Mouths are muzzled; we are in the Nature of Judges, and shall we pass a Vote that the Judges shall not ask any Questions?

Sir Tho. Dyke. I can't be informed without asking of Questions: I know not whether you are a House without it, without having the Mace upon the Table. And will you act in your highest Capacity without being a House? I do not know how it was when the Lord Torrington was here, but when the Duke of Leeds was here the Mace was upon the Table.

Mr Boyle. I wish you had appointed a Committee to have settled the Preliminaries, and that the Bill had not been brought in at all; what they labour as a Matter to avoid delay may occasion more. For though when you carry the Mace to the Table no Member should have the Liberty to speak, yet any Member hath Liberty to desire that the Council

may withdraw, and then they must withdraw, and the Mace must be brought upon the Table.

Mr Chanc. of *Exchequer*. That Gentleman is certainly in the right: But I think the Mace must not be upon the Table 'till when the Prisoner is here; and I think the Questions must be asked by the Chair.

The longest Examinations that I remember was of the Admiralty, and then the Questions were asked by the Chair. For the Instance of my Lord *Torrington*, 'tis true, he had not the Mace with him, but he came at his own Request, he came to give you an Account of his Proceedings; and in that Case not a Question was asked by any Member; any Member hath Liberty to propose any Question, but it must be asked by the Chair.

Afterwards the Question was put, and it passed, That Sir *John Fenwick* should stand with the Mace at the Bar.

Then a Question arose about reading of the Bill: Some Gentlemen said, it could not be read when the Council was present, for the Mace would be off the Table; (and they seemed to be under a Difficulty by having passed the last Question;) others said, It was not necessary to read it whilst Sir *John Fenwick* was present, he having had a Copy of it; but at last it was thought reasonable, it being in the Nature of a Charge upon him, that it should be read to him when present with his Council; and 'twas said, it was done so in the Case of Indictments, tho' Copies were delivered to them: But it should be read only as a Matter of Form, as a Charge to which he was to answer; but it could not be reckoned a second Reading, according to the Rules of the House, the Mace being off the Table, and therefore it should be read again when the Council and he was withdrawn.

And it was said, That the Journals did take notice that in some Cases, as in the Case of an adjourned Debate, that some Bills had been read four Times, and so it was agreed, and that Difficulty was solved.

And the Serjeant took the Mace, and brought Sir *John Fenwick* to the Bar; and Council was admitted for him, and for the Bill, *viz.*

Mr. Serjeant Gould, King's Serjeant, and Mr. Recorder Lovel likewise King's Serjeant. And Sir Thomas Powys and Sir Bartholomew Shower, for Sir John Fenwick.

And Mr *Speaker* opened the Matter thus.

Mr *Speaker*. Sir *John Fenwick*, the House have received Information that you have been in a horrid Conspiracy against the Life of his Majesty, and for bringing in a French Force to invade this Kingdom, that you have been indicted thereof; and they have considered the Nature of the Crime with which you stand charged, and how destructive it would have been (if it had succeeded) to the very Being of this Kingdom; and therefore that you may not go unpunished, if you are guilty, have ordered a Bill to be brought into this House to attain you for High Treason, which hath been once read, and will be now read to you at the Bar; and then you will hear the Evidence against you, and have Liberty to make your Defence: And though you cannot claim any Right thereto, this House (to shew how ready they are to favour you, in giving you any reasonable Help to make your Defence) do allow you Council to assist you therein; and having granted you this their Favour, they do ex-

pect that you will make a good Use of it. I am likewise to acquaint those that are your Council, That this House do reckon their own Prudence will so guide them, as not to give any just Offence to this House; and that they will not be allowed to question the Power of Parliaments to pass Bills of Attainder when they judge it requisite, of which this House is more proper to judge than any private Person, and therefore they will not allow you to debate that Point.

Let the Bill be read.

Clerk of the House of Commons reads.

Whereas Sir *John Fenwick, Bart.* was, upon the Oaths of George Porter, Esq; and Cordel Goodman, Gent. at the Sessions of Oyer and Terminer held for the City of London, on the 28th Day of May, 1696. indicted of High Treason, in compassing and imagining the Death and Destruction of his Majesty, and adhering to his Enemies, by consulting and agreeing with several Persons (whereof some have been already Attainted, and others not yet brought to their Tryal for the said Treason) at several Meetings, to send Robert Charnock, since attainted and executed for High Treason, in conspiring to assassinate his Majesty's Sacred Person (whom God long preserve) to the late King James in France, to invite and encourage the French King to invade this Kingdom with an armed Force, by promising to join with and assist him with Men and Arms upon such Invasion. And whereas the said Sir *John Fenwick* did obtain his Majesty's Favour to have his Tryal delayed from Time to Time, upon his repeated Promises of making an ingenuous and full Confession of his Knowledge of any Design or Conspiracy against his Majesty's Person or Government, and of the Persons therein concerned. And whereas he has so far abused his Majesty's great Clemency and Indulgence therein, That instead of making such Confession he hath contrived and formed false and scandalous Papers as his Informations, reflecting on the Fidelity of several noble Peers, divers Members of the House of Commons, and others, only by hearsay; and contriving thereby to undermine the Government, and create Jealousies between the King and his Subjects, and to stir up the real Conspiracy. And whereas Cordel Goodman, one of the Witnesses against the said Sir *John Fenwick* to prove the said Treason, lately and since the several Times appointed for the Tryal of the said Sir *John Fenwick*, at one of which Times the said Sir *John Fenwick* had been accordingly tryed, had it not been for the Expectation of the said Discoveries so often promised,

is withdrawn; so that the said Cordel Goodman cannot be had to give Evidence upon any Tryal. Be it Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this Parliament assembled, and by the Authority of the same, That the said Sir John Fenwick is hereby Convicted and Attainted of High Treason, and shall suffer the Pains of Death, and incur all Forfeitures as a Person Attainted of High Treason.

Mr Speaker. Mr Serjeant Gould, the House expects from you, and Mr Serjeant Lovel, that you open the Evidence you have to prove the Suggestions of the Bill.

Mr Serjeant Gould. Mr Speaker, we are here in Obedience to your Commands to give an Account of the Charge, and likewise of the Evidence of the Fact, that is against this Gentleman, Sir John Fenwick. The Charge against Sir John Fenwick is for High Treason, and High Treason of the highest Degree; 'tis no less than a Design of deposing the King, and subverting the Government, and subjecting it to a French, arbitrary, and slavish Power. It further charges, That in prosecution of this Conspiracy he hath met together, with several others, who have consulted, consented, and agreed together, to bring in a French Army upon us; and in order to that, as a particular Overt-Act, it is charged, That they contrived to send one to the late King James to bring in a French Power upon us. It is charged likewise, That he conspired to levy War upon us, and for that Purpose did provide Pistols, and other warlike Arms. This I take to be the Substance of the Charge as laid in the Indictment.

Now, may it please you Mr. Speaker, as for the Evidence of the Fact charged and alledged in this Indictment: It is no Secret certainly to any at this Time of Day (after so many Tryals, so many Convictions, so many Attainders) that for some Years last past there hath been a wicked Conspiracy to bring in a French Power upon us, to subject this good Government, and to depose the King; but God Almighty, by special Providence, hath always prevented and disappointed them. We know ever since the Business of *la Hogue* (in which even by a Miracle, God disappointed them) they have been still restless, and have been industrious to set up again this Design; and for this have plotted to bring in a French Power, and have not had any regard to the King's Mercy shewed to them, and that in passing several Acts of Parliament, but have still persisted in the same Designs.

As to the Charge upon this Gentleman at the Bar, we shall shew you that in Time: In the Year 1694, for several Months there was a Conspiracy carried on, but did not take Effect; afterwards, in Time, I think the Beginning of June, or latter End of May, there were several Consults, or Meetings, at the King's Head Tavern at the upper End of Leadenhall-street, where this Gentleman that now stands charged at the Bar was present; there was several Gentlemen, and among the Rest (as it hath and will appear upon Evidence) there was Sir John Fenwick, my Lord Montgomery, and several others, whereof Captain Porter and Goodman

were there likewise present: It was then proposed, That one Charnock (since executed, and agreed upon by all to be present) should go over into France to the late King James, to communicate to him their Resolution and Sincerity in being serviceable to him in levying War here to depose the King, and subvert the Government; who was to interceed with the French King, so that there might be Forces sent from France. But after this Charnock (present still this Gentleman) comes and proposes this Thing again, and tried whether they were sincere and real in their former Resolutions: To which they all replied, and did agree and assent, That it should be done, and they were very zealous in the Matter, and the Forces were at that Time proposed. And what was that? Why truly, no less than 8000 Foot, and 2000 Dragoons of French, with an Assurance of 2000 Horse from this Country. Charnock did go into France, and did communicate this Matter; and after he had communicated this Matter he came back, and brought Answer, That King James had endeavoured to answer their Expectations, but at that Time the French King could not spare his Forces, but however returned his Thanks to them.

This passed on till towards Christmas last; then comes over Sir George Barclay upon this Expedition, and there was a Commission prepared for that Purpose: And as to one Part, he brought along with him a Detachment of some of King James's Guards, who was to assassinate the King. The next Part was for raising a Rebellion; now that fell to Sir John Fenwick's Part: As to the assassinating Part, you have had several Examples made already: This we have Evidence to prove, and if we prove this Matter as we have opened it, then I think there is no Person whatsoever, but will agree that this is High Treason in the highest Degree. Now, Sir, here stands our Matter: Here was an Indictment found according to the Law you made last Sessions of Parliament, by two Witnesses, to one Species of Treason against Sir John Fenwick; we have one of these Witnesses here *in voce*: But Sir John Fenwick hath protracted his Tryal by frequent Assurances of making a Discovery, which hath terminated in what you have already mentioned in your Bill; by Means of which, Sir John Fenwick hath not been Try'd; whereas he had been Try'd in course, without these Applications, and found guilty: But now he hath had all this Time, that Goodman is withdrawn is plain, and we think (but that we must leave to the Judgment of this Honourable House) may be reasonably supposed, by Contrivance, to take off this Prosecution of Sir John Fenwick. For why? The Inference is from a Fact that we shall prove to this Honourable House: There hath been the like Attempt upon Captain Porter, but Captain Porter hath been more stedfast; he hath been so resolved, that he stood his Ground; and, to speak the Truth, notwithstanding he hath been highly attempted: For we shall prove to you, that one Clancy comes to Captain Porter, and tempts him to withdraw into France, with Assurance of a Pardon, and he hath Three Hundred Pounds paid him in Hand, and Three Hundred more he was to be paid when he should come into France, to be remitted by Bills of Exchange: Besides, he was to have 300*l.* a Year; 100*l.* from my Lord Aylesbury, 100*l.* from my Lord Montgomery, and the other 100*l.* a Year from Sir John Fenwick, and this to be an Annuity during his Life; and thus far we suspect Sir John Fenwick may be concerned; for his Lady

Lady came (he did not come Personally, but his Lady did) and gave her Honour and Assurance, that it should be all performed, and much more, if he would withdraw himself.

Captain *Porter* presently made a Discovery of this, and takes the 300*l.* which was paid down; upon this it hath been so far proceeded, that *Clancy* hath been Indicted for it, and Convicted, and hath received Judgment, and I suppose there hath been Execution: We have the Record of all these Proceedings.

We have this Circumstance farther in the Case (which it is my Duty to open to this House) to shew what Labour there hath been to stifle the Truth of the Fact, upon taking off Sir *John Fenwick*: There was one *Webber* taken with him, and he slid a Letter into one *Fowl's* Hand, and this was to be sent to my Lady *Fenwick*; and what is the Import of this Letter? The Import of it is (they could not prevail with *Porter*, as I opened just now, therefore) you must influence the Jury, get two or three stout Jury-men to starve the Rest, for we have nothing else to depend upon: These Things we shall humbly offer to prove according to our Duty, and according to the Order of this House, and then leave Sir *John Fenwick* to make his Defence.

Mr. *Recorder*. Sir, In what I say, I shall endeavour, as I ought to do, to pursue the Method of this Bill: And first, I will take notice, That it is the Pleasure and Direction of this House, that we should attend this House this Day, to produce the Evidence against Sir *John Fenwick*.

The Crime for which he stands indicted is High Treason: I presume the learned Gentlemen on the other Side will not deny, but that the Compassing and Conspiring the Death and Destruction of the King, is High Treason; and that to endeavour it, or shew it by an Overt-Act, to cause a foreign Power to invade the Realm, or to hold Correspondence, or adhere to the King's Enemies, is likewise High Treason; and therefore I shall not trouble the House to say any Thing to it one Way or another, because I believe they will not deny it.

In the next Place the Bill does take notice, That Sir *John Fenwick* hath been Indicted at the *Old Baily* in May 1696. Sir, by the Law of this House of Parliament made last Sessions, no Man ought to be Indicted of High Treason without two Witnesses; pursuant to that Law, Sir *John Fenwick* hath been Indicted upon the Oaths of two Witnesses, Captain *Porter* (whom we have here) and *Goodman* (whom we then had) and he did Swear; and upon the Evidence of these two Witnesses the Jury found the Bill.

We have this farther Matter: For before the Time the Bill was presented to the Grand Jury, there was an Examination taken both of *Porter* and *Goodman* in Writing, and I think it was before a worthy Member of this House, to whom I appeal in this Case, and in those Informations (if I mistake not) the same Informations they gave against Sir *John Fenwick*, as they gave against Mr. *Cook*; and upon the Tryal of *Cook* they were Sworn, and did justify and verify the Informations they gave before: And then, if you please, we shall call Witnesses to prove, That upon the Tryal of *Cook*, *Porter* and *Goodman* gave that Evidence that did equally affect Sir *John Fenwick* (for he was then withdrawn, and could not be taken) and the Evidence was, that *Cook*, Sir *John Fenwick*, with my Lord *Aylesbury*, my Lord *Montgomery*, Sir *William*

Perkins, Sir *John Friend*, *Charnock*, *Goodman* and *Porter*, were all together at a Consult especially appointed for the carrying on these traiterous Purposes; they gave the Court a great deal of Trouble, whether *Goodman* was there at that Time, and they did call some Servants of the House that did prevaricate, but the Court was thoroughly satisfied, and it hath appeared more plainly since, that they did abuse the Justice of the Court, for that *Goodman* was undoubtedly there. Sir, *Cook* upon the Tryal was convicted, and had Judgment of Death. And, Sir, he is Attainted, but it does not become me to say, Why he is not Executed? His Majesty, no doubt, hath great Reason for it. But this I may say, being present at the Tryal, nothing was made more plain; and Sir *John Fenwick* appeared to be equally concerned.

To shew Sir *John Fenwick* is guilty, I crave leave to add this, he did withdraw himself, and fled, and was enquired after with Diligence; and at last he was found.

We shall make good all we have with, by Evidence (we hope) to the Satisfaction of this House.

Mr. *Speaker*, if you please, Mr. *Baker*, that is Solicitor for the King in this Case, does attend at the Door with all the Papers; we desire that he may be let in.

Mr. *Speaker*. Serjeant, call in Mr. *Baker*, (which was done.)

Mr. *Speaker*. What do you call Mr. *Baker* for?

Mr. *Serjeant Gould*. To give an Account of this Indictment, for we have a true Copy from the Record.

Sir *Thomas Powys*. Mr. *Speaker*, since I am here assigned Council for the Prisoner, by the Allowance of this Honourable House, upon his Application, without my Privy, I crave leave humbly to acquaint you, in behalf of my Client; I take it for granted, that he is, I am sure we that are Council for him are, a little surprised in what the King's Council are going about; for in Truth, we were not aware, nor do we find that any Notice was given to the Gentleman at the Bar, that there would be any Proceeding against him by examining of Witnesses, or giving of Evidence; he had (it seems) the Vote of the House sent to him, and likewise a Copy of the Bill; but I could not understand that the House had given Notice that he should be prepared by Witnesses, if he had any, or be at Liberty to produce them. Nor was there the least Notice to him, that there would be a Proceeding against him by Way of giving Evidence. He did, as I find, humbly apply himself, by Petition, That he might be heard by Council, against the Passing of the Bill, and I shall very carefully observe those Directions you gave us, which I hope we should not have stood in need of, but have behaved our selves as becomes us, and not have drawn in Question the Power of Parliaments: I never had a Thought to do such a Thing; but this I humbly lay before you for your Consideration, Whether, without any Sort of Notice, that I perceive, he had from this House to make his Defence to any Evidence, and consequently there could be no need of Witnesses on his Behalf, whether you will so proceed, unless he had had Forewarning to provide himself otherwise than by the printed Votes, which (I suppose) he had no Opportunity of seeing? And, Whether, within the Words you are pleased to acquaint us with, we may be heard, as to the Reasonableness

sonableness of this Proceeding, that by and by we must crave leave to speak unto.

Mr Speaker. Sir John Fenwick did Petition, it is true, That he might be heard by Council at the Bar against Passing the Bill; but he likewise Petitioned for Council and a Solicitor, and the Answer from the House was, That he should be allowed Council to make his Defence.

Sir Tho. Pomys. Yes, Sir, I have seen the Order of the House; and truly there did not any Thing occur from it to me, That it should be expected that he should produce Witnesses, for he Praying that he might be heard against Passing of the Bill, and the Order of the House being that he might have Council for making of his Defence, I did not apprehend that it impowered us so to be prepared as to bring Witnesses, especially there being no Notice given to him to bring Witnesses, nor no Way for him to compel them to come here.

Sir Bart. Shower. Mr Speaker, we do acknowledge that we are so far ready as to offer some Considerations against the Reasonableness of the Bill, not against such a Bill in general, but against Sir John Fenwick in particular, and upon those Suggestions in the Bill; but in Respect of his making his Defence against Matter of Fact, and to answer the Charge of the Bar, we are not ready. The first Time we had Notice that Sir John Fenwick should attend, or be brought to the Bar, was last

Note, This Order was made the Day before at the rising of the House.

Night at Nine or Ten a Clock at Night; 'tis true, the Order said the King's Council should produce Evidence for the Bill upon this Day; but it was not Ordered that there should be Evidence produced for Sir John Fenwick, or at that Time that he should be Personally present: We are ready, with Submission, to offer what we have to say against the Passing of this Bill, upon the Suggestions made in the Bill, as Sir John Fenwick's Case is there represented; but to answer them in Respect of Truth or Falsehood, that we are not prepared to do; whether you will hear them to that, before you have heard us, in the other Particular, that we submit to you.

Mr Speaker. Sir, you had Notice on Wednesday last, that Sir John Fenwick should have Liberty to make his Defence by Council; and if you had doubted whether he should be admitted to do it by Witnesses, you might have applied to have known the Pleasure of the House: But if that be what you stand upon, if you will withdraw, you shall know the Pleasure of the House.

Mr Serj. Gould. I must confess we depended on it, and expected no other Thing than the Bar Evidence. This was our Order, and I apprehended that the Petition meant the same Thing; For, as I remember, it was an Order likewise that the King's Council should produce the King's Evidence: What Reason was there for that Evidence, unless Sir John was to apply himself to answer it?

Mr Recorder. I beg your Leave to observe with what Reason the Council on the other Side make this Objection; when 'tis the Import of this Bill, That Sir John Fenwick is guilty of High Treason: And your Order says, They are to be heard against the Bill, that is to say, They are to be heard against the High Treason charged upon him by this Bill. Therefore the House did direct us to produce the Evidence against Sir John Fenwick, to

verify the Suggestions of this Bill: And so I cannot apprehend what can be more proper at this Time, but to prove the Fact against Sir John Fenwick; and 'tis their Business to defend it as well as they can.

Sir Tho. Pomys. What was said by the Learned Gentleman on the other Side, I hope, will be some Reason why we might be of Opinion, that we should not have Occasion to produce Witnesses: And the Truth is, This Bill does no where so much as say, Sir John Fenwick is guilty of High Treason; and therefore Mr Recorder was under some Mistake, when he said the Bill charged that he was guilty. The Bill does not any where make such an Allegation; there is nothing but a Recital that he was Indicted for such a Treason; and then it recites, That whereas he had protracted his Tryal by such Means, and Goodman had withdrawn himself, (but it does not say with his Privy;) and then follows the Enacting Part, *Be it Enacted*, &c. So that there is no such Thing as any Allegation that he is guilty. Whereby we could imagine that that was the Fact or Question between us. We now offer these Things humbly to you, and shall readily submit to what you think fit to do in it.

Mr Recorder. Sir Tho. Pomys says, That Sir John Fenwick is not charged with his doing any Act, or being guilty of High Treason; but the Bill takes Notice that he stands Indicted for it: Then it will be enough for us to prove, that he stands Indicted, unless the House think fit to let us go into the Evidence of his being guilty.

Sir B. Shower. We do not oppose the producing Evidence to prove the Suggestions of the Bill, and the Recitals of the Bill specified: But if they attempt to prove him actually guilty, by living Witnesses, as they have opened it here, that we humbly beg Leave to oppose. But if they think fit to prove the Suggestions of the Bill, That there was an Indictment, that there were Witnesses sworn, and one is withdrawn, and the Promises of making Confession, and his Prevaricating in that Matter, we are ready to make our Defence to that.

Mr Speaker. Gentlemen, you must withdraw before you have the Directions of the House.

Accordingly Sir John Fenwick, and the Council of both Sides, withdrew.

And being withdrawn.

Mr Speaker. Gentlemen, you have heard what is stood upon by the Council for Sir John Fenwick: They say, if you call only Evidence to prove the Suggestions of the Bill, they are ready to answer them; but if you call any Evidence to prove Sir John Fenwick guilty of a Conspiracy, by living Witnesses, they pretend they are not ready, and say, They did not know they should be allowed Liberty to produce any Witnesses.

Sir Tho. Littleton. Mr Speaker, the Council could not think that the Bill should set forth that Sir John Fenwick was Indicted, but that the House would know by what Means; and that Goodman was gone away, and we should not enquire by what Means. What are the Objections by the Council against the Bill? Say they, We are ready to give Reasons against the Bill; they do not say down-right against your Jurisdiction: But, say they, we are ready to shew 'tis not reasonable in this

this Case, as stands Circumstances, to pass this Bill: Sir John's Petition was to be heard downright against the Bill. If that was your Intention to hear him to that, and to that only, I conceive you would not have worded your Answer as you did: You ordered him Council to make his Defence, and at the same Time ordered the King's Council to produce the Evidence; How could they understand it, but to make Defence to the Evidence; It may be they have a Mind to have another Fee; whether you will think fit, in the Circumstances you stand, to give them further Time I do not know: But the Circumstances of the Kingdom, and King's Life, must be considered as well as Sir John Fenwick. What is the Meaning that they are not prepared? I suppose it is to have further Time; but I think your Order is so plainly worded that they could not ignorantly mistake it.

Lord Norryes. I rise up to the Matter of Fact; that Gentleman tells you your Order is plainly worded; 'tis so, if they had timely Notice of it: But the Council at the Bar tell you, they had no Notice of this Order till Ten a-Clock last Night.

Mr Speaker. That noble Lord does mistake; for that which they say they had no Notice of till last Night, was, That Sir John Fenwick should be brought hither; but the Notice that he should be heard by his Council for his Defence was sent him the Day before.

Lord Norryes. This very Order, for his Majesty's Council to produce the Evidence, was made but upon Thursday.

Mr Speaker. Then I mistake. But the Order that was made upon his Petition I sent away immediately: But the Order they mean, I suppose, is that for bringing him hither.

Mr Cooper. Say the Council for Sir John Fenwick, We come prepared to make Defence to every Thing charged in the Preamble of the Bill, but what is not charged, we do not come prepared to make Defence to. Now they conceive the Fact of High Treason is not charged upon him by the Bill, and if true, it is of great Weight; but as it is, 'tis none: For first, 'tis plain, the Preamble recites that he was Indicted for High Treason by the Grand Jury, That is a Charge of High Treason within the Bill; for it says, he was Charged by the Oaths of his Country upon the Oaths of two Witnesses, and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, Can any one think that sits here as a private Judge, That the High Treason thus recited, as found by the Grand Jury, was no Part of his Charge? The very Nature of the Bill speaks; for could any one think, That you would ground a Bill of Attainder upon a Suggestion, that he being Indicted of High Treason had spirited away one of the King's Evidence, or for giving false Information? So that this is Trifling with the House, with Submission.

Sir Rich. Temple. Can any Body say any Thing of the Intention of the House, when 'tis reduced into a Bill? Is it not the Bill that he is to make his Defence to? And the Gentleman that spake, says, That no Body could think otherwise: Why, Sir, no Body is to think otherwise than the Bill states it.

Now the Thing before you is, Whether upon the Suggestions of this Bill 'tis fit for you to pass it? The Case of Mortimer was, That he had made his Escape, being under an Indictment of High

Treason, and it came before the House, Whether upon the Statute of 25 E. 3. it was High Treason? But they did not debate the Fact.

Now you have brought a Bill here, and all the Ground is, That he was Indicted for High Treason, had thus and thus prevaricated and delay'd his Tryal, upon Promises of Confession, and in Conclusion one of the Witnesses is withdrawn: Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any Thing but what is suggested in the Bill. If you had put the Issue upon the Guilt of Sir John Fenwick, He must have a fair Tryal in some Place, and that he can't have here upon Oath; for upon all Bills of Attainders they have had a fair Tryal above.

Mr Smith. I always thought when a Bill of Attainder was to pass through this House, That every Man was concerned to hear what Evidence he could, to make it appear whether the Person was guilty of the Facts that were alledged against him to condemn him for; and, I take it, the principal Thing to be considered is, Whether he be guilty of such a Crime as deserves such a Punishment. So that, I take it, the Question now is, Whether Sir John Fenwick hath had that Notice to produce his Evidence as is convenient? For I think we should lose Time to let Council ramble upon the Reasonableness of our Proceedings; the Question is, Whether he is guilty of the Fact? Sir, I can never think the Council could understand your Order, when it says to make his Defence, but it must be to the Fact upon which he is to be condemned. You have already determined that Point, as to his Prevaricating, but that is not the Matter that shall make me find him guilty; but the Evidence that will weigh with me is the Evidence of High Treason, and how far they can answer it.

Mr Hooper. The Question is, Whether or no there be a sufficient Guilt laid to this Man's Charge? For in all Courts of Judicature this is a certain Rule, You must proceed *Secundum Allegata & Probata*; and you shall not go about to prove a Thing unless it be alledged. Now the Question is, Whether this Thing be alledged in the whole Bill, That Sir John Fenwick is guilty of High Treason? And if not, you will go about to prove what is not alledged. 'Tis true, it hath been alledged that a Bill hath been found; but several have been Indicted who have been acquitted. It is possible the Prisoner at the Bar may be guilty; but I think we must observe that Method here, that is observed every where else, and that is not to go about to prove any Thing that is not alledged.

Mr Clerk. The Learned Gentleman hath made an Objection that perhaps would hold very well in Westminster Hall: But I suppose he may remember this Bill must have a second Reading before you, as a House; and then perhaps the Allegations may be different from what they are now. But the principal Matter before you is, Whether this Gentleman be guilty of High Treason, or no? And if they did not prepare to that Part, I think they were negligent to their Client; for it appears to be that Part that is most sensibly like to affect him.

Mr Howe. The more I hear the Matter debated, the more it seems strange to me. I have heard the Bill read, and took Notice of the Heads of it: I always understood the Preamble

of the Bill to be the Inducement to the End of it; I was mightily surprized to hear the King's Council attempt to make good — I think they did not speak materially to one Point of the Allegations in the Bill, so that the Allegations do signify nothing: Or else, if they intended these Allegations should signify any Thing, we must have these Allegations proved before we pass our Judgments upon the Bill. Whereas the Council, instead of endeavouring to prove that he was Indicted for High Treason, (though hinted at) would prove him guilty of High Treason; instead of proving that he had prevaricated, they say not one Word of it; instead of proving that he has forged Papers, in Order to alienate the Minds of the King's Subjects, they say nothing to it, tho' in the Bill it is alledged as High Treason.

We must not go here upon private Fancies and Opinions; no Man that heard my Lord *Delamare's* Tryal but believed him to be guilty of the Fact, yet he was acquitted, because there was not Evidence sufficient against him. I think you must stick to one of these Points; if you stick to this, to prove him guilty of High Treason, you must alter the Bill; and then that must be proved out of the Mouths of two Witnesses. If you please to stick to the Bill, then I hope the King's Council will go on to prove the Allegations of it, or let us know why they do not: I shall no more give my Vote to hang him, because he is Indicted of High Treason, than I shall because he hath been in *Newgate*.

Mr *Stourne*. I think a great deal of your Time in Debating this Matter may be saved; though I will allow the Bill might have been drawn better, and that a Bar Indictment is not a sufficient Ground of it self for a final Decision of this Matter: But when at the Time of the finding the Indictment there was two Witnesses, and one of them is withdrawn, and as is supposed by his Means; if the Bill seems imperfect, for any Thing before you now, you will not stay all the Proceedings upon it; but if you see it imperfect, and it may be amended, you will amend it at the Committee. I think the Favour you have given is abused, and that 'tis perfect trifling from the Bar. In one Breath they say, They could not get ready, for they had no Notice till last Night; and in the next Place they say, They will go on to every Thing but his being guilty; and I believe they never will be prepared for that.

Mr *Att. Gen.* Sir, I am very unwilling to speak any Thing in this Matter; because, Sir, by the Place I have the Honour to serve his Majesty in, as one of his Council, if it was in the Courts below, I must prosecute on behalf of the King: But I am very sensible, while I am in this House, I am in another Capacity; I am to vote here as a Judge, and not as a Party.

That which I do now trouble you about, is in Relation to the Matter that hath been objected; That the Bill does not expressly affirm, that Sir *John Fenwick* was guilty of High Treason, but only that he was Indicted for it: Truly I thought, and do still, with humble Submission to the House, That that Matter of affirming him to be guilty of High Treason was not to be inserted in the Bill; for that will be the Consequence of your Judgment, and Opinion, upon hearing of the Evidence. That worthy Member

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that spake last said, the Bill might be better drawn; I am sorry we had not his Assistance in it: But with Submission to his Understanding, I think that had been too much Presumption, till you are satisfied whether he was guilty or no. We could only go so far as to set forth the Faults that we knew; as that he was Indicted that we can verify, and can't take this to be like the Case of an Indictment; for there you must affirm such and such Things that cannot be altered afterwards: But a Bill in Parliament hath many Steps, you read it several Times, and commit it; so that you alter the Suggestions of the Bill as the Case appears to you to be verify'd; and if you be of Opinion that he is not guilty, you will not condemn him because he is Indicted: However that is not immaterial, but proper to be set forth for a Ground of your Proceedings, That there was a Probability of his being guilty from that Accusation. Therefore, Sir, I confess, I can't think that those Gentlemen that are Council for Sir *John Fenwick* could think, that you did intend to proceed otherwise than to hear Council as to the Fact; they could not think that upon Proof of his being Indicted, that that would be Ground enough for you to proceed to pass the Bill: For how could any Body think, but you would come to examine the Fact? I can't see how they should come to mistake, unless 'twas wilfully.

Mr *Price*. The Matter now debated, is, What Method shall be followed, or what Evidence shall be given upon this Bill, or whether Evidence shall be given of any other Matter than is suggested in the Bill; I must confess, making a false Step at first setting out, hath put us out of the Way hitherto: For in the Case of my Lord *Strafford* Witnesses were examined, and Adjudication that he was guilty, before any Order for a Bill of Attainder; but since you are in this Way, consider whether the Council against the Bill have gone according to their Order: The Order was, That Council should be heard to prove the Suggestions of the Bill, and the Council for Sir *John Fenwick* do not oppose that, but the Council for the Bill open more Things than are comprehended in the Suggestions of the Bill; for the Suggestion is only a Recital, and hath no positive Averment. And though the Bill and an Indictment is not the same, yet they must be the same in this, to put a Charge upon the Person; if the Preamble is not to any Purpose, What need they have made any? but have said only, Let him be attainted: To what Purpose does Sir *John Fenwick* come to the Bar? If it is to any Purpose, 'tis to answer the Charge of the Bill. That learned Person says, to suggest that he is guilty till the Matter is proved, then there must be an Amendment in that Point; and that will make it a new Bill, and then he must have another Day to answer the new Charge: But they might as well have said he was guilty of High Treason, as to say in the Enacting Part, that he should be attainted. Therefore if the Gentlemen for the Bill, will proceed and prove the Preamble of the Bill, let them; otherwise let there be another Day for Sir *John Fenwick* to attend, and let them do all together.

Sir *Christopher Musgrave*. I think as to that learned Person, nothing is to be laid to his Charge, for I think they have drawn the Bill pursuant to the Directions; and I am sure if they had drawn it otherwise, before they had known the Sense of the House, I think they had been guilty of a Crime.

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That which seems to be before you, is what was opened by the King's Council, and that was to prove the Treason. Now, Sir, I would be glad to know of any Person, Whether any Thing is to be admitted to be proved at your Bar but what is in your Bill? For let us have a little Regard to the Proceeding in *Westminster-Hall*. Can any Person upon an Indictment of High Treason, offer Evidence of any Treason but what is express'd in the Indictment? And I think this is the same in Effect; for here you draw a Bill of Attainder against Sir *John Fenwick*, and in Justice you send him a Copy of it, and with great Favour too, you allow him Council to defend himself to that, as to the Suggestions that are in the Bill; otherwise to what End did you send him the Copy of the Bill? Now if you will admit of any Thing to be proved but what is in your Bill, I know not of what dangerous Consequence it may be, for 'tis impossible to be prepared to it.

Mr *Sol. Gen.* If the Council against the Bill could be any Way mistaken, or think the Bill defective, I am for giving them longer Time to make their best Defence, but think neither one nor the other of them true; but your Order was to draw a Bill for Attainting Sir *John Fenwick* of High Treason, and I think if the Bill had gone no farther, but Enacted, that he should be Attainted of High Treason, we had strictly pursued your Order, for the Preamble is no necessary Part of the Bill.

A Bill and an Indictment are of quite different Natures; there is a Form for an Indictment, but no Precedent for an Act of Parliament.

As to the Preamble, the Debate when it was Ordered went no farther than that he was accused of High Treason, and was like to have been brought to his Tryal, and to delay it he pretended to make an ingenuous Confession, and instead of that, there was produced a Paper which you have censured (as you thought fit,) and upon that you voted a Bill to be brought in to Attaint him of High Treason; what then could be expected more for the Inducement, but the Debate upon which it was Ordered.

If this House had thought fit to examine Witnesses before, (as now) no Doubt but the Bill would have suggested that he was guilty of High Treason; but 'tis Time enough for you to suggest that, after you have heard what Witnesses there are; if the Council did not know this, notwithstanding all that I have said I am for giving them Time, but (with Submission) it was impossible for them to mistake it; if the Bill had went no farther than, Be it Enacted, That he should be Attainted of High Treason; then they had some Colour to say there were different Species of High Treason, and they could not tell to what particular Facts they must apply themselves: But when the Indictment is recited, which charges him with particular Facts, and tells him by what Witnesses the Bill was found, it was impossible not to know that this was the High Treason you did intend to Enact that he should be Attainted for; but when they say they are not ready, truly there may be some Reason for it, for I believe they never will be ready; sometimes Men will be wilfully mistaken, and sometimes 'tis their Misfortune to be so. They say they are mistaken, which of these are true I know not, but we have seen already the Time when he hath trifled with the Courts of Justice, he hath delay'd his Tryal till one Witness is withdrawn; if you give him longer Time,

he may have the good Fortune to have the other gone too; I see no Reason for you to forbear hearing of the Evidence.

Mr *John Mountague*. I am not surprized to hear Sir *John Fenwick* desire Time, for giving him Time is giving him Life; nor for his Council to tell you his Witnesses are not ready; 'tis a common Excuse. I hardly ever knew a Person brought upon his Tryal, but that was his Excuse; and yet I have seldom known it allow'd as a good Excuse: But 'tis objected, you must go *secundum aliquid legat' & probat'*, and nothing being in this Bill like what the Council for the Bill did open, 'tis not fit to hear them call Witnesses to what is not alledged in the Bill. I grant that; and yet I think they ought to be allowed to call Witnesses to prove every Thing they have opened to you: 'Tis agreed they ought not to have brought in a Bill to say in point blank Terms, he is guilty of High Treason; but, they say, you should have charged with what Treason he is accused of, and then they should have been admitted to prove it. With Submission, the Bill does that Thing; for the Bill does recite, That he is Indicted of High Treason in Compassing, &c. This is the Treason that is charged upon him by this very Bill: Now sure you will permit them to prove what is alledged in the Bill; What did the Council for the Bill open? That at several Meetings they met to consult of the Matter that this Bill takes Notice of: Did not he tell you when *Charnock* came first there for that Purpose, and when *Charnock* met them again for their Assurance? Now this being so plainly set forth in the Bill here, which recites that this Matter was proved by two Witnesses, upon the Credit of whose Testimony this Matter was found, and that one of them is gone away; and say they now, we are ready to prove the Matter then sworn: Is not that proper to satisfy Gentlemen's Consciences that won't convict this Man without Evidence?

Sir *Franc. Winnington*. Mr *Speaker*, I humbly conceive the Question is not, now, Whether Sir *John Fenwick* is guilty or no? But, Whether the Objections the Council for him have made, be so strong as you will grant what they move to you? They tell you, if Council will proceed upon nothing but what is suggested in the Bill, according to your Order, we are ready to make our Defence. It was said the King's Council was Ordered to give their Evidence, that can have no Interpretation but as to the Matters in the Bill.

Says the King's Council, We will prove him guilty; says the Council on the other Side, I hope the House will give us Time to encounter them in that; for you have no such Thing in the Bill; the sending them the Copy of the Bill was as much as to say, you need not prove any Thing but what is therein asserted. 'Twas said by the learned Gentlemen there, that there might have been an Act of Parliament which might have said only, *Be it Enacted*, That such a Man be Attainted, without giving any Reason. I cannot deny but it might be so without any Reason, but I don't believe it will be so. And another learned Person was for Mending of the Bill; says he, When you have the Matter of Fact proved before you, it may lead you to the amending of the Bill, and Inserting what you please, and Enacting of it; but does that answer what the Council said on the other Side? Would you have us answer what we did not know that you would stand upon? The Question is

is not, whether he be guilty or no? But whether the Objections that are made be good to give them time?

Coll. Granvill. Sir, the Council (by what I observed from them) have started two Difficulties, and really (to me) both seem very material; the first is, Whether the King's Council shall be at liberty to prove any thing that is not suggested in the Bill: The other is, whether Sir *J. Fenwick* had due notice to make his Defence.

The first is a Matter of very great Moment; you are proceeding upon a Bill where not only the Life of Sir *John Fenwick*, but the Life of every Man in England is in some measure concerned; when a Precedent is made in this Case, no Body knows who may be affected or hurt by it, and therefore I desire you will settle that Matter, and have the Judgment of the House, whether they will admit the Council to prove any thing that is not suggested in the Bill; if you will, I do not see how any Man that stands at the Bar of your House, can be prepared to make his Defence. For there shall be one Crime alledged in the Bill, and when he comes to the Bar, the Council that are to prosecute, shall go quite off from that which is laid in the Bill, and produce you Evidence to a new Crime; and he stares and looks round him, and you had as good allow him no Council, or Copy of the Bill. This you thought so necessary for every Man that was to come upon his Tryal for his Life for Treason, that you altered that Tryal, and declared no Man should have any Treason proved against him that is not alledged against him in the Indictment.

We have had great Complaints of *Westminster-Hall*, and if the Parliament should proceed in this manner, may have the same again. If they are too rash in their Proceedings, they will be countenanced mightily in them, if you should proceed against a Man, and condemn him for one thing when he is accused of another; I desire to know, how we can proceed in a Bill upon which Sir *J. Fenwick* is to be proved guilty, and he hath no Opportunity to answer it? I take it, as this Bill is drawn, Sir *John Fenwick's* Guilt is no way concerned in it: For whereas the worthy Gentlemen tell you the Treason is specify'd, there is no Treason specify'd, otherwise than he is Indicted for it.

Mr George Rodney Bridges. Sir, I think the proper Question before you is, whether you will allow Sir *J. Fenwick* time to produce such Witnesses as he shall desire for his Justification? 'Tis a little strange to me, that the Gentlemen that are of Sir *J. Fenwick's* Council, should insist upon those things, to desire farther time for his Preparation; when (I think) 'tis very plain, they were told what they were to prepare for by the Bill, which was, they were to justify Sir *J. Fenwick* against those things he stands indicted for; and the Matter of the Indictment is the Thing to be proved before you, and the Witnesses to make it good, are likewise mentioned; one of them is gone, but his Testimony remains upon Oath, not only to the Grand Jury, but in another place, that I am told of; I do not think you will think it reasonable, after the King's Council have made out their Evidence, to give him time to make their Observations upon the Charge; so you will consider before you hear the King's Coun-

cil, whether you will allow him farther time; or no.

Sir Jos. Williamson. Mr Speaker, the Gentleman that spoke last, states the Case to be, Whether you will think it reasonable to allow Sir *J. Fenwick* farther time to produce his Witnesses? You may, Sir, make that the Question; but that will depend upon another, which is, Whether you think that Sir *J. Fenwick* had not notice enough to prepare to defend himself against the Charge contained in the Preamble of the Bill? And I add this further, Whether the Manner and Way of expressing that particular Charge in the Bill, is not so Worded, so Charged, as here expressly to become a Charge that he is to answer for; and not only as a Matter of Fact Historically related, not to come in Proof here: For if it proves to be well Charged in the Preamble, 'tis a particular Fact of Treason he is to answer for in this House, and then he hath had time enough; so that now you are to judge of your own Way of expressing your selves. I believe every Gentleman knows it was the Sense and Meaning of the House, that those are the particular Treasons mentioned in the Indictment with which he should be charged at the Bar, and have time and liberty to defend himself; and not only to the Allegations that he had been Indicted, &c. Now, Sir, if you shall allow these Gentlemen to except against your Way of expressing your selves, that I submit to you: But 'tis clear to me, that this was a very good and proper Way of expressing your selves, to charge him with these Facts, and to give him Liberty to disprove it. If he and his Council understood it otherwise, the Question is, Whether their differing with you in the Way of expressing it shall be allowed to them, without taking a reasonable Exception to it? You are ty'd here to the strict Rules of Justice, but as to the Forms of Proceeding below, I don't think you are. Our Meaning was most certain (though he was indicted, that was nothing to us) that they should bring their Proof to our Bar to prove him guilty; and if you should give him two or three Days time, you must mend your Bill to their Way of Expression, and to their Sense.

Mr Brotherton. I take the Question to be now, Whether the King's Council should give Evidence of any other Matter than what is alledged in the Bill? As to that I must observe to you, that this Bill does not set forth any particular Charge against him; it does not say, that he such a Day did such a Fact, whereby he can make his Defence, 'tis only the Recital of an Indictment; and it does not say the particular Time and Place where the Fact was done. Now as to what that Gentleman says, if it had been said generally, that he should be attainted, it had been sufficient. 22 H. 8. The Statute for attainting one for putting Poison into a Pot, &c. there is the Day and Year when the Fact was committed, and so he might make his Defence. Then the King's Council offer to prove, that this *Goodman* was conveyed away by Sir *J. Fenwick*, and there is no such Charge in the Bill; for the Bill only says, that he is withdrawn; and I am of Opinion they ought to give Evidence of nothing but what is in the Bill.

Mr Whitaker. As to the Exceptions made by the Council to the Insufficiency of the Bill, by which they pretend Sir *J. Fenwick* was lead into an Er-

ror, so that he had no due Notice, I must needs say, if they were in *Westminster-Hall* they would be in the Right: but this House is not bound to those Forms; for I believe the Enacting Clause would do the Business of Sir *J. Fenwick* well enough, if all the rest were laid aside; and I will consider it with as much Tenderneſs and Conſcience for the Prisoner at the Bar, as any that brings Arguments from *Westminster-Hall*. I would conſider, Whether ſuch a Defence as they have made, that from the Bill (as to what is laid in it) he had not Notice enough to prepare to make his Answer: They ſay, a Recital is no direct Affirmation in Civil Matters; It is an Affirmation. For to ſay, *Whereas ſuch a one is Bound*, is good in a Declaration upon a Bond. Now I would know, Whether this be not enough to ſay, that he is Indicted, without an Allegation that he is guilty? Had the Bill no recital at all, it had been an Objection; but it may be it had been ſuch an Objection, that they ought to have done ſomething of their Parts, as to have deſired the Opinion of the Houſe to what they ſhould have answered: For ſuppoſe there had been no Recital at all, (and you may make what Recital you think fit) what ſhould Sir *J. Fenwick* have done? There are ſome Inſtances at Common Law; A Man is indicted for being a common Barrater, and there are no Inſtances given in the Indictment; why then he comes and prays the Court, that they may declare what Inſtances they will give, and that they may give no other Words in Evidence: Therefore I queſtion not but that ſhou'd have come on his Part, he is to be heard as to the enacting Part of the Bill; and under Favour you could do no otherwiſe. Now if they do offer to give Evidence of any Treason that is not ſpecified in the Recital of the Bill, and the Council make an Objection to it, I ſhall agree with them.

Sir Ed. Seymour. My Lords, and you Mr Speaker, what hath been ſaid to you by that worthy Perſon that ſpoke laſt, no doubt is true;

That if there had been no more than the enacting Clause, it would have done Sir *J. Fenwick's* Buſineſs with a Witneſs, or rather without a Witneſs: But that is not the Queſtion we are diſputing here; but the Queſtion is, whether you will give Sir *J. Fenwick* longer time to make his Defence to that Part he inſiſts on, that is not contained in the Bill. You are well ſatisfied that you can't go through with the Suggestions to Night, and the Debates, and what relates to it; and I find no Perſon againſt putting it off, but becauſe it would be a delay. and if it be no delay that Reaſon is out of Doors.

They tell you the Council could not but take Notice of the Matters ſuggeſted in the Indictment: I cannot think that is reaſonably argued; becauſe they do know the Practice and Method is ſuch, That they can take Notice of nothing but what is ſpecified and contained in the Bill. And therefore there being no Guilt charged upon Sir *J. Fenwick* in the Bill, Is it reaſonable they ſhould come and accuſe themſelves here, or make a Defence to what is not Charged? No; but, ſay they, it is implied. This is an untrodden Path, and you ought to walk as ſecurely in it as you can. 'Tis extraordinary that you bring Sir *J. Fenwick* here to answer for Treason, when 'tis allowed in the Suggestions of the Bill; you have but one Witneſs to

that Treason, and when you take theſe extraordinary Steps, you ſhould comply with him as much as you can in the Forms. For if Treason be not Treason unleſs it be proved by two Witneſſes, and you will give him Liberty to make his Defence, I think it no loſs of Time; for you can't go through the Bill to Night, to ſee whether Sir *J. Fenwick* be guilty of what is contained in the Indictment. And I will give you one Reaſon why he could not be prepared to make his Defence in ſo ſhort a Time, for he could not produce his Evidence if he had any; and if you give him longer time, I ſuppoſe you will think fit that Sir *J. Fenwick* ſhould give an Account of what Witneſſes he ſhall make uſe of for his Defence, and you will give an Order for thoſe Witneſſes.

Mr Harcourt. If Sir *J. Fenwick's* Buſineſs muſt be done, I hope we ſhall do it like rational Men, and what we Enact be able to give a reaſonable Account of it in the Preamble of the Bill.

As to the Queſtion propoſed, your Debates have run ſeveral Ways: The firſt is, Whether Sir *J. Fenwick* ſhall be allowed further Time? And in this Caſe, whoever I diſſer with, 'tis of that Nature that I muſt deſire the Liberty of ſpeaking my Mind. I muſt confeſs I ſee no Room for enlarging the Time, and I ſhall humbly ſubmit my Opinion to other Gentlemen, whether he ſhould have further Time to prepare his Witneſſes: And for that, pray conſider the Nature of the Matter before you.

Sir, there is nothing certain that is alledg'd in the Bill; and ſhould you allow him further time, to answer that which is not alledged, I can't imagine what Effect you would have of it. 'Tis ſaid indeed, he ſtands Indicted; but 'tis no where ſuggeſted, that he is guilty of that Indictment. This general Charge ſeems a great Hardſhip: There is no one Thing that ſo many have been unjuſtly taken off by, as the Uncertainty of alledging general Facts in Indictments of High-Treason; nor has any Thing been complained of in ſuch Trials for a greater Grievance. What have you done in the Bill for regulating of Trials in Caſes of High-Treason? In that Bill you have reformed that Abufe, and taken care, That whatever Treason a Man might be guilty of, yet he ſhall never upon his Indictment answer to any Fact, unleſs the particular Overt-Act be expreſsly laid and affirmed in his Indictment.

That which ſeems moſt reaſonable in this Caſe to be done, is not to enlarge the time; but when you think fitting to proceed, proceed upon what is before you. Here are ſome Matters expreſsly alledged; let them go over the Recital, ſee whether they can prove that; but I can't imagine to what purpoſe you ſhould give the Prisoner further time to answer nothing, for that which is not Charged is ſo.

Mr Finch. Mr Speaker, Sir, this is a Queſtion in my Opinion of very great Conſequence: You are very well told from below, that this is an untrodden Path, and I am the more confirmed 'tis ſo from this Debate.

We are told, That Sir *J. Fenwick*, or his Council, could not be ignorant of what they were to prepare themſelves for. For this was our Meaning, ſays one Gentleman, though I find the Path is ſo untrod we are very unfortunate in expreſſing of it; for we have not ſaid it at all in this Bill; we have ſaid, Sir *J. Fenwick* was indicted, &c. Sir *J. Fenwick* hath had a Copy of this Bill ſent him, Coun-

Council allowed him, and upon a second Reading he comes to make his Defence. We are told, the Proceeding upon this Bill is not to be resembled to the Proceeding in *Westminster-Hall*, and this is sufficient in a Bill (though in an Indictment it would not) without alledging that Sir J. Fenwick is guilty. But one would think that if Sir J. Fenwick is guilty; every Allegation in the Bill, that is, the Inducement to the Bill which is for attainting him, should be a good and just Ground for the Attainder; and then, this Gentleman that hath had a Copy of the Bill to prepare for his Defence, and shew you Reasons why the Bill should not pass, though our Proceedings are not to be resembled to the ordinary Proceedings, yet we are to expect from him such a Defence as the ordinary Proceedings in *Westminster-Hall* would require: But I think this is hardly to be expected; one might have thought, and reasonably enough, that it might have come into his Imagination, that if there had been Ground to attain him, by the ordinary Proceedings and Methods of Justice, the Parliament would not have taken an extraordinary Course to come at it: For I can never think it a good Reason to proceed this Way, that is, for the saving of Time; and if there be extraordinary they must guess at that out of the Bill: Now that is grounded upon those Suggestions that I have cited; and then I should have imagined, that whereas he had been indicted upon the Oaths of two Witnesses, as the Law requires, and one of them was withdrawn; that you had rather intended to have charged him with some Contrivance to elude Justice, whereby you had reason to exert your extraordinary Authority to proceed against him by way of the Legislative; and I do not find we have any Precedent to warrant this Proceeding, though in our Debates we have endeavoured to find one; yet I can't but observe the Consequence of this hereafter: For whether we can find a Precedent to warrant this Proceeding in former Ages, or not, we are making a Precedent for our Posterity. And consider the Consequence of this Precedent you are making; I think all the Bills in Parliament are grounded by the most serious Ways of Deliberation, before you come to Judgment: And Bills of Attainder ought much more sure to require the Seriousness of your Debates; but I can't but observe the Steps now made; I am afraid there was a wrong Step at first; I was not here the first Day: But I recollect some Things from the Bill it self; the tenderness of those Things upon which this enacting Clause does stand. Here was no Evidence given to introduce the House to bring in this Bill of Attainder; when this Bill is brought in the House, and the Preamble, that suggests that which is the Ground of the Enacting Part considered in the House; and the House did not think it reasonable to proceed to the Reading of it a second time: I remember we were told, Won't you read it a second time, when you may have an Opportunity of having those Suggestions proved to you? This was the Ground why this Bill was read a second time. For consider, otherwise a Gentleman may in any other Case as well as this, desire leave to bring in a Bill for attainting such a one, and tell you, you shall have good Reason given to you for it afterwards; and though the Reasons suggested in the Bill, are not sufficient, you may have Reasons out of the Bill that are sufficient. What a Precedent will this be? Why Sir, length of Time gives a Sanction to those Precedents

which the Age that made them think not of; and they become good Examples to Posterity, that were even very heinous Precedents to the present times. Now if this shall stand, as now in the Bill, I would ask what Man in *England* is secure when a Parliament shall arise that hath a Mind to attaint him? Why then, Sir, if you do amend the Bill, consider the Method of your Proceedings; you do your selves, in effect, declare, That for bringing in of the Bill, for twice reading of the Bill, you had no Ground at all; for otherwise you had good Grounds recited in the Bill, and that must be a sufficient Ground to attaint him; and if you declare it no sufficient Ground to attaint him, you declare you have brought in a Bill, and read it twice, without any Ground. Whether you will allow liberty to offer at your Bar any Suggestions otherwise than in the Bill, that I must submit to you; and for giving time, since that is a Question of a very extraordinary Nature; but have humbly offered my Thoughts, whether any thing shall be offered otherwise than is suggested in the Preamble of the Bill? I hope you will not, for the Precedent sake you are now making, which if you do, I am afraid Bills of Attainder may be come now as frequent as Bills of Attainder were in *Richard the II.* time, which I hope never shall be.

Lord Norreys. Mr Speaker, I will not pretend to tell you that you are bound by other Rules than Rules of Justice; but what is Justice in *Westminster-Hall*, is so here, and every where. And last Year you thought it Justice that no Man should be brought to a Trial, but he should know what were the particular Facts that were alledged against him.

Lord Cutts. I think it, in some measure, a Misfortune, That a Matter of this Nature, as is your present Debate, hath held you so long; and conceive it a Thing to be wished, that every Gentleman that speaks upon this Occasion, would apply himself more closely to Reality, and less to Forms; I mean to Forms considered meerly as Forms, for it ought to be true Reason that is convincing to you: And you ought not to tie your selves to any Forms upon this Occasion, but such as are grounded upon Reason; and really I have not heard any thing that fell from any Gentleman that shews his doubt of the Nature and aggravating Circumstances of the Crime of the Prisoner; but it hath consisted with the great Candour and Justice of this House, to shew this Favour to the Prisoner before you: The Council say, they are unprepared; if they mean they should prepare themselves for more grounds of Difference and Chicanry, I would not give them farther time; I can't perceive there is any reality of Argument in it, and there is in Reasoning, as in Religion, sometimes a Form without a Power.

Sir Tho. Dyke. Sir, you have now two or three Questions before you; I desire you will confine our Debates to one Point; I think whatever Opinion Gentlemen may be of concerning the Proof; I think the Point under your Consideration, if you will make a right Judgment, is the Preamble of your Bill, which I take to be the Foundation of it, and the Cause for which you attaint this Gentleman: Now the Preamble does not recite, and say, he is guilty, but only indicted, nor set forth any time; nay it does not say he was arraigned. So that these things are very uncertain, and yet you must attaint him for the Things recited

recited in your Bill. And you know these Acts of Attainder are extraordinary Methods in Cases of Treason; and if you put it upon this Point, that the Act attaints him for one Thing, and the Council shall prove another, it makes it more uncertain than it is, and no Man can be safe; and therefore I hope you will confine the Council to Proofs of the Matter contained in the Bill.

Mr *J. How*. Sir, I shall not move you to any thing that may tend to a delay of the Matter before you: I think, if you please to go on upon the Matter suggested in the Bill, they are Allegations which must be proved before the Bill is committed, (and that will not hinder Sir *J. Fenwick* from being examined to the Treason likewise.) Therefore all that is alledged in this Bill, I suppose, being thought necessary to be proved, I desire he may be called in, and the Council may go on to prove what is alledg'd in the Bill, and afterwards Sir *J. Fenwick* may answer them.

Lord *Coningsby*. If the Question was, whether you should grant this Gentleman time or no to make his Defence, I should not have troubled you? But the Question now seems to be, whether the Bill does depend upon the bare Suggestions of the Bill, or upon the Guilt of Sir *J. Fenwick*? And therefore if Gentlemen do insist upon it that he should have longer time to defend himself, as to his being Innocent or Guilty, I shall not oppose it; but if you think fit to put it off, as if the Fate of the Bill did depend upon the Suggestions of it, I can't agree to that Matter; therefore I desire a short time may be given him to answer the Matter of his Guilt.

Mr *Harley*. I find all Gentlemen that speak of this Subject, do say this Matter is of a very extraordinary Nature, and you have entered into it by very extraordinary Methods: But I must only observe, that this being the first Bill of this kind that hath been brought into the House, before any Proof, Gentlemen must be excused if they are cautious what Steps they do take; and when the Wisdom of the House have thought fit to take quite different Methods, as to the Preliminaries, 'tis not to be wondered if they meet with difficulties in their Proceedings.

Some Gentlemen press for more Time to be given to Sir *J. Fenwick* to be prepared; and others urge, that you should declare, whether the Council should be heard to any Thing, but what is suggested in the Bill? And I think you must give a Determination to the last Question, though the whole House agreed to give him longer Time: For if you give him longer time, it will after come to the same Debate, whether they shall be heard to any Thing but what is suggested in the Bill? If you should think fit to add any Thing; then it will be reasonable that he also should be heard to that; for in the Case of the Death of a Man, let him deserve never so much, yet he does not deserve to die unjustly by your Hands.

It seems a very plain Proposition, that when a Man is accused, he should not answer to what he is not charged with; and to charge it with *Innuendo's* and *Implications* is so uncertain, that as I always have seen it denied in this House, so I hope I shall not see so great an Assembly give any Countenance to it. They did tell you, they were prepared to speak to the Reasonableness of the Bill; but this Matter not being suggested

in the Bill, they are not prepared to speak to it.

Sir *Tho. Littleton*. I see now where your Debates have led you: I thought the regular Subject of our Debates had been the Point upon which the Council withdrew; and that was for Time. For what? Why, to prepare themselves to answer any Evidence that might be given against them; because they perceived you did expect the Council for the Bill should produce their Evidence. But they made an Objection; say they, we did not understand your Order was, that we should come prepared to oppose any Testimony *Vivâ Voco* to be given against us, but only prepared to speak to the Reasonableness of the Bill. Now, Gentlemen, after five or six Hours Debates, have been willing to accommodate the Matter (that no Body might think that any one pressed a Matter unreasonable) that they might have time: But some Gentlemen will not be satisfied with granting what the Council desired, but they desire more. And what is that? Why, that is to know the Opinion of the House, whether you will admit any one Thing to be proved that is not suggested in the Bill? And I do take this to be within the Suggestions of the Bill as fully as can be expressed. For what does the Bill say? The Bill does say, he was indicted of High-Treason, and that one of the Witnesses are gone: And, Gentlemen come to the Conclusion, and skip over the intermediate Part of the Bill; for the Bill does say, that he did incite and consult, &c. And the Objection of the Council was not against the Evidence; but they said, they were not prepared at that time to answer it, and there they leave it; and thereupon the House go on upon the Debates. What can we expect that they intended? They might think, either we shall gain our Point, and the House will give us time; or otherwise, if they go on, and hear this Evidence, then we say we wanted time. And that will be only Evidence *ex Parte*, and not carry so much Weight with it, though we have nothing to say to it; or they might think it may have this Effect, that the House will not go on, and hear any Evidence at all; in either of these Cases, we have the fairest Advantage that we can have, on the second reading of the Bill, in defence of our Client: All they desired was, that they might have time; and I hope that which satisfied them that are most concerned, may satisfy any Gentleman of the House.

Mr *J. Howe*. The Question is not, what they asked? But what is reasonable for us to grant? I was in the Beginning against any Delay; and I think there is no occasion of Delay; All I desire is, Sir, That the King's Council may be desired to prove the Suggestions of the Bill *ex Toto*.

Mr *Soll. Gen*. Most that have spake of this Matter have said, that the Matter is very generally laid in this Bill, and the Council could not very well know to what to apply themselves: That it speaks of High-Treason in general, and of Aiding the King's Enemies, which is very general: It recites that indeed; but the Indictment is legal, according to the late Act of Parliament. 'Tis not only said, that he designed the Death of the King, but for that Purpose, he, and others, met together and agreed to send *Charnock to France*, to go to King *James*, to induce the
French

French King with an Armed Power to invade *England*. Now how can any thing be more particularly charged? And the Indictment is so charged in your Bill. I think therefore the Council could not be ignorant to what they ought to apply themselves: But by what I perceive, Gentlemen are very well contented to give him further time. I remember, when the Bill was first brought in, there was a long Debate for a second Reading; and some Gentlemen thought it hard to be tried by so great an Assembly, and said, they had rather be tried by a fewer Number: But I shall observe, that you have sent the Copy of the Bill to Sir *J. Fenwick* before hand, and you sent him Notice that he should provide himself. But I remember a much better Man than Sir *J. Fenwick*, who had the Misfortune to be under an Accusation of High-Treason, had his Indictment one Hour, and was tried the next; and though he pleaded to have his Trial put off till the Afternoon, he could not prevail with the Court of Justice to do it. Sir *John Fenwick* hath had a Copy of his Bill for two or three Days, but he never had any Copy till he had pleaded.

Mr *Waller*. I stand up only for my Information; that which I would know is, whether the Council did not ask you the Question, whether they should be bound to answer any thing that is not in the Bill? If they asked that, then the Gentleman that spake here is answered; and the Gentlemen of the House do not insist upon what Sir *J. Fenwick's* Council did not insist on. And I do think the King's Serjeant, who opened the Proceedings, after he had opened what had been before the Grand Jury, seemed to make it a Charge, as if Sir *J. Fenwick* had been condescending to the withdrawing of *Goodman*. Now that seemed, as if they designed to make that a Part of the Evidence.

Sir *Richard Temple*. The Council did not insist upon it only to answer the Suggestions of the Bill: Every Body knows, they objected to the others going on with the Evidence they opened, because it was not in the Bill; and the King's Council could not so much as alledge, that it was in the Bill; and they would have gone on to have proved the Indictment. There is another Thing: It is told you as if the Preamble had suggested something of this kind, that there was a Meeting. Now that Gentleman that spake last but one, has cleared it, that it only recites he was indicted for these Things, and this brings nothing in Issue, whether he be guilty or no? Now, I think, the present Question, and only Question before you, is upon the Suggestions of the Bill; for you can bring nothing in Issue here, but what is in the Bill; and no Body can insist, by the Rules of Reason or Justice, That any Man should be heard to any Matter of Fact but what is in the Bill. And therefore I think there is nothing before you, but that you should give Direction to hear them to what is suggested in the Bill.

Mr *Methuen*. Sir, I speak to the Method of your Debates: Your Debates arise upon an Objection that was made by Sir *J. Fenwick's* Council, against the Council for the Bill going on, with their Evidence to prove Sir *J. Fenwick* guilty of High-Treason.

I must beg leave to differ as to what the Council did say; for some of the Gentlemen that spake last, the Force of their Objections was, that they should not now go on, for they were not prepared

to answer them; and the Reason they gave, was, that they had not formal notice; and the other afterwards spake to the Shortness of the Time; your Debates for a long time went pursuant to this, whether you should allow them further time or not? But the length of your Debates hath raised a new Matter. Though I think that Doubt, though it was not made by the Council, may be very properly made by any worthy Member that hath that Doubt, whether as the Bill is brought in, the King's Council might at any time speak to that Point, though Sir *J. Fenwick* be acquainted with it? And I must always agree that Doubt ought to be resolved, before you come to resolve whether further time shall be allowed him or not; and therefore I propose it, that this Question may be put, whether the House will hear, at the Bar of the House, the Evidence there is to prove Sir *J. Fenwick* Guilty of the High-Treason whereof he was indicted?

Col. *Wharton*. You have three or four Questions upon your Paper; and now after so long a Debate as we have had, I hope Gentlemen will not think fit to start new ones; and I hope you will take care that Gentlemen shall not rise up three or four times to speak to this Matter. You have another Rule of the House, That when a Question is moved, and seconded, though another Question is moved afterwards, yet that must be the first Question that is to be put, and I hope you will keep us to these Rules.

I wonder at some Objections: 'tis told you, that this is such a Proceeding that never any thing of this Kind was before; and that you are here going to read a Bill of Attainder before you have had any manner of Evidence, upon which you should ground the bringing in of this Bill. Gentlemen must remember, or should have informed themselves; for 'tis very certain that you had very good Grounds to vote this Bill to be brought in: I see the Gentleman that brought in his own Accusation; you had his own Discovery read, and Mr Attorney did inform you what was against him; and how he stood indicted. And another Gentleman by me told you, he was with him, and there was a Treaty for his Pardon; this was Evidence for reasonable Men to go upon: And to tell you that these Precedents will endanger your Liberty? Under favour, this is the Ground of all your Liberty. 'Tis by this Power of Proceeding, when you have not that Evidence that *Westminster-Hall* requires, by which you will keep great Men in Awe.

Now give me leave to speak to the Question that I think you ought to put; 'tis told you, by the Council for the Prisoner, that they are not appraised what the Sense of the House was, and upon that Account they desired further time: I confess, when you allowed Council, I was of Opinion it was a Favour; and now since they have made this Objection, though I do not believe you are obliged to allow them further time; yet I had rather err on that than the other Side; and therefore I think the fairest thing is to allow them some further time.

Mr *Secretary Trumball*. Mr Speaker, I have attended all this Day to your Debates, which are now in my Opinion of a very extraordinary Nature; for a great deal of your time hath been spent upon Motion of the Council for the Prisoner at the Bar, whether you should allow them further Time or no: And now, by what I recollect from

from the Sense of several Gentlemen, the House seems willing to allow them further time; even that is opposed at this Time of Day.

Sir, the King's Council have opened the Matter of Fact, upon which they did intend to produce their Evidence; and when they had opened the several Heads, the whole Objection that I heard made by the other Side, was, They did not think the King's Council could have proceeded to examine Witnesses upon those Facts, and that they were not prepared to bring Witnesses on the Side of the Prisoner, and therefore prayed for further time; truly, whether that be reasonable or no, or whether upon one Favour the House think fit to grant another; I can't tell what might appear, if it had come to a Question; since the Life of a Man is concerned, we ought to be tender of it, and I shall be as tender as another; therefore I am of Opinion, that a reasonable Time should be allowed. To do what? Why, upon the Evidence the King's Council should produce, they shall bring their Witnesses on the other Side to answer them: Whether the King's Council will produce Evidence that is foreign to the Bill, that will be in Judgment of the House; but it was a good Motion made below, which I close withal, that a short Time may be allowed them to make their Defence, and bring their Witnesses.

Mr Speaker. Gentlemen, you have had a long Debate; I don't remember any formal Question that was proposed at first, till such time as I read to you what I thought was the Question upon the Debate; when I read you the Question for further Time, there were several Members stood up, and said, that was not the Question; and took Exceptions to it, and proposed that the Council should be confined to produce Evidence only to the Matters suggested in the Bill; so that now I have two Questions upon my Paper, which I will read to you, and put which you will. One Question is, That they be confined to make their Proof to what is suggested in the Bill. The second Question is, that Sir John Fenwick be allowed further Time, &c.

Sir Christopher Musgrave. A Gentleman said, the second Question upon your Paper was but lately started; but I remember, a little after the Council was withdrawn, it was moved, Whether you would give them further Time? And I, presently after in the Debate, did take the Freedom to ask, Whether it was intended they should Answer to any Thing but what was contained in the Bill? And I remember there was a Gentleman of the long Robe said, That there was nothing offered by the King's Council, but what was within the Suggestions of the Bill. Another Gentleman said, when they may have longer Time, they'd not seem so fond of it; 'tis indifferent to me, provided he be prepared to Answer. But I can't but observe, That the Conclusion of that honourable Person was, that at last you must come to determine the Question. You were likewise told, by an honourable Person nearer the Bar, Why do you dispute this, now you have ordered the King's Council to produce the Evidence, and so you have concluded your selves? But for my self, I must confess I did never think the Evidence was to be heard otherwise than as to the Suggestions of the Bill. And if that Point be to be determined, Why will not you determine it now, rather than to have another Debate upon it?

Mr Boscawen. That which is pressed by some Gentlemen, is Begging of the Question. What have we here brought Sir John Fenwick for? Was it not to satisfy our selves, whether Sir John Fenwick was guilty of High Treason? Now that is supposed by some Gentlemen not to be within the Bill: If it be not within the Bill, I desire you would throw out the Bill. But the Thing is, we must not examine to those Things that will make Sir John Fenwick guilty. Sir, This is a very nice Thing, and very curiously woven. The great Thing, say some Gentlemen, we must take care of, is the Blood of a Man: Does any one say he is Innocent? No: But we must have some Way or another that he must not be brought to his Tryal. I desire, as English Men, you will not only take Care of the Life of one Man, but of the Life of the King; of the Lives of our Wives and Children, and all our Families. What will they say without Doors? You are afraid to meddle with Sir John Fenwick; and therefore you will slide it away upon another Point, That his being guilty of High Treason is not within the Bill. I am not for taking the Advantage of Time; I desire, as it was moved before, That you will give him Time, and try whether he be guilty of this Treason or no, or otherwise do nothing in it at all.

Then the Order was made for Candles to be brought in.

Sir Thomas Littleton. Now you have Candles brought in, it will be fit for you to return to the Question: For my Part I am willing to put both: But I think the last Question that you have upon the Paper, properly speaking, is to be put first; and that is, That the House will proceed to examine Witnesses to the Treason in the Bill for which he stands Indicted.

Mr. J. How. I think the Question ought to be, That his Counsel be directed to bring Witnesses to the Allegations in this Bill.

Sir Thomas Littleton. I propose it to you thus; That the House will proceed to examine Witnesses at the Bar, to the Treasons mentioned in the Bill for which he was Indicted.

Mr. J. How. I think that Gentleman might very well have moved the Question without that Limitation; for that is as much as to say, That Witnesses shall be examined to none of the Treasons in the Bill, except those for which he hath been Indicted; and that is a Limitation I hope shall not be put to the Enquiries of this House. I hope you will put it, That they shall bring Evidence to the Matters alledged in the Bill generally: There are several other Allegations in the Bill which I would have him answer to; as the alienating the Affections of the King's Subjects from him, which I take to be High Treason.

Members. No, no.

Mr. J. How. Why? If it be not High Treason, it hath nothing to do in that Place. I believe 'tis a very high Crime, and would induce me very much for the Punishing of Sir John Fenwick.

Mr. Norris. Sir, I do not know how the Questions may be carried since Candles are come in; but I think 'tis for the Better. I think there are two Things have been spoke to; one is this Bill: I find those Gentlemen that were against the Bill on Friday, are more against it now. I was for the Bill then, and am now for a second Reading of it: I think the Bill is very plain, and know not what they would have mentioned in it more, unless

less they would have had the *King's Head Tavern*, and what Wine they drank there. I think there is all the Reason in the World to hear the Witnesses to prove him guilty of High Treason. As to the Point of Time, I should be very willing to allow it them, if that Question was put; and I think you have been very favourable to him already, in allowing him Council.

Mr. Smith. I would only observe, when the Bill was to be brought in, the Objection was, That you had not Witnesses. And now the Question is, Whether you can hear Witnesses upon Facts not particularly assigned in the Bill. I believe no Man can say, but that in the Indictment there are particular Facts that ought to be examined: I do own, for my Part, if Sir John Fenwick was a greater Man than he is, It were better he should escape, than you should spend so much Time about him. Sir, the Indictment is mentioned in the Bill; no Man thinks that Goodman's going away, is Reason enough for bringing in such a Bill against Sir John Fenwick.

Mr. Speaker. Shall I read you the Question?

That Sir John Fenwick be allow'd further Time to produce Witnesses in his Defence, against the Charge of High Treason, and that he name his Witnesses.

Which Question was put, and passed in the Affirmative.

Mr. Speaker. The other Question is,

That the Council, who are to produce their Evidence against Sir John Fenwick, be allowed to prove Sir John Fenwick guilty of High Treason?

Sir Thomas Littleton. I do think one of the Reasons why this Bill was brought, was, because possibly, by the Absence of this Witness, he could not, strictly speaking, be proved guilty; though all Mankind is satisfied in his Guilt. And therefore I question whether it will amount to a legal Proof: And if you had such a Proof as would convict him by the common Proceedings of Law, I should not have been for a Bill of this Nature: For 'tis against the Honour and Dignity of this House, to do the Work that an inferior Court can do. But probably, by the Absence of this Witness, Sir John Fenwick, at a Tryal in the Old-Bailey, might escape; though at the same Time 'tis highly probable, the Witness that is wanting to convict him, is by his Means gone out of the Way. Therefore I speak to the wording of the Question; you say, *Shall be allowed to prove.* I would willingly prevent what may be objected when we come upon this Debate: If you do use the Word *Prove*, they may say, this is not Proof; for still Goodman is not here. If you please to say, That we will examine Witnesses to the Treason, and we will be Judges how far it appears to us, whether he be guilty, or not guilty.

Mr. Speaker. Will you let me propose it to you thus then? That the Council, in producing their Evidence against Sir John Fenwick, be allowed to examine Witnesses touching the Treasons mentioned in the Bill, for which Sir John Fenwick is Indicted?

Mr. Mountague. I do not observe, that in Reading of it, you say any Thing as to the other Allegations of the Bill: I think you should word it, That the Council be allowed to produce Evidence

to the Allegations in the Bill, and the Treasons whereof he stands Indicted.

Mr. Speaker. Well then, the Question is this, That the Council that manage the Evidence against Sir John Fenwick, be allowed to produce Witnesses touching the Allegations in the Bill, and the Treasons whereof he stands Indicted?

Which Question being put, it passed in the Affirmative.

Mr. Speaker. Will you please to appoint a Time for it?

Mr. J. How. That I would move you is this. You were so extremely late before you went upon this Information, That you had not Time to go through any Part of it; therefore I would move you, that you would appoint early in the Morning for Sir John Fenwick to be here.

And thereupon it was Ordered, That Sir John Fenwick should be remanded to Newgate, and brought to the House on Monday 10 a Clock.

Mr. James Mountague. Sir John Fenwick now insisted he had not Notice; I humbly move, that he may be brought in, and acquainted with what you have Ordered. And accordingly Sir John Fenwick was brought to the Bar.

Mr. Speaker. The House have consider'd; of what Sir John Fenwick hath said at the Bar, by his Council, and they are of Opinion, That Witnesses ought to be examined there, to prove the Allegations of the Bill, and to prove him guilty of High Treason whereof he stands Indicted; but in favour to you, because your Council said you were not prepared, the House is willing to give you Time till Monday next, to make your Defence; and they require you to give in a List of your Witnesses, and if you send to me, you may have a Warrant for their appearing at that Time; and they require you to be here, so that they may proceed upon the Bill exactly at Ten a Clock.

And Sir John Fenwick being withdrawn,

Resolved,

That the Bill for Attainting Sir John Fenwick of High Treason, be read a second Time on Monday next.

Luna 16 die Novembris, 1696.

Mr. Speaker. Gentlemen, I would receive your Directions in one Thing: You have Ordered a Member to produce a Letter, and the Council, in opening the Evidence, have referred to it. That Member desires to know the proper Time for him to do it; Whether, while the Council are managing the Evidence at the Bar, or whether he must stay till they are withdrawn?

Mr. Sloane. As to this Matter, I do not question but 'tis to be offered as an Evidence; and by the same Reason that you give him the Favour to examine the Witnesses that are produced against him; for the same Reason the Letter ought to be read in his Presence, that he may explain it, or deny it: And give me leave to tell my Thoughts of another Matter: If that worthy Member is to offer Evidence of what he took from Sir John Fenwick's Mouth, (though a Member commonly gives his Evidence in his Place, after the Council is withdrawn) I think 'tis not only fair to produce the

Letter in his Presence, but that Sir John Fenwick should hear what he says, and deny if he can.

Mr. Speaker. Is that your Pleasure, that the Letter be produced before Sir John Fenwick, and that the Evidence to be given by Mr. Vernon shall be in the Presence of Sir John Fenwick?

The Question being accordingly put, it passed in the Affirmative.

Then the Serjeant was Ordered to take his Mace, and go into Westminster-hall, and summon the Members.

And being returned, The Order of the Day for Proceeding on the Business of Sir John Fenwick was read. [It being a Quarter before Eleven a Clock.]

Then Sir John Fenwick, and the Council and Solicitors on both Sides, were brought in.

Mr. Speaker. Sir Thomas Powys, when you were here last, you insisted upon it, That the Council against Sir John Fenwick should be kept to the Proofs relating to the Allegations in the Bill only; or else that you might have further Time, because the Witnesses were not ready. The House have considered that Matter, and in favour to Sir John Fenwick, that he might have no Surprise, have given him to this Day; but they do allow the Council to give Evidence not only as to the Allegations in the Bill, but to prove Sir John Fenwick guilty of High Treason; and therefore Mr. Serjeant Gould, you are at liberty to go on with your Evidence.

Mr. Serjeant Gould. May it please you, Mr. Speaker, We are here to give in our Charge; and the Evidence that we have against Sir John Fenwick. I find by your Order, That we are now allowed to produce Evidence touching the Allegations of the Bill, and likewise of the Treasons for which he stands indicted; therefore I shall beg leave to open first, how he stands charged by the Indictment.

The Indictment first charges him with compassing and designing to depose the King, and put him to Death. The second Charge is, For inciting the French King to send an Army of Soldiers to invade this Kingdom, and to make a miserable Slaughter amongst the Subjects of this Kingdom. The Third Thing is, For adhering to the King's Enemies. The Fourth Part is, That to effect this, That he, together with several others, that is to say, Charnock, Sir John Freind and others, did consult, propose, treat, and agree to invite the French King to send a Number of Soldiers to invade this Kingdom, and to procure great Numbers of armed Men against the King, to rise and be formed; and with these Enemies, upon their landing and invading this Kingdom, to join, for to make and carry on a Rebellion and War in this Kingdom. And further it charges, That he did consult, consent and agree, to send Charnock as a Messenger from Sir John Freind, and others, into France to the late King James, to propose to him, to procure the French King to send Soldiers and armed Men to invade this Kingdom. Then likewise to effect this, the Indictment charges him with providing Horses, Pistols, and other warlike Arms. This is the Charge of the Indictment; and these Matters are in the Bill: For the Bill does charge him with compassing and imagining the Death and Destruction of the King, with adhering to his

Enemies, by consulting and agreeing with several Persons at several Times, to send Charnock to the late King James in France, to invite and encourage the French King to invade this Kingdom with armed Forces, and Promises to join them, and assist them with Men and Arms.

Then the Bill does take notice of other Matters, That Sir John Fenwick hath protracted his Tryal, by giving Assurances to the King to make a plain Discovery; by Reason of which he did not come to his Tryal, and now one of the Witnesses against him is withdrawn. May it please you, Sir, This is the Charge as it stands before this Honourable House; and the Evidence we shall charge him with, will be of this Nature: We shall give you an Account, That the latter End of May, or Beginning of June, Sir John Freind and Charnock, and several other Persons, met at the King's Head, and upon that Meeting they consulted how to invade this Kingdom; and they concluded in this, That they would send Charnock into France; and he was to propose it to King James, That he should procure 8000 Foot, and 2000 Horse and Dragoons; and upon their Landing they were to join them with 2000 Horse. After this they had another Meeting; for Charnock, to be Sure of the Matter, would have another Meeting; and then he proposed it to them, Whether they continued in the same Resolution? And they all then declared, particularly Sir John Fenwick, That they did approve of it, and stuck by it; and that Charnock should go for that Purpose to France. Charnock, in pursuance and execution of this Treason, does go to France, and brings back a Message, That the Matter had been communicated to the French King, but at that Time he was not ready for them, and could not spare his Soldiers, and his Troops. Then it rested for some Time, till towards Christmas, when Sir George Barclay came into England, and he brought with him a Detachment of about Sixteen, and their Province was to assassinate the King: But there was another Part, and that was the Invasion; and in that Part was Sir John Fenwick concerned, which we shall produce our Evidence to prove upon him; but it does fall out that we have but one Witness to this Matter, that we can produce *viva voce*; though when this Indictment was found, (for it was found upon the A & last Sessions, which required two Witnesses to each Species of Treason) we had two, but one is since withdrawn, and that is touched in the Bill, as in Truth the Fact is. Now if Sir John Fenwick had come on in the ordinary Course of Proceedings to be Tried, Sir John Fenwick might have been Tried upon his Indictment, for then Goodman had been there; but he procrastinates his Tryal, he makes application to the King, and gives him Assurances from Time to Time of an ingenuous Discovery; but instead of that, when Goodman now is withdrawn, these Assurances have terminated in this counterfeit Confession that hath been laid before the House, and is charged in the Bill.

But, Sir, to supply this, we shall produce the Examination of Mr. Goodman; we shall prove to you not only the Evidence that hath been given upon this Indictment, upon which he hath been arraigned; but also the Evidence which hath been given upon the Tryal of Cook, who was convicted upon that Evidence. We shall go by these further Steps in the Case; and humbly offer it to the Consideration of this House, how far Sir John Fenwick will be affected in it. And that is this: Here hath been Goodman, and Captain Porter who

still stands his Ground; but they have tempted him with 300 Guineas in Hand, and 300 more was to be remitted to him upon his first landing in France, with Assurance likewise of King James's Pardon, and likewise 300 l. a Year; 100 l. a Year whereof was to be settled by Sir John Fenwick; this Proposition sprung from one Clancy: It could not be expected that Sir John Fenwick should appear in his proper Person, but he did by his Lady, who was with Captain Porter, and gave him Assurance of all that was proposed by Clancy, that That should be performed, and a great deal more.

We shall further give this Account, That when Sir John Fenwick was taken, there was a Letter handed to a third Person; and it appears by That, that he thought himself at that Time not safe, unless they could corrupt the Jury: For, says he, we must now get two or three stanch Persons that will starve the Rest. These Steps we shall proceed upon, and begin with the Indictment, and call our Witnesses to it.

Mr. Serjeant Lovel. Mr. Speaker, I shall not repeat what hath been said; because I know what hath been materially said, can't pass the Observation of this House. The Method we desire leave to proceed in, is the Method you have prescribed us; and that is, first to prove the Allegations of the Bill: And that we shall make appear to you by undoubted Proofs. That Sir John Fenwick does stand indicted for these Treasons at the Sessions at the Old Baily, the 28th of May, upon the Oaths of Porter and Goodman, that we shall prove by Records, and that is not capable of any Traverse or Denial. We shall also prove, by Matter of Record, That several who were concerned with Sir John Fenwick in this Conspiracy have been tried and attainted; and then we shall call a living Witness to prove Sir John Fenwick guilty of Treason in the highest Manner. Mr. Tanner, deliver in the Indictment of Sir John Fenwick.

Which was delivered in, and read at the Table.

Mr. Serjeant Lovel. The Bill does charge, That he stands Indicted upon the Oaths of these two, Captain Porter and Mr. Goodman: Besides, I must beg leave to observe, that by the Act of Parliament made last Sessions, 'tis enacted, That no Person shall be indicted unless upon the Oaths of two Witnesses; had not these Witnesses been Sworn before the Grand Jury at that Time, this Bill could not have been found according to that Law, nor would Sir John Fenwick have pleaded: But he hath been arraigned, and pleaded; so that we submit it to this House, that it does appear upon Record, That this Indictment was found upon the Oaths of two Witnesses: Besides that, two Witnesses are subscribed to the Bill. Now that other Persons have been indicted, and convicted upon the same Evidence, we shall prove, and that likewise by Records.

Mr. Serjeant Gould. I thought when we came to give you an Account of the Absence of Goodman, then to have given you Account of this; and other Matters.

Mr. Speaker. You will agree upon your Method, Gentlemen: Who do you call in the first Place?

Mr. Serjeant Gould. Captain Porter, Sir. (*Who being present.*)

Mr. Serjeant Gould. I desire, Mr. Speaker, that he will give an Account of what he knows concerning this Matter, as also of what is charged in the Indictment.

cerning this Matter, as also of what is charged in the Indictment.

Mr. Speaker. Captain Porter, the House requires you to give them an Account of your Knowledge of any Conspiracy, by Sir John Fenwick, against the King and this Government; and likewise of your Proceedings upon the Indictment against him for High Treason.

Captain Porter. About the Middle of May was Twelve-months, there was two Consultations, one at the King's Head in Leadenhall-street, and the other in Pall-mall; these two Consultations were for the Considering of the best Means to bring the late King James into England again: For it was said, That King William being gone beyond Sea, he had left but few Forces, and therefore they thought they could not have a fitter Opportunity than that Juncture; upon which, they pitched upon Charnock to go into France, and make some Proposals to the late King James, to borrow 10000 Men of the French King, whereof there should be 8000 Foot, 1000 Horse, and 1000 Dragoons; and it was proposed, when they came over, to meet them with 2000 Horse.

Mr. Speaker. Where was this?

Captain Porter. Our first Meeting was at the King's Head in Leadenhall-street; after that, Mr. Charnock desired another Meeting, and then we met at Mountjoy's in St. James's, and we all stood to what he had before resolved, That he should go over to King James, and make this Proposal; and that if he could get so many Men of the French King, we would meet him with so many Horse.

Mr. Speaker. Sir, you say the first Meeting was at the King's Head in Leadenhall-street, who was then present?

Captain Porter. There was my Lord Aylesbury, my Lord Montgomery, Sir John Fenwick, Sir John Friend, Sir William Perkins, Charnock, Mr. Cook, and my self; we dined there, and after Dinner Mr. Goodman came in to us.

Mr. Speaker. Did Sir John Fenwick hear this Discourse?

Captain Porter. Yes, Sir.

Mr. Speaker. Did Sir John Fenwick consent to it?

Captain Porter. He did absolutely consent to it. Sir John Friend did propose it; says he, Do not let us propose more than we can bring.

Mr. Speaker. Then you say you had a second Meeting.

Captain Porter. When we agreed upon this Business in Leadenhall-street, Captain Charnock desired another Meeting, to know if we continued in our Resolution; and the next Meeting was at Mrs. Mountjoy's, I think then my Lord Montgomery was not there, nor Mr. Goodman; but there was my Lord Aylesbury, Sir John Fenwick, Sir John Friend, Sir William Perkins, Mr. Charnock and my self.

Mr. Speaker. How long after?

Captain Porter. About eight or ten Days, to the best of my remembrance.

Mr. Speaker. What was said at that Meeting?

Captain Porter. The second Meeting was to agree to the same Thing: We desired Charnock to go as soon as possible to acquaint King James, that the sooner he came that Year, the better.

Mr. Speaker. Did Sir John Fenwick consent and agree, at the second Meeting, to his going into France to procure the Forces?

Captain Porter, Yes, Sir.

Mr. *Speaker*. Will you give the House an Account of any Thing else you know, relating to this Matter?

Captain *Porter*. That is all.

Mr. *Serjeant Gould*. Was you examined by the Grand Jury, when the Bill was presented against Sir *John Fenwick*?

Captain *Porter*. Yes, Sir.

Mr. *Serj. Gould*. What Evidence did you give to them?

Captain *Porter*. The very same I give now.

Mr. *Speaker*. Mr. *Serj. Gould*, what have you to say further to him?

Mr. *Serj. Lovel*. We would ask, whether Mr. *Cook* was at the first Meeting?

Capt. *Porter*. Yes, Sir, he was at both Meetings.

Mr. *Serj. Lovel*. Was Mr. *Goodman* at the preferring of the Bill of Indictment at the *Old Baily*?

Captain *Porter*. I saw him go in to the Jury, and he told me it was for the same Thing.

Mr. *Serj. Lovel*. We have some of the Jury here, and we will call them to that.

Mr. *Serj. Gould*. Now, if it please you, Sir, we will ask him to the Matter concerning *Clancy's* tampering with him.

Mr. *Speaker*. Will you give the House an Account of that Matter?

Sir *Tho. Pomys*. By your Favour, I hope you will give us leave to interpose in this Matter: For I am sure in the Case of Life, and in Case where there is a Law prepared to be made, subsequent to the Fact, to condemn any Man to Death, you will not only have good Evidence, but that which is legal Evidence. And I take it, that in Cases of this Nature, of a subsequent Law, the Evidence ought to be much stronger, and much fairer than when a Man is to be tryed by a Law in Being. If they should offer that which was said in the great Case of my Lord of *Strafford*, (which Attainder there hath been an Act of Parliament to reverse) by a Gentleman that did then appear against my Lord of *Strafford*, That where the House proceed in a legislative Way, there needs no Evidence at all; but every Man may follow the Dictates of his own Thoughts and Conscience. 'Tis in *Pensworth's Collections*, fol. 377. Yet, I hope, you will be of another Opinion, and expect stronger Evidence, than if a Man was to be tryed by a Law in Being. Now that which is offered now, cannot be allowed in any Court of Justice: They were going about to shew, That my Lady *Fenwick*, the Wife of the Gentleman at the Bar, that she had used some Means to take off *Goodman's* Evidence, and they would make use of that against her Husband. Now, what any Man's Wife says cannot be made use of against him, as nothing that she says; or does, can be made use of for him; and, by the same Rule of Justice, it cannot be made use of against him: For otherwise the Rule would be unequal, That she might be a Witness against him, but not a Witness for him; that seems so unjust, that it will not be admitted in any Court whatsoever.

Sir *Barth. Shower*. By your Votes the Prisoner is allowed Council, and the King's Serjeant is to produce the Evidence against the Prisoner: That Phrase of Evidence makes us believe, or at least to hope, that you will give us leave to object to that which is not so; and in this I appeal to the Knowledge of the Gentleman on the other Side, who hath had a great deal of Experience of this Kind; and I am sure, in all his Observations in the *Old Baily*, he can't say this was ever admitted in Case

of Treason, nay not in Felony, the Actions or Sayings of other Persons; and I must confess I wonder to hear him move it now.

When attempted on behalf of a close Prisoner, that was not visited by any Body, it was not admitted that the Actions of a third Person at large, should be admitted against him: There the Actions of a Wife cannot be Evidence for, nor against her Husband. It was never but in one Case, and that for Sodomy, allowed, and that was after two or three Witnesses besides had been produced, and by the Opinions ever since, it hath been allowed not to be Law; and that for the Oeconomy, the Danger might follow in Cases of Matrimony and Families. Now they both do concern the Acts of other Persons, and not Sir *John Fenwick*. Besides, I have one Objection more, and that is, There is no such Thing alledged in the Bill; and with Submission, you have declared, That they should produce Evidence as to the Allegations in the Bill, and the Treasons in the Indictment; but I can't find any Order that they should produce Evidence concerning the carrying away of any Witness; and 'tis not alledged, that *Goodman* is withdrawn by Sir *John Fenwick's* Privy: As to *Porter's* being tampered with, there is no Colour of Suggestion in the Bill; so that this neither being in the Bill, nor being Evidence at Law, we must be surprized very much by it, if you should admit it.

Mr. *Speaker*. You hear the Exception, What do you say to it?

Mr. *Serj. Gould*. I think what these Gentlemen say, will receive a plain Answer. They have made an Objection without answering the subject Matter; it is an Allegation in the Bill, That *Goodman* hath withdrawn himself. Now the Use we make of this, is to let us in to give an Account of what *Goodman* hath Sworn, and to entitle us to read his Examination: For, say we, he hath been tampering to stifle this Conspiracy, to take off the King's Evidence. For no Body doubts of the execrable and wicked Conspiracy; and 'tis as plain here hath been two Witnesses to prove it; and as plain that this Indictment is found, according to the late Act of Parliament, upon the Evidence of *Porter* and *Goodman*. Now to shew this Conspiracy is carrying on, we offer to prove the Tampering that hath been, to take off the King's Evidence, and to lay that before the Consideration of this House; so the Use we make of it, is only preparatory to let us in to tell you what *Goodman* hath Sworn, and in good Time we shall produce to you an Indictment, where, upon his very Oath, and upon the same Evidence as we offer here, another of the Traytors hath been convicted; and therefore we humbly offer it, Whether as this Case is, we shall not be admitted to prove this Tampering?

Mr. *Serj. Lovel*. Before we withdraw, I beg two Words as to what is objected on the other Side, for the learned Gentleman appeals to me; and I must appeal to the Knowledge of some Members that are learned in the Law, and to all, That even in criminal Cases, Courts are not bound up to positive Evidence, but that the Evidence of Circumstances, and some Persons to corroborate them, is admitted: And if it should be so, that nothing but positive Evidence should convict, we should have very few Convictions at the *Old Baily*; as to Clipping and Coining, where One is convicted by positive Evidence and direct Proof, Forty are convicted and attainted by Circumstances, as Materials found about them, and putting off Counterfeit-money. Sir, I must sub-

mit to you, Whether, as the Nature of this Case is, this House will not think fit to hear all Evidence that may concern this Matter, whether Certain or Circumstantial; and the Wisdom of this House will distinguish afterwards, what they think is Material, and what is not. We do take this to be Part of the same Conspiracy we do charge the Prisoner at the Bar with, that he might not come to condign Punishment; and therefore we pray, that let the Proceedings of other Places be what they will, that you will hear the whole Matter in this Case, whether the Evidence be Positive or Circumstantial.

Sir Thomas Powys. I think they mistake us when they give us such an Answer; we doubt not but there is positive Evidence and circumstantial, but we suppose this to be no Evidence at all: Mr. Recorder tells us true, That circumstantial Evidence is frequently made use of; but we say, That whatever my Lady Fenwick hath said or done, is not to be admitted as Evidence against the Prisoner at the Bar; because what she hath said by Way of Endeavour to draw off Goodman, is no Evidence at all to be offered against her Husband, and is not so much as circumstantial Evidence.

Sir Barthol. Shower. We do agree, If the Bill had been brought in against my Lady Fenwick, or against Clancy, this had been proper Evidence; and they did, and may deserve Punishment for it themselves: But this is no Evidence against Sir John Fenwick, that is here.

Mr. Serj. Lovell. We think 'tis properly before the House, even by the Order of the House it self: For in the first Place, we are to speak to the Matters contained in the Bill. One Matter is, That Sir John Fenwick had been Tryed before now, but for Reasons mentioned in the Bill; and that he delayed his Tryal, till such Time as Goodman was withdrawn; therefore what lies before us by the Direction of the House, is, That till such Time as Goodman was withdrawn, Sir John Fenwick did pretend to go on to make a Discovery, and afterwards put it off with what is charged in the Bill: But say they, What is done by my Lady Fenwick, is no Evidence against him. When all the Circumstances are laid before the House, what Dealings there was with Captain Porter, and what was said at that Time, and the Consequence presently after Goodman's going away, I hope it is as much Evidence as the Case will bear.

Sir Richard Temple. Sir, Desire they may withdraw.

Accordingly they withdrew.

Sir Richard Temple. I think it much concerns the Honour of the House, when a Prisoner is at the Bar, that he should be allowed the Right of an Englishman; what you do here, may be a Precedent in after Ages; you are told what is offered as Evidence here, is admitted in no Court, and the Answer that is made to it, is of no Force at all; they tell you there is no Allegations in your Bill, That Sir John Fenwick had any Hand in his withdrawing, nor nothing in the Indictment of it, and for that Reason the Evidence seems improper; and if it was, this would be no Evidence at all; for the Oaths of other Persons is no Evidence against the Prisoner, to make him guilty of any Thing.

Lord Cutts. I think 'tis agreed already, That the Council for the Prisoner should not meddle with the Authority and Jurisdiction of this House; for if we are to be ty'd up to all the Forms and Niceties observed in inferior Courts, then to what

End is the Prisoner brought here? I think Evidence ought to be admitted, that may clear every Man's Conscience, that this Bill against Sir John Fenwick ought to pass.

Mr. F. How. A Gentleman said, We are not ty'd to the Forms of inferior Courts; but tho' we are not ty'd to the Forms of inferior Courts, we are ty'd to that which was the Ground of them, and that is right Reason and true Sense: They have alledged that he was Indicted, no Body doubts it. That Goodman is withdrawn, no Body doubts it: But what is that to Sir John Fenwick? It might be with a Design for Good or Evil to Sir John Fenwick. My Lord Jeffries said, at my Lord Delamare's Tryal, (as I am informed) That one Witness, with good Circumstances, was enough to convict a Man of High Treason. And I am told, it was told him then, that if they ever met him in the House of Lords, he should answer it with his Head. I desire you would ask Captain Porter, when he comes in, Whether this was discoursed before Dinner, at Dinner, or after Dinner? And whether he knows that Goodman heard this or no?

Mr. Chancel. of the Exchequer. There seems a particular Shyness to know the Truth of this Matter; I mean in the Council to other Day: The Gentleman says, That Goodman might be withdrawn to the Prejudice of Sir John Fenwick, as well as for his Good; I desire you will not let the Government be so Stigmatized. You have given leave to the Council to examin to any Thing that may be added to the Bill; for upon a Commitment, I can move you to put any Thing that shall be thought reasonable.

Sir Thomas Dyke. It may be a reasonable Thing to enquire why Goodman is withdrawn? But the Question is, Whether this be a proper Time? The House is not ty'd to the common Forms, but they are ty'd to the common Rules of Equity: And the Question is, Whether the House will permit any Person to suffer by the Acts of another?

Mr. Soll. Gen. It is discretionary, whether you will determine that this is Evidence now, or after you have heard it. I can't tell at whose Tryal it has, but I won't enter upon the Legality of the Thing: 'Tis one Thing when a Man is to be Tryed by a Jury, and another Thing when he is to be Tryed before Judges. A Jury may be so sway'd and possessed by it, that it may not be fit for them to hear it: But look into the Court of Chancery; and there, Depositions, if one Side say, they are Evidence, and the other Side say, they are not, are every Day admitted; and the Rule is, That it is sooner dispatched by hearing of it, than not. You do not sit here as a Jury, but as Judges; and will consider how far the Actions of a Wife shall concern her Husband; you will do the Prisoner Right, and your selves Right, if you will hear them.

Sir Francis Winnington. The Question is, Whether the King's Council —

Mr. Speaker. Let me set you Right; they are not here as King's Council.

Sir Francis Winnington. Very well: But in this House you are the Judges and Jury too. The Evidence that is opened, is to induce you to believe that he is guilty, and the Gentleman that spake last, will not allow it to be a legal Evidence. Then the Question is, Whether, you being Judges of the Fact, as well as of the Law, should be afraid to be induced to believe a Fact, by that which is not legal Evidence? Suppose my Lady Fenwick had had the Design, and had told her Husband what she

she intended to do, and he should have said, he scorn'd it: This is possible, if you go to supposing; and that he might apprehend it would do him a Mischief. Now it can be to no purpose to hear this Evidence, unless it be to satisfy the House, in order to attain the Prisoner. No, but say they, Let us hear, and we will judge afterwards: Why so? It can't affect the Prisoner: And if any Person hereafter have a Mind to have my Lady *Fenwick* punished, they may examin it.

Mr. *Sloane*. The Gentleman that spake last, hath made one Supposal; let me make another. He supposes, That it may appear by the Evidence, upon the Examination of Witnesses, that what my Lady *Fenwick* or *Clancy* did, was contrary to the Direction of Sir *John Fenwick*: If the Evidence happen to be so, 'tis nothing. But we may suppose again: Suppose it happens, that it appears by the Evidence, that it was for the Benefit of Sir *John Fenwick*, to the greatest Degree, to get away one of the Witnesses, & *Cui bono*, is the strongest Presumption to me. I do allow, in *Westminster Hall*, that a Woman shall not be a Witness for or against her Husband; but if she be directed by her Husband, *Qui facit per alium, facit per se*; you do not alledge all the Evidence in the Indictment, that runs in general; if the Evidence differs as to Time and Place, ye may find him guilty of the Indictment.

Lord *Norryes*. Because I would not willingly go upon Suppositions, I desire the Clerk may read the Question that you have passed the last Day, to examining Evidence.

Which was accordingly read.

Now I desire to know, Whether this be Treason within the Indictment, or any of the Allegations of the Bill; otherwise I think you have tied your selves up by that Rule.

Mr. *Pelham*. I did expect the Gentleman that spake lately, would have cleared the Matter. He gave you a Distinction between the Proceedings of *Westminster Hall* and the *Court of Chancery*. I am ignorant of both. I desire to know, whether we are to go here by the Proceedings of *Westminster Hall*, or the *Court of Chancery*? If we are not tyed by these Rules, we may let our selves into any Evidence that will induce us to believe him guilty or not guilty. If we are tyed to those Rules that are observed in all Courts of Justice, where Tryals of Treason are had, this can be of no Validity: So I desire to know, whether we are to go according to the Proceedings of those Courts, or whether we may proceed as the Court of Chancery?

Sir *Tho. Littleton*. The honourable Member that spake last, desires to know, Whether we are bound by the Rules in *Westminster Hall*, in their Proceedings or not? I believe it would have been to very little Purpose to have thought of this Bill, if those Courts could have convicted him. I believe if the Council had tyed you to the Proceedings of *Westminster Hall*, and therefore that you could not have proceeded on this Bill, you would have taken Notice of them, and reprimanded them for saying so. I know not what to say to the Proceedings of *Chancery* in this Case; but I suppose upon this Tryal, you will inform your selves by the best Methods you can; and every Man, according to his Judgment, be for, or against the Bill. If upon what I hear, I am of Opinion, he is notoriously guilty, I shall freely pass the Bill. If I do

so much as doubt that he is guilty, according to the old Rule, *Quod dubitas ne feceris*, I shall not be for it; and in Order to this, I am for hearing every body that comes before us. It is said, that possibly *Goodman* is withdrawn to Sir *John Fenwick's* Prejudice: I would be glad to hear that; if so, I shall have the worse Opinion of the Bill. They say, 'tis not alledged in the Bill, concerning Captain *Porter's* being tampered with; but 'tis alledged, That *Goodman* is withdrawn, and that 'tis not alledged, that Sir *John Fenwick* was privy to it; but it may weigh to Gentlemens Judgments, how he comes to be withdrawn. They that tamper with one Witness, may be thought like to tamper with another. They tell you, That the Evidence of a Man's Wife will not weigh against her Husband. It may be so in Point of Law; but if you think your selves bound up to the strict Rules of Law, dispose of your Bill presently.

Sir *Will. Coryton*. You have been pleased to give Leave to the King's Council to prove Matters against Sir *John Fenwick*: You have heard Captain *Porter* upon the Fact. If they had opened the Matters, that Sir *John Fenwick* was instrumental to convey *Goodman* away, I should have been willing to have heard it: But they opened it, That my Lady *Fenwick* was instrumental in Conveying away *Goodman*: And this ought in no sort to be admitted. An honourable Gentleman of the Long Robe, made a Difference in the Proceedings between the Court of *Chancery*, and the Courts of *Westminster Hall*: But I would fain know, if a Fact was stated, Whether my Lord Keeper could determine the Matter before a Commission went to prove it. 'Tis true, we are not tyed to the Forms of Law, but we are tyed to the Forms of Justice. I know no Case where a Wife is admitted to be a Witness for or against her Husband. In *Brown's* Case indeed, who took a Woman away, and forced her to marry him; the Question was, Whether she should be admitted? And in that Case she was admitted as a Witness, because the Necessity of the Thing required it; and there was no other Way to prove, whether he had her Consent or not. Another Case there was of my Lord *Castlehaven*, where from the Nature of the Thing, it was admitted; for it was impossible there should be any other Proof of it. But if my Lady *Fenwick* be guilty of this Matter, it must only by Way of Inference affect Sir *John Fenwick*. They tell you, they insist upon it as an Indictment; then it comes to be a Matter of Consequence; and therefore since the Matter hath been fully stated to the House, as to what they would prove: I think we may now give our Judgment upon it.

Mr. *Boscawen*. You are here in your Legislative Power, and are no more tyed to the Rules of Law in Examining of Witnesses, than you are in giving of Judgment; for you can give those Punishments that never are given in *Westminster Hall*. I am of Opinion, that my Lady *Fenwick* cannot be examined for or against her Husband; but if he send her to sollicite for him, it shall have some Weight with me. Those that don't believe it from what he says, may give their Judgment accordingly: I desire to know of this Gentleman, if I don't believe it, whether I can give Judgment against him? I believe a Man's Conscience ought to go with his Judgment.

Mr. *Speaker*. I will read the Question. That Captain *Porter* be examined to the Attempt of taking off his Testimony as to the late Conspiracy.

Which

Which Question being put, it passed in the Affirmative.

Mr Harley. I suppose you will let the Council of both Sides, have first done with their Questions; and then there will be some Questions proposed to you.

Mr J. Howe. They tell you how that Sir John Fenwick was indicted, and that Goodman is withdrawn; but there is one Thing the Council of both Sides slip over, and that is, Sir John Fenwick hath given in false Informations; it looks as if they were agreed on both Sides in that Matter: I desire the King's Council may be asked, Whether they have any Evidence of that Matter?

Col. Cranford. Since I am mentioned in that Paper —

Adm. Ruffel. I believe though that Gentleman was afraid that Matter would have been passed over, yet that the Gentlemen of this House that are therein named will take Care, for their own Vindication, That that Matter should not be slipped over; I suppose the proper Time for that is, when the Evidence is over: I assure you, if no Body else will, I will.

Then Sir John Fenwick, and the Council of both Sides, and Captain Porter, were brought in.

Mr Speaker. Sir Tho. Powys, The House hath considered of your Exception to the Testimony of Captain Porter, as to the Point he was to be examined to, and they are agreed, That 'tis fit that all the Evidence should be laid before them, and they can judge afterwards, whether it be material or fit to be allowed, or not. Therefore, Captain Porter, pray do you give the House an Account at large of what Attempts have been made upon you, at any Time, to draw you off from your Testimony, with Respect to the late Conspiracy.

Capt. Porter. I had a Meeting with one Clancy, first in *Mitre Court*, at and afterwards at the *King's Head Tavern*

by the Play-house: At those Meetings he proposed to give me 300 Guineas to bear my Charges to *France*, and to send me a Bill for 300 more; and likewise that I should be allowed 300 l. a Year. —

Mr Speaker. How long had you been acquainted before?

Capt. Porter. Several Years.

Mr Speaker. Did he tell you who he came from?

Capt. Porter. He said, he had been with *Fenwick*, who desired him to make this Proposal to me.

Mr Speaker. How often had you Meetings with him?

Capt. Porter. About seven or eight Times.

Mr Speaker. What Satisfaction did he give you, that Sir John Fenwick would perform the Agreement?

Capt. Porter. He told me, my Lady Fenwick, and my Lady Montgomery, should meet and confirm every Thing that Night. The Day before I was to go, I met with my Lady Fenwick, who told me, my Lady Montgomery could not come, because one of her Children was fallen sick.

Mr Speaker. What Satisfaction did she give you, that Sir John Fenwick would perform what Clancy had proposed?

Capt. Porter. She said, what Clancy had proposed should certainly be made good. —

Mr Serj. Gould. Did you receive any Thing in Part, in Pursuance of this Agreement?

Capt. Porter. I received 300 Guineas of Clancy, and he promised to me a Bill of 300 more, which was deposited by *Fenwick* in his Hands, to be sent after me into *France*.

Mr Serj. Gould. Pray what Letter was that he brought you?

Capt. Porter. He brought me a Letter, and said, It was writ by Sir John Fenwick to King James on my Behalf.

Mr Speaker. Did he deliver that to you?

Capt. Porter. No; he delivered it to the Gentleman that was to go with me, one Captain Donelagh.

Mr Speaker. Why did you not take that Letter into your own Hands?

Capt. Porter. I had it, and read it, before it was seal'd up.

Mr Serj. Gould. Do you remember the Contents of it?

Capt. Porter. As much as I remember was, He desired his Majesty, by Reason that my going away was to save my Lord Aylesbury, and my Lord Montgomery, &c. to pardon what I had done.

Mr Serj. Lovel. Who subscribed it?

Capt. Porter. It was not Sir John Fenwick's Name, but they told me, King James would know who it came from.

Mr Serj. Lovel. How did you proceed after the Meeting with my Lady Fenwick?

Capt. Porter. The next Night after that he had paid me my Money, and shewed me the Bill, and I was to go away the next Day after; They said, the Boat was provided.

Mr Serj. Lovel. Can you tell whether the Boat was provided?

Capt. Porter. They were taken up presently after.

Mr Serj. Gould. We will now produce a Record to confirm the Evidence that he hath given you: This Person hath been convicted for this Tampering.

Accordingly the Record for Clancy's Conviction was produced.

Sir Tho. Powys. I desire to know, Whether they offer this as Evidence against Sir John Fenwick?

Mr Speaker. They offer to prove, That this very Person hath been tampered with, to take off his Testimony; and they leave it then to the House to judge, who is most likely to be guilty of Goodman's Withdrawing. They begin to shew you, there hath been an Attempt to take off this Person's Testimony; you have heard the Person himself to it already: So now they offer to read the Conviction of Clancy to this Matter.

The Record of Clancy's Conviction was read.

Mr Serj. Lovel. We will prove the like Solicitation hath been made by Mr Dighton, who is the Solicitor for the Prisoner at the Bar.

Mr Speaker. What is your Witness's Name?

Mr Serj. Lovel. Thomas Roe. If you please, Sir, to ask him, what Endeavours have been used by Mr Dighton, to make Use of him, that Goodman might withdraw himself.

Mr Speaker. Mr Roe, You are required to give this House an Account of what hath passed between Mr Dighton and you, in Order to take off the Testimony of Mr Goodman.

Mr. Roe.

Mr *Roe*. About the Middle of September last, I had Occasion to go to Mr *Dighton*, to enquire, Whether the Commissioners of the Land Tax in *Surrey*, sate; for I knew he was concerned in some Affairs for that County: He told me, He did not positively know, but would speedily enquire. At the same Time, he took Occasion to tell me, He knew it was in my Power to do Sir *John Fenwick* Service. I asked him, What he meant by it? Says he, I know you know *Goodman* well, and it will be the better for you, if you will tell me: I asked him, What he meant by that Way of Talking? He desired I would meet him some other Time, and I should know further of his Mind; accordingly I did meet Mr *Dighton*: Says he, You know *Goodman* well, and if you can say any Thing that can discredit *Goodman*'s Testimony, you shall have 100 *l.* a Year settled upon you for your Life. Says I, Sir, I do know him well: Says he, Did you never hear him talk of Poysoning the Duke of *N.* and Robbing on the High-way, and that he is concerned with Clippers: Says I, I have heard him talk of those Matters several Times, but you can't think I will be a Witness, and expose my self, and disparage People, till I know for what. Says he, For that you shall be satisfied; you shall have 100 *l.* a Year settled upon you, provided you can discredit *Goodman*'s Testimony, that Sir *John Fenwick* may come off, and it will be done by a Friend of yours.

We accordingly agreed to meet the next Day at a Coffee-House in the City, and appointed a Friend to be there, but Mr *Dighton* did not meet at the Time; and the Reason he told me, was, because Sir *John Fenwick* was that Day to be arraigned. As soon as Mr *Dighton* had made this Proposal, I told Mr *Goodman* of it, and he advised me to go on with him, and see if I could get any Offer under his Hand: I told him, he had appointed to meet me in the City, and a Friend to be there to hear me: I went, and told Mr *Dighton*, but Mr *Goodman* would not be satisfied with that, but said I must go to the Arch-Bishop and tell him what passed; so I did go and tell the Arch-Bishop what I have told you now.

Mr *Speaker*. Had you any Meeting after that?

Mr *Roe*. Yes, on the 19th of September, and then he made great Asseverations, that what he said should be performed; and that I should not only oblige Sir *John Fenwick*, but my Lord *Montgomery*; and that *Goodman* was a lost Man by being become a Common Evidence; and that it would not be in his Power to oblige any Man, my Lady *Dutchess* having discharged him of his Employ, and he would not be in a Condition to do further for me; and says he, whatever you would have gotten by serving my Lady *Dutchess* in her Concerns, shall be made up over and above this 100 *l.* a Year that I have promised.

Mr *Serj. Gould*. I desire he may be asked, Whether *Goodman* did not acquaint him, that a Sister of Sir *John Fenwick*'s had been with him, and upon what Occasion?

Mr *Roe*. About the Time of the Preferring of the Bill against Sir *John Fenwick*, I saw *Goodman* at *Hicky's Hall*; and a little after, he told me, that a Sister of Sir *John Fenwick*'s had come to him, and made some Proposals to him, and I acquainted the Duke of *Shrewsbury*'s Deputy, Mr *Vernon*, with it.

Mr *Speaker*. Did you pursue this Discourse with Mr *Dighton*, so as to come to any positive Agreement?

Mr *Roe*. No otherwise than what I told you, my Design was to have Mr *Dighton* to have given it me in Writing, or else for him to have said it before some other Man; but I don't know any Thing whereby I could have discredited Mr *Goodman*, if he would have done it.

Mr *Serj. Gould*. You observe, Sir, that one of the Witnesses whose Name is subscribed to the Bill of Indictment, is withdrawn: Now to give you an Account that he is withdrawn, I desire the King's Proclamation may be read.

Members. No, no.

Mr *Serj. Lovel*. We have Mr *Goodman*'s Examination under the Hand of Mr *Vernon*; we pray it may be read.

Sir *Tho. Poyys*. Mr *Speaker*, I desire to be spared a Word to this Matter: I take this to be a great Point, not only as it concerns the Life of this Person, but as it may be a Matter of Example in all Times hereafter; that which they would offer, is something that Mr *Goodman* hath sworn, when he was examined by Mr *Vernon*; Sir *John Fenwick* not being present or privy, and no Opportunity given to cross-examine the Person; and I conceive, that cannot be offered as Evidence; for if that should be allowed for Evidence, then what is sworn behind a Man's Back, in any Case whatsoever, may as well be produced as Evidence against him; and they know, that in a Case of the Value of Five Shillings, no Depositions or Examinations of any Man can be made Use of; and I am sure they will not say, that the Depositions taken between other Persons, where a Man is not a Party, can be made Use of as Evidence against him; and if not admitted where Property is concerned in the lowest Degree, I hope you will never admit it in this great Place, from whence inferior Courts (as to Justice) take their Measures.

Sir *Bartholomew Shower*. Mr *Speaker*, I desire you would spare me a Word of the same Side. I humbly oppose the Reading of this Examination, as not agreeable to the Rules of Practice and Evidence, and that which is wholly new; and this in civil Causes can't possibly be done: No Deposition of a Person can be read, though beyond Sea, unless in Cases where the Party it is to be read against, was privy to the Examination, and might have Cross-examined him, or examined to his Credit, if he thought fit; it was never pretended, Depositions could be read upon other Circumstances. But in criminal Cases, I appeal to the Gentlemen on the other Side, who know the Proceedings in the *Old Baily* very well, it was never admitted: Nay, in an Appeal of Murder, if Depositions be taken before the Coroner, and there be an Examination of Witnesses upon the Indictment, though the Appeal be for the same Fact, and in order to bring the Person to the same Punishment; yet, in that Case, those Depositions can't be read, because 'tis another Suit: But it was never attempted in any Court of Justice, that the Examination of Witnesses behind a Man's Back, could be read in any Place whatsoever. Our Law requires Persons to appear, and give their Testimony *viva voce*; and we see that their Testimony appears credible, or not, by their very Countenances, and the Manner of their Delivery; and their Falsity may sometimes be discovered by Questions that the Party may ask them, and by examining them to particular Circumstances, which may lay open the Falsity of a well-lay'd Scheme; which otherwise, as he himself had put it together, might have looked well at first; and this we are depriv-

deprived of, if this Examination should be admitted to be read.

Now, though the Practice of other Courts does not oblige this House, yet we know you will consider the Rules of Justice; 'tis but Justice in criminal Cases, especially as our Constitution is, that the Person shall see his Accuser. A Man may swear to a Deposition reduced into Writing, whose Conscience perhaps would not let him publicly accuse the Prisoner, Face to Face: Experienced hath shewed it often, that several that will calumniate another privately, will not justify the same in open Court of Justice. What *Goodman* is, 'tis not proper for us at present to give an Account of, but we oppose it at present, for that we were not present, nor privy, nor could have Cross-examined him; 'tis only an Information before a private Justice; for if not so, we know not what Authority he had to examin him; and then if so, Mr. Recorder knows, that in the *Old Baily*, if *Goodman* had died, it had not been Evidence: In case he had been sick, or withdrawn without our privy, they could not have read it: Nay, if he were withdrawn by our privy, it could not be read: 'Tis true, the Inticing him to withdraw, had been punishable in another Man, but could not have been read to have convicted the Party; and since this Examination could never have been read there; and if it must be unjust, and hath not been practised, I hope you will not do it now.

Mr. Speaker. Mr. Serjeant Gould, what do you say to it?

Mr. Serj. Gould. I observe this Gentleman's Objection, why this Examination should not be read; and under Favour, we think we are regular, as this Case is, to have his Deposition read. 'Tis true, as long as the Witnesses can be produced in all Courts, and Practice of the Law, you shall not read his Examination, or what is taken before a Justice of Peace: But that is not our Case: It is now fully proved before you, that he is withdrawn; and it is fully before you, that he hath given Evidence for the King, and hath been examined; and this is an extraordinary Case, and that is the Reason we are in Parliament: He hath Sworn this Matter, and before a proper Officer; Why then shall not his Evidence be read and allowed, when he is wilfully withdrawn, and we say, by the Contrivance of the Prisoner at the Bar? And the Thing speaks it self. Now, with Submission, I take it to be every Day's Practice, that where an Evidence is dead, his Deposition shall be read. It appears to you, that there was to have been a Tryal, but the Witness is withdrawn; and it appears plainly, that he hath been tampering: The Evidence, is full, in the Case as to *Porter*; and we have produced a Record of Conviction, that does confirm it: Now this is such a Practice, we come into Parliament to have it remedied; for otherwise Men shall commit Treason, and by their Contrivance and Art, the Witnesses shall be drawn away, and the Prisoner shall not be brought to condign Punishment. Here is the Record in which he gave Evidence, and he is withdrawn; and therefore I hope, in this Case, we shall be admitted to read his Deposition; for I deny what the Gentleman says, to be Practice; and Mr. Recorder can give you a better Account, who knows more of the Practice of it, That if a Witness is dead, they may read, his Depositions. We are here before you in Parliament, and by the same Reasons that others have been tampered with, this

Witness may be presumed to be tampered with; and therefore we are in your Judgment, Whether in this Case his Depositions shall not be read.

Mr. S. Lovel. 'Tis objected, on the other Side, That this Evidence ought not to be offered; and for what Reason? Because, say they, a Jury ought to go *Secundum allegata & probata*; and what is not strictly Evidence by Law, you are not to take notice of; but in Criminal Cases (which is this Case) where Persons do stand upon their Lives, accused for Crimes, if it appears to the Court, that the Prisoner hath by fraudulent and indirect Means, procured a Person that hath given Information against him to a proper Magistrate, to withdraw himself; so that he can't give Evidence as regularly they used to do; in that Case his Information hath been read: Which, I suppose, with humble Submission, is this Case; but I suppose, we are not here tied up to formal Evidence; but 'tis our Duty, since the House hath Commanded, to lay the whole Fact before you, and you are Judges what is Material, and what is not Material.

Sir Thomas Powys. 'Please, Sir, to spare me a little; for sure this is no small Matter. I did expect that they, if they intended to have supported this Evidence, would have mentioned some Author, some Case, or some Precedent where this has been before: — But he makes such a Distinction, I am mightily surpris'd at; for Mr. Recorder cites no one Instance, that ever he saw such a Thing in his Life; nor cites one Book that hath such Authority; but he gives you a Distinction, whether it be of his Side or ours, I must submit to you; for he seems to agree, that in Cases of Property, such Evidence is not allowed; but in Cases of Life, in which we ought to be more tender, he says, 'tis to be allowed. Sure, if it be not Evidence where Five Shillings only may be at Stake, I submit to you, whether it ought to be admitted in the Case of Life? For my Part, I know nothing of it, if it be a Rule; but I always thought the Evidence ought to be more Clear and Full in the Case of Life, than in the Case of Property; but Mr. Recorder turns it upon us; and says, though it is not Evidence in Case where Property is concerned, yet 'tis Evidence in Case of Life: But I desire he will shew any one Lawyer in England, that ever said it but himself.

Sir Bartholomew Shower. I answer to what Mr. Serjeant Gould says, That this is an extraordinary Case, I will not pretend to say any thing, you are the proper Judges of that; we now oppose it in respect of the Rules of Justice. As to Mr. Recorder's Distinction between Civil and Criminal Causes; he hath admitted, that in Civil Causes it would not be allowed; and I hope you will be of Opinion, that it ought not to be admitted in Criminal. The Jury must go *Secundum allegata & probata*. I desire to know what other Rules a Jury hath in Criminal Cases? But they say, that a Jurymen hath not as much upon his Oath in trying a Prisoner for his Life, as in trying an Action of Trespass? Is not the Oath, *You shall well and truly Try, &c. according to the Evidence you have heard?* Now, I would know whether the Form of the Oath, which the Wisdom of our Ancestors hath thought fit to use for 1000 Years past, does not direct what shall be Evidence? Evidence of *Prima Facie* must be Evidence of living Persons: I am

speaking for the Life of a Man, and for maintaining the Rules of Law, which I hope shall continue for ever: And that is, that the Examination of a Person that is absent, shall not be read to supply his Testimony. What you shall think fit to do here, we must submit to; but that 'tis allowed below, we must deny.

Mr. Recorder. Sir, I do, with humble Submission, stand to what I said: As to the Definition of *Allegata & probata*, in matter of Property, we agree with them; but as to *Allegata & probata*, in Matters Criminal, we must differ with them: I did say it before, and do say it again, with Submission, That in many Cases Criminal, there need no positive Evidence at all: and yet the Jury according to *Allegata & probata*, in that Case, may convict a Criminal. And I do say, with Submission, that where there is no positive Proof at all, yet in that Case, many Criminals are, and still will be convicted. I did instance before in the Case of Clipping and Coining, which are Matters so secretly practised, as 'tis very rare, there can be any positive Witness to prove the Fact: What is then the Method? Why we go by Circumstances, by Information of other Persons, by Tools, and other Instruments that are found; and though no Body ever see them do the Thing, yet they are convicted. We do not offer this Evidence to be as concluding Evidence, as if *Goodman* was here; but a Corroborating Evidence of what Captain *Porter* hath said. If it did wholly depend upon this Evidence, it may be it might have no great Weight; but since there is other Evidence *Viva Voce*, and since you have been pleased to order us to lay before you all the Evidence, we humbly offer it to you, and pray it may be read.

Mr. Manley. I humbly pray they may withdraw,

Mr. Speaker. If you please to withdraw; but first I am required to ask, if on both Sides you insist upon this Point?

And the Council for both Sides declared, they insisted on it.

And then withdrew.

Mr. Manley. I should not have presumed to have given you this trouble of their withdrawing, but that a Thing is insisted on by the Council for the Bill, which I think is of the greatest Consequence to all the Freemen of England; 'tis true, the Rules of *Westminster-Hall* are not binding to the Legislative Power; but I would not have the Legislative Power to be governed by the private Sense of any Man whatsoever; but by those Rules that are the Rules of Justice and common Equity. God forbid that we should, upon Suppositions, suppose our selves out of all the Rights of the Law. I never heard any Gentleman of the Long Robe, before the Learned Serjeant at the Bar, assert, that an Examination before a Justice of the Peace, could be read against a Man for his Life. 'Tis known to all that have looked into the *ABC*. of the Law, that it was never practis'd. 'Tis, true, in Equity, Depositions may be read, because they are taken by the Consent of all Parties; and 'tis as well a Deposition of one Side, as of the other, and the Witnesses may be cross examined. But that is nothing to this Purpose.

Mr. Sloane. I believe I may save you a great deal of trouble in this Matter; for those Gentlemen from the Bar that made Objections spake without Book, but I speak by Book; (having my Lord

Chief Justice *Hales* Pleas of the Crown in his Hand.) No less a Man than my Lord Chief Justice *Hales* (and I think he was past his *ABC*. of the Law; I know not how far this Gentleman is advanced.) In his Pleas of the Crown, in that Part where he shews what is Evidence to the Petit-Jury, he says,

First, By the Statute 1 & 2 *Phil.* and *Mary.* c. 13. and 2 & 3 *Phil.* and *Mary.* c. 12. the Justice hath Power to examine the Offender, and Informer; and so he goes on in several Particulars: And then, 5. He says, these Examinations, if the Party be dead or absent, may be given in Evidence. I must allow, such an Examination not of the same Authority as if the Witness was present it would be, because he can't be cross examined; but still it must be of some Weight, and it must be read: But in this Case, 'tis of greater Weight than in that which my Lord Chief Justice puts; for he says, it would be Evidence, if the Party was dead; or if he was withdrawn without the Consent of the Party against whom he is a Witness, and that comes to the Case in Chancery, every Day practised; That if any Person gets my Deeds and Evidences into his Hands, and he hath imbezled the Deeds, they shall be presumed to say what I alledged, because 'tis his Fault he does not produce them. So this withdrawing by the Instigation of Sir *John Fenwick*, is a strong Presumption, that what he Swears against Sir *John Fenwick*, is true.

Sir *Richard Temple*. No Man can give Evidence of any Depositions, nor was it ever admitted to be Evidence either upon the Party's Death or Absence; and I would not have that Doctrine pass, that we are not tied to the Rules of Law. My Lord Chief Justice *Vaughan*, when he was of this House, told us, we were not bound to the Forms of Law, but we were tied to the Rules of Law; and if you are not, how will you judge of this Crime? How will you judge it to be Treason in the worst of Times? In the Tryal of my Lord *Mordant*, who was try'd before the High Court of Justice, they would not allow of this Piece of Evidence, though they had thrown aside Juries. We are tied by the Rules of Law, or we are tied by nothing.

Sir *Thomas Littleton*. The worthy Member here tells us, we are tied by the Rules of Law, or we are tied by nothing. I hope he does not intend to put the Pun upon us, that was by a Noble Lord. You are tied by Rules or no Rules; if you are tied by no Rules, what Rules are you tied by? I think you may act by Rules, and yet admit of this Evidence. I told you before, I should not reckon my self so tied by the Rules of Law, but that I would hear all Evidence that should be offered; and I do not think 'tis for our Honour to stifle any thing that may bring out the Truth. A worthy Lawyer said, Let them produce one Evidence that is of the Recorder's Opinion; and a Member hath produced the Opinion of my Lord Chief Justice *Hales*: And I hope we shall not be debarr'd from the Satisfaction of hearing what they might hear in the Courts below. Here are two Witnesses that have been examined against him, which the Jury did believe that found the Bill. If we can't have these two Witnesses, let us have as much as we can. We have heard what one said. We have an Opportunity of hearing what the other said. No, says the

the Gentlemen, we do not desire to be informed; but I believe it must come to that at last.

Sir Richard Temple. The Gentleman that spake last, insinuated, as if I had dropped something he could not understand. Give me leave to tell you, there was the Courts of the Precedents of *Wales*, when they urged Rules of Law, then they were a Court of Equity; and when they argued from Points of Equity, then they were tied up by the Rules of Law: And so gave Judgment neither according to the one nor the other; and so it was taken away by Act of Parliament.

Mr Boscawen. I have seen it my self, that a Justice of Peace has been examined himself, as to Depositions he hath taken, and I take it to be an ordinary Examination.

Mr Harcourt. Sir, I must say, if you were to pick all the Absurdities out of the Trials in the last Reign, you could not pick out more than has been endeavour'd by the King's Council to be imposed upon you this Day: This does in some measure convince me of what was said by another Gentleman the other Day, that it is much better to be tried by an Assembly of 400 Gentlemen, than at the *Old-Baily*. There was a Quotation of a learned Author, and the Gentleman read you what was Evidence, and what was not. And the Conclusion was, That these Depositions, if the Party was dead or absent, is Evidence. Why Sir, if these Depositions be Evidence if the Party be absent; then what are we doing of all this Day? If that be a certain Rule, there is no manner of need of applying in this extraordinary Way; but if you please to enter into the Consideration of that Point (I am neither afraid, nor unwilling to be informed.) If Gentlemen will take it, *De bene esse*, For better for worse, with all my Heart, but if you enter into that Matter, I will freely tell you my Opinion of it.

Sir Edward Seymour. It hath been made a Question, how far you are bound to pursue the Rules of Law? I suppose it is no new thing I am going to say, That Bills of Attainder, and Judgments of Attainder, have been reversed for no other Reason, but because the Parliament have not proceeded according to the Rules of Law: I will not say, you are bound by the Rules of inferior Courts, but you must be bound by the Rules of Parliament, and by the Proceedings and Practice of Parliaments, which is the Law of Parliament. And then I would know, whether this House did admit of an Affidavit for Evidence? And the Reason is this, because by that you make this, which is the superior Court, lame, without the Assistance of an inferior Court.

Mr Geo. Rodney Bridges. The Matter before you is, whether Sir John Fenwick be guilty, in your Judgments, of this Conspiracy? And if so, I can't imagine why you should not take all the Information that is offered to you; and why not hear all the Circumstances of it: If you do not read this Affidavit, I do not say but 'tis a Kindness to Sir John Fenwick; but what Kindness will it be to the Country and Government?

Mr James Mountague. I hope you will not spend much more time about this, because the Law is so plain: If there be any thing in the Objection, 'tis this, That if it be Evidence, the other Courts below may proceed upon it: but that I take to be no Objection neither; for though it be Evidence,

there are not two Witnesses; and the Courts below require two Witnesses, though there be other Evidence, and one Witness besides, so that you can't try him without two Witnesses; it would be admitted in the Case of Felony, and there two Witnesses are not required expressly by the Law. And I can tell you; upon my Reputation, I have seen it done several times. The Learned Gentleman tells you, my Lord Chief Justice *Hales's* Opinion is so, and that is grounded upon an Act of Parliament; and I think that is of greater Authority than any Judge; and therefore I think that Objection will vanish. He says, you have no Authority to receive Affidavits, but sure we must take Notice of Acts of Parliament; and if that requires Depositions to be taken, and to be Evidence against Criminals, we ought to take notice of it, so that what the Law makes to be Evidence will be good in this Place.

Mr Harley. I look upon this Matter under your Debates to be of the greatest Consequence to the Lives of the Subjects of *England*, that possibly can come before you: Gentlemen have given you several Reasons for reading these Depositions; one, that it was my Lord Chief Justice *Hales's* Opinion; another, that there is an Act of Parliament for it: Now, I think, it would be proper to join Issue in these two Points, If any Act of Parliament can be produced for this, then the Debate will be at an End; but if there be an Act positive in Fact against it, then I hope you will not receive it: And if my Lord Chief Justice *Hales's* Book, have not one Word relating to this, then I hope that will be no Argument. He begins his Chapter of Evidence, and says, that the Evidence to the Jury, in Cases of Treason, must be two Witnesses; and then comes to the Cases of Felony: But is that any Debate before us? And he tells you, that Informations might be taken of the Person himself, but that was not by the Common-Law, but was allowed of by particular Acts of Parliament; and then tells you, that his Information, and that Depositions before the Justice, were to be admitted, (but he was to be by:) But is this any thing to lead you? Have they brought any Statute that tells you, there must be two Witnesses in this Case? If you will take Notice of a Statute, you must take notice of a Statute that is in Point. If any Man suffers by one Witness, I believe all the World must say, he suffers unjustly: I think 'tis of the greatest Consequence to admit of Affidavits. Here it is, that the Boundaries are established for the Lives and Liberties of Mankind: And this is an Observation that is found in History, that those that have broke their Bounds down, it hath returned upon them to their Prejudice.

Sir Robert Richard. I am sure now we are not upon the Point of Reading, whether it be much or little, but upon the Point of Hearing, and that I speak to: And, I think, the Gentleman near the Table, did not mistake what the Bar said; for the Council on the other Side insisted positively, that neither by the Practice, nor by the Books, was a Deposition to be read as Evidence: Against that, the Gentleman near the Chair produced that Book, as to the Matter of Treason, every Parliament Man can remember, that you have made an Act, that there shall be two Witnesses in Cases of Treason. Now at the

same time, it will be taken notice of, that you have taken Care in that Act, that the Proceedings of this House shall not be tied up. The Gentleman tells you, of a Court that wavered between Law and Equity, and so came to nothing; and I am afraid, if we bring the House of Commons down to the Courts of *Westminster-Hall*, they will make nothing of us neither: I do not say, that this Paper shall be as strong Evidence as if *Goodman* was at the Bar; but to say, it shall weigh nothing, I can't agree neither; I agree also to make a common Practice of reading Affidavits, will be of ill Consequence: And if you take this to be a Matter of small Consequence, I am not for reading this Affidavit. Now I aim not at Sir *John Fenwick's* Blood, but the Safety of the King and Government: And I would not refuse any Evidence in this Case, be it never so small. These Gentlemen speak against a Matter being Evidence before it is read; 'tis offered as Evidence, if it be small, or come to nothing, it is the better for the Prisoner at the Bar.

Mr *Pelham*. I am indifferent whether I hear that Paper read, or no; but what is said by a Learned Gentleman startles me; says he, in *Westminster-Hall* they are bound to the Evidence of two Witnesses, and there this Evidence would not be proper, but here we are upon another Foot: I hope we are not here upon another Foot; I hope though here, we are not to be tried by the Chicany of the Law, we are to be tried by the Equity and Substantial Reasons of it: I desire to know, if any one can be tried for Treason upon one Witness? And if we are not tied by the Rules of Law, we may hear any Evidence whatsoever, if the King's Council thinks it may satisfy your Fancies, it must be received.

Lord *Cutts*. I conceive, Gentlemen, we are out in the Way of arguing; I must put you in Mind that we are at the Bottom, only arguing against the Jurisdiction of this House; and though that Matter hath been settled before, we are told very often of the Law, and Rules of *Westminster-Hall*; in answer to that, I must observe there are several Sorts of Laws; there is the Law of Nature, the Law of Nations, the Law of God, and there is the Legislative; and 'tis a Self-evident Maxim not to be contradicted, that no Superiour is to be circumscribed by an Inferiour: And I would ask, if the Courts below are not inferiour to the Parliament? There is nothing can limit us, but the Law of Nature, the Law of God, and the Law of Parliaments; and though I cannot tell you very well what is the Law of Parliaments, yet no Gentleman hath said any thing upon that Subject, that is, against the Question before you: The Matter was in a Course of Law; but upon an extraordinary Accident, and for extraordinary Reasons, 'tis brought before you. The Accident is the withdrawing of a Witness; the Reason is the Securing of the King, the Government, your selves, and Posterity. I don't think any Man that spoke against it, is for favouring Sir *John Fenwick*; for I think this is the worst way: I would appeal to every Man, what Prejudice 'tis to you to hear this Paper read? And it may be a Disadvantage to you not to hear it.

Mr *Hop*. There have been many Arguments given for and against the Reading of this Paper; and if I did not take it that the Reading of this Paper could be of no use to the Judgment

we are about to make, I should be for the reading of it; either it amounts to a Proof of High Treason against Sir *John Fenwick*, or it signifies nothing to you. If you suppose it to weigh any thing, I can never agree to the reading of it; for 'tis only an Hearsay brought to convict a Man that is tried for his Life. But there is a greater Argument which weighs more than the Reason hath been urged; and that is, your Enemies will have an Advantage, and your Government is at Stake: But I don't take that to be so much an Argument of their Strength, as of their Weakness and Neglect; however when they prove that, I will see how far I can go. 'Tis said, that in the worst of Times, they would not convict a Man upon one Evidence; as to Sir *John Fenwick*, though he should not be a good English Man, yet his Cause may be a good English Man's: The Question is, whether there be more danger by the withdrawing of a Witness, and the escaping of Sir *John Fenwick*, or the withdrawing of the Witness and the convicting of Sir *John Fenwick*? Here they let *Goodman* (such a Rake) go about, and he is gone; and now the Fate of the Government seems to depend upon it. The Precedent on the other Side is not so much to be feared; for I suppose future Governments will take care not to let a Witness go about the Streets again: But it may happen that certain Men, for asserting the Liberties of their Country, may be run upon by ill Governments, and Attempts made upon their Lives by false Witnesses: But the Bill of Treason provides, that no Person shall be prosecuted without two Witnesses. Now it may happen that they shall have no such Witnesses as can convince a Jury; (I believe this Man to be as much guilty, in my own Thoughts, as I believe any Thing in the World, and yet I will condemn no Man upon my private Fancies;) but here are two Witnesses brought before the Grand Jury, and nothing is so easie as to get a Bill found by them (and that is all that is done by *Goodman*.) Now say they, if this should come before a Petit Jury, one of these Witnesses may not be credited, so they will carry him away, and urge this for a Precedent, and so this Man may be convicted.

Mr *Smith*. I think we are come to the Debate of the Bill, instead of reading the Paper. Was the Question, whether this Paper should be allowed as a second Witness? Then it would be a great Question with me, whether it should be Read; but the Question, as to *Coll. Sidney*, was not whether the Paper should be read, but whether it should supply the Place of a second Witness? But your Debate is extraordinary; your Bill takes notice of *Goodman* being gone away, and now you won't take notice of what he hath left behind him, which I should the rather be satisfied in, because I saw a Gentleman solliciting at the Bar, that did endeavour to get him away. If *Goodman* had been brought a Prisoner to the Bar, I do not know, whether it might not have been reckoned as great a Fault, as now his having too much Liberty. It hath been cited as a great Lawyer's Opinion, that it might be given in Evidence; but he does not say what Weight shall be laid upon it.

Mr *Pelham*. I am sorry that honourable Gentleman mistook me so much; I thought I had spoke very plain; I told you, I was not against reading of the Paper, till the Learned Gentleman

man told you, you were not tied up as the Courts of *Westminster-Hall*, to two Witnesses. As to what I said of Mr *Sidney's* Case, it was not against reading that Paper; but I said; he did rely upon it as against Common Justice, to be attainted upon one Witness: And that Attainder you have thought fit to reverse; and the Reason he gives for it, was because it was impossible for a Man to make any Defence against one single Witness.

Mr *Att. Gen.* The Matter you are now debating upon, is, whether these Papers should be now Read. And Gentlemen have let themselves into a Debate foreign to the Question. A great many are against it upon this Argument, that they would not be of Opinion to condemn him, unless there were two Witnesses: That is not the Question, for I think no Man is ready to give his Opinion to Condemn or Acquit him, unless there were two Witnesses: One Gentleman is against the reading of it, and yet believes Sir *John Fenwick* guilty. I must respite my Judgement, till I have heard his Defence: I think that the Council for Sir *John Fenwick* at the Bar, are very much mistaken, when they said, that such a Thing as an Examination in Writing, was never read in any Court of Justice. I think that is in a great mistake, and a good Authority hath been cited for it; and every one knows the Practice is otherwise; 'tis often allowed, that the Examinations before a Justice of Peace are read. The Question is now, whether the Examination shall be read? If there do not appear another Witness to prove him guilty, you will debate that Matter then, Whether you will condemn him without two Witnesses? You might as well have debated before, whether *Porter* should be examined, because no Man will condemn him without two Witnesses, and therefore do not examine one. Why, we know not what further Witnesses may be produced, if Sir *John Fenwick* was upon his Trial; I think this Information might have been admitted for Proof, if *Goodman* was out of the Way; but if it was admitted, unless there was another Witness produced, I believe the Court will tell the Jury, here are not two Witnesses, and therefore you must acquit him.

Sir *William Coryton.* I must crave leave to differ from that worthy Gentleman; I think this is the proper time to determine, whether this Evidence is to be admitted afterwards? Indeed you may determine, how far it is available, I thought both in Law and Justice, before I came into the House, that this ought not to be admitted for Evidence. A Gentleman grounded his Argument, upon what? My Lord Chief Justice *Hales's* Opinion; but the Fate is, that my Lord Chief Justice *Hales* States the Difference in Cases of Treason, and in Cases of Felony. Now in Felony, they make use of Depositions; and the Reason is, because 'tis more for the Advantage of the Prisoner than his Disadvantage; for if the Witness differ from his Examination before the Justice of Peace, that turns to the Advantage of the Prisoner. In the Nature of the Thing it seems not to be reasonable, for it is easie to turn the Tables. And suppose *Goodman* in the Place of Sir *John Fenwick*, and Sir *John Fenwick* in the Place of *Goodman*; it would be hard (take the Informations to be as they are) to admit them for Evidence; which in my Opinion, are

great Reflections upon Persons of great Honour and Worth.

Sir *Charles Musgrave.* That which I perceive to be your Debate, is that upon which the Council withdrew; you heard it asserted, That there was no Instance in a Criminal Case, where an Affidavit was allowed for Evidence: And I think the Learned Council at the Bar, did not much insist upon it; and yet I don't think they were ignorant of the Case quoted out of my Lord Chief Justice *Hales*, but they thought it was not applicable to this Business before the House: But only related to Felonies, and when Depositions were taken in the Presence of the Party, 'Tis said, we are not tied up to the Rules of *Westminster-Hall*; and that Parliaments may Denominate Crimes after they are committed; but I never did hear, that the Parliament did take upon them to determine that to be Evidence which is not Evidence in any Court of the World. If you read this Paper to inform your selves, you admit that to be Evidence, which is no where else to be admitted. You are told, you are not tied to the Forms of inferior Courts of Law, nor Equity: If you are not bound by them, you are bound by your own Constitutions. You are told, you are used to read Affidavits in Common Causes; but if my Memory serves me right, you have always had it opposed in this House: Therefore I think, according to the Rules of your own House, we shall not read Affidavits. Will you make a new Rule in this Case? Pray consider the Consequence of it hereafter. Suppose there came down Affidavits upon another Person, against a Great Man for High-Treason, Whether that may not be thought sufficient for to govern your Judgments: I hope those that hear me, will have a Care of the Matter. Why, by the Parity of Reason, may not two Affidavits do by the help of the Legislative Power? I would be glad to know, whether in the Case of an Impeachment, they ever heard of Affidavits being read? And this is much in that Nature; and therefore, why should you admit of an Affidavit now, when the Party charged was not present, when that Affidavit was taken?

Sir *Joseph Williamson.* I am sorry this Point costs us so much time; the Gentleman that spoke last, hath brought us to the Question, How far you will admit this Affidavit (as they call it) to be read: I am of Opinion notwithstanding all that hath been suggested, that it not only may be read, but that it ought to be read. None of the Cases that have been instanced, comes up to the Case in Question; all the Cases that are brought, are from inferior Courts, and the last that is brought, is from the Example and Usage, in less considerable Cases; and indeed of a different Nature.

This Bill of Attainder, is indeed a Thing so extraordinary (as hath been said) as it never ought to be used but upon extraordinary Occasions; and upon that Principle, all that is feared, is all answered and avoided. It is to be thought never to come, but upon the like Occasion; and then God forbid, but they should be governed by the like Precedent; and if that was proper to speak now, which will be at the bottom of it, when we come to give Judgment, and we have time to consider of it; I can't think we shall differ in many Voices. Whether it be Evidence, and how far it is so, is not now the Question; but

but the Question is only, whether it be such an Evidence as ought to be read? And all the Inconveniencies that have been alledged, depend only upon this, that it should not be admitted in the ordinary Proceedings in the Courts of Justice. Now I say, there was a Power lodged in the Parliament of *England* to make a Man guilty of Treason, that was not so before; and that even in a Reign, when they came to determine what Treasons were: They did not think it for the Safety of the Community of Mankind, but that there should be a Power lodged in the whole, to declare that to be a Crime, that was no Crime before it was committed, giving them more than is asked here: For here can be no Question, but as to the Forms of Proceedings. The Question is not upon his Crime, that is no Question; and I take it, that if upon any Occasion 'tis to be justified in this, and the Law hath trusted the Parliament with a greater Power than now they are about to execute, and there are only Objections to it raised from another Place, which I think can never conclude in this.

Mr. *Chancellor of the Exchequer*. I am for reading of this Paper, though I don't think it Evidence equivalent with *Viva Voce*; nor do I think, that in like Cases it ought to be admitted below; but I think, in your Proceedings in Parliament, it ought to be read, whether it be an Affidavit or not; and I am more of that Opinion, from what happened in a Case to Day. We had a dispute, whether *Porter* was to be examined, because the Testimony of a Man's Wife was not good below? But when that came to be examined, it was not the Testimony of a Man's Wife, but his own, better appeared in Evidence; and *Clancy* told *Porter*, he came from *Fenwick* himself, and therefore the Evidence which at first, for that Reason, was urged not to be heard, did amount to more when it came to the Proof. I would have this Paper read; not because it should supply the Place of a Witness: No, but because you see he hath been indicted by the Evidence of *Goodman* and *Porter*, and the first is withdrawn; and by whose Means you have heard: And I would know, whether *Goodman's* Evidence did amount to accuse him of the same? I do say, in your Power of Judging, you are not constrained to the Rules of *Westminster-Hall*. And I would say, that for your Constitution, the Courts of *Westminster-Hall*, are to be governed by the Letter of the Law; but there is lodged in the Legislative, a Power to judge those Crimes that are sheltered behind the Law; and I believe, if the several Attainders were examined, there was never any Attainder that went upon a more just Proceeding than this. I take the Crime to be a Plot with your Enemies, to bring in a foreign Power; and as if that was not sufficient, he hath made a False and Scandalous Confession, to bring a Distrust and Jealousy among the King and his People; and he hath dallied and gain'd so much Time, as he hath had Opportunity to corrupt one of the Witnesses; and therefore it would be hard, if no Law should reach him. 'Tis said, Why did not you keep the Witness? It would be hard, after a Person hath made a Confession for the Good of the Kingdom, that he should be always kept in Irons. We are debating of the Bill, while we are now only, purely to see what is in this Paper. I should not have offered to have made use of this as a second Witness; but the being an Affidavit or not, is not mate-

rial in this Point; The Commons proceed upon Impeachments, without Affidavits: 'Tis offered as Evidence, That *Goodman* was a Witness against him (you have had proof of;) and that he hath been tamper'd with, to withdraw, by the Friends of this Gentleman. I do think we have gone more fairly and equally to work, than upon any of the Records of Attainder in your Journals.

Mr. *Brotherton*. The Question is, Whether this Paper shall be read? First, It hath not been proved before whom it was taken, nor nothing at all. It hath been objected, that there ought to be two Witnesses, by the late Statute. But I must put you in mind, that it was so by the Statute of *Edward V.* and so was the common Law before; and my Lord *Coke* says, there must be two Witnesses, and they brought Face to Face: And so goes to the Divine Law; and if it should not be so, I will put you in mind of an Inconveniency. Eleven Witnesses were produc'd before the Grand Jury; and when they came to give Evidence, Face to Face, before the Petit Jury, the first Witness did not know the Criminal, that he had sworn against. It was in the Case of *Sir Rowland Stanley*.

They mention a Paper against *Algernoon Sidney*; but that Paper was wrote by himself. 'Tis said, this House are not bound by the Rules of other Courts; for that Reason, they ought to give Rules for other Courts. Nothing is more common, than to say, Judgment was so in the House of Lords, and that settles the Law in other Courts below.

Sir *Godfrey Copley*. Several Gentlemen have spoke to the reading this Paper; some have said, That it should be read as Evidence; some others are for reading of this Paper; but yet at the same time tells us, It is not to be looked upon as Evidence, at least, not equivalent to a Witness: If the Paper be to be read at all, I would know for what Reason? If it be to have any sway upon our Judgment; if it hath any Effect upon my Judgment, then in some measure it is equivalent to a Witness, when 'tis in the Nature of a Witness; and if it should be read to supply the Defect of a Witness, then I would know, what the Consequence of this might be? I do very well understand, that the Court of Parliament does take no Precedent from *Westminster-Hall*; nor am I afraid of any Precedent they should give to *Westminster-Hall*: But I am afraid of a Precedent to future Parliaments. Suppose the Information of *Sir John Fenwick*, that hath been delivered in here, should be produced as Evidence against any of those Honourable Persons that are charged in it, though I believe they are very Innocent; and some Knaves, or Rascals, in future Reigns should come in against them, and this Paper should be brought to supply another Witness, what a Consequence would that be?

Sir *Henry Hobart*. I must differ with the Gentleman that spake last; as to the Gentleman that spake before, I did not expect any thing to be quoted out of *Lancashire* against the Reading of it. I will tell you why I think this Paper should be read; you have it suggested in the Bill, that *Goodman* was one of the Evidence against *Sir John Fenwick*; they are to make good the Suggestions, and this will shew, that *Goodman* was an Evidence. You are told the Danger of the Precedent, and there may come ill Reigns, and ill Parliaments; as to that, I shall only say, in a good Reign, and a good Parliament, there is no Danger; and in an ill Reign, and ill Parliament, they

they will make Precedents without your giving of them. Mr. *St. John* tells you in his Arguments, 'tis true in inferiour Courts, by the Statute of *Edward VI.* they are bound by two Evidences *Viva Voce*; but you are not prescribed by that here, but you are to judge in your own Consciences as the Thing appears: I may say as another did upon another Occasion, let it be read; *Valeat quantum valere potest.*

Sir *Marmaduke Wyvell.* I desire to take notice of one Argument, that hath been made use of by one or two honourable Persons; which is, that they tell us, that *Goodman* hath been tampered with by Sir *John Fenwick*: I remember no such thing that hath been proved; but indeed it was said, that Mr. *Dighton* offered Mr. *Roe* 100 *l.* a Year, to invalidate Mr. *Goodman's* Testimony.

Lord *Castleton.* Let me ask you this Question. Whether if you read this Affidavit you read it as Evidence?

Mr. *Soll. Gen.* I desire you would consider what you did, before you ordered Captain *Porter* to go on with his Evidence, and did agree you would consider of it afterwards. Some are for reading this Paper, and others are indifferent, whether it be read or no; and those that are against reading of it, are against reading of it because 'tis no Evidence: But that is no Reason why you should not read it; for it is at most, but doing a vain Thing.

I think you have been told already, if it was insisted on below, it must be read; and the other Side must demurr. The Court might say, 'tis not Material, but it must be read before they can demurr: So that the Question, Whether it is Evidence? must come afterwards; and if you go according to the Rigour of Law, with Submission, it must be read.

Mr. *Price.* I did not design to trouble you in this Matter, but the Doctrine laid down by some Men of our Gown, surprises me: 'Tis only an Argument, that the Court below ought to admit this Paper to be read; but there is no Precedent shewed, nor convincing Reason given, why the Courts should admit it. The Question is, Whether an Information taken before a Justice of Peace, ought to be read here? If it be to introduce a new Law, and make a new Crime, then you make a new Sort of Evidence: But if this be a Crime against an Act of Parliament, or Law in being, then you must take the Evidence the Law doth afford you, in the Nature of the Crime. The Charge here is a Charge of Treason against a known Law: But the great Argument is, this is an extraordinary Offence; that Sir *John Fenwick* or his Lady, had a Hand in sending *Goodman* away: 'Tis a Mistake; and offering one Thing that is not Evidence, brings us to another; the Evidence of *Clancy's* tampering with him; Captain *Porter* does not say, that Sir *John Fenwick* employed him; only that *Clancy* said so, which is but a Hearsay, and that is no Evidence, unless *Clancy* was at the Bar, and would say it.

In the next Place, it is said, That there was a tampering by a Solicitor: What is that? Is it not natural for a Solicitor to say, is there any Objections to such a Witness? Is it not natural for him to lessen his Reputation if he can? Now you would have a Copy of an Information to be Evidence. 'Tis said, 'tis *Tanta Moun*: If so,

then the Courts of *Westminster* ought to intermeddle with it, and not this House. A Noble Lord mentioned to you the Law of Nature, the Law of Nations, and the Law of God; but he forgot one Law, which was most Material, and that is Marshal Law; which if he had said, does justify the taking away a Man's Life upon extraordinary Evidence, he had said right.

Mr. *Speaker.* The Question is this, that the Information of *Cordel Goodman*, taken upon Oath, 24th of *April*, 1696. be read?

Which Question being put, the House divided.

Ayes, 218.

Noes, 145.

So it passed in the Affirmative; and Sir *John Fenwick*, and the Council, and Solicitors on both Sides, were called in again.

Mr. *Speaker.* Gentlemen, since you withdrew, the House have considered of the Matter, upon which you did withdraw, and they have thought fit, that the Information of *Cordel Goodman*, taken upon Oath, before Mr. *Vernon*, 24th of *April*, 1696. be read.—Clerk, read it.

Clerk of the House of Commons. Reads—This is Signed, *Cordel Goodman*, and sworn 24th of *April*, 1696. before *James Vernon*.

About some two Years since, or better, I understood, Col. *Parker* was Resident here; in order to engage several People for the Service of King *James*; and Captain *Porter* told me, he had a Mind to see me, which he accordingly did; where he told me, there would be an Invasion, and that King *James* would be restored; and that in order to it, he had Commission to levy Men, and to grant out Subordinate Commissions for a Regiment of Horse, and did ask if I would accept of one, which I accordingly did. He likewise said, he would see me as often as he could; and that Captain *Porter* and I should receive Directions from him, from Time to Time upon several Meetings; and having received my Commission, I understood what Captains were to be in the Regiment; which were Captain *Porter*, Sir *William Parkyns*, Mr. *Charnock*, Sir *Hugh Smithson*, Mr. *Higgins*, and my self; and one *Mi. Witherington*, to be Lieutenant Colonel.

The Commissions were to be Blank when they were to be delivered, and to be filled up by the Captains, &c. I then came acquainted with Mr. *Charnock*, and Sir *William Parkyns*; and by them and *Parker*, Captain *Porter* and I were informed, that there was a great Body of Horse to be ready in the North; but though I asked, yet they never named any Persons to me, but said, it was sufficient I should receive Orders, and a Roll to March, to Rendezvous upon Occasion; and indeed I did not much press it, because I did gather there were a great many concerned; and at this time, Captain *Porter* and I took a House in the *Chase*, with Stables and Barns, fit for holding Horses, and as a fit Place to meet, upon Orders given us to March, which were then daily expected.

Sometime after this, Collonel *Parker* was taken, and being Committed to the Tower, he made his Escape; and after that, I saw him, and then he told me, he would be sure to correspond with me and *Porter*; and I should receive his Letters of Mr. *Charnock*, or Mr. *Johnson*, and he accordingly did; and in his Letters he still gave us Hopes;

Hopes, and said, he would certainly send us notice to be in readiness Time enough, to be serviceable to the Design of the Invasion.

The last Letters I received from *Parker*, gave me Advice, That he doubted not, but the Cause would come to a Hearing as this *Easter Term*; and he should write no more, but bring the Orders himself; upon which I went to *Charnock*, and he told me, he did expect him here in a short time: But always, or most commonly in his Letters, he told me, for a Sign, That when the *Thou-lon Fleet* should join the *Brest Fleet*, I might certainly depend, that we should be invaded here.

During these Transactions, Captain *Porter* complained, that something he was sending to *Lancashire*, had miscarried; he desired me to set by two Boxes, which I looked not into, but supposed them to be Arms, and I did set them by for him: I had not bought any Arms, but had bespoke some of one *Perry*, a Gunsmith, who said, I should have them at a Week's Warning.

After *Parker's* having made his Escape, and getting into *France*, Mr. *Charnock* came to me, sometime before the King's going to *Flanders*, and said, he had something to propose to me; and desired me to go along with him, which I did; and he brought me to one Mr. *Waugh*, who said, he expected a Commission from King *James*, to seize King *William*; accordingly we went to the *Chocolate-House* in *St. James's-street*: and after some Discourse about the Commission he said he expected, we appointed another Meeting at that Place, and adjourned from thence to my House in *Brownloe-street*, where was present, Mr. *Charnock*, Mr. *Porter*, Mr. *Waugh*, Major *Matthews*, and Mr. *Donelagh*. The Subject of our Discourse was, about the Surprizing and Seizing the King, as he came from *Richmond*; and after several Ways proposed to that Purpose, I particularly asked; Suppose that the King were in our Power, What then? For we ought to have regard to some End or other in such an Undertaking; for I was not willing to offer any thing to his Person. Mr. *Waugh* said, we might have a Coach, and convey him away; and he said, he was assured of a Fort to be delivered to him, and put into his Hands (to the best of my Remembrance, it was *Deal*) which might give us Shelter till we might find Opportunity to carry him into *France* by Shipping. I must confess, I did see very little Probability in what he said, neither did I believe, that he would receive any such Commission, as he said he expected: (For about two Years since, I remember I saw Sir *George Berkeley*, with Col. *Fountain*, and Mr. *Porter*; Sir *George* was then going over to *France*, and it was the only Time that ever I saw him; and then Captain *Porter* and I did desire, that if King *James* designed any such thing as Seizing King *William*, he would send over a Commission, and a Pardon withal in Case of an Accident; which Message Sir *George* carried over, and King *James* refused to send it.) However, we had another Meeting after that at my House, by which time, he said, he would shew us the Commission, and facilitate the Design; it was at a House behind the *Temple*, where the afore-said Company met, and Mr. *Waugh* brought with him one Mr. *Hays*, who, he said, could furnish us with a Ship, which would be ready to transport us after we had seized the

King; but upon Discourse with Mr. *Hays*, we found that the Demands were so exorbitant, and not in possibility of being complied withal; and besides, no Order nor Commission being produced, we did desist then; for Captain *Porter*, and Major *Matthews*, and I, did declare we would not meddle without sight of the Commission. After this, Captain *Porter* and I talked of having a Vessel, and sending *Le Rue* and *Charnock* about it. We met at the *Fountain* by the *Temple-Gate*, and Sir *William Parkyns* was there; and during the Time of our being there, one called Sir *William* out, and Sir *William* called out *Porter*, who came in, and said, there was a Gentleman that could help us in this Affair; who he was, I know not; I believe Captain *Porter* may, for I saw him not: But all this proved ineffectual, for the King went away suddenly, and no Commission ever came. And by Letters from *France*, I understood King *James* was angry, that they used his Name to what he had not promised; and *Porter* and I wrote over by his Order, the Truth of the whole Matter.

Sometime after this, Captain *Porter*, the Earl of *Aylesbury*, Sir *John Freind*, Sir *William Parkyns*, and Sir *John Fenwick*, and others, met about sending over some Proposals to K. *James*, to expedite an Invasion; and likewise Captain *Porter* said, it was proper I should be there, for he had engaged for me. I told him, I would come, and at the King's-Head in *Leaden-hall-street*, I found the Persons above-named, together with my Lord *Montgomery*, and one Mr. *Cook*.

The Effect of their Consultation was, the sending Mr. *Charnock* with a Message to this Purpose; That if the King of *France* could spare such a Number of Foot, and so many Dragoons, amounting to about 12 or 15000, or thereabouts, in all: That then upon Notice given, that every particular Man there, was to furnish such a Number of Horse; some more, some less, to be ready to succour the Forces from *France*, when Landed. Mr. *Charnock* went and returned with a Refusal, that Forces could not be spared; Sir *John Freind*, and my Lord *Aylisbury* were of Opinion, that if King *James* would venture hither with some small Retinue, he had Friends enough to appear for him, without any Foreign Forces; but that was held in doubt.

I used afterwards to see my Lord *Aylesbury*; I always asked what News he heard? He said, when he received any Orders he should know; for he having been in *France* (as he did not deny) I supposed him not to be ignorant of what was intended.

And to the better facilitating an Invasion, Sir *John Fenwick* used to send over a List of the Forces, and how they were quartered, and what were in Garrison, and what otherways disposed of: He having made a Mistake in the Account, *Parker* did by Letter, desire me to try if I could procure such an Account; which I accordingly did of one *Gibson*, a Clerk in the Office, and sent it over frequently.

After the Escape of *Parker* out of the Tower, Sir *John Fenwick*, when I asked him, how he got away, and how much Money was given? He said, 200*l.* promised, and 300*l.* given; for when a Person came in, and told him, he had brought him Liberty, and was to have 200*l.* he replied, you shall have 300*l.* and it was made good to him afterwards.

Cordell Goodman.
Much

Much about the same time, I used now and then, with Captain Porter, to be with Sir John Fenwick, and it was agreed, that if Parker should not bring us timely Orders, that what Forces we could bring in, (*viz.*) Porter and I, we were to take Orders from Sir John Fenwick; this we offered him, and he kindly accepted: And then he said, That he believed, most of my Lord Oxford's Regiment would go to King James. When I told Mr Paradise had promised to bring in 7 or 8 to me, and that Mr. Aynsworth was to bring in 20, and Parker had said, if I made 30, it was sufficient for me.

As to keeping the Horses, Sir John said, it was dangerous, and they would certainly be Seized; but the best Way was, to have a List of what Horses were in and about the London Stables.

Captain Porter and I, sent accordingly to view the Stables. I sent Mr Reyhough, and Captain Porter sent Cranborn, and they took an Account.

Cordeell Goodman.

Jurat. 24. April, 1696. Coram me, Ja. Vernon.

Mr. Serjeant Gould. Now Mr. Speaker, if you please, we will call some of the Grand Jury that will give you an Account what Evidence they found the Bill upon — Mr. Gracedue, you were one of the Grand Jury that found this Bill?

Mr. Gracedue. Yes, Sir.

Sir Thomas Powys. This is so far from being Evidence, that I think 'tis the Oath of the Grand Jury, that they shall not disclose or discover the King's Secrets. The Bill of Indictment is but an Accusation. A Bill of Indictment cannot be given in Evidence against a Man for the least Crime forever. It can't be given in Evidence to be credited, because 'tis but an Accusation; and by Consequence, whatever any Witness says at that time, can go no farther. When a Person comes upon his Tryal; they can't so much as resort to any Thing that is sworn before the Grand Jury, nor make use of it.

Sir Bartholomew Shower. We humbly oppose this Evidence; because the Gentlemen can give no Instance either in their Reading or Observation, that the Testimony that hath been given before a Grand Jury, hath been given in Evidence to a Petit Jury: And 'tis Part of the Oath of a Grand Jury Man, that it should not be disclosed. We do not say, it will bind your House, but I hope it will be Evidence to you, that 'tis not agreeable to the Rules of Law.

Members. Go on, go on.

Mr. Speaker. Mr Gracedue, Will you give the House an Account, who were the Witnesses before you upon finding the Bill?

Mr. Gracedue. The Witnesses before us, were Captain Porter, and Mr. Goodman.

Mr. Speaker. Can you remember so well, as to give an Account to this House of what Evidence Mr. Goodman gave.

Mr. Gracedue. Yes, I think I can. When he came before us, he told us, That he was at a Meeting at the King's-Head in Leaden-hall-street, where there was Sir John Fenwick, my Lord Montgomery, Captain Porter, Mr. Charnock, and others; and the Business was to send Mr. Charnock over to France, to procure Men to invade this Kingdom;

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and 8000 Foot, and 2000 Horse was proposed. He told us, the Result of that Consult was, that if France would supply 8000 Foot, and 2000 Horse, it would be a sufficient Power to come over; and that they would supply 2000 Horse among themselves. Upon which Charnock replied, Gentlemen, you send me over upon Uncertainties; you say, you will supply 2000 Horse, but unless you give me some Assurance, I can't, nor will I go. And the Question was proposed to all of them, if they would make good their Proportion, and they promised singly: Says I, did Sir John Fenwick promise? And he said, Yes. Says I, Did my Lord Montgomery? And he said, Yes. He was asked, Who else? But, says he, 'tis not a Question for you to ask us; and for that he referred himself to me; For, he said, he was not bound to answer further, having proved the Indictment.

Mr. Serjeant Lovel. We desire Mr. Joshua Meade may be asked to the like Purpose. Were you one of the Jury that found the Bill against Sir John Fenwick?

Mr. Meade. Yea.

Mr. Speaker. Pray, who were the Witnesses before you upon finding of the Bill?

Mr. Meade. There was Captain Porter, and Mr. Goodman, Sir.

Mr. Speaker. Can you remember what Mr. Goodman testified then?

Mr. Meade. Mr. Goodman did then testify, That Sir John Fenwick, my Lord Montgomery, &c. were at the King's-Head Tavern in Leaden-hall-street; and Charnock, and the rest there did consult how to bring in their old Master; as to Charnock, That they agreed to send him over to King James, to know whether the French King could furnish them with 8000 Foot, and 2000 Horse, and that they would endeavour to meet him with 2000 Horse. Hereupon Charnock (Goodman said) put it to every Man of them, to know if they were all of one Mind; and they all said they were. This he did prove, and this is all I can remember.

Mr. Serjeant Lovel. We have many more to the same Purpose, if the House think fit to hear them.

Members. No, no.

Mr. Serjeant Gould. We will go thus much further; That upon the Tryal of Mr. Cook, wherein there was Evidence given by this Gentleman, and in that this Gentleman that is the Prisoner at the Bar was particularly named to be concerned, we will call them that were present there at the giving of the Evidence: But first, we desire to read the Record of Cook's Conviction.

Thereupon a Motion was made for the Council to withdraw; and being withdrawn, a Motion was made for Candles, which passed in the Affirmative without a Division, in regard it being dark without Candles, there could be no Motion made for adjourning the Debate, or remanding the Prisoner.

Afterwards a Motion being made for adjourning the House till to Morrow Morning, the House divided.

Ayes 141.

Noes 163.

And so it passed in the Negative; and Sir John Fenwick, and the Council, and Solicitors, were brought in again to the Bar.

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Mr. *Speaker*. Mr. Serjeant *Gould*, the last Evidence you were about to offer was, That of the Record of Mr. *Cook*.

Sir *Thomas Powys*. Mr *Speaker*, we oppose that being offered as Evidence; as I understand it, they are going to give in Evidence against Sir *John Fenwick* what was sworn against Mr. *Cook*; that is not admitted in the Courts below; for, according to that Method, the Tryal of one in the Company would be the Tryal of all the rest. This was never allowed in any other Case, and I hope you will not allow it here.

Sir *Bartholomew Shower*. The Indictment is, that they did consult together, but their Crimes are several; if they had been mentioned in one Indictment, and one had been tried at one time, and the other at another, it would not have been allowed that they should give in Evidence against the one, what had been sworn against the other: For though their Charge is by the same Witness, and for a Fact done at the same time, yet the Defence of the Parties may be different; and it cannot be expected, that we, on the behalf of Sir *John Fenwick*, are prepared to give an Answer, in regard of any thing that was Sworn against Mr. *Cook*.

Mr. *Speaker*. Mr. Serjeant *Gould*, you hear the Exception.

Mr. Serjeant *Gould*. We hope in this Case we shall go on with our Evidence, as offered and proposed to this House. These Gentlemen have made their Objections, as if they were below in the inferior Courts; but we are here now before you, in a Parliamentary Way; and what is that which brings us here, but because there is a Witness withdrawn by Artifice, so that we cannot produce him? And therefore we come, and humbly apply our selves to this Honourable House. Now, Sir, you are Judges of the Method of coming at the Truth, and supplying that Defect? if we could produce him, there would be an End of the Matter; but in this Case we are in the Judgment of this Honourable House, Whether we shall not give such Evidence as he hath given upon his Oath, though in other Cases it is not admitted.

Mr. Serjeant *Lovel*. When we produced the Record of Conviction, we only produced it to shew you there was such a Tryal; and by that means to let us in, to shew you what was Sworn by Mr. *Goodman* at that Tryal.

Then upon the Motion of Colonel *Granvil*, and Sir *Richard Temple*, Sir *John Fenwick*, and the Council, and Solicitors, withdrew.

Sir *Richard Temple*. If I did not believe what is now offered, is what was never offered before, and of dangerous Consequence to every one here, I would not have troubled you at this time of Night. There has nothing been offered that this hath ever been done. They say, It hath not been done in Inferiour Courts: Pray let us see if ever it hath been done in Parliament, That what was given in Evidence at another Tryal, should be given in Evidence against another Person here, when this Person was not by, and had no Opportunity to defend himself against it; I am sure it was never done yet.

Sir *Thomas Mompesson*. This Gentleman complains this was never done. When the Duke of *Monmouth* was Impeached, the Bill was read three times in one Day, and that Gentleman moved for the Impeachment.

Sir *Richard Temple*. Here were three Witnesses that did declare they saw him in actual Rebellion, at the Head of an Army; but I hope I am not to answer for all the Proceedings then.

Colonel *Granvil*. When I saw them going on to make use of that as Evidence, which was never allowed in any Court; I thought I ought to move for them to withdraw. I shall not give my Consent to have it read, till some Body satisfies me 'tis good Evidence against Sir *John Fenwick*; I can't see how you can admit this for Evidence: Are we to read all the Tryals that are upon this Plot? Therefore I desire you will bid them produce what is Evidence against Sir *John Fenwick*, and not to trifle with you.

Sir *Thomas Littleton*. If you proceed in this manner, I know not when you will have done. They do not tell you, they produce this as Evidence against Sir *John Fenwick*; nor do I take this to be the only Evidence to prove him guilty. If nothing but exact Proof would have satisfied, this Bill would not have been brought in: But this is to make as good Proof as the Nature of the Thing will bear; you have heard several Things before, in Relation to *Goodman*, that possibly might strictly be no more Evidence against Sir *John Fenwick* than this, as *Goodman's* being withdrawn. First, they offered to prove that he was gone; that it was suspicious that Sir *John Fenwick* was privy to his going: Why did you admit the Evidence of what he said to the Grand Jury? What is this, but to give Evidence of what he said to the Petit Jury, wherein the Grand Jury and Petit Jury have both believed him?

Mr. *Harley*. I think if you had come to one Determination before you had entered upon this Matter, you had very much shortened your Business; that is, that you would not expect such Proof as is necessary at Law; and it may be if you would come to it now, it would save you time: For I find by the Council, that what is sworn against another Man, at another time, would not be Evidence at Law against the Prisoner; and I believe if he should except to a Jury-Man, because he was upon *Cook's* Tryal, it would not be allowed as a good Exception, and he would be told, he was no way concerned in another's Tryal.

Mr. *Hon*. 'Tis a strange Sort of Evidence that is offered here, and 'tis a strange way of bringing it in. The House made nothing lately of Hearsay, and yet now Hearsay must be taken for Evidence. I have heard that the Grand Jury take an Oath not to discover what was sworn before them; this since the Grand Jury have subjected themselves to (yet you have brought them here as Witnesses to give an Account of what was sworn before them,) which I am afraid is a Breach of their Oath, it shall make me give less Credit to what they say. We are here to attain a Man, but we must not talk of Proof; that is a strange Thing. I am sure, if you do not find it with Proof, it would be against Proof. Shall I be plain with you? I question if this House had heard what *Goodman* swore at that Tryal, and what was alledged against it, whether this House would have been of that Juries Mind: For I have heard that two or three did swear, he was not at the Place at the time he swore he was, as plain as a Negative could be sworn.

Mr. *Harcourt*. If you please to let the King's Council go on upon this, you will save a great deal of Time, and prevent any Exception to any Evidence afterwards: For 'tis not in the Power of Man to offer any Thing more absurd. I don't believe that ever any Man heard of such a Thing offered, That a Record should be given in Evidence against a Man, that is no Manner of Party to the Record: I am sure never any such Thing was attempted before. As for the other Things, you had something offered that made it seem doubtful how far you should give Credit to them. Upon those Matters, the Council at the Bar for the King told you, That there was some Pretence that it was Law, and practised below, and a Book was produced to justify it: But in this Case, if there be Book, Practice, Precedent, or any Thing to justify it, I will sit down; the Answer made it ten times worse. The Gentleman said, he would not have the Record read; but upon that Record to prove what was sworn at the Tryal, Why, does that concern any Person in the World but *Cook*?

Lord *Cutts*. If the worthy Gentleman that spake last had made out all his Propositions with Clearness, equal to the Assurance with which he asserted them, they would have more Weight: But I will say, That which he hath asserted does not appear to me so. I take this to be the same Thing in some Measure debated over again: It hath been told you, That this House are to give their Judgment in a Matter of great Importance; and therefore I think 'tis fit that all the whole Matter should be laid before them; when that is done, they only are the Judges of what Weight it is.

Mr. *Sloane*. I go along with those Gentlemen, That this is no sort of Evidence against Sir *John Fenwick*: But our Question is about a Witness that is withdrawn, and to know what he said, and how he was believed when he was here. How he is gone, we have seen already; and therefore though I think the Verdict against *Cook*, nor nothing of that, can be given in Evidence against Sir *John Fenwick*; but yet if he hath withdrawn the Witness, and the Credit of him is at Stake, as you have heard Evidence of what he said upon Oath, before the Tryal came on, by the same Reason you may hear what he said at the Tryal.

Mr. *Pelham*. I think it would shorten our Debates, if we were truly satisfied about what we are a doing; That we are Trying Sir *John Fenwick*, as we were told at the Bar; he called it a Tryal, and 'tis a Tryal. I must confess I was in hopes I should never sit in the House of Commons to try any Body; I did not think it the Business of us; if I had, I would not have come hither: But since we are come into it, is any Thing more natural, than to examine whether this Evidence be proper, or such Evidence as any Court would allow of?

Sir *William Williams*. I suppose there is no Gentleman of our Profession that hath seen any Record will say, That this hath been offered in any Court of Law: I believe, if he was upon his Tryal upon the Indictment, no Body will say it would be read against him. Let us consider how many Judgments that have been given hastily, in the late Reigns, have been reversed. What is the Reason that is given for it? It is for receiving that for Evidence which was not Evidence in the Law: Your Bill of Right takes Notice of it.

Mr. *Solicitor General*. I did not think this Matter would have held you a quarter of an Hour: But

if Gentlemen will debate upon the same Matter that hath been over-ruled twice before; all that is to be proved by this Record is, That one *Peter Cook* was attainted for High Treason; if the Council on the other Side would have owned *Peter Cook* to have been Attainted, you had not been troubled to have the Record brought to the Table. But as to what they say, That Sir *John Fenwick* was no Party to the Record, and therefore it can be no Evidence against him; I suppose it would be Evidence for him. Suppose *Goodman* had sworn he never had been at the *King's-Head Tavern*, would not the Prisoner have produced a Witness to prove what he had sworn? Then I would put you in mind of a Case, because there is a Nicety in this Matter without any Reason: It was in the Tryal of Alderman *Cornish*; he was Indicted and Tried, and the great Fact was in the House of one *Shepherd*; there was a Witness against him, one *Rumsey*, who swore, &c. Says Mr. *Cornish*, he was a Witness at my Lord *Russel's* Tryal, and he did not name me to be one; and it went so far, That when *Shepherd* said, I was in the Room; he stood up and said, No, it was read before I came in. Mr. *Cornish* would have produced a Witness to have proved what *Rumsey* said; says the Court, We cannot admit of that; for it does not appear to us, that my Lord *Russel* was ever tried for High Treason; and there, upon that Slip, was that Gentleman destroyed. I pray it may be read; I have given no Opinion of what Force it is, but I think it depends upon the same Reason; nay, you have more Reason to do it, than any Thing you have read to Day.

Mr. *Price*. 'Tis very much pressed, That you should read that, which when Read, they say, is not Evidence, but only to introduce another Matter. If it be not Evidence, upon what Account shall they read it? But if it introduce other Evidence, this is an Ingredient and Part of that Evidence. Now suppose the Record should be produced, and they should bring Witness to say what *Goodman* swore at that Tryal; would that be Evidence? No sure, for no Body ever pretends that this hath been admitted either at Law, or in Parliament. By what Law? By what Rule? By what Measure of Reason are we to proceed in this House? If you would permit to be produced a Record of Conviction against a Third Person, and this to be Evidence against one that is not present; I think you may as well admit to be produced a Record of the Conviction of any other concerned in the Assassination. But I stood up Principally upon the Observation made at the Bar, and he put you that which he takes to be a sinister Case; for, says he, suppose Sir *John Fenwick* had brought this Record, and made use of it to take off *Goodman's* Testimony, should it not be Evidence? Yes, no doubt of it, and there is the Distinction: 'Tis one Thing where you are to give in a Record to Convict and Attaint a Person; and another Thing where it is to prove a Man perjured, and to invalidate his Testimony; for when Evidence is brought against a Prisoner, he hath no Way to lessen his Evidence but what is Collateral; if it be upon a Tryal when another is concerned, if the Witness gave a contrary Evidence, or the Party was acquitted, then the Record may be made use of against the Witness: But it differs very much, where you bring Evidence to take off the Credit of a Witness, and where you bring it to Convict or Attaint a Person. The Case of *Cornish*, that turns upon the same Reason; and

and it was only to be used to take off the Testimony of *Rumsey*; but if this Record of the Conviction of *Cook* be brought to any Purpose now; 'tis to satisfy your Consciences, that *Goodman* gave a good Testimony at that Tryal; and I wonder the Serjeants should offer it, who are Sworn to offer nothing in Violation of the Law.

Dr. *Oxenden*. If I did not think this Question had been determined before, I should not trouble you in this Debate, for did not we receive what *Goodman* deposed upon Oath before a Justice of Peace? Was it read because it was taken in Writing, or because it was his Evidence? Now they offer you an Evidence of his, that was not put into Writing, but they will prove by Witness; what is the Difference? If it had been taken down in Writing, it must have been admitted as the same was before.

Sir *Marmaduke Wyvell*. That worthy Gentleman desired to know the Difference, &c. That Deposition was against Sir *John Fenwick*, but this Evidence that they offer now, was given against *Peter Cook*.

Mr. *Att. General*. You are now upon a Debate, Whether you shall read the Conviction of *Peter Cook*? I do agree with those Gentlemen that have spoke of this Matter, that the Conviction of *Cook*, nor any Evidence upon his Conviction, can be Evidence against Sir *John Fenwick*. I don't pretend that this is: Nor don't believe that this is offered upon any such Consideration; but 'tis one of the Allegations of the Bill, that several of these Gentlemen were present at this Consult, of which Sir *John Fenwick* is accused; therefore I suppose the Council for the Bill, did offer this Record to make good that Allegation, and so think it may be properly offered, unless it be admitted: I don't see how it can be made good further; I do not think it proper to examine to what *Goodman* Swore at *Cook's* Tryal.

Sir *William Williamson*. I speak only to shew my Concurrence with the Attorney General; Mr. *Attorney* hath Stated it right no doubt, as to the Conviction of this Person; as Mr. *Attorney* offers it, it may be proper enough.

Members. Call them in, call them in.

Sir *Christopher Musgrave*. I hear Gentlemen say, Call them in; do you intend when you call them in to read this Record? I think the learned Gentleman hath stated it, That it ought not to be read as Evidence. Now the Council for Sir *John Fenwick* said, they hoped you would not suffer it to be read as Evidence against the Prisoner: I never heard the Council say, that *Cook* was not Attainted, nor ever heard that any Man did doubt it; then if it be no Controversy between the Council, to what End is it brought hither? Do you think that the Steps that are urged to be taken in this Case, will not be a Precedent for Posterity? I take it that there is a great deal of difference between the Paper you have read, and this Record, and therefore if you call in the Council, I hope you will not gratifie them in reading of it.

Mr. *Edward Harley*. Before you call the Council in, I humbly propose it to you to consider to what Purpose this Record should be read; if as Evidence, you are through all the Course of Proof that is settled by the Common Law, and Statute Law; for it hath been in all Tryals opposed to give in Evidence that which is improper, because it should not influence the Jury. I would not have it said, that under the Reign of King *William*, any Thing was done contrary to the Law

and Constitution of the Nation: There hath been an Instance given of the Tryal of Mr. *Cornish*, though that Case does not come up to it; but we know what was done in those Reigns hath been justly reflected upon: And I hope you will not make a Precedent here, to encourage Judges to do what is against Law.

Mr. *Speaker*. Gentlemen, This is your Question, That the Record of the Conviction of *Peter Cook* shall be read.

Which Question being put, the House divided.

Ayes 181.

Noes 110.

So it passed in the Affirmative.

Mr. *Speaker*. Gentlemen you have had another Question that hath been the Subject of your Debate, That the Council for the Bill be admitted to give Evidence, as to what *Goodman* swore against *Peter Cook*.

Mr. *Robert Harley*. The Learned Gentleman did tell you, That what *Goodman* said at that Tryal, ought not to be given in Evidence; and therefore, I think, Gentlemen won't insist upon that, that is, carrying it too far; and I think, he opened it, that it was only to prove that *Cook* was Attainted, and to make use of it no further.

Mr. *Speaker*. Is it then your Pleasure, that Sir *John Fenwick* and his Council be called in?

Which Question being put, it passed in the Affirmative, and accordingly they were called in.

Mr. *Speaker*. Sir *Thomas Powys*, The House hath determined to have this Record read, not as Evidence against Sir *John Fenwick*, but to prove the Allegations in the Bill, and that *Cook* was Attainted.

Read the Record.

Accordingly that Record was read by the Clerk.

Sir *Barthol. Shower*. We are sure the Record does not prove that he was Convicted upon *Goodman's* Evidence.

Mr. *Serj. Lovel*. Look upon the Indictment.

Sir *Thomas Powys*. It appears by that, that *Goodman* was a Witness upon the Indictment; but it does not prove by that, that he was a Witness upon the Tryal.

Mr. *Serj. Gould*. May it please you then, Mr. *Speaker*, thus far 'tis agreed, that here is a Record of the Conviction of *Cook*; and 'tis agreed, and the Record speaks it, That *Goodman* was a Witness, for it is indorsed upon the Indictment. Now the main Dispute is, Whether *Goodman's* Evidence did prevail to Convict *Cook* upon that Indictment? And for that we shall apply our selves. Call our Evidence, some of the Jury, and some that were then Witnesses, and they will give you an Account upon what Evidence that Conviction was.

Sir *Thomas Powys*. In what you were pleased to acquaint us at our last coming in, you were pleased to give such a Reason in Relation to the Reading of this Record, that if we had heard it before, we would not have troubled you to have withdrawn; for it was proper to make out the Allegations of the Bill, and that *Cook* was Convicted; but we apprehend, they can carry it no further than what they have applied it to. But I perceive from hence, the Gentlemen of the other Side are encouraged to proceed to another Piece of

of Evidence, such they call it; they are going to call the Witnesses to prove what was sworn at the Tryal of *Cook*, where Sir *John Fenwick*, nor no Person on his behalf, was present, either to hear, or observe, or cross examine, or offer any Thing to their Credit, which possibly he might be furnished with, though *Cook* was not; I hope that will be no more allowed of as Evidence here, than in any other Place.

Sir *Barthol. Shower*. We humbly oppose their calling of Witnesses to give this Account of the Evidence given at *Cook's* Tryal. And we submit it to your Consideration, whether you will think it just, that the Evidence that is given with respect to one Man only, shall conclude another Person that stands at the Bar in defence of his Life; or that it shall be given against him. Every Man's Defence is several; and we opposed the Reading of the Record before, and so do now the calling of any Witnesses to this Purpose, for the same Reason.

Mr. Serjeant *Lovel*. We call these Witnesses for no other Purpose, but to prove, that *Goodman*, what he did inform by that Paper, he did Swear before a Jury.

Mr. *Speaker*. Gentlemen, you must withdraw.

Accordingly they withdrew.

Mr. *Mantley*. I thank God I have that regard for the Laws of *England*, and to every *Englishman's* Life, that when I see any Thing attempted against it, I must give my Testimony against it; I did not believe they would have insisted on it, for there was a Gentleman that sat near to you, who in the close of his Debate, I thought had satisfied every Body, That this was a Thing that ought not to be read; if they should do it, it would be a Thing of dreadful Consequence; if you should admit of every Thing these Gentlemen that come in for the Bill offer, I know not where it will end. How will it appear, that upon *Goodman's* Evidence the Jury found *Cook* guilty? For they might find *Cook* guilty, and yet give no Credit to *Goodman*; for he was contradicted materially, and there might be other Evidence upon which they might find him guilty, and yet lay aside the Evidence given by *Goodman*: But whether one Way or the other, we can't tell. They tell us, We are not to be guided by the Rules of *Westminster-Hall*, but we are to be governed by the Rules of Justice; and we are not at this time to seek a Way to the King's Favour by voting against a Criminal for High Treason.

Mr. *Sloane*. There is no manner of doubt of it, That that Gentleman is in the Right, who tells you, If this Indictment and Conviction of *Peter Cook*, stood singly, as to Sir *John Fenwick*, 'tis no Evidence; and if they will produce *Goodman* now, it shall be no Evidence against them; but take the Case as it is, here is a Witness, who hath given me Satisfaction, that 'tis one of Sir *John Fenwick's* Friends or Agents (which is the same Thing as if done by himself) by whose Means this Witness is withdrawn: Now the Question is, What could this Witness say, when he was here? What did he say? 'Tis not Conclusive, but 'tis Material for you to hear what he did say when he was upon his Oath.

Sir *Christopher Musgrave*. The Gentleman of the Long Robe that spake last, was pleased to tell you, It is very reasonable that you should hear those Persons, as to what *Goodman* swore at *Cook's* Tryal; I confess, I think this is harder than all

the rest, because what you have hitherto Admitted was in Writing; one was an Examination before a Justice of Peace, the other a Record; but for any Man to say, he can exactly repeat what any Man swore at the Tryal, to me is wonderful: Why, in his Evidence, the least Mistake of a Word alters the Nature of the Thing, and therefore this would be a bold Undertaking for any Man; for if he wavers in the least Circumstance, 'tis not true that he swore so; then this Gentleman was no Ways concerned in that Tryal; and to what Purpose is it read, if not to the Prejudice of Sir *John Fenwick*? I do not know but by the same Rule, you may hear Evidence of what any Man hath sworn upon all the Tryals this three quarters of a Year.

Mr. *Sloane*. I have been called upon, to know in what Cases Testimony hath been given, that Witnesses have sworn so and so at a former Tryal. 'Tis every Day's Practice between Party and Party, that where a Witness doth die, between the same Parties (I will state the Case fairly) 'Tis given in Evidence, that such a Witness at such a Tryal, did Swear so and so; sometimes they take it in Short Hand, and then they can tell the Words of it; otherwise they repeat it upon their Memories, but I will not strain it: But I put it with a further Reason upon it, for we do not desire to hear it as Conclusive Evidence upon the Prisoner, but only in this Sense; here is a Witness supposed to be carry'd away by the Prisoner's Means; and therefore, Is it not necessary to hear what he said before he was deluded and carried away? Not that after it is heard, it is any Conclusive Evidence, but it is reasonable we should come at the Truth, *Omnibus viis, & modis quibus Melius sciri poterit.*

Sir *Thomas Littleton*. A Gentleman says, to what purpose should it be read, if it be not to the Prejudice of Sir *John Fenwick*? On the other Side, we may say, 'tis for his Benefit; that is only supposing one Way or another: I will hear any Body to his Benefit, and any Body to his Prejudice, Says a worthy Gentleman, It is not done in Criminal Cases: Why, in this Case you have heard the Grand Jury, what he Swore before them already; and what Objection is there more against hearing what he Swore in another Case, than against hearing what he Swore upon the Indictment? The main Inducement for you to hear it, is because he is gone away, and can't be heard *Viva Voce*, and with Suspicion that it was by Contrivance of the Party.

Mr. *Gery*. I would speak but one Word as to what the Gentleman that spake last but one said, and that is, as to the Courts below, That one Man is allowed very often to give in Evidence what another Swore; it hath been so, and 'tis at the Peril of any Person that Swears that he Swear Truth; for he may be prosecuted if he does not Swear Truth; but I would ask him, what Remedy there is here, if he do not say the Truth? We have no Remedy against him if he takes away this Man's Life by what he says here.

Mr. *Smith*. Truly, Sir, if I must give my Opinion, I do think 'tis very reasonable, that Bills of Attainder should be only upon extraordinary Occasions; I think, that take it at best, if there was not a Place where the Witnesses are to be Sworn, and more particularly examined, I know not whether I should give my Consent for the passing of this Bill through your House; for the Witnesses against the Prisoner are not Sworn, nor the Wit-
nesses

nesses brought against them ; so that we can only give our Opinion upon the Probability of the Matter ; for what that Gentleman says, weighs with me, That 'tis a difficult Thing for any Man to charge himself with what was Sworn at a former Tryal ; for the Mistake of a Word may alter the Sense very much. We are told, by a worthy Gentleman, That there was two or three Witnesses that did give such Evidence against the Testimony of *Goodman*, that 'tis a Wonder almost how *Cook* could be found guilty : It is our Misfortune that *Goodman* is not here, it would have been worth our While to have heard what *Goodman* could have said in his own Defence ; but since there are such Witnesses like to be offered against *Goodman's* Testimony, Is it not reasonable that we should hear what *Goodman* said for himself ?

Mr. *How*. Sir, I always thought it very reasonable, that you should hear any Evidence that might tend to your Information ; but I think 'tis plain, that nothing can tend to your Information that is alledged by any Person that is not to be believed ; that is to say, is not to be believed from the Nature of the Evidence, though from the most credible Person in the World. I know not whether these Witnesses are to be brought or no, but I have heard that *Cook*, after he was condemned to die, without any Apprehension of his being saved, did, upon the Sacrament, declare, That *Goodman* was not upon the Place at that Time he swore himself to be there. I have heard since, that the same Divine that gave him the Sacrament, Dr. *Wake*, when he had confessed it, after he had made such a Declaration, had such an Abhorrence of it, that he would go to him no more ; but I can't think we can have Information from these Persons, that I suppose did not think of giving Evidence in this Tryal, and therefore did not take notice so particularly of what he said ; and if so, 'tis losing your Time to hear it.

Mr. *Speaker*. Gentlemen, the Question is this, That the Council against Sir *John Fenwick* be allowed to examine Witnesses, as to what *Goodman* Swore at the Tryal of *Peter Cook*.

Sir *Godfrey Coply*. I must confess it would weigh with me, if it had been made appear, that Sir *John Fenwick* had taken off any Evidence, and I should be ready to apply it as well as I could ; but I must needs take notice of what was said in this Debate, that we had done as much as this comes to already ; this makes me a little more apprehensive, and to take care what we do now, since what this House does, hath so quick an Operation. We are citing Precedents of this very Day already, and make one Thing a Hand to draw on another, and so they may easily be made use of in after Parliaments.

Sir *Henry Dutton Colt*. I believe no one Gentleman doubts, that *Cook* was convicted upon the Evidence of *Goodman* ; if they do, I would know the Reason of it ; for upon the last Act, there are to be two Evidences to the same Treason : There were but two positive Witnesses against him for Treason, and they were *Porter* and *Goodman* : I think, therefore, he was convicted upon the Evidence of *Goodman* ; what then needs any Person to remember any Particulars that passed at the Tryal, if they remember in the Whole, that he was convicted by the Evidence of *Porter* and *Goodman* ?

Mr. *Speaker*. As many that are of Opinion that the Council against Sir *John Fenwick* be allowed to

examine Witnesses, as to what *Goodman* swore at the Tryal of *Cook*, say, Aye.

Ayes 180.

Noes 102.

[Afterwards the Question of Adjournment was put, and it passed in the Negative ; and several Gentlemen that were against the Bill, to about Forty, went away together in a Body ; some of them having declared, that their Health would not give them leave to stay there longer.]

And Sir *John Fenwick*, and the Council were brought in again.

Mr. *Speaker*. Mr. Serjeant *Gould*, the House do allow you to examine Witnesses as to what *Goodman* swore at the Tryal of *Cook* ; pray go on with your Evidence.

Mr. Serjeant *Lovell*. We call Mr. *Collins*, Sir.

Who was brought to the Bar.

Mr. *Speaker*. Was he a Jury-Man ?

Mr. Serjeant *Lovell*. He was one of the Petit-Jury, Sir.

Mr. *Speaker*. Mr. *Collins*, can you give the House an Account of what was Sworn by *Goodman*, upon the Tryal of *Cook* ?

Mr. *Collins*. To the best of my Memory, I will give the best Account I can. *Goodman* did depose, That he came to the King's Head in Leaden-hall Street, and enquired for Captain *Porter*, according as the Captain had ordered him ; and the Captain came down and carry'd him up into the Room where the Gentlemen were. There was Sir *John Freind*, Sir *William Perkins*, Mr. *Charnock*, Mr. *Cook*, and Sir *John Fenwick* ; there was two others, if you please to have me name them.

Members. Yes, yes.

Mr. *Collins*. My Lord *Aylesbury*, and my Lord *Montgomery* : This was what he deposed.

Mr. *Speaker*. Go on, Sir, you have named those that were at the Meeting.

Mr. Serjeant *Lovell*. Did he give you an Account of what was Agreed on at that Meeting ?

Mr. *Collins*. I think it was about sending *Charnock* to France.

Mr. *Speaker*. Sir, you should repeat all the Particulars what *Charnock* was to do.

Mr. *Collins*. I can't remember any Thing further than what I have told you.

Mr. Serjeant *Gould*. If you please that Mr. *Cooper* may be asked to this.

Mr. *Speaker*. Was you of the Petit-Jury that convicted Mr. *Cook* ?

Mr. *Cooper*. Yes.

Mr. *Speaker*. Can you give the House an Account what Evidence *Goodman* gave to you for conviction of *Cook*, and what he said in that Evidence ?

Mr. *Cooper*. Mr. *Goodman* did declare upon his Evidence, That he was at the Old King's Head in Leaden-hall Street, where he did meet with divers Persons that were in Consultation ; he named *Charnock*, Sir *John Fenwick*, Sir *John Freind*, and divers others.

Mr. *Speaker*. What was the Consultation ?

Mr. *Cooper*. It was about sending *Charnock* over into France.

Mr. *Speaker*. To what purpose ?

Mr. *Cooper*.

Mr. Cooper. To bring over Forces, or encourage the Bringing over of Forces: That was the Purport of his Message.

Mr. Speaker. Will you produce any other Evidence to this Point?

Mr. Serjeant Gould. We desire this Gentleman may be asked to the same Purpose.

Mr. Speaker. Was you one of the Petit-Jury.

Another Witness. There was Captain Porter, and Mr. Goodman, that were the two Evidences; and Goodman did say, That he had been at the Old King's Head in Leaden-hall Street, one Cox's, and Sir John Fenwick was there, and several other Gentlemen, consulting of an Affair to send over into France for some Forces to be brought over into England; and that Charnock was the Person, and they all agreed he should go over.

Mr. Speaker. But did he give you an Account of what Cook and the others did agree to, upon which you found Mr. Cook guilty?

The same. We did apprehend that Cook did consent that Charnock should go over to France, and acquaint King James, That there had been a Meeting of several Gentlemen, and that they had made several Offers of Soldiers and People that were to be raised here, and to acquaint King James with it; and he declared, That Sir John Fenwick was there at the same Time.

Mr. Speaker. Pray, can you give this House an Account of what Exception was taken to Goodman's Credit, and how it was answered?

The same. There was Exception taken, That he was guilty of a great many Crimes, and that he had his Pardon, and the Fines were levy'd upon him; but it was said then, that he had paid his Fine, and that he was a very good Evidence in the Case.

Mr. Speaker. Mr. Serjeant Gould, Have you any other Evidence to produce?

Mr. Serjeant Lovell. If you please, Mr. Speaker, here is Mr. Tanner, the Clerk of the Arraignments, that best knows the Nature of these Things; that as to these Objections that were made, it appeared to the Court to be a Contrivance, for he was never Bailed, but discharged without any more to do. If you please that he may be asked, What Objections were made to Goodman's Reputation, and what Answer was made to it?

Mr. Speaker. I did ask the Jury-man that; and I suppose you need not labour this Point, unless the Credit of Goodman comes in question here.

Mr. Serjeant Gould. Then may it please you, Mr. Speaker, we have one other Piece of Evidence against Sir John Fenwick, which we are humbly to offer to your Consideration, and I think 'tis very Material; and 'tis some of the Evidence which I did open in Stating of the Case, wherein Sir John Fenwick hath, in a Manner, given a Verdict against himself; for while Sir John Fenwick was working of his Escape to go beyond Sea, at that very Time there was a Letter written by him, directed to his Lady, and delivered into the Hands of one Mr. Fowler, who was to cause it to be delivered to his Lady, by one Webber, who was taken up when Sir John Fenwick was; this Letter imports, That Sir John Fenwick look'd upon himself, as having no Defence, but depended only upon a Contrivance with the Jury; they were to work with some Persons of the Jury, who were to stand it out, and to starve the rest; and so by that Means to save him. Our Evidence of this will be, That it fell out that Webber, (we have him not here now, but

have endeavour'd it as much as was possible; but he is gone too out of the Way) That he was taken at the same Time that Sir John Fenwick was; but by reason of the protracting of Sir John's Tryal, he comes, and is delivered, there being no Charge against him; and he is since his Deliverance, upon his Habeas Corpus, gone out of the Way; but we shall, in the Method of our Evidence, produce you Mr. Fowler, the Person to whom this Letter was handed, who will give you an Account of this Letter; and then will produce this Letter: To which End, we must humbly beg the Favour of a worthy Member of this House, Mr. Vernon, who hath this Letter, that it may be produced, and shew'd to Mr. Fowler.

Mr. Vernon. Sir, I receiv'd your Order to bring the Letter that Sir John Fenwick wrote, while in Custody at Rumney, which was sent up to me by Mr. Mascall, who had it of Mr. Fowler; and, if you please, I am ready to deliver it.

Mr. Speaker. Who sent it to you?

Mr. Vernon. One Mr. Mascall, a Justice of Peace of Rumney.

Sir Thomas Pomys. I hope now we shall make an Objection to this Letter, with good Authority. Surely for them to produce a Letter, as Sir John Fenwick's, is not to be allow'd as Evidence, unless it was prov'd that he wrote it, because that Sort of Evidence was particularly taken notice of by Parliament: And Judgment given upon that Sort of Evidence, by Comparison of Hands in the Case of Mr. Sidney, and the Act of Reversal of his Attainder, does allow it to be illegal Evidence. This is such an Authority as, I hope, will bear no dispute: And the Courts of Westminster Hall, have since thought it so; they did so in the Case of Crosby, who was Try'd the other Day in Westminster Hall.

Sir Barth. Shower. In this Objection we have the Opinion of inferior Courts, and the Parliament too; for the particular Evidence Mr. Sidney was convicted upon, was upon a Paper which was found, and proved by some who pretended to know his Hand; and I am sure that is more than they can pretend to, and more than they have yet opened. We do therefore humbly oppose this Evidence, it being in the Case of the Life of a Man; and the King, Lords and Commons, having declared, That this Sort of Evidence ought not to be allowed: And therefore, I hope, you will not allow it in this Case. And in Crosby's Case, upon reading the Act of Parliament, this Evidence was not allowed, and Crosby was acquitted.

Sir Thomas Pomys. I have a Copy of the Bill for reversing the Attainder in my Hand; and it says, The producing a Paper found in the Closet of Mr. Sidney, which was not proved by any Witness to be his Hand-writing, &c. and, we hope, if in the Judgment of the Parliament that was not thought reasonable Evidence to Attain him, this will not be thought reasonable in Parliament to Attain this Gentleman.

Mr. Serj. Gould. As this Case is, we hope this may be a concurring Evidence: It will be plain, upon the Evidence we shall give, That Webber was with Sir John, and taken with him; and at that Time this Letter was handed by him over to Fowler, to be carried to my Lady. Now, Sir, we humbly offer it to your Consideration, How far it is available, and what Operation it will have? Whether, in a Case of this Nature, these two being taken together, and Webber delivers this Letter to Fowler to deliver it to Sir John Fenwick's Lady

dy, and the import of the Letter concerns Sir *John Fenwick* for his Acquittal, you will not suffer it to be read? 'Tis not to charge him with a Treason, for that is the Case of *Algernon Sidney*: 'Tis not to prove a Crime upon him; but we will prove that Sir *John Fenwick* handed this Letter over, that it might come to his Lady; by which he desired his Lady so far to work the Matter, That some Jury-man might be found to starve the Rest, and stand out for him: If we could produce *Webber*, we would; 'tis plain, *Webber* corresponded with Sir *John*, and was with him.

Mr. Serj. *Lovell*. I humbly beg one Word in this Matter: The Council on the other Side do very well know, the constant Practice is, That in the Case of a Deed or Will, let the Value of the Estate be what it will, if the Witnesses can't be produced, or are gone beyond Sea, they always admit Evidence by Comparison of Hands. But for the Case of *Algernon Sidney*, there is no doubt but his Attainder ought to be reversed, because that Attainder was upon no other Evidence; for there was no other Proof, but a Paper, that he himself did say, was only for the Exercising of his own Ingenuity and Parts; and was said to be written for no other Purpose, and proved only by the Comparison of Hands. Had there been any other Witness to corroborate, it had altered the Case; but in our Case, we do produce the Letter, not for the Convicting of the Prisoner at the Bar; but we are humbly to lay before you all the Matter of Fact. It will be worthy of your Consideration, what you will think fit to take, and what to reject; that is a Matter for your own Judgment. We produce this Letter for this Purpose, to shew you, That after Sir *John Fenwick* was taken, he apprehended his Case to be so desperate, that he used these indirect Means.

Mr. Speaker. What mean you by that? This Letter came from Mr. *Fowler*.

Mr. Serj. *Lovell*. Here is Mr. *Fowler* that receiv'd it from *Webber*, when Sir *John Fenwick* was by, in the Presence of Sir *John Fenwick*.

Mr. Speaker. Shew Mr. *Fowler* the Letter.

Accordingly the Clerk went down to the Bar, and shew'd Mr. *Fowler* the Letter.

Mr. Speaker. Do you know that Paper?

Mr. *Fowler*. Yes, Sir.

Mr. Speaker. Where have you seen it before?

Mr. *Fowler*. I had it from one *Webber*, that was at *Rumney*, about the Third of June, as I remember.

Mr. Speaker. Was that the Time that Sir *John Fenwick* was seiz'd?

Mr. *Fowler*. He was then at *Rumney*. Mr. *Webber*, I was told, had some Acquaintance with me, and desired to speak with me. I went to him; and he was rising; and when up, says he, Mr. *Fowler*, I would desire you to put a Letter into the Post; says he, There is no Hurt in it; it is directed to Mrs. *Frances Farrer*, at the Countess of *Carlisle's* in *Soho-Square*; and when I had deliver'd it, he desir'd me to come to him again.

Mr. Speaker. Did you come to him again?

Mr. *Fowler*. Mr. *Mascall* of *Rumney* sent for me to his House, and told me, That he had heard that I had received some Letter from Mr. *Webber*; and when he had open'd it, and saw what it was, he thought fit to send it up to the Secretary of State; and I made my Mark upon it, that I might know it again.

Mr. Speaker. Have you made your Mark upon it?

Mr. *Fowler*. Yes, Sir.

Mr. Serj. *Lovell*. I desire he may be asked, Whether Sir *John Fenwick* was not in the same Room when *Webber* delivered it?

Mr. *Fowler*. Yes: But I question whether he saw Mr. *Webber* give it; for he delivered it privately, as I thought.

Mr. Speaker. Was Sir *John* in the Room then?

Mr. *Fowler*. Yes, Sir.

Mr. Speaker. Can you say any Thing more of Sir *John Fenwick's* Knowledge of that Paper?

Mr. *Fowler*. No, I know no more.

Mr. Serj. *Gould*. If you please then, Mr. Speaker, because perhaps there may be some Objections, that we should give an Account of *Webber*, we will call a Witness, that we have done our utmost to find him out.

Members. No, no.

Sir *Thomas Powys*. That which I was going to offer is, That this Proof is short; if that which in the Act of Reversal of the Attainder of Mr. *Sidney*, is admitted to be no Proof against him; for the Act recites that Letter was found in his Closet, and proved by Comparison of Hands, and yet for all that, this Sort of Evidence is condemn'd by this Act of Reversal, as illegal Evidence. This Case before you comes short of that; for here is no Proof by Comparison of Hands, nor that it was in the Possession of Sir *John Fenwick*: But only that a Person in the Room, without the Privy of Sir *John Fenwick*, delivered it to another; and the Witness says, he did it in a private Manner.

Sir *Bartholomew Shower*. With Submission, this Letter could not be read in any Place whatsoever, against Sir *John Fenwick*, in a Civil Cause; for even in that Case, they must prove it to be his Hand-writing, by Comparison of Hands.

Mr. Serjeant *Gould*. I think not to insist upon it: But that we shall desire is this; we have now done with our Evidence, only we shall desire the worthy Member, Mr. *Vernon*, to give an Account what was the Reason, why Sir *John* hath not been Tried; for indeed, he hath very much trifled with the Government, pretending still to make a free and ingenuous Confession.

Sir *Thomas Powys*. I am of Council for this Gentleman at the Bar; for his Life, for his Fortune, for All that he hath in the World. 'Tis not only this Gentleman's Case, but 'tis a Case that may be of great Consequence in all future Times. I have, as 'twas my Duty, attended for at least these twelve Hours, either in opening the Matter, or by producing such Evidence as, we hoped, we did fairly Object to. Sir, there are several Things offer'd on their Parts, which I confess we little expected, and which will require something to be said to; and I have a great deal to offer on the Behalf of Sir *John Fenwick*, both as to this Method that is taken, and what is alledged in the Bill, and what is contained in the Indictment upon which the Bill is founded, wherein I desire to be heard; and since you have been pleased to allow us to be Council for him, I am sure we shall have a fair and favourable Hearing. We have a great deal to offer to you, both as to the Matter of the Indictment, and the Manner of it: And I hope to shew you, That the Indictment, as it is laid, does contain a sufficient Charge of Treason. We have likewise a great deal to say, as to the Evidence they have offer'd, at least what they call so: But I must make it my Request, That we may have

have Liberty till to Morrow Morning to make our Observations, and Answer what hath been said by the Council on the other Side. I am not in a very good Condition by this long Attendance, and by attending my Duty in the Courts in *Westminster-hall*; and I am afraid I am not now in a Condition to do my Duty, as may be expected from me. I must own it, I am not prepared as I ought to be; and I hope when there is so great a Stake, you will allow us till to Morrow Morning?

Sir *Bartholomew Shower*. I beg your Favour in the same Manner, and to the same Effect as Sir *Thomas Powys* hath done. It is to be acknowledg'd there are several Things offer'd in Evidence, which is new to us Lawyers; we do not desire to Trifle: We do not desire it on behalf of the Prisoner by Way of Delay; but on behalf of the Length of the Proceedings, that you will give us a fair Hearing, as you have allowed it to the King's Serjeants; and that we may make that Defence that is incumbent upon us in discharge of our Duty to the Prisoner.

Mr. *Speaker*. Gentlemen, you must withdraw. *(And being withdrawn.)*

Mr. *Smith*. I would not give an Opportunity to any Man to practise with Witnesses, to hinder the Truth of the Matter from appearing, after they have heard the Evidence for the Bill. I would know what List of these Witnesses Sir *John Fenwick* hath given in?

Mr. *Speaker*. You did make an Order, That Sir *John Fenwick* should deliver in a List of his Witnesses; but I believe he did not send any List to any Body upon that Account, for I have made no Order for any.

Lord *Coningsby*. I am convinc'd that you are obliged to sit so long as to hear the Witnesses on both Sides; and therefore my Motion is, to call in the Council, and ask them, if they have any Evidence to produce; but I do not desire the Council should go on to make their Observations to Night.

Sir *Walter Young*. I think you are rightly moved by that noble Lord that spoke last. I think if Sir *John Fenwick* hath any Evidence to produce, he ought to produce it now; and that you ought not to give him Time till to Morrow Morning to produce That.

Mr. *Speaker*. Is it your Pleasure that Sir *John Fenwick* and the Council be called in, and told, That the House do expect, if they have any Witnesses, that they do examin them to Night; but as to their Observations, the House will give them Time till to Morrow Morning.

[Which was generally consented to, and they were brought in again.]

Mr. *Speaker*. Sir *Thomas Powys*, the House have consider'd of what you said, when you went out, and they are inclin'd to allow you Time for making your Observations; but they have command-ed me to ask you, Whether you have any Witnesses to produce? and to let you know, That if you have any Witnesses to produce, they expect you should produce and examine them to Night.

Sir *Thomas Powys*. Sir, I would acquaint you with all the Openness that becomes me on this Occasion. I must confess, we have not any Witnesses that we propose to call; but when we come to speak to the Matter, we hope to give you some Satisfaction as to That; but at present, we have no Evidence to produce, unless it be a Copy of a Record.

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Mr. *Speaker*. Sir, If you please to withdraw, you shall know the Sense of the House.

Accordingly they withdrew.

Mr. *Chancellor of the Exchequer*. I suppose, since the Gentlemen have no living Witnesses to produce to Night, you will not think fit to receive them at any other Time, for 'tis giving them too much Advantage; and the whole Meaning of the *Chicamy* of the Council, is only to get Time to Reply, Mr. *Dighton* having heard the Evidence. And now I have mentioned him, give me leave to tell you, That I think you can't rise without taking some Notice of him. I think there is as plain a Subornation prov'd in *Dighton*, as can be, by one *Roe*; and when you have heard such a Character of a Man, and there is no other Evidence that he can solicit, I think you ought to take care that he be forth coming; and that he should be taken into Custody. I think you may give the Council further Time: As to the Record, that can't well be falsified, tho' I believe, in a Matter of this Moment, where the Government is concern'd, there never was such a Proceeding by the Council, as this has been, to entertain us six or eight Hours together, by Delays.

Mr. *Smith*. I suppose before you hear any Thing as to *Dighton*, you will do something as to the putting this Cause off to another Day; I humbly propose that you will go on this again on *Wednesday*.

Sir *H. Hobart*. When 'tis proper to go upon Ways and Means, I shall come into it: But while this is upon your Hands, I believe you will never get heartily into other Business: And therefore I humbly move you, that you will go upon this to Morrow Morning.

Thereupon the House came to these Resolutions.

Resolved, That this House will proceed further in relation to this Business of Sir *John Fenwick* to Morrow at Twelve a Clock.

Ordered, That Sir *John Fenwick* be remanded to Newgate.

Ordered, That the Bill be read a Second Time to Morrow Morning.

Mr. *Ruffel*. I am unwilling to trouble Gentlemen at this Time of Night: But I would know, Whether, when Sir *John Fenwick* is called in, you will ask him any Questions upon that Paper?

Members. No, no.

The Council were called in, and withdrawn again.

Resolved, That this House being informed that the Council for Sir *John Fenwick* have no living Witnesses to produce, except to prove a Record, that this House will not hear any Witnesses, except to prove the said Record.

Ordered, That Mr. *Dighton* do attend to Morrow Morning.

Adjourned till to Morrow Morning Twelve a Clock.

[Memorandum, It was half an Hour after Ten, at the Time of Adjournment.]

Martis 17. die Novembris, 1696.

[Sir John Fenwick and the Council of both Sides were called in.]

Mr. *Speaker*. Sir *Thomas Powys*, you that are of Council for Sir *John Fenwick*, the House agreed last Night, to give you Time till to Day to make your

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Defence; your Observations upon the Evidence that hath been given.

Sir Thomas Powys. Mr. Speaker, I am of Council for Sir John Fenwick, who now stands before you upon the greatest Concern he can have in this World; and as you have been pleased to assign us to be of Council for him, and I must own have very favourably heard us hitherto, so I shall think my self very unfortunate if I should let fall any Expression in his Defence, that should seem indecent, and give Offence to this House, for I am sure I have no Intention to do it; but on the contrary to behave my self with all the Deference that is possible, in a Case of this Nature.

The Thing I shall insist upon, will be upon Three Heads.

First, The Manner of Proceeding, and Method that hath been taken in this Prosecution.

Secondly, I shall take notice of those Things that are alledged against him in the Bill, upon which he is to make his Defence.

In the *Third Place*, I shall beg your Favour, to Observe what Sort of Proofs they have offered on the other Side, and which they call Evidence.

As to the *First Matter*, I must intreat the Favour of you to be thus understood; That when I say any Thing in Relation to the Manner of Proceeding, I do not speak in Opposition to the Power of Parliaments; for I know very well, that our Lives and Estates, and all that we have, are subject to Acts of Parliament; but I hope you will permit me to offer some Reasons, which (I hope) may be of Weight, in Opposition to the Exercising of that Power in the Way you are now going. No Body can say, but when an Act of Parliament is passed, though the Party concerned may think it was upon hard Terms; yet when it is become a Law, it is not to be opposed. I can't say but those Persons, who in the last Sessions of Parliament, were Imprisoned by an Act *ex post facto*, and subsequent to the Fact complained of; yet when it was passed into a Law, they were legally detained: But, I hope, I may so far take notice of their Case, as some kind of Reason against this, to the End that those Laws may not grow familiar, that they may not easily be obtained; because Precedents generally grow; and as that Law *ex post facto*, extended to Liberty, so this extends to Life: One Precedent is apt to beget another; and therefore, sure you will be careful how you give Precedents, especially in Case of Life.

The first Thing I observe is obvious; that is, the Person who is to be sentenced by this Bill, is forth-coming, in order to be Tryed in the ordinary Method of Justice. He is not only Indicted, and actually under Process, but he hath Pleaded, and he is ready when his Majesty, in the Course of Justice, shall call upon him to undergo his Tryal; and either there is sufficient Evidence, legal Evidence against him, as the King's Serjeant insisted there was; and if there be so, then, under Favour, there is no Reason but he should have the Benefit of an Ordinary Tryal, which is the Birth-right of all the King's Subjects; or there is not sufficient Evidence against him; and if there be not, it will be a good Reason against making a particular Law for taking away his Life: For, we think, nothing can be said for this Law, but want of Evidence; and that, to my understanding, is a very odd Reason.

Sir, I would not spend Time in taking Notice, That the meanest Subject in the Kingdom, is Entitled, by being born in this Kingdom, to be Tryed by a Jury, where there are those just Advantages that can't be had in another Case: There is a Liberty of Challenging of 35, without shewing any Reason, and as many more, as he can any way object to, with Reason. The Witnesses are upon Oath, and all the Proceedings are by certain known Rules and Methods, and not only by the Statute of *Magna Charta*, but by the Common Law of *England*, much more Antient than that Statute; and though the Proceedings therein, are such as a Criminal may sometimes escape; yet the just Advantages are so much beyond any Thing of that Nature, that I hope we shall never complain of that antient Course of Proceeding by Jury; I am sure it is the Honour of our Government, the Mark of our Freedom, and Envy of our Neighbours; and, I hope, that Method of Tryal shall never be laid aside, though sometimes it may not have the Effect that is desired by it.

I would take notice to you, that in a Case of the greatest Crime, and most Notoriety of Fact; yet the Persons concerned in it were brought to their Tryal. The Regicides, who did not fly, but were found upon the Restauration of King *Charles II*, though their Treason had the worst Effect even in the Murder of the King; yet notwithstanding, though the Fact was so Notorious, those that were found upon the Place were admitted to their Tryals in the ordinary Course of Justice; although at the same time there was a Bill of Attainder against some that fled, and some that were dead, and so could not be Tryed.

I would, with your Favour, likewise observe, That the Parliaments of *England* have been so far from depriving Persons from their ordinary Tryals, that whereas the Common Law of *England* says, that Persons Out-law'd for Treason and Felony, if taken, shall be put to Death without Tryal; yet the Parliament, in the Reign of *Edward VI*, made a Law, providing, That Criminals that returned within a Year, according to that Law, should be admitted to their ordinary Tryals.

Sir, all along, the Statutes run in favour of Tryals; there are no less than Two Acts of Parliament in the Reign of *Edward VI*, in the First and Fifth Year of his Reign, that say, there shall not be less than Two Witnesses against any Person for Treason: And I hope I shall never see a Law made so much in opposition to those Acts, as that a Person shall be sentenced to Death without so much as one Witness, as I shall shew by and by.

Perhaps it might be thought Extraordinary, That in the same Parliament that passed a Bill for regulating Tryals in Cases of High Treason, requiring two Witnesses with great Strictness, and giving further Advantages to the Criminal than ever were before allowed; An Act should pass, to put a Person to Death, without any Tryal at all. And let any one compare the Preamble of that Act with this Bill.

Sir, I take it, with humble Submission, that the present Case is not at all to be likened to most of those Bills of Attainder that may be cited; those, when they come to be looked into, will be found either to have passed against such Persons as fled from Justice; and therein they only pursued the Rules

Rules of the Common Law, which allowed them to be Out-lawed, and by Consequence to be Attainted. And the Parliament therefore, in Attainting them, did but the same Thing; and therein, there was nothing done extraordinary. True it is, That where Persons have been forth-coming, there have been some few Bills of Attainder: But I will presume to say, they are never mentioned without heavy Censures, and a great Complaint against them.

This Cause is not like the late Instance of the Bill of Attainder against the Duke of Monmouth; for he was present in the Kingdom; yet he was in direct Oppolition to any Method of Tryal; he was in Defiance to all Courts of Justice: But here is a Person who submits himself, and hath Pleaded, and stands ready to be Tried; and I hope, I may take notice, to take off all Prejudice that may be raised; That this Gentleman, though he was of the Parliament that passed that Bill, yet he was not in Town, till at least a Month, after the Bill was passed.

I do agree, there are some Cases where Persons have been Attainted without being admitted to be Tried. In the Beginning of the Reign of Edward III. Roger Mortimer was Attainted, and Executed, without being Tried; but 28 Ed. III. it was reversed, because he was not brought to Judgment according to the Law of the Land, 1 Ed. III. The like in the Case of Edmund Earl of Arundel: But 4 Ed. III. Richard his Son, Petitioned in Parliament, setting forth the Proceedings to be against the Great Charter, and insisting, That there ought to have been due Process of Law, and he was then restored in Part; but 28 Edw. III. there was an Act of Reversal, Declaring, That it clearly appeared, that the said Edmund was unduly put to Death; and that the Statute by which he was Attainted, was Void, Erroneous, and Null. There is an Instance in 32 H. 8. Co. 4. Inst. fol. 37, of Thomas Cromwel Earl of Essex, who, though he was in Custody in the Tower, yet he was Attainted without being Tried: But the Words of my Lord Coke, are as follow, *Auferat oblivio, si potest, si non unumq; silentium legat*: For the more High and Absolute the Jurisdiction of the Court is, the more Just and Honourable ought it to be in its Proceedings, and to give Examples of Justice to Inferior Courts. And he adds further, to the end, as I apprehend, That the Rehearsal of this Attainder may be of no ill Use: I am, says he, confidently perswaded, such Worthy and Honourable Members, shall from Time to Time be of both Houses of Parliament, as never any Attainder, when the Person is forth-coming, shall be had hereafter, without hearing of him: Which I understand to be, without Trying of him; and 'tis memorable, what my Lord Coke recites, That he, who thus died, attempted the like against another.

There is another Case of Thomas Seymour, Admiral of England, who likewise was Attainted by Act of Parliament; and as it appears, without Execution: You have an Account thereof in the Second Part of the *History of the Reformation*, fol. 98, 99, 100. whither I will refer you, only to read the Sentence of the Learned Author, there pronounced against him. That latter Case is, that of my Lord Strafford, which every Body knows. I shall, as the best Account of that Matter, crave leave to read the Words of the Parliament in the Act of the Reversal. I will not trouble you with

reciting the Whole, but only read the Beginning, and some Part thereof in another Place. Whereas Thomas, late Earl of Strafford, was Impeached of High Treason, upon Pretence of endeavouring to subvert the Fundamental Laws, and called to a Publick and Solemn Arraignment and Tryal, before the Peers in Parliament, where he made a particular Defence to every Article objected against him; insomuch, That the Turbulent Party then seeing no hopes to effect their unjust Designs, by an ordinary Way and Method of Proceedings, did at last resolve to attempt the Destruction and Attainder of the Earl, by an Act of Parliament, to be therefore purposely made to condemn him upon Accumulative Treason — And then it goes on to shew, it was carry'd by the Tumult of the People, and then follows — And to the End that Right be done to the Memory of the Deceased Earl of Strafford aforesaid: Be it further Enacted, That all Records and Proceedings of Parliament relating to the said Attainder, be wholly Cancelled and taken off the File, or otherwise Defaced and Obliterated, to the intent the same may not be visible in After-Ages, or brought into Example to the Prejudice of any Person whatsoever. So that the Parliament that Enacted that Reversal, did consider those Proceedings as very Evil and Unjust, and was not willing there should be any Remains of such an Example to future Ages.

Sir, having made these Observations as to the Manner of Proceeding, I come now to that which is the Subject Matter of the Bill at present before you, and which we take to be the Charge against Sir John Fenwick: I must crave leave to observe, That in all Courts of Justice, where any Person is accused, he is to make his Defence *secundum allegata & probata*: 'Tis not enough that a Matter is proved, if it be not alledged; nor that it is alledged, if it be not proved: But if it be both alledged and proved, then it is a full Charge, and requires an Answer. It is not only the Law of England, but I believe, of all Nations, and wherever any Person is to make his Defence, especially in Capital Crimes, that to which he is to answer must be alledged against him, from whence I shall observe what is alledged against Sir John Fenwick; for, I hope, we are not concerned to defend him further than as to what at this Time he is charged with. This Bill of Attainder, as it is drawn, and now stands before you, doth not so much as alledge, or say, That Sir John Fenwick is Guilty of the Treason whereof he was Indicted; and that hath prevented us from producing Witnesses to that, and several Matters which the King's Council have entered upon: For though you have permitted them to examine Witnesses to several Things quite out of the Bill; yet, I hope, you are not come to any Resolution, That these Matters shall be thought fatal to Sir John Fenwick, that are not so much as alledged against him. We do not therefore think we are bound, or ought to follow them in those Things that are totally out of the Bill; and therefore his being guilty, is not now the Question, because 'tis not a Charge upon him.

The first Thing that is alledged in the Bill is, That Sir John Fenwick was indicted at the Sessions; for that which is laid in the Indictment to be Treason (which by and by I shall crave leave to be heard to) and, I think, no Body will say this alone does require any Answer, further than to own the Fact or to deny it: And we do admit that he was so Indicted. I need not labour much

to clear him of the Consequence of that alone; for very often innocent Persons have been Indicted and Accused, (for an Indictment is no more than an Accusation;) and this Bill, as I have observed, doth not say he is guilty. When the Bill hath recited that Matter, it proceeds to take notice, That they by some fair Prevarications (for so I agree they were, if the Facts alledged in the Bill are true, which by the Way hath not been yet proved, by producing any one Witness) did obtain the King's Clemency to put off his Tryal, in expectation of an ingenuous Confession, which the Bill takes for granted he hath prevaricated in, by Charging several Persons of Honour and Fidelity with Matters of a High Nature, only by Hearsay; and by using other unfair Artifices to put off his Tryal. How far it is made out, that I must submit to you; we think at present there is no Proof of it, and by Consequence we are not concerned to answer it: But had they proved it as fully as it is laid (though far be it from me to excuse such a Behaviour;) yet when a Criminal is to be tryed for that which will be of fatal Consequence to him if he be Convicted, no Body can say it comes near Treason, by unfair Means, to contrive to put off his Tryal.

The next Thing the Bill recites is, That one of the Witnesses, who might have been produced against him upon his Tryal, if it had proceeded as was intended, is since withdrawn. I can't say, but *Goodman* is withdrawn: But as the Bill does not so much as alledge, That it was by the Means or Procurement, no nor Privy, of Sir *John Fenwick*; so from thence that Part of the Bill charges no Offence home to Sir *John Fenwick*: For in Case the same Witness had hapned to have died by the Act of God, it would not have been said to have been a good Reason for this Bill of Attainder against Sir *John Fenwick*, unless he had contributed to it.

From these Premises follows the enacting Part, that Sir *John Fenwick* be Attainted of High Treason; and in future Times the Act must be supposed to be grounded upon the Inducement to it. And I humbly submit it to you, Whether this Bill condemning him for High Treason, upon such Recitals, will be thought to be reasonable?

These being the Allegations of the Bill, I will now, with your Favour, come to that, which they on the other Side do call Proofs; and I must humbly observe to you, and submit it to your Judgment, Whether in a Case where a Man's Life is to be taken away, by a subsequent Law made on Purpose for him, the Proofs in that Case ought not to be much more Evident, than if he were to be tried by a Law already in Being? In my poor Apprehension (I speak it with all Submission to you, Sir,) It would be too much at once to make a subsequent Law to condemn a Man to Death, and to do it upon doubtful and uncertain Evidence, or rather upon no Proof at all. Nothing could excuse such a Law, but an undeniable Proof of the Fact. And therefore surely the Position we find of Mr. *St. John's*, in my Lord *Strafford's* Case, is of most dangerous Consequence. I am afraid none are safe if that be admitted, That a subsequent Law may take away a Man's Life without any Evidence, other than the private Opinion or Conscience of every particular Law-maker. He is pleased so to assert, That it may be done as in *Rushworth's* History of

that Tryal, fol. 677. I am sure if this be so, no Man knows how long his Life is his own: I hope this Doctrine shall never be followed or approved. Sir, we have the Happiness to live under an Establishment that every Man does, or may know the Law he is to go by: Every one is bound at his Peril to take notice of the Laws, and to act accordingly, because they may be known: But at this Rate none but Prophets can live amongst us.

In the next Place, I would observe what Course they have taken in their Evidence who are the King's Council.

First, They have betaken themselves to that which is not Alledged in the Bill; and we think that this is not agreeable to a Course of Justice.

In the next Place, to make out that they insist on, they have produced but one Person that comes hither *viva voce* to speak to it; and I must take Notice to you, That he is not upon Oath. I know very well it is not your Course in this House to administer an Oath; But I know very well, though it is not your Course in this House to administer an Oath, yet, I hope, that is so far from being a Reason why this Bill should pass here, without an Oath; that it is a good Reason why such a Bill should not begin here: There is no Place in the World, where a Person is sentenced to Death without an Oath. In the Case of my Lord *Strafford*, the Proceeding first was by way of Impeachment, and the Witnesses had been first examined upon Oath in the House of Peers; and that Bill of Attainder takes notice of it, reciting that it had been fully proved; and, by Consequence, we may suppose, that they would not otherwise have passed it, that being the Ground of their Proceeding upon that Bill of Attainder: But for the Bill to begin originally in this Place, to form such a Judgment, the Heaviest that can be pronounced against a Man; a Judgment of Death, corrupting of his Blood, and forfeiting all he has in the World; and this upon bare Allegations, without so much as the Sanction of an Oath, is extremely hard. Mr. *Porter* is such a Person, that I know not how he hath gained so much Credit, that this Act should pass upon his Parole to take away the Life of a Man. He was lately of that horrid Conspiracy of the Assassination of the King; and shall that Man, who was so lately of that villainous Disposition, to be engaged in a Crime of that black Nature, and not convicted by his own Conscience, but by the Danger he had run himself into, not so much as pardoned his Crime, but at this time, if I may without Offence use that Expression, Drudging for his Pardon; I say, shall this Person's Life be taken away by his Parole?

Sir, The next Thing I would go to, is that (which likewise they call Evidence) which is an Examination, as they term it, of *Goodman*, taken before a Justice of Peace: But he was not examined, and I must insist upon it; That though you permitted it to be read, yet I did observe you did not declare it to be Evidence; but you were, I presume, willing to hear all Things, and then judge what would be the Evidence. And, I think, the King's Council did not press it further. Sir, as this is not Evidence that would be allowed in an inferiour Court, so, I hope, you will not allow it to be Evidence here; for then it is like to be followed by other Courts, who observe the Proceedings

ceedings here as their great Rule: 'Tis only what Mr. Goodman thought fit to write down without being examined.

Sir, the next Thing they resort to, is What Goodman swore upon his Examination in another Cause, where Sir John Fenwick was neither Party, nor Present. Sir, there are, I suppose, such Reasons against that sort of Evidence from natural Justice, that it is not admitted in any Court; because there may be a weak Defence, or the Person that swears it against one, perhaps may not, when Face to Face, have the Confidence to persist in it, in Case it be false against another; or at least that Person, who was not a Party before, when he comes upon his Tryal, may think of such Questions as may go a great Way to discover the Truth, may produce such Evidence against his Credit as may overthrow it.

But if what is Sworn at one time against one Man must be always taken for Truth against all others, the Tryal of one in the Company is the Tryal and Condemnation of all the rest: And how contrary is this to a fundamental Rule in our Law, That no Evidence shall be given against a Man, when he is upon Tryal for his Life, but in the Presence of the Prisoner; because he may cross Examine him who gives such Evidence, and that is due to every Man in Justice.

But I would with Submission inquire, how they are sure that Goodman would have swore this Matter again, if he was now forthcoming? Because he did swear so in Cook's Cause, is it necessary that he would swear so again now, if Face to Face, with Sir John Fenwick? No Body can say so positively and absolutely; they only can imagine it, because he once swore it, therefore it is possible that he would do so again: Whereas we may as well say, he did then swear to save his own Life; and having done that, and found an Opportunity to get out of the Way, his own Conscience might put him upon flight, to prevent his doing of it again; and that might be the Reason for the withdrawing of himself. However, I insist upon it, That there is no Proof that it was by the Procurement of Sir John Fenwick: The Bill does not alledge it, and the Proofs do not come up to it: Nay, there is nothing offered to such Purpose, save only that Mr. Porter was pleased to say, That another Man told him, that the 300 Guineas he was offered, and 300 more he was to have received, were to have come from Sir John Fenwick: But hearsay Evidence is to be rejected, especially against a Man for his Life; because every Man is at liberty to talk at large: But God forbid that that should be allowed for Evidence.

The next Thing they went upon was what Mr. Roe said; That Mr. Dighton, who by your Permission is Solicitor for Sir John Fenwick, was inquiring of him what he could say to take off Goodman's Evidence: The Words I think he used were, What he could say to discredit Goodman's Evidence; and, I hope, that does no way affect Sir John Fenwick. For it does not appear that he had any Authority from him; but 'tis only suspected, because he is now Solicitor for him, which he was admitted to after the Time spoken of. But I take the Words to be nothing relating to Goodman's withdrawing of himself; but to inquire what he could say to discredit his Testimony, which supposeth he would appear, and imports the quite contrary of withdrawing himself: And if he had gone on further, I think, there had been

no Fault in that; for any Solicitor may enquire up and down for the Advantage of his Client; and the Word *Solicitor* imports his Employment. As to the Offer Mr. Roe says he made him, of a very great Recompence, how far he is guilty of that, I suppose, he can give some Account, if you should please to enter into the Examination of it: And as I find he does not doubt to clear himself, so that Sir John Fenwick is in no sort proved to be privy to Mr. Goodman's withdrawing himself, much less to be proved to have had a Hand in it.

There is one Thing more I would offer, and that is grounded upon the Bill of Indictment preferred at the *Old Bailey* against Sir John Fenwick; That the Matter in the very Indictment that they have read on the other Side, as it is there laid, and as far as it hath been offered to be here proved, does not amount to Treason; or, at least, it hath been made a very great doubt, and by some within these Walls: But this I offer, with all Submission, I have the Author in my Hand, who is a Person of Note of the King's Council, he hath furnished me with such Arguments as, I hope, I may be admitted to put you in mind of without Offence.

The Indictment lays, That there was a Conspiracy and Agreement to call in Foreign Power, and to that Purpose to send Charnock to France; but the Indictment does not say, That Charnock was sent, only that there was a Meeting, and an Agreement, and a Conspiracy, to send him: So the Indictment does not lay it as a Thing done, nor does the Bill charge it so; but only takes Notice, That he, I mean Sir John Fenwick, was Indicted for Conspiring and Agreeing to call in a Foreign Force; so that this Bill does not say that Charnock was sent. And I appeal to you, Whether it be proved that he was sent: For Mr. Porter says no more, but that there was a Meeting at the King's Head, and he named Sir John Fenwick to be one who was present; and there it was, he says, agreed, That Charnock should be sent into France. Now, if there was nothing more than an Agreement and Conspiracy to do it, and no further Act, but such a Meeting to do it, but the Person was not actually sent, or, at least, not proved to be sent; then, from this learned Author's Opinion, I insist upon it, that this is not a sufficient Overt-Act of Treason. In the late Case of my Lord Russell, whose Innocency is vindicated by this Author, he takes notice, That a Conspiracy or Agreement to levy War is not Treason, without actual levying War; and of that Opinion was my Lord Coke, and my Lord Chief Justice Hales. A Conspiracy or Agreement to call in Foreign Forces, unless actually done, or a Person, at least, actually sent, or something more than a bare Agreement for that Purpose, is the same as a Conspiracy to levy War. And in the Case of my Lord Russell, the Proof being only, That he, and others, met together, and agreed to seize upon the Guards, and levy War, which he never actually did; it is insisted upon by this Author, That that was not Treason; for that Indictment went no further. And therefore my Author says, Show me where such an Accusation was ever agreed to be more than a Conspiracy to Levy War? And that such a Conspiracy was ever agreed to be Treason within the Statute of Edward III. till within these few Years?

Sir, now I must humbly submit it to you, whether this be any Thing more? And for the Purpose you will please to consider, What this present Bill, and what that Bill of Indictment is: For it is not, for that *Charnock* was sent into *France* to sollicite Foreign Forces; but only that Sir *John Fenwick* was at a Meeting, where they did agree so to do. Calling in Foreign Forces is levying War, but Conspiracy to levy War is not Treason, unless it be actually done: A Conspiracy to call in Foreign Forces is nothing more. And therefore I humbly insist upon it, That neither by this Bill, or by the Indictment recited in it, or the Proofs offered before you, any Thing is charged, but only an Agreement at that Meeting mentioned by Captain *Porter*, a single Person, and he not upon Oath, to call in Foreign Forces. For he only says, That *Charnock* told him he had been in *France*. I shall not trouble you any further; we have not thought fit to produce Witnesses, for the Reasons I have offered: For that we do not find, That Sir *John Fenwick* throughout the Bill is charged with being guilty of Treason; and we are not willing to enter upon the Defence of a Matter not charged upon him. I hope, Sir, you will not make a Precedent, That where a Person is Indicted, and ready to abide his Tryal, in the ordinary Course of Justice, as Sir *John Fenwick* now is, that he might be taken out of the Hands of the ordinary Judges, and be brought to this Bar, to receive his Tryal here.

A Matter of this Nature may be of very great Consequence: We know at present upon what Ground we stand; for by the Statute of *Edward III.* we know what is Treason; by the 2 Statutes of *Edward VI.* and the late Act of Treason, we know what is Proof; by the Statute of *Magna Charta*, we know how we are to be tried, *per legem terra & per judicium parium*; That is, a Peer by his Peers, and a Commoner by a Jury: but if Bills of Attainder come into Fashion, we shall neither know what is Treason, what is Evidence, nor how, nor where we are to be tryed. Sir, I submit it to you, and hope this Bill shall not pass.

Sir *Bartholomew Shower*. Mr. Speaker, I am of Council for Sir *John Fenwick*, the Prisoner at the Bar; and first, I am humbly for to thank you for your Candour, of which I have had frequent Experience; and humbly beg for my self, That if I offer any Words that are indecent, or unfit for me, that you will interrupt me, for it is furthest from my Intention so to do.

The Bill that is brought into this House against Sir *John Fenwick*, is that whereby every one of you (with Submission) are to declare and pronounce, That he shall be Drawn, Hanged and Quartered, as a Traitor. And the Question before you is, Whether you will do this in this Case?

Sir, I shall not pretend to question, nor enter into any Debate or Argument in this Thing concerning the Power of Parliaments: No question, but in all Governments, there is some Supream Power; and by our Constitution, it is lodged in the King, Lords and Commons.

There are Precedents of Attainders, and that many; but can they shew me, where there hath been any Attainder by Parliament, for High Treason upon one single Act, which if Treason, was Determinable at Common Law; there have been Bills of Attainder for flagrant Treasons, and for Great Ministers of State; some topping Sinners,

who have been above Judges and Jury, and whom Inferiour Courts could not tell what to say to: But I believe I may say this, That for a single Consult or Agreement between four or five private Gentlemen, in a private Room, in which there was no Danger, but by the Consequence of the Resolution, if it was put in Practice, no Man can shew any Precedent for Attainting any Person in Parliament.

If you please to observe the 25 *Edw. III.* reserves the Power to Parliament, to proceed in Treason not expressed within the Statute; but as to the Compassing the King's Death, Adhering to the King's Enemies, and those Things that are there particularly specified, it seems the Sense of the Parliament to leave them to the Rules of the Common Law. So 1 *H. 4. No. 144.* upon the Roll it is at large complained of Accusations in Parliament for Treasons and Felonies, and declares for the future, they should be determined in the Inferiour Courts.

1. This was occasioned by Sir *Ram. Harray*; *Cotton's Abridgment*, 189.

There is a Melancholy Precedent or Two of single Acts of Attainder; but they are most of them reversed. Sir *Thomas Haxey* in *Richard the 3rd's* Time, was Attainted for bringing in a Bill into the Commons House against the Prerogative; but 1 *H. 4.* it was reversed with great Censure, *Cott. Abridg.* 362. 363. There are others in *H. 8.* Time, but they were for Acts in that Reign, which were questionable, whether or no within the Statute of *Edw. III.* and were for such Actions, as perhaps were not for the Honour of the Prince, or Good of the Government, to disclose by publick Tryal, as the Attainder of the Queen, and others concerned.

I beg leave to repeat the Words of a great Author, the Bishop of *Salisbury*, in the *History of the Reformation*, which I crave leave rather to do, because it hath been approved of by this House, for he had Thanks of the Parliament for it; fol. 359. 360. where speaking of these sort of Attainders, then he says, *After these Executions, followed the Parliament in 1539, in which these Attainders were not only Confirmed, but divers others were made of Persons in Custody, without bringing them to Tryal; (and he says) which can't be enough condemned as a Breach of the most Sacred and unalterable Rules of Justice.*

That of the Marchioness of *Exeter*, &c. I shall make no Paraphrase upon it: There is no question but you will Agree, and I must Admit, *Salus Populi* to be *Suprema Lex*; but for an Act, not the last of *May*, but last *May* was Twelve Months, the Danger passed, the Persons executed, that were concerned in the Great Treason, and all Danger that might have been from that Act gone, and no Fear now concerning it: I hope you will not use the extraordinary Power of the Legislative, to punish for that Fact which may be punished by the ordinary Rules of Law.

The Reason suggested in the Bill is, That 'tis impossible to have this Gentleman Tryed by the Rules of the Common Law; for otherwise there is none; For you will not waste your Time; and if the Doctrine that was broached here yesterday, be true, there is no Occasion to trouble you now; for according to their Doctrine, there is legal Evidence, and there is no need of a Bill of Attainder; but taking that for granted, that we must do; otherwise there is no Reason for this Bill. Then the

the Bill says, That *Goodman* was an Evidence, and that he is withdrawn; which I must observe, is neither laid, nor proved to be by the Privy, Consent, or Procurement of Sir *John Fenwick*: There is no pretence of it in the Bill; no Insinuation of it, nor any Evidence to that Purpose. Then suppose *Goodman* is withdrawn, we may presume you will not pass a Bill to put Sir *John Fenwick* in a worse Condition than if *Goodman* was present, if he had been ready to have sworn the same Thing.

In case you do pass this Bill, you do put Sir *John Fenwick* in a worse Condition than he would have been if *Goodman* were here: Perhaps it might have been reasonable to have an Act passed, That *Goodman*'s Depositions should be read at the Tryal, if *Goodman* was withdrawn; but we hope it can't be a Reason to condemn Sir *John Fenwick* of High-Treason without Tryal; for the Consequence of this is (if it were by his Means) that he is punished greater than the Thing requires. For if *Goodman* was here, Sir *John Fenwick* would have had his Tryal by a Jury, the Benefit of Challenges, Exceptions to the Array, might have Challenged upon Account of Favour, if any of the Grand-Jury had been impanelled, had his legal Exceptions to the Testimony of the Witnesses, might have these Witnesses examined upon Oath, might give Evidence upon Oath to it, and all this he is deprived of: So that now he is in a worse Condition, by *Goodman*'s absence, than if he was present. We insist upon it therefore, and submit it to you, whether any Punishment can be imposed by the Legislative Power, but only to supply that Defect; and put the Case in the same Circumstances it would have been, if such a Miscarriage had not been committed: But this Bill is to condemn him to Death upon the Oath of one Witness, though there was your Act of Parliament last Year requires two. With submission to their Judgment, it was the Law of the Land, before that; and in all Cases, where Tryals are *per Testes*; and 'tis the Law of God, and the Law of the whole World; and no Law allows a Man to be condemned but by two Witnesses; and the Reason that here one Witness is admitted, is, because he hath the Benefit of a Jury, and Challenges to them, who the Law supposes are privy to the Fact, and therefore are to come from the *Vicinage*, from the Neighbourhood of the Place where the Party dwells; and for that Reason, in Cases of Felony, where no Statute interposes, the Law allows but one Witness. Natural Reason requires two Witnesses in case of so great Crimes, because that one Witness can be no Rule to guide your Judgments; one affirms, the other denies, this is equal; and Presumption ought to be on the Side of Innocency, rather than otherwise; but we hope, in this Case, it will not be thought reasonable to pass the Bill to condemn Sir *John Fenwick* for Treason, and to condemn him to the basest of Executions, upon the Testimony, nay, upon the Parole of one Witness. And 'tis no more than if *Goodman* had been dead, then you would not have done it: If *Goodman* and *Porter* had both come to this Bar, you would not have done it, but have referred him to his Tryal at the Common Law. Now what is there pretended by them to induce you to judge the contrary, or at least without so much as an Allegation in the Bill, that Sir *John Fenwick* procured his withdrawing. I propose it to your Consideration, Whether there be any Proof that *Goodman* is withdrawn? He was once in Custody, let

out upon Bail, the Prosecutors approved the Bail, he never yet called upon his Recognizance; nay, there is not one Tittle of Evidence, but that *Goodman* may be in the same Lodging where he was: And then, suppose when you have passed this Bill, *Goodman* should appear again and contradict his Testimony he has given before: Then it may be too late for you to do Right to Sir *John Fenwick*. 'Tis not so much as offered that *Goodman* could not be found; they offered a printed Proclamation, which I am sure the King's Serjeant will not allow to be any Evidence. Whether it passed the Great Seal before it was printed, or whether it passed it at all, *non constat*; for it was not read; they waved it. It does not appear Sir *John Fenwick* consented, or procured *Goodman*'s withdrawing; he could not procure it, for he was a Prisoner, and so not likely to effect it, being a Prisoner, especially for his Life.

As for my Lady *Fenwick*, whether she did so or not, I am sure you'll be of Opinion, it ought not to affect Sir *John Fenwick*: Suppose *Clancy* a Stranger to Sir *John Fenwick*, and in Truth he never saw him: Or suppose him a Friend, and he officiously did what he did; he ought to answer for it, and I think he hath undergone the Punishment the Law thought fit to inflict in that Case; 'tis his own Crime, and by the Rules of Justice, no Man's Crime ought to tend to the Punishment or Misfortune of another Man: The Act of one Criminal, thought to be a Party, or Acquaintance, or a Friend of Sir *John Fenwick*'s, ought not to affect him, nor no Body but the Actor; 'tis he that hath suffered for it.

And what hath been said in that Matter, ought not to influence your Judgments; for 'tis not improbable, but what *Clancy* told *Porter*, is false; you will never allow Hearsay, nor permit your Judgment to be governed by any Thing but what is certain, and hath all the moral Rules of Persuasion. Hearsay was never, by any Law in any Court of the World, allowed, nor indeed believed in private Conversation.

As to my Lady *Fenwick*, there is this further, That Husband and Wife, in respect of Crimes, are distinct Persons; and what one does, cannot affect the other, no more than she deserves to be executed for what Sir *John Fenwick* did; and as to what *Porter* says concerning it, it only relates to himself; it proves no Suggestion of the Bill, which is, That *Goodman* is withdrawn, because a Stranger to Sir *John Fenwick*, (and it must be so in Construction of Law) made an Attempt upon Captain *Porter*; therefore *Goodman* being withdrawn, there was an Attempt upon him, and by the same Person, and by the same Means; this is no Evidence; it carries no Logick in it, and won't prevail upon your Judgment.

We offer another Thing to your Consideration. 'Tis said, that one *Roe* was spoke to by a Solicitor of Sir *John Fenwick*'s, Whether or no he could say any Thing to the Discredit of *Goodman*, as to his Robbing or Clipping? The asking of that Question was lawful; and to desire him to testify it was lawful: I must agree, to offer too great a Sum of Money, may subject him to an Information in the King's Bench; (but Mr. Attorney knows that best) but God forbid it should affect Sir *John Fenwick*; Mr. *Dighton* was not his Solicitor at that Time, not appointed, nor had any Liberty to come to him; besides, it can't be an Evidence, nor can't induce you to believe, That the same Person was instrumental to get away *Goodman*, because

cause he asked *Roe*, if he knew *Goodman* to be guilty of those Crimes; for there is no Evidence, that he asked him to persuade him to withdraw himself.

There's another Thing we could offer to you: There's no Proof of that, which, upon the first Reading of this Bill, was aimed at, to be punished with greater Pains than the common Law inflicts, and that is, the Giving of false Papers and Accusations against great Persons; they have not attempted any Thing like it; so that That is to be taken as if there was no such Thing. Neither is there any Proof of protracting his Tryal, by any Promises of Confession or Discovery; they opened it, but did not attempt the Proof of it, but waved it.

But take it to be so; I hope you will not pass an Act to Attaint a Man for making a false Accusation, which only incurs an Action of *Scandalum Magnatum*, or Fine and Imprisonment upon an Indictment; and, I hope, you'll not condemn him to a greater Punishment, when, at the Time he did it, he had no Notice of that Punishment. The Design of the Law, is to influence Men by Fear of Penalty; and how can that be, when Penalties are not known at the Time the Fact was committed? I speak with Submission still; it seems not Just, that I should forbear with so much Caution, from an Action that exposes me to the Penalty of 20 *l.* as from an Action for which the Law says, I shall forfeit my Life: Now, Sir, in this Case, it might be expected that he should incur the Penalty of Fine, Pillory, and Imprisonment; but not that he could incur the Penalty of Death.

Then, Sir, as to the protracting of his Tryal by such Promises of Confession. Certainly the putting off his Tryal, in it self, is so far from being a Crime, that it can't be thought but lawful; 'tis every Man's Duty, upon the Principle of Self-preservation; and it was at the Liberty of the Government and Ministers, to do as they thought fit in it.

In the next Place we do insist, That there is no Treason alledged nor proved in this Case: There is no Pretence of Truth nor Charge, in respect of the Assassination; nor of buying of Arms or Horses, though mentioned in the Indictment: And if Sir *John Fenwick* had been to have been Tried upon this Indictment, and they had had both these Witnesses there, all that could have been proved, must be of the Consult; as to the Rest, he must have been found not Guilty: And I believe 'tis most notorious, that the whole Company there, could not have raised what was talked of. Now as to this single Act, it hath been said, That a Conspiracy to levy War is not Treason: My Lord *Ruffel* was attainted for it, and that Attainder was reversed upon this very Account, and the Act declares the Reason of it, he being deny'd his lawful Challenges, and by strained Construction of Treasons, he was unlawfully convicted of Treason. Now the Overt-Act in the Indictment was this, That my Lord *Ruffel*, and others, did consult and conspire to seize the King's Guards: The Proof of it went further, That they sent Sir *Thomas Armstrong* to view them and seize them: But then the Question is, Whether the Consulting to send a Man to invite foreign Forces, is any more than a Consult to seize the King's Guards? We say each are levying of War, and 'tis not within the Clause of adhering to the King's Enemies; for they must be either present aiding and abetting of them, or sending them Money, Arms, and Ammunition, and the

like; and I think, for that, I may appeal to your Act made against corresponding with the King's Enemies; which, I suppose, if the Law before was otherwise, it needed not to have been made. Now here is only a Consult and Agreement to do this Act.

It hath been questioned, Whether *Scribere est agere*? But here it is only *mittere*; nay, it is not so much, 'tis only *agere mittere*; six Men had between them a little private Discourse, and at last One of them did agree to send *Charnock* to France: The Question is, Whether the Law of the Land will warrant this to be Treason? And if not, then you must not Pass this Act upon such a single Point. Dr. *Story's* Case is deny'd to be Law; this Case is no more than that in my Lord *Dyer*, for writing a Letter to invite the *Spanish* King to invade *England*; and it was a Time of great Fear of them, as it is of the *French* King now; and he was attainted upon that, but that Judgment hath been questioned and deny'd to be Law. My Lord *Hales* expressly, in his Pleas of the Crown, says, That a Conspiracy to levy War, is not an Overt-Act of the King's Death; and that attempting to levy War, is not Treason. Now the Sorts of Treasons are these Three; compassing the King's Death, levying War, or adhering to the King's Enemies. Now for compassing or agreeing to levy War, to apply that to be an Overt-Act of compassing the King's Death, hath been always complained of as a Strain of the Law.

Upon these Reasons, we think this would not have been an Act of compassing the King's Death, as laid in the Indictment; and then if it be but a Question, Whether it be or no? We hope you will not proceed in your Legislative, especially when he is deprived of the Advantage of insisting on this at his Tryal at common Law: Witnesses are there upon their Oaths; he might have had a Challenge to the Jury; he might move in Arrest of Judgment. Now the Question is, Whether you will pronounce Sentence of Death upon him for High Treason, upon one single Act, a Year and a half ago, just after the Act of Parliament for regulating Tryals in Cases of High Treason; and if we had had a Tryal at Law, we should have canvassed these Things; if we had Witnesses upon their Oaths, for the Pardon reached the 29th of April, they could Swear no new Discourse but just in May; and now they say it was in the Middle of May, if it had been before, the King's Grace would have exempted Sir *John Fenwick* from Punishment; and these Things we should have had the Advantage of, if we had had the Liberty of a Tryal.

There's another Consideration: Sir *John Fenwick* hath pleaded, and hath so pleaded to Issue, and Issue is joined, and a *Venire Facias* is awarded. Now we submit it to you, whether you will think fit to take it out of the Hands of the Common Law, when there is no extraordinary Necessity? And the Consideration we have to offer to you, if you do not cast out this Bill, if we should have the good Fortune, as we hope for in another Place, Sir *John Fenwick* stands still liable, and must submit to his Tryal, if the King's Council think fit to prosecute him, and we think it hard to undergo your Censure, to be condemned in this Place; and if (perhaps) he be acquitted here, to undergo the like Danger in another, and then to be Tried in a Third: And for these Reasons, we hope, you will reject this Bill.

Mr Serj. *Gould*. May it please you, Mr. Speaker, I have hearkened to what these Gentlemen have Objected, and could not be aware of all they have said. They have enlarged upon several Topicks; I shall recollect them as well as I can, and Answer them in the Method they have taken. I never did think, that the Parliament would take Things out of the Ordinary Course of Justice, nor Attaint any of Treason, unless in Cases Extraordinary; and these Gentlemen have agreed, That in Cases Extraordinary they have done it. They likewise have agreed, and Sir *Bartholomew Shower* has told you, That there are some Treasons, by the Statute of 25 *Edw. 3.* reserved by that Act, to be declared by Parliament. Sir *Thomas Powys* says, This is taken out of the ordinary Course of Justice: So says Sir *Bartholomew Shower*; says he, Here is an Indictment before you, the Party hath pleaded not Guilty, and they say, he may be Tryed in the ordinary Course of the Law; and therefore they look upon it as improper to bring it here.

The Gentlemen are mistaken very much, to think that I did say, That the Examination that I said was Evidence here, would be allowed below. If I had thought so, I should have thought at the same Time, this House would not have meddled with it: But I do disagree with them in this; and take it, That where a Case is Extraordinary, you will come and meddle with the Matter. Here is an abominable Treason, that is agreed on all Hands. Here is Plot upon Plot: Here hath been a Plot now to take away the King's Evidence; there was two Witnesses in the beginning, and 'tis very plain that one of them is not here; for that here was a Proclamation produced, and I did look upon that Matter as taken for granted, That *Goodman* was withdrawn, and for that Matter they may be easily satisfied. They say, we have not proved the Suggestions of the Bill; but we think we have: For first of all, Captain *Porter* hath here Sworn it expressly; it is not a Thing of loose, bare Talking; but he hath proved a deliberate and formed Conspiracy; he hath proved, that it was actually agreed upon, a First and at a second Time; and that *Charnock* was sent in order to the Execution of it: And what was it for? It was plainly to depose the King. He tells you, for that Purpose, they had desired 8000 Foot, 1000 Horse, and 1000 Dragoons from the *French King*; and these Gentlemen agreed to join them. Now, can there be a greater Evidence of deposing the King, and consequently of imagining his Death? 'Tis an Evidence of the Imagination of the Death of the King, as well as of the Rebellion; it being so in the necessary Consequence of it. Now, I think, he hath fully proved That. Then we offer to you, how far you will allow of this Examination: Why? Because upon a second Contrivance, here is a Witness withdrawn; and can we give you greater Evidence of that, than we have given? We have proved that there was tampering, let the Thing run as far as it will. Captain *Porter* was dealt with, had 300 Guineas in Hand, and 300 more he was to have remitted to him; and was to have 300 *l.* a Year, whereof Sir *John Fenwick* was to pay One. It does follow after, that he is withdrawn, we must leave it to this Honourable House, what Construction you will make of That: Whether here is not a second Plot?

Now this Matter is brought before this Honourable House, we have gone so far in it, as to produce *Goodman's* Examination that was taken before a Justice of Peace: We have shewed you the Evi-

dence that he hath given upon a former Tryal; and now he is gone, sure no Body but must justly infer, 'tis by Sir *John Fenwick's* Means: So that here they have taken away the Evidence that is necessary in the ordinary Course of Proceedings. In such an extraordinary Case, I think it hath been usual for the Parliament to interpose: Therefore, what they pretended, under Favour, that this should not be Evidence, is all taken off. For now we are in Parliament, you will make use of such Informations as can give you any Light into the Matter, and may obviate and cure the Distemper that is upon us; and you are Judges of your own Methods, and how far Sir *John Fenwick* hath been concerned upon the Instances we have given you, that is in your Judgments. As for what Sir *Thomas Powys* tells you; says he, This Power hath not been executed by Parliaments very frequently, but it hath generally been done where Persons are withdrawn from Justice, and can't be come at in the ordinary Course. Why, we are in the like Case; if so be we can't come at Justice in the ordinary Course, and that by our Evidence having been tampered with, and drawn away; then, Sir, under Favour, by their own Arguments, 'tis proper to come before this Honourable House; so that notwithstanding what hath been said, we do think we have given you Evidence.

And as for what they said, That we have not given any Account that Sir *John Fenwick*, by giving Assurance of his Confession, had protracted his Tryal; for that I did apply my self, That Mr. *Vernon* might give you an Account of it: So that upon the whole Matter, we must leave it to your Consideration, and hope we have given you good Satisfaction, that there hath been a great Plot against the Government; and there was no Evidence of any other Matter before the Judges, and they allowed it to be High Treason. Here is the same Evidence, only we have not one of them *Viva Voce*.

Mr Serj. *Lovell*. Mr. Speaker, I shall not trouble you nor the House very long; but I humbly hope, with a little Pains, to satisfy the House, that most that hath been said on the other Side, is not much to the Purpose. Sir, I will consider, with the Leave of this House, what the Common Law was before 25 *Edw. 3.* and how the Law does now stand; and draw some Consequences from thence, and the Necessity of this Case.

The Statute of 25 *Edw. 3.* I must observe it, is not an Enacting Law, it is only a Law Declaratory; for all those particular Instances of Treasons that are mentioned there, were Treasons before that Law was made; and so, by the Preamble of it, plainly appears: But the Judges had a greater Liberty upon constructive Treasons, and upon accumulative Treasons; and that was left too much at the Discretion and Liberty of the Judges below, and the executive Power of the Law. Then that Statute comes and restrains the Judges in that Point; and says, That they shall not give Judgment in any Cases of Treason, but only in these Cases, particularly mentioned there: And that Statute says, That if any other Matter which shall be thought Treason, should come before them, they shall not proceed to Judgment, but acquaint the King in Parliament with it. I only make use of it, to prove how Treasons stood before that Act, and how it comes to be altered from the Common Law: And I am sure it is not to be denied, but that one Witness was sufficient at the Common Law: But then comes 1 *Ed. 6. c. 12.* and that, for the Security of the Subject, does ordain,

That in Cases of High Treason there shall be two Witnesses of the Fact: But that Statute does not alter, but was made for the more Security of the Subject in Point of Proof. But in that Statute of 1 Ed. 6. c. 12. that does provide there shall be two Witnesses in Cases of High Treason, there is an Exception of Treason for counterfeiting and forging of the Coin; and that is the Reason that the Law is taken now, that though there must be two Witnesses in the Cases of other Treasons, yet in the Case of Coining, there needs but One. The Offence or Crime is never the greater, because there are to be two Witnesses to prove it. In this Case that is here before you, we come to desire your Help, because one of the Witnesses is by Art and fraudulent Means withdrawn: Does that purge the Crime at all, or lessen it? No Man will say the Crime is less, but it does prevent a regular Tryal before the Courts below; and that is the Reason why we did come here; and we hope this Defect shall be supplied by a special Law: But, say they, 'tis very hard a Law should be made *ex post Facto*, to take away a Man's Life. It would be very hard, if the Case was as they have cited it, to make a Crime *ex post Facto*, that was not so before: But I do not take it to be hard for a Law to be made to repeal another, to make a Matter Tryable, that was not Tryable before.

Suppose a Law should be made, That all Treasons from and after such a Time, suppose from a Time before the Fact is here supposed to be committed, as *May* was Twelve-months, should be tryable as at the Common Law, no doubt the Parliament may repeal a Law in Part, or in All. No Man can say, but Sir *John Fenwick* might be Tried at the Common Law, by one Witness, before the Statute of 1 Ed. 6. So that I do observe, and humbly submit it to you, That this Law, by the Act, is not changed as to the Crime; the Crime is as it was before, it is only changed as to the Number of Witnesses. The Instances that have been observed on the other Side, with humble Submission, I think do not reach our Case. We do not insist that there are two legal Witnesses; we do confess the Information that hath been read; is not a legal Proof; but this House, in their Legislative Capacity, is not to be confined to the Evidence that a Jury must have below. This House may take what Ways and Methods they please to satisfy themselves: Say they, Here is the Life of a Gentleman that is concerned. I know all good Men will be tender of the Life of a Man: But here is the Life of the King, and the Safety of the Kingdom, the Peace and Safety of us all, that is concerned in the same Case; and let them put these Things into the Ballance, and consider which ought to weigh most.

You have a Record before you of the Conviction of *Peter Cook*, who was Indicted by the same Witness.

A Learned Gentleman, that is of Council for the Prisoner at the Bar, did make the same Objections as are made now at the *Old Bailey*; (it may be there are some other Particulars now) and after all the Debates and Arguments that could be used at that Time, it was unanimously resolved, That the Crime was High Treason: And if it was High Treason in *Peter Cook*, 'tis no less in Sir *John Fenwick*, who was present at the same Time, and engaged in the same Business: For what was a Crime in one, was the same in both.

I think 'tis too determinative an Expression, to say, This was nothing but a little Twittle Twat-

tle. They did there meet upon a solemn Consultation; and not only once, but they did meet a second Time; and what was it to do? It was to invite a Foreign Power to invade this Land, and to make War with the King and Kingdom; and they did promise, and solemnly engage to assist them with armed Forces; and it was proved, That they did agree with *Charnock* to go into *France*; and *Charnock* was not willing to go the first Time he was desired, till he found they were stanch and steady in their Resolutions; and upon a second Meeting they were all found so, and then he would go: I think that is an Overt-Act of Treason, if there be any. And when he came back, he said, he had been in *France*, and brought an Answer to the Message he went about: This is all now laid before you. But, say they, this is an extraordinary Case: I do agree it; but because it is an extraordinary Case, and for the Safety of the King and Kingdom, it is fit there should be an extraordinary Remedy.

They ask, What Mischief it would be, if this Gentleman should be left to the ordinary Course of Law? It hath been the Wisdom of all Ages to make a Law, to punish such as by their Artifice would evade the Law. Here is this Gentleman, as we say, guilty of High Treason; but that we submit to you.

This Gentleman was in the Prosecution of the Law, and might have been Tried in the regular Way, had the Witnesses upon their Oaths; (the Grand Jury have found *Billa Vera* upon their Oaths;) but we must appeal to a worthy Member of the House (who because he was a Member we did not call upon him) to give you an Account how he did Delay and Protract his Tryal; and now they know he can't be Tried at all, they pretend he is willing to be Tried: And because he can't be Tried, they would have it as an Argument that he should not be punished by any other Means.

Sir, if so notorious a Crime as this is, should be committed against the Body of a Nation, and go unpunished, either in the common Course, or by some extraordinary Methods, the Nation would be in a doubtful and dangerous Case.

When this House hath passed their Judgments in this Matter, it will go to another Place, where it will have another Examination; and it will have that regular Consideration that all other Acts have. We are in an extraordinary Case, and do think, That this extraordinary Case does deserve an extraordinary Punishment.

Sir *Bartholomew Shower*. I beg Pardon but for one Word: No Man does abhor such Consults more than my self; but I do not think that Discourses are such an Overt-Act of High Treason, as deserves the Punishment of Death.

Sir *John Fenwick* and the Council withdrew. And being withdrawn.

Admiral *Russel*. I think this may be a proper Time to ask Questions: If so, I think my self enough concerned to trouble you with one or two. I think in the Paper that hath been read, I am mentioned twice. These are the Questions I desire to have asked; What Proof he hath of this? Whether ever he saw — And what Proof he has that I sent Captain *Lloyd* over? And that I gave him a List of the Ships? And that

Meaning Fenwick's Informations.

that I said, we could not fit out thirty Ships in May? And whether or no, since this Revolution, he hath had any Conversation with me?

Colonel *Crawford*. What that honourable Person says, calls me up; my Name is mentioned in Sir John Fenwick's Paper: I desire you would ask him, Why he mentioned me in his Paper, as he hath done? And that you would require him to make Proof of what he says in relation to me.

Colonel *Gudfey*. I desire some Questions may be asked him in relation to a noble Lord, my Lord Marlborough: If he be Guilty I would have it known, and I would as willingly have it known if he be Innocent, as I believe it will so appear. I would have him asked, Whether, since the Beginning of this War, or from the Time of this King's Landing, Sir John Fenwick did ever speak to him, in Publick or Private? Or ever did write to him, or receive any Message by Word of Mouth, or Letter, from my Lord Marlborough? He says, That some Service he had promised King James, which inclined him to promise him his Pardon: I would know what that Service was? And in relation to his sending Lloyd into France, Whether he can, by any Body else, make that appear?

Colonel *Crawford*. That Gentleman hath put me in mind of one short Question; Whether ever he conversed or spake with me in his Life?

Mr. *Bridges*. Whether Sir John Fenwick hath any Body but himself, to support the Hearsay he hath given an Account of? And I desire a Question may be asked him on behalf of the Duke of Shrewsbury; What Proof he has that the Duke of Shrewsbury came into the Office of Secretary of State again, by the Operation and Consent of King James?

Mr. *Vernon*. I desire a Question may be asked previous to that, because 'tis so in Time; How he knows that noble Lord was in Treaty with King James, before he went out of the Secretary's Office, when he first came there?

Colonel *Granvil*. I desire he may be asked, What Proof he can give, that my Lord Bath was to betray Plymouth into the Hands of King James, or the King of France, and whatever else my Father is accused of in that Paper?

Mr. *Harley*. I humbly propose it to you for the Method of your Proceedings, since you take this Method, Whether it will save you Time for you to look upon that Paper, and ask him as to the several Parts of it, what Proof he can make of it.

Mr. *How*. I do not oppose Sir John Fenwick's being examined to this Paper, but it might have been more to your Credit, if you had Examined him before your Vote: But here are a great many Gentlemen rise, to ask a Man to that which he does not pretend to any Proof of. The best Way for saving your Time is, I conceive, to have the several Parts of the Paper that does concern these Gentlemen read to him; and to ask him upon what Grounds he gave the King that Information: This will lead him into all that he knows of the Matter.

Mr. *Boscawen*. I am not against the Question that is proposed last, but you may ask him that at last. But there is a noble Lord that is reflected on in that Paper, and that is my Lord Godolphin; I desire you would please to ask the same Questions as to him.

Lord *Corningsby*. I did intend to take care of my Lord Godolphin; there is a hard Reflection upon

that noble Person; but, under Favour, you must, I think, let him know you have such a Paper; and then ask him in General, What Proof he has to the Particulars of that Paper? And then you will do Injustice to no Body.

Mr. *Norris*. There have been several Questions moved by several worthy Members; and, I think, the Questions ought to be asked: But, I think, there is one previous Question to all these; and that is, when you tell him that you have such a Paper. I think the first Question should be, Whether ever he delivered those Papers to the King?

Sir *R. Delaval*. I find I am named in that Paper that Sir John Fenwick hath given; I desire that Part that relates to me may be read to him; and that he may give a Reason, why he hath said so of me, and Mr. Killigrew.

Lord *Walden*. There is another mentioned, and that is Commissary *Crawford*; I desire he may be asked, What Proof he hath, that he gave Mr. — a List of the Army?

Mr. *Comr. of Exchequer*. I can't blame Gentlemen for asking Questions that concern them, or their Friends: Some are for reading of it to him, I am against that: But yet I would have you to enquire into this Paper. And being you intended to do it, it might have been as well enquired into before Mr. *Dighton* came last to him. I think you may put your self into an easy Method, and avoid all leading Questions; and ask him upon every Name in that Paper, as you come to it, What he knows of that Gentleman? And ask him no other Question.

Mr. *Smith*. I was standing up to the same Purpose: I would not have you to put Words into his Mouth, nor let him know by any Question what Answer he is to make.

Mr. *Speaker*. Gentlemen, I am willing to do you any Service I can; but here are long Informations, and I never read them, nor know the Contents of them, but as they were read at the Table.

Mr. *Att. Gen.* I think the Method lately proposed, will save you a great deal of Time, and is proper for the Discovery of the Truth; That you will Name the Persons to him in Order as they are in the Paper, and ask him in general, What he knows of those Persons? But when you call him in, I am not for asking him to the particular Things he hath said against them in that Paper; because that Paper, though it is under his own Hand, is not his own; and if he knew it then, he knows it still.

Colonel *Morden*. I won't pretend to propose any Thing, only for the Shortning of your Time; If after you have informed him there is such a Paper, that you should ask him, Whether he will own it? And then, What Sort of Proof he will bring to prove it? You will find he will either tell you, he will Advise with Council, or whether he will give any Answer at all.

Lord *Cutts*. I have only one Question to be asked Sir John Fenwick; 'tis not a Question that relates to any Person named in that Paper. I think there is no one Person that he hath named, but is eminently known or believed to be in the Interest of this Government; and none but what are in some Post of Trust, and Employment in it. Then, I think it highly necessary to know, How it comes to pass that he hath had so much Conversation with Persons of that Character, and none with those People that he hath been seen daily to converse with? And if he hath, Why he hath not discovered them, as he hath done the Rest?

Mr. Speaker. Is it your Pleasure I inform him we have the Informations?

Mr. Palmer. If I am not mistaken, when you first called Sir John Fenwick before you, he referred himself to what he had informed the King; and referred himself to that Paper, as often as you asked him any Questions. And if you ask him general Questions, I presume he will give you the same Answer: Therefore, I think, it may be proper to ask him, Whether this is the Paper that he delivered in, or not? Or otherwise, I doubt, he will tell you, He knows nothing but what is in that Paper. Now, if he refers to that Paper, you may ask him, If he knows it again, if it be shewed to him?

Mr. Sloane. What this Gentleman has said, has partly interrupted what I was going to offer; but as to what he says, That when he was here before, he referred to his Confession delivered in to the King; we did not tell him we knew of that: But he put it further, That he was not bound to accuse himself, and that what he said might be given in Evidence against him; and so far he was in the Right. For if he knew of any Body that was concerned in a Conspiracy against the Government, that was Misprision of Treason at least in him. I don't question but it was a very mischievous Contrivance; but if he should confess it, without some Assurance of being indemnified, he proves himself to be Guilty of it.

Mr. Vice Chamberlain. You are now upon the Method of your Proceedings: There is great Suspicion whether this Paper be Sir John Fenwick's own or no. If you will tell Sir John Fenwick, that in the Paper in your Hand he hath laid Things to the Charge of Persons of Trust, whom this House hath a good Opinion of; and that this House desires to know, What Ground he hath for it? If he does not think fit to give you an Account of it, there is an End of your Enquiry.

Mr. James Mountague. The House seems to agree, that they will have Sir John Fenwick sent for in: I suppose you will not have the Council, nor Solicitor by; and when he withdraws, I desire he may be kept private, from his Council and Solicitor.

Lord Cutts. By Sir John Fenwick's Behaviour, when he first appeared at the Bar, and by what he said then, I believe Sir John Fenwick did tell you to this Sense, That he had Assurance from a noble Person, that what he then said, should not rise against him in Judgment; and I think he was told, If he dealt ingenuously, he might expect Favour, or to that Effect. I do, for the Saving of Time, mention it to you, to consider how far the House may give him Security, that what he here says, shall not rise up in Judgment against him; and that if he dealt ingenuously, he might expect some Favour from this House.

Mr. Harley. You are upon the nicest Thing, in its Nature, that possibly can come before you. I think before you call him in, it ought to be understood that the Questions be very plain.

Mr. Manley. I think you have been well moved from the other Side, That we should not read this Paper to Sir John Fenwick: And I am of that Opinion from this Consideration, besides what hath been mentioned; we are here in a judicial Capacity as well as a Legislative; and this Paper I take to be an Examination made upon Sir John Fenwick; and as my Memory serves me, some Things he speaks of as Matters of Fact, which he does positively assert; which being contained in the same

Paper with other Matters of Hearsay, if you should read that Paper to him, and ask him a Question, Whether that be his Paper? That, I doubt, will be contrary to the Rules of Law: For it will be asking, Whether this Information against himself be true or false? And I think it does not become the Dignity and Honour of this great Assembly, to ask him any Questions that may make him Accuse himself.

Mr. Vernon. I would observe to you, that he has not considered these two Papers: The first of these Papers I think the Bill refers to, and that is under Sir John Fenwick's Hand; and there he does charge nothing at all upon himself, but it is an Accusation upon the Persons named. In the first Paper he does say, There was a select Number to manage the Affairs of King James, and ——— was sent over, but they are not named; and afterwards he went about to explain it in the Second; and the Bill referring only to the First, I suppose you will confine your selves only to the first Paper.

Mr. Chancellor of Exchequer. I would think of some Way to reconcile these Things you are going upon: For though Gentlemen are in the Right to press for these Questions; yet I do not think it the Business before you. Therefore I think you should acquaint Sir John Fenwick that this Paper hath been presented to you which this House hath thought false and scandalous: But before he goes away, this House has a Mind to hear what he would say to it; and let him say what he would upon that, then you would not lead him by any Question. The first Person that is named, I have a great Respect for, and am as willing he should be vindicated as any. The first Question that you ask him is, What he knows of my Lord Godolphin? But that you should literally ask him Questions, as the Paper states it, I don't think it proper for this Assembly to ask: For there are Facts beyond the Act of Indemnity many of them. After you have done with the Paper, I have some Questions to ask him: I take these Matters to be false; but I shall have some Questions to ask him, which I believe will prove true.

Mr. Bridges. Before you call in Sir John Fenwick, I would offer one Thing to your Consideration; I think that Paper you are upon, is written with Sir John Fenwick's own Hand. Why may it not be fit for you to ask Sir John Fenwick if that be his Hand?

Members. No, no.

Mr. Speaker. Is it your Pleasure that Sir John Fenwick be called in?

[Which Question being put, it passed in the Affirmative. And he was brought in without his Council.]

Mr. Speaker. Sir John Fenwick, this House does understand that you have given in Informations against several Persons of great Quality, that have been in the Government; and they do expect from you, that you should deal clearly and candidly with them, and give them an Account of what you know in relation to those Persons. I am commanded, in the first Place, to ask you, What you know of my Lord Godolphin, in relation to this Matter?

Sir John Fenwick. I am under a double Prosecution for my Life; I know not but what I say may turn to my own Prejudice: I hope the House will not think it Obstinacy in me; and since this House

House have done me the Favour to hear me by my Council, I hope they will please to consider what they have said.

Mr. Speaker. No doubt the House will consider what you have said by your Council, that is, in reference to your own Defence; but they do expect from you, as I told you before, That you do deal candidly with them in what you know of this Matter.

Sir John Fenwick. Sir I am under Prosecution for my Life; and, I hope, the House will please to consider, That I know not what Inconveniency may come upon me by it; and, I hope, the House will Excuse me, for I do it not out of Obstinacy, but for my own Preservation.

Mr. Speaker. You would do well to advise your self well in this Matter, 'tis of great Concernment; the Favour of this House, if you deserve it, may be of great kindness to you. I have only in command to tell you, what the House expect, and you are to consider how to Answer it.

Sir John Fenwick. I hope the House will not put me upon any thing that may hurt my self: I should be sorry to incur the Displeasure of this House, but I hope they will consider my Condition; and I am sure the Justice and Honour of the House is such, That they will not press any Man to do any Thing that may hurt himself.

Mr. Speaker. Sir, if you please to withdraw.

Accordingly Sir John Fenwick withdrew.

Lord Cutts. I would humbly propose something to you to save your Time, and remove this Inconveniency. The House have heard what Sir John Fenwick says; I can't but say, that in Matters of Blood we can't be too tender; but that I would propose to you, if this House approve of it, is this; Suppose you wave the whole Matter to the last Moment of passing your Bill, and then I shall have something more to say to you in the Matter.

Mr. Clerk. Now I think it very proper for you to proceed in your Legislative Capacity. I am glad the House have taken so much Pains in the Examination of the Matter; and it is no small Satisfaction to me, That the Gentleman was brought to the Bar upon this Enquiry; very probable another Time may induce him more to comply than he does at present; though, if I may speak my Opinion, there is little hope of the Gentleman's Answering your Expectation here: And I think the first thing you are to do now, is to read your Bill.

Mr. Pultney. One of the Allegations of the Bill is, That his Tryal was put off upon several repeated Pretences of making a Confession. The Council for the Prisoner took Notice, That that Allegation was not proved: The Council for the Bill told you, They must refer to a worthy Member of this House, who could prove it; the worthy Member is Mr. Vernon. I suppose before you enter into a Debate, as there will be after the second Reading of the Bill, Gentlemen will desire to have all the Evidence. And I find your Order is, That Mr. Vernon do give in his Evidence while Sir John Fenwick is at the Bar; and therefore I humbly move, That Sir John Fenwick may be called in while Mr. Vernon gives his Evidence.

Mr. Speaker. I suppose if Mr. Vernon gives Evidence, you will call in the Council.

Members. Yes, yes.

Mr. Speaker. Pray then hear the Motion that hath been made. Shall I put the Question, That Sir John Fenwick and the Council be called in, while Mr. Vernon does give his Evidence?

[Which Question passed in the Affirmative; and Sir John Fenwick, and the Council on both Sides, were brought in.]

Mr. Speaker. Gentlemen, you that are of Council of both Sides, the House, before they proceed any further, was willing to hear the Testimony of a worthy Member of this House which has not yet been given; and they are willing that Sir John Fenwick, and you, should be present while it is given. Mr. Vernon, will you please to acquaint the House, &c.

Mr. Vernon. If I understand the Council for the Bill aright, that which they did appeal to me for, was about the Portraiting of Sir John Fenwick's Tryal, and upon what pretence it was. The Account, Sir, that I can give of it, is this; That Sir John Fenwick's Tryal was put off, will appear best from the frequent Adjournments of the Sessions at the Old-Baily for six or seven Weeks together. For when Sir John Fenwick was committed to the Tower (which was as I take it) on the 19th of June, there was, I believe, a Sessions to be held soon after; for as I remember it, the first Application that Lady Mary Fenwick made for putting off Sir John Fenwick's Tryal, was upon the 30th of June; and the Petition was, That he might have some Friends come to him to advise him how to make his Application to the King: On the 30th of June, or about that time, my Lady Mary Fenwick did first Propose, That somebody should be sent over from Sir John Fenwick to the King upon some Matters of Importance, but did not declare what they were; but only that she was told there was such Matters, and she had a proper Person to send, and would acquaint the Lords Justices with the Man, if he might have leave to go: But afterwards my Lady Mary Fenwick said she could not provide a Person so soon; and, I think, the 2d of July, she came and offered to go her self, and said, if it was not as much for the King's Service, as Sir John Fenwick's Benefit, she would not undertake the Journey. She had leave to go, and would have capitulated, that the Tryal should be put off till she returned; but the Lords said, when she should return, would depend upon her pleasure; but they would write to the King at the same time, and give notice of her Intention, and that the Tryal should not go on till they had an Answer of their own Letter.

There was a Passage in the Transport Ship going to Holland, and my Lady Mary Fenwick desired to speak with Sir John in Private, in Order to her Journey; the same Night she came back again, and said, she had considered of it, and said, she would not go, and several Reasons she gave. Upon the 7th of July there was a Noble Lord that was in the Commission for the Administration of the Government, said, he had had an Application made to him from another Noble Peer, my Lord Carlisle, who desired that he would go to Sir John Fenwick, for he had been very earnest to speak with him. That Noble Lord did acquaint the Lords Justices with it, who acquiesced in what he thought fit to do in the Matter.

He went the same Day to Sir John Fenwick, and the next Day the Lords Justices met again; he then

then told he had been with Sir John Fenwick, and that Sir John Fenwick had told him, he had sent to the King; for he did not allow it should be otherwise communicated: My Lords then thought it was fit to stay for the King's Answer. This was the 7th of July, and by what Accident I know not, but no manner of Account came till the 7th of August, that the Letter was received; but the 7th of August, the Letter was acknowledged to be received; and the Answer that then came to it, was, That the King had not received any great satisfaction by the Message; (I know not what it was) but that Sir John Fenwick should be Tried; but withal, that Noble Lord acquainted my Lords Justices, That the King was pleased to write to him, That what Sir John Fenwick had to say should be sent him in Writing. It happened at that time, that the Judges were upon their Circuit; and there being the King's Directions to receive what Sir John Fenwick had to say, in Writing; that Noble Lord did undertake to go again to Sir John Fenwick; and, I suppose, he did receive something from Sir John Fenwick, which he sent to the King: When the Answer to that came, it was in September, and that Noble Lord was at the Bath; and so it required a little time—Why then it appeared, That the King's Direction was, That what Sir John Fenwick had sent to the King, he should prove it; and he should likewise shew his Ingenuity in Confessing what he knew of any other Designs against the Government: And the 10th of September, as I take it, I was directed to go to Sir John Fenwick; who was then in the Tower, and to acquaint him with this Message from my Lords Justices. Sir John Fenwick's Answer was, That he had no more to say; or some Words to that effect; and then he must prepare for his Defence as well as he could; but if he could speak with that Noble Lord, he should be glad to do it; but he was not come from the Bath; and Direction was then given for his Tryal: Again in the mean time, that Noble Lord did come, and he did go to Sir John Fenwick, and he brought an Account from him; That Sir John Fenwick would prove to the King, and make out what he had said; and was ready to give the Lords Justices Satisfaction: And upon that, I was sent to Sir John Fenwick; I carry'd the Message in Writing, which you may see when you please; and it was to ask him, Whether he was willing to make out by Proof, what he had already said to the King; and whether he was ready in Compliance with the King's Directions, to give the Lords an Account of what he knew of any Design against the Government? I carry'd Sir John Fenwick this Message, and he returned an Answer in Writing, That he was ready to make out to the King what he said, and would acquaint the Lords with all the Matter that he had not observed to the King; (his Arraignment was then to have come on the 17th) but he did dictate a Paper which was brought to the Lords, which they thought fit to be sent to the King; and the Tryal was put off as to that time: And before an Answer from the King, came, it was (I believe) the beginning of October: And this is the Account I have to give you.

Mr. Speaker. Gentlemen, you consider that this Evidence is given, with Relation to that part of the Bill, that sets forth, how Sir John Fenwick had delay'd his Tryal by Offers of Confession. You have heard what the Evidence is; if you have any thing to observe as to that Point, you may speak before you withdraw.

Sir Tho. Pomys. As to this Matter, I can only say, That in it self at least, according to our Rules of Law, it is not, in any degree, Treason: What you will construe it to be I can't tell. We think it is only what is very usual when Persons are under an Accusation; they will put off their Tryal as long as they can: Perhaps their Witnesses may be out of the way, or something else may be the Reason of it, and it does not carry any Crime in it self; at least, not of the Nature that this Bill is of.

Sir Barth. Shower. We do think, with Submission, That considering the Nature of the Bill, and the particular Case of Sir John Fenwick, will (in some measure) Answer this Fact: I take this singly in it self, as it hath been observed, not to consist with Honour; but it does not import a Crime, for any Man to use little Insinuations to put off his Tryal: But, suppose it was unlawful, or that which they call Prevaricating. I hope it is far from making him Guilty of high Treason, which is the greatest Crime this Bill designs to pass Sentence for; and, I hope, you will consider, if it be an Offence, 'tis so at Common Law; and the same Evidence will prevail to bring Sir John Fenwick to Condign Punishment by the Common Methods. And if it be no Offence, I hope you will not by a Law make it an Offence, so as to inflict the greatest Punishment for this Artifice.

Mr. Speaker. Mr. Serjeant Gould, Have you any thing to say?

Mr. Serj. Gould. No, Mr. Speaker.

Mr. Speaker. Then withdraw.

And being withdrawn,

Mr. Sloane. I propose it to you, Whether, if the Paper be Evidence, it should not be read in the Presence of the Prisoner?

Members! No, no.

Then the Question was put for Candles, which passed in the Affirmative, and they were brought in.

Ordered, That the Council be discharged any further Attendance at this time.

Mr. Methwin. There can be no Debate previous to the reading of your Bill. I desire the Order of the Day may be read.

Accordingly the Order of the Day for reading of the Bill a second Time, was read by the Clerk.

Then the Bill was read a second Time by the Clerk.

And being afterwards opened by Mr. Speaker, and Mr. Speaker having expected for some Time, and no Member rising up to speak.

Mr. Speaker. Shall I put you the Question of Commitment?

Sir Tho. Dyke. Sir, I hope you will not put the Question of Commitment till some Exception is made to the Bill; I am sure it is as liable to Exceptions as any Bill that hath been brought in a great while! 'Tis a tender Subject to speak of, the Pretence of the Bill being for the Preservation of the King and Government; and if I thought it was really so, I should be heartily for it; for I think there is no Comparison between the

the Value of the King's Life, and that of Private Persons, but that hath been often said, but not proved; therefore, I think, I may tell you my Reasons why I am against the Bill: That the Parliament hath a power to make such a Law, is Agreed; but I think it ought not to be used but upon Extraordinary Occasions, when great Persons are concerned, that can't be otherwise brought to Justice; and when Crimes do not fall under the Denomination of the Law, which is not the present Case. This Case is, That a Gentleman is charged with Treason; and 'tis proved but by one Witness; though the Council did say, That a Consult to levy War was not Treason. Now either it will not be the Crime that is alledged, or it is not proved. Here you are Judges, Prosecutors, Witnesses and Jury: I would know in what Country it is so? Besides, the Witnesses are produced here, and not Sworn; and upon the whole, there is but one Witness. Sir, I am against the Bill, and against it as being of dangerous Consequence.

Mr. *Pultney*. This Matter before you, is of such a Nature, that as a Debate is rising upon it, I hope all Gentlemen will hear one another with the greatest Attention that may be.

The worthy Member admits you have a Power to pass the Bill, and I do not find that contested by any Body; though (with Submission) the latter part of what he said, contradicted what he admitted at first; but since that is so much Agreed, I shall say but little to it, and that is this, That without such a Power as this, any Government would be imperfect, and would want a sufficient Power for its own Preservation, upon extraordinary Occasions. You have been told, this hath been an untrodden Path; but, I believe, Gentlemen are pretty well satisfied it hath not been so untrodden, and many Precedents of that kind have been quoted; and the Council against the Bill have admitted, That there have been frequent Precedents. An Objection hath been made to some of them, That they were made in ill Reigns; but I take it to be no Objection, That the Precedent was made at one Time or another, since 'tis Agreed, that we have such a Power, and that that Power hath been Executed.

The chief Matter before you is, Whether in the present Case, there is sufficient Ground for you to exert that Power? And upon that, give me leave to observe the Nature of the Crime of this Gentleman, and the Evidence that hath been brought to prove him Guilty of that Crime. His Crime his high Treason, the highest Crime in the Law: 'Tis for Conspiring the Destruction of the King, and the Overthrowing of the Government. The Overt-Act which the Bill tells you (and which is mentioned in the Indictment) is his inviting in a *French* Force, in order to accomplish his Design. If this Crime would admit of Aggravation, some other Parts of the Bill would aggravate it; but I think it will admit of none. The Council at the Bar made a Doubt, Whether or no, that which was laid in the Indictment, did amount to a sufficient Overt-Act of High-Treason? And his Argument he drew from a Book that hath been put out by a learned Gentleman of the House; but the Gentleman could easily have answered himself; and, I presume, did not speak his own Opinion. For ——— Gentleman did write a Book, called, *His Majesty and Government vindicated*: By which he endeavoured to overthrow the Arguments in the other Book of the other Gentleman.

As to the Proof before you, you have had the Testimony of Mr. *Porter*, whose Evidence hath been justified by the several Convictions grounded upon it; and by the Confession of several Gentlemen, that have owned the Fact at the very Time when they have been going out of the World: And there hath been no Evidence brought by the Prisoner at the Bar, that should invalidate the Testimony of this Gentleman. And so (with Submission) you have one undoubted Evidence, that does charge the Prisoner with the Fact mentioned in the Bill: You have other Proof that does not come up within the Letter of the Law; but you have strong circumstantial Proof, that every Gentleman will apply to his Conscience in the Judgment he shall give in this Matter. One of the Allegations in the Bill is, That he did, by repeated Promises of making a Confession, from Time to Time, gain a Delay of his Tryal. It is a great Presumption, that That was in order to a Design that he had of seducing Mr. *Goodman*, that was one of the Witnesses; for it was observed to you, what Practice there was in the Case, with the other Evidence, Mr. *Porter*.

Sir, Gentlemen have objected the Consequences of making a Precedent: You were very well told by a worthy Gentleman that spoke the other Day, near the Place where I am, That in the Case of a good Parliament, 'tis not to be imagined that they will make use of this Precedent, but upon as good a Ground as you have now; and an ill Parliament, they will have the same Reason, for they will Copy after the same Precedents that have been made before, and will not stick at doing of it.

Besides, let Gentlemen consider the Way of Arguing: I have a Power to do such a Thing, and yet if I have such a Ground as is sufficient, I shall not make use of it: To say you have a Power, but shall not exert it, is as good as to say, you have no Power at all.

There were some Precedents cited by a learned Gentleman that spoke against the Bill, and he particularly quoted that of my Lord *Strafford*; and the Act of Parliament that repeals that Attainder, was in Part read to you: But, Sir, the Reasons given in that Bill of Repeal of my Lord *Strafford's* Attainder, are, That it was obtained in a tumultuous Manner, which influenced the Parliament in doing of it; and that it passed in the House of Lords, when most of the Lords were absent: And at last, when the King, when he gave his Consent, by Commission, to the Passing of the Bill, it was with great Reluctancy. 'Tis certain, all these are Reasons that are given; but there is not One that questions the Parliament's Power of doing it; tho' upon the Tryal, Gentlemen may remember, there was a Doubt in the Law, Whether the Evidence was sufficient?

Sir, It hath been urged to you, of what ill Consequence it would be, and how much Injustice to make a Law to punish a Man, *ex post facto*; but that the Parliament may declare That to be a Crime, which was not so before, no Body doubts; and without That, the Clause in the 25th of *Ed. III.* signifies nothing; and I don't imagine it is a greater Injustice to supply in Point of Form, as to Matter of Evidence, when the Fact committed by the Prisoner, was against a known Law, at the Time when it was committed: And the rather, if I think that Defect of Form in the Courts below, was occasioned by the Prisoner. 'Tis a Matter of Blood, 'tis true; but I do not aim at this Gentleman's Life in it; but any Man must

must believe he must be concerned in great Matters, to bring to pass this great Design; therefore, all I propose by it, is to get his Confession, which in all Probability we might have had, if the other Witnesses had remained here.

Sir, upon the whole Matter, I do think we have Power to do this: I do think here is good Evidence (I speak with respect to my self) to think him guilty of this Crime. I do think, if this Bill does miscarry, there is the greatest Blow that can be given to your Constitution. And give me leave to use this Expression; I think, if this Bill miscarry, it not only turns this Plot upon you, but makes it impossible ever to come to the Depth of any other: And for these Reasons, I am for committing of this Bill.

Mr. Newport. Sir, I am unwilling to trouble you at any Time, but more especially at this Time, when I am afraid I am like to speak against the Opinion of the Majority of the House; for I see Gentlemen are in great haste for the Commitment of this Bill.

Sir, in this Matter I look upon my self, as every Gentleman here, to be a Judge; and therefore, I will in this Case, as in all others, go according to the Dictates of my own Conscience: I must be saved by my own Faith, and never will pin my Faith upon another Man's Sleeve: Perhaps it may be a Weakness in my Nature, that I am very tender in the Matter of Blood; but I hope Gentlemen will not be in so much haste to commit the Bill; for *De Morte hominis, nulla est cunctatio longa*. A Gentleman below said, the other Day, it was possible in his own private Opinion, he might believe the Prisoner Guilty; and some notice was taken of those Words; But, Sir, I would put a Case for Argument's sake, and would have it taken no otherwise; and I would go a little farther than that Honourable Gentleman: and suppose that I knew, of my own private Knowledge, that Sir John Fenwick was Guilty; yet, Sir, with humble Submission, as a Judge, I do not think it ought to weigh one Way or another with me, and I will give you my Reason for it; for as a Judge, I am to go according to my judicial Knowledge, and not according to my private Knowledge. 'Tis a Maxim, *Nil refert quid notat Judex, si non notat forma judicii*; and it puts me in mind of a Case in H. 4. Reign. Two Men travelled together, and One killed the Other, and the Judge saw it: Afterwards that Judge went the same Circuit, and an innocent Man came to be Tryed before him for it; and yet the Judge, in that Case, was obliged to go according to his judicial Knowledge; all the Judge could do (the Man being found Guilty) in that Case, says the Book, was to respite the Judgement, and Execution; and to make application to the King for the poor Man's Pardon.

The Evidence that is produced, is first a living Witness; the next Evidence, was the Confession of Goodman, taken before a Justice of Peace; for that, truly I did not think Yesterday, it was a legal Evidence: I am sure in a Court of Law, it would not be admitted; but the House was pleased to read it, and Gentlemen, when they pressed it, told us, read it: *Valeat quantum valere potest*. Then if you strike this Paper out of the Case, with humble Submission, there is nothing left but the Testimony of Capt. Porter; and so then in that Case, you have but one Witness. It would seem a little strange, that the Commons of England, that lately were so very careful of the Lives

of the Subject, and were so desirous of passing a Bill, that did provide, That where there were two Species of Treason in one Indictment, and one Witness to one Species, and another Witness to another Species, that That should not be good Evidence to convict a Person of High Treason; that they should be Attainting a Man for Treason upon one single Evidence! Surely they will say, we have mightily changed our Opinions since last Sessions. I speak not this upon the Account of Sir John Fenwick; I know him not, though I am not a Stranger to his Character, and I hear that is none of the Best: I speak it as it may be my Case, or any Man's whatsoever. God knows we live in an unsettled Time, and how soon a Precedent of this Nature may turn upon any Man whatsoever.

Amongst the great Irregularities committed in the late Reign, I thought that of Mr. Algernon Sidney, one of the greatest Strains I saw in Westminster Hall; for there was my Lord Howard a Witness against him, and the next Evidence was a Book that he had wrote against Sir Robert Filmore, which, I think, is printed since this Revolution, and I have it in my Study; and I hope, I shall not be hanged for it. That was construed to be calculated for a Treason that had not been committed above two Months, and was the second Witness to convict him; but that Attainder was reversed, and it was fit it should be so; for I thought it a hard Strain to convict him upon that Evidence.

I am very sorry this Bill is brought into this House; nor can I imagine, after all that hath been said by the learned Gentleman, why this Man was not Tryed when there were two positive Witnesses against him? All the Reason this Gentleman has told you, is, That he promised to make an ingenuous Confession: But any Man might have easily seen through this Confession, That it was only an Artifice to abuse the King's best Friends; nay, the rather, when this Gentleman's Brother had served this very Government, but two or three Years ago, the same Trick. We know my Lord Preston was Attainted of High Treason, and then he must do something for his Pardon; and he made an ingenuous Confession, as he called it, whereby he accused most of the great Men; and when he had a Pardon, though his Confession was under his own Hand, and delivered to the King, he denied every Word of it; and what he told, was to save his own Life. My Neighbour cited you several Precedents, I have looked into a great many of them, they are mentioned in Rushworth's Collections, in the great Argument that — made for passing the Bill against my Lord Strafford; and as to those Precedents, all I can say, is, I could not have come up to them, if I had lived in those Times. The last Precedent was of a Cook that put Poyson into the Pot of the Bishop of Rochester: And what did they do? They did Enact that he should be boiled alive. I have a great Honour for the present Bishop, but if it had happened in his Family, I should hardly have consented to the like. *Judicandum est legibus non Exemplis*. I should be glad this Gentleman, might suffer his due Punishment; but I am not, by any Means, satisfied in the Passing of this Bill: And as to what Gentlemen say, is the Reason why this Man was not Tryed; because it was thought he would have made an ingenuous Confession: Sir, if they have made any Mistake, I will not help it, by the Passing this Bill of Attainder. I ask your Par.

Pardon for troubling you so long: I am a Judge in this Matter, and ought to deliver my Opinion. I hope no Man doubts but I am as zealous for this Government as any Man whatsoever; but let what will come of it, I can't give my Vote for passing of this Bill.

Mr. Sol. Gen. This is a Bill for Attainting Sir *John Fenwick* of High Treason: 'Tis the greatest Crime we know in the Law; and, I think, the greatest Crime known in a Government. It is much greater than Murther, or any Thing else; because it subverts the Government, and the Law whereby these Crimes are punished; and Persons should be deterred from committing these Crimes.

It hath been made a Question by the Gentlemen at the Bar, (I think Two of them) Whether this Matter that Sir *John Fenwick* is indicted and accused of, is High Treason or not? I must confess I heard something of it without Doors; and that they would make it out, That if he was guilty of the Matter charged, it was not High Treason. I thought it somewhat a bold Matter, but did not think they would have undertaken it in this Place, though they might have pretended some Flaw in the Indictment: But it seems they have the Authority of a good Lawyer in it; and they have quoted one learned Author, as they please to call him, though I take that for a great Compliment: I believe they may mean my self; and they have done me some Honour; for they say, my Lord Chief Justice *Hales* was of the same Opinion; and then said something of *Dyer*. Now he hath read something at large out of that Author he speaks, and challenges any one to shew any Opinion, That ever a Conspiracy to levy War, was High Treason within the Statute of 25 *Ed.* 3. Now, I would give a Challenge on the other Side, That he would shew me any Opinion before that Time, or since, That a Design to depose the King is not High Treason within that Statute? The Author that he speaks of, says that expressly in the Matter of my Lord *Russel*, and tells you particularly; and in *The Government vindicated*, which was only an Answer as to the Prosecution of my Lord *Russel*, there are several Cases cited, That a Design to depose the King, was High Treason, and agreed to by that very Person; and it always was agreed to be High Treason. Then take the State of this Case, and that of my Lord *Russel*: The great Matter was, That he sent some Persons to view the Guards (it was said, in order to seize the King) this was Evidence against my Lord *Russel*, for a Conspiracy to levy War; but it was said, That this was not so much a Conspiracy to levy War against the King, as against the Guards: But this is of a quite different Nature: Captain *Porter* hath given you an Account of it, (and I think *Goodman's* Examination is to the same Purpose;) That they met in *Leaden-hall-street*, and consulted how to bring King *James* back again; and the only Method they could think of, was to send *Charnock* over to King *James*, that he might prevail with the *French* King to send them 10000 Men, and they would meet him here with 2000 Horse; and for what Purpose was this? It was to bring back King *James* again: I would be glad to hear if those Gentlemen that were at the Bar, or any Body else, could say this was any Thing else but a Design to depose King *William*? And they can't shew me one Lawyer's Opinion, but that Designing to depose the King, was ever called, Imagining the Death of the King, within the Statute of 25 *Ed.* 3. The

first Resolution of this Matter was pretty early; I think it was *H. 4th's* Time, and that was pretending *Richard 2.* was alive, and that he was the lawful King: So that the Matter is Treason, as it is charged in the Indictment.

Then, as to the Precedent, That 'tis an ill Precedent; I must confess I am not afraid of a Precedent of this Kind: I should be glad if these Gentlemen should turn back, and see how many Attainders have been by Act of Parliament? But I dare say, there have been more Men destroy'd by the irregular Judgment of a Commission of *Oyer and Terminer*, than by all the Acts of Parliament, whether Legal or Illegal.

As to what they say of my Lord *Coke*, who mentions the Attainder of my Lord *Cromwell*, and Sir *J. Mortimer*; the Gentleman pretends to repeat my Lord *Coke's* Words at large, but he did not deal so well as he ought to do by you, for he should have told you all my Lord *Coke* tells you; That *Cromwell* was never brought to Answer, never permitted to say any Thing for himself, neither in Parliament, nor where he was. Now, pray Sir, is this the present Case? Hath not Sir *John Fenwick* been heard by you? I would be glad that Gentleman, or any Body could shew me, that any Person hath had so fair an Hearing before Commissioners of *Oyer and Terminer*, as Sir *John Fenwick* hath had before you? As to Sir *John Mortimer*, 'tis much of the same Nature: My Lord *Coke* says, there was a Jealousy of Sir *John Mortimer's* pretending to the Crown; and because they suspected him, they did give out, that he said, That the Earl of *March*, was Heir to the Crown; and if he did not, he would pretend to it himself, &c. Now, says my Lord *Coke*, this was but a bare Pretence, and nothing else: He speaks as if he did not ever think him guilty of those Words; and says, having indicted him, they not being able to proceed that Way, they made it good by Act of Parliament, and he was condemned: So that what my Lord *Coke* complains of, is, That these Persons so condemned, were never heard; and if this be the Truth of the Matter, these Precedents (with Submission) have no Affinity with yours: But I believe this may be said in this Case, Sir *John Fenwick* hath been heard, and that more than ever any one in Parliament was before, in a capital Matter.

As to the Case of my Lord *Strafford*, he had Council assigned him to stand by and hear, but not to Prompt him: If there arose any Point of Law, he was to propose the Matter to the Lords, and the Council was to assist him by their Direction: And in the Case here before you, you have allowed Sir *John Fenwick* Council; not only to assist him in Point of Law, but to assist him in Point of Fact too. They have made Answer for him; so that I say, he hath been Tryed fairer than any Man ever was in Parliament, be it upon Bill, or upon Impeachment; That is, as to the Matter of Precedent. Then it hath been said, this would not be good before the Judges. I must confess it; but the Evidence Capt. *Porter* gave of his own Knowledge of Sir *John Fenwick*, every body will agree, is what the Law will allow. But he is but a single Witness, and you ought not to proceed upon the Evidence of a single Witness. Let us see how the Law stands upon the whole Matter? you have made an Act of Parliament last Sessions, and I own the Law was before that, that there should be two Witnesses in Case of Treason; but all that goes no farther than

to Tryals in the *King's-Bench*, and Commissions of *Oyer* and *Terminer*, and Goal Delivery. And if you look upon those Acts, 'tis very plain, for they refer mostly unto the Judges, what they shall do in such and such Cases: But then you will see what is the Reason of making those Rules; I think there was good Reason that you should not put that Power in Persons below, that you have in your selves: you give them Rules to proceed by, and they are to keep up strictly to them; you may Act by other Rules. 'Tis one thing when I command my Servant to do such a thing, and another thing when I Act my self: And there is a difference when a Judicature is by Few, and when 'tis by Many; the Law puts a greater confidence in Many, than in a Few. The ordinary Tryal is by twelve Jurors; but if it be a Matter of an high Nature, as an Attaint, then it shall be by Twenty four; and you do prefer a greater Number in every Thing to a Few: 'Tis said, though a Judge do think in his Conscience a Person guilty; yet he ought not to make use of that private Knowledge, and a Case was Quoted out of *H. 4.* but I think that Judge might have behaved himself something better than he did; and sure I am, now he would be blamed. I do not say, that a Judge upon his private Knowledge ought to Judge, he ought not; but if a Judge upon the Bench knows any Thing, whereby the Prisoner might be Acquitted or Convicted (not generally known) then I do say, he ought to be called from the Place where he sate, and go to the Bar and give Evidence of his Knowledge; and so the Judge in *H. 4.* Time ought to have done, and not to have suffered the Prisoner to have been Convicted, and then get a Pardon for him; for a Pardon will not always do the Business, for there may be a Forfeiture that the King's Pardon does not restore. But though we Act as Judges here, do we Act only as Judges? I thought we were as well Tryers of the Fact as Judges. There is this difference between the Judicature of *Westminster-Hall* and this Court; They are to judge upon a Fact found by a Jury; but we Act both the Part of a Jury in Trying, and also of Judges in judging what the Fact amounts to: So that if a Jury-Man may make use of his private Knowledge to Acquitt a Prisoner, as (I think) no body doubts but 'tis his Duty to do; then every Gentleman in this House, may make use of his private Knowledge, to acquit the Prisoner, or convict him.

I confess, for my part, I am satisfied, that Sir *John Fenwick* is Guilty of this Crime for which he stands Accused: I do think this Crime is high Treason; I think there is no danger of a Precedent in this Case, if you Convict him, being convinced upon the Evidence you have heard, that he is Guilty; I do own, if any Gentleman think he is not Guilty of meeting at the King's Head in *Leaden-Hall-Street*, or at Mrs. *Mountjoys*, for the purpose given in Evidence, he ought to be against the Bill: But I think every Man that is of that Opinion, ought to be for the Bill. I am one of those that think he is Guilty; and therefore am for Committing the Bill.

Mr. *Harcourt*. I can readily agree with the Gentleman that spoke last, that high Treason is the highest Crime in the Law; and further, That the Matter of the Indictment that is mentioned in the Recital of the Act, is undoubtedly high Treason; and I am sure he will agree with me in one Thing also, That the greater the Crime is that any Person is Accused of, the clearer the Proof ought to be, by which he is Convicted.

Some Gentlemen have begun their Discourse in relation to the Power; but sure 'tis no Argument because I can do a Thing, therefore I will do it; because we have Power to repeal *Magna Charta*, and all other subsequent Laws which have been made in Favour of Life and Liberty, and Property, by the same Consequence we ought to do it: A better Reason must be given me, before I consent to this Bill.

Then for the Precedents, 'tis said, There have been many, and many have been mentioned; And if I thought it worth while, I would mention many more you have not heard of; as for Precedents in general, they are so far imitable as they are grounded upon true Reason, and agreeable to Justice; but I don't remember any one Precedent of this Nature, for a Person in Custody, forthcoming to be Tryed, yet to be Attainted without a Tryal at Law, but what has been Universally Branded; and they all seem to be Reproaches even to those ill Reigns in which they were usually made; and rather to be marked out as Rocks for us to avoid, than Patterns for our Imitation.

Before I particularly mention the Facts how they stand before you, I would beg leave to observe upon the general Method of your Proceedings, and tell you what staggers me in it.

I have often heard this called a Tryal, and that we are the Judges; the Gentleman that spoke last gave us another Title, and told us we were the Jury also: I know no Tryal for Treason, but what is confirmed by *Magna Charta*, per *Judicium Parium*, by a Jury, which is every English Man's Birth-right, and is always esteemed one of our darling Priviledges; or per *Legem Terra*, which includes Impeachments in Parliament; but if it be a Tryal, 'tis a pretty strange One; where the Person that stands upon his Tryal, hath a Chance to be hanged, but none to be saved. I can't tell under what Character to consider our selves, whether we are Judges or Jury-men? I never heard of a Judge, I am sure not of a Jury-man before, but he was always upon his Oath: I never heard yet of a Judge, but had Power to examin Witnesses upon Oath, to come to a clear Sight and Knowledge of the Fact: I never heard of a Judge, but if a Prisoner came before him, the Prisoner was always told, he stood upon his Deliverance, and had not only a Power to condemn the Guilty, but to save the Innocent. Have we this Power? Suppose upon such a Tryal as this (if it must be called so) it may so happen, that a Person that comes before us, should be the innocentest Man in the World; what Judgment is it that we can give, for so much as such a Person hath made his Innocency fully appear? Is the Speaker, by his Warrant, to send him back again to *Newgate*? You can't dispose of him otherwise, though you were satisfied of his Innocency: But in such a Case, the Party must undergo a double Tryal, which is contrary to all the Rules I have heard of. If I am a Judge in the Case, I beg leave to tell you, for my own Justification only, what a Definition I have met with of a Judge's Discretion: My Lord Chief Justice *Coke* says, 'tis *Discernere per Legem*; and by that Discretion I beg leave to consider this Case, if Judges make the Law their Rule, they can never err; but if the uncertain arbitrary Dictates of their own Fancies, which my Lord *Coke* calls the crooked Cord of Discretion, be the Rules they go by, endless Errors must be the Effect of such Judgments.

As to this particular Case, I did expect from the Gentleman that spoke last, that he would have told you there was a plain Evidence, why you should go on to the Passing of this Bill; but instead of that, I am surprized to hear a Thing mentioned, that in parliamentary Proceedings, a Man may be hanged by one Witness, certainly that is not to be taken for granted.

As to this particular Case, I would take Captain Porter as upon his Oath, for Supposition: You have one Witness against Sir John Fenwick of High Treason, and with your Leave, I desire to examine what you have more in this Case.

Yesterday you voted a Paper to be read, *Goodman's* Narrative, or Examination; 'tis a different Case now, you have it before you to determine upon. Yesterday the Question was only for hearing; but, Gentlemen now consider how far they ought to believe it, and the other Evidence we heard. And first, there is some Evidence that *Clancy* tampered with *Porter*, and gave him a Sum of 300*l.* and so they would infer, because *Porter* was tampered with to be gone, therefore *Goodman* was. It was told us further (and I desire I may be informed if I am mistaken) That *Clancy* said, he came from Sir John Fenwick, and afterwards my Lady *Mary Fenwick* said she would make good what *Clancy* had said; and from these Arguments they presume, that Sir John Fenwick knew of it. Give me leave to tell you a Rule I never heard contradicted, That Presumption is to be made in favour of Life; but to presume a Man guilty because *Porter* was tampered with by another, because he said it was by Sir John Fenwick's Order; shall we presume Sir John Fenwick did it? Is *Hearsay* to be Evidence? Or is a Man to be had to the Gallows upon Presumption? How often, and with how much Reason have we heard Examinations against Judgments, upon Presumptions, Innuendoes, constructive and accumulative Treason? &c.

Gentlemen, there is some further Evidence; and that is, of what was sworn at *Cook's* Tryal, and some Gentlemen thought fit to have the Record read, and an Examination of what was sworn there. I can never go so far as to think it reasonable, That what Evidence hath been given in one Case should affect another Man; but all this is to be answered, by calling it parliamentary Proceedings. We doubt 'tis no Evidence in the Courts below, but they are mentioned with some kind of disdain, as very inconsiderable. In this Case, I beg leave to say this in their Vindication, That whatever the Rules in *Westminster-Hall* are, 'tis not therefore Reason because 'tis a Rule; but because 'tis Reason, and Reason approved of by long Experience, therefore 'tis a Rule, and if they make their Rules for that Cause, I hope that is a Cause why we should imitate them: But I would not have those Rules thought Matters of Form, but Substance, or more properly part of the Law it self.

Upon the whole Matter; if no Gentleman will give us a Reason why this is Evidence, but one Witness, and that not upon Oath; and if we are to come to our Parliamentary Discretion to supply that Defect, the Want of the other, 'tis a Discretion I will disclaim all the Days of my Life. And I hope you will reject the Bill.

Lord Curts. If, Sir, the Gentleman that spake last had been speaking to *Westminster-Hall*, I should think that he had shewed a great deal of Reason, and spoke with a great deal of Judgment: But since I think you are here, upon a quite dif-

ferent Foot, I shall not follow him (because I will not unnecessarily detain you) to answer every particular.

I remember when the Council for the Prisoner first spake, they took notice to you, That Precedents were procreative, and one begat another, and they are apt to multiply; therefore, I do think, 'tis of the highest Moment to you, what Precedent you make to night: And if any Gentleman can be satisfied, That the Precedent of not passing this Bill, will be of worse consequence than the Precedent of passing it, I shall humbly submit. I do think, Sir, the Matter before you is of the highest Importance; and I must confess, 'tis with a great deal of Satisfaction to my self, that I do see Gentlemen seem to apply themselves with a great deal of seriousness to this Debate. Sir, I shall not pretend to make a particular Answer to what the Council for the Prisoner did say; as to the Precedents of Acts of Parliament, I think this Answer is sufficient at present for that, That if we have no Precedent, we are under a necessity of making one. It is told us, That of all the Precedents none will justify us in this proceeding; but at the same Time it must be considered, That we are in a Case, the like to which never yet happened in *England*.

The first Thing I shall apply my self to, is the Jurisdiction of Parliaments; and truly, I think, it will be very necessary to say a little upon that. I have heard none call this Power in question, the Thing speaks it self; 'tis the legislative Power. and the Etymology of the Word tells you what it is: 'Tis a Power that can make Laws, and abolish them; a Power that is superiour to all other Powers whatsoever, and we are part of that legislative Power; and therefore I shall say no more to that, it being a Matter agreed, That we have a Power to proceed in this Matter. Now I will take leave to observe something as to the particular Case before you.

Though a Gentleman that spoke some Time since, did speak to you of the Nature of the Crime; yet, with Submission, I think there remains something to be added to what he said. The Conspiracy of which Sir John Fenwick to me appears guilty, is not only against the Life of the King, not only to depose the King, not only a Conspiracy to raise a Rebellion; but at the same Time to contrive an Invasion from *France*, and bring in a foreign Power. I know not what better Expression to tell my Thoughts in, than by using a Term which Physicians use in some desperate Cases; they tell you, there is a Complication of Distempers, and I think this is a Complication of Treasons: This is the highest Crime, and it is attended with all the aggravating Circumstances this Crime can admit of. Now, in giving our Opinion, and passing our Judgment upon this Matter, I think there are two Considerations ought to guide us: There is a Consideration we owe to the Prisoner that is brought before us; and another Consideration which we owe to the common Security. As to the First of these, It being a Matter of Blood, wherein the Life of an *Englishman*, the Life of a Man of his Quality and Figure is at stake, we ought to proceed with all the Calmness that is possible; and I do agree, if there was nothing but Presumption, that ought to be in favour of Life; but pray let us consider how this Matter stands: Let me desire those Gentlemen that are of Opinion we ought to have so much Tenderness for the Prisoner, to lay before them another

Scene, and Sort of Consideration, at the same Time. I do consider the Hardship (if I may use that Expression) of passing this Sentence; I do consider what a Condition we had been in, if the Contrivance that was laid, had taken Effect; that is the weightiest Part of the Matter before you: And tho' it was disappointed then, I know not how far off 'tis at present; this ought really to weigh with you. And I hope I may take leave upon this Occasion, to observe to you, what one of the wisest and best of the *Romans* said, upon an Occasion of this Nature; he tells you, That a Man that would consider his Duty aright, must consider the Matter in all its Parts and Circumstances; and when that is done, must act adequate, as well to the Community, as to himself and his Neighbour. I would apply That to the present Case; and would desire those Gentlemen that express so much Tendernefs in this Case, to have some for the Government, and themselves.

It was told you, That the Prisoner before you does not stand convicted of any Crime: It was told you at the Bar, That the most we ought to pretend to, is no further than to leave him in the Condition we found him: I think, with Submission, the Prisoner stands convicted of High Treason, with the highest Conviction upon Earth, and that is, the general Consent of all Mankind; for I will be bold to say, I do verily believe, that there is not one Gentleman within these Walls, nor that walks the Streets, not a living Soul, that doubts of his Crime. But, Sir, I would put this Matter yet further; I am not only satisfied in my own Conscience and Reason of the Justice of your Proceedings, which ought indeed to be the Foundation of every Man's Opinion: But I am satisfied, that in this Way, there is no Hardship imposed upon Sir *John Fenwick*, if he will be his own Friend: For I doubt not, upon what hath passed in this Proceeding, that before Things are brought to the last Extremity, if Sir *John Fenwick* be his own Friend, if he be so much a Penitent and Friend to the Government, and to Posterity, to tell Truth, and leave off his Dissembling, and be Plain; I doubt not but he will find Favour. Now, Sir, I would beg leave only to answer one or two Objections; for some Things that have been said against the Passing of this Bill, I do not think material.

One Objection that seems to me to carry the greatest Appearance of Weight, was made by one of the Council for the Prisoner; he said, It would look strange in after Ages, that the same Parliament should pass the Bill for regulating of Tryals in Treason, and this Bill of Attainder. Sir, I desire you will please to observe how this Matter stands; and in the first Place, as previous to that, I take leave to observe a few Things: 'Tis a Proposal generally agreed to, and not to be denied, that That which is designed for the Preservation of any Creature, ought not to be made use of to their Destruction. Now this Treason-Bill was designed for your Preservation, to skreen you against the Danger of arbitrary Power, and the Malice of false Witnesses; and this Bill of Attainder is brought to skreen both you and the Government from your Enemies, both abroad and at home. And I think the Treason-Bill is no Objection upon these Considerations: Besides, the Treason-Bill was only made to be a Rule to inferior Courts. The learned Gentleman that spake last, told you, The Rules of *Westminster-hall* were not Rules, because they were observed there; but because they

were grounded upon Reason. Why, Sir, in answer to that, I will only take leave to tell him, that That which is Reason in *Westminster-hall*, does not carry the same Weight here. I think that Matter was so well explained by the learned Gentleman at the Bar, that there need nothing be added to it. He told you very well, 'Tis one Thing what I trust to do by my Servant, and another Thing what I do by my self. It is very obvious to any Man's Understanding, if this Power were lodged in the Judges, what Use they might make of this unlimited Power; but no Gentleman can mistrust any Thing that shall be done by this House.

Another Objection that was made by the Council for the Prisoner was; says he, This is Evidence, or it is no Evidence; if it be Evidence, then, says he, Why do you not Try him at Law? If it be no Evidence, Why do you admit it here? Now, Sir, with Submission, this carries the Face and Form of an Argument, but if you take it to pieces, I think there is no convincing Weight in it: For, Sir, the Reason why this Matter comes before you, is, because by the Absence of one of the Witnesses, according to the formal Part of the Law, Sir *John Fenwick* will be acquitted; but it is generally agreed, that the Consequence of so great a Crime going unpunished, may be dangerous to your Posterity. This Bill of Attainder is brought into the House, that you may supply that Want of Form, you being convinced of the Reality of his Crime.

Another Objection made by the Council at the Bar was, as to Capt. *Porter*, whom he reflected upon; says he, Shall a Man that hath owned himself guilty of such a Villany as the Murther of the King, of a suddain have such Credit as to sway with you? I would take leave upon this Occasion, to repeat to you what my Lord Chief Justice upon the Bench did observe at *Charnock's* Tryal, this same Thing was urged and pressed home by *Charnock*; and my Lord Chief Justice was pleased to take notice, That it consisted with the Wisdom and Justice of all States and Governments to allow of such Evidence, because without it they could never come to the Knowledge of any Treason or Conspiracy: For he added, Whom will you have an Account of these Things from, but the Actors of them?

And therefore when they are Penitent, and willing to atone for their Crime, by doing all the Service they can to the State, and Justice to Mankind, we ought not only to receive, but encourage them.

When the Danger the Government would be in, if you did not pass this Bill, was urged; it was answered, But what Danger will you and your Posterity run in not passing of it? I think the Matter appears so plain and clear before you, that when all the other Parts of the Question are passed over, that I should think it a Reflection upon the House, to enter upon a particular Answer to it. I have not said what I have said, that I think any Part decisive, but to clear my self to the World for the Opinion I am going to give, and perhaps what I have said, may give occasion to some others to say something that may be much more to the purpose; but for the Reasons I have given, I am for the Bill.

Mr. *Sloane*. Sir, I as little care for meddling in Matters of Blood, as any Man, and should be glad to avoid giving my Opinion in this Case; but I think 'tis incumbent upon every Gentleman that

that hath the Honour to sit here in Point of Trust; I think 'tis his Duty to them whom he Represents, to the King and Kingdom in general, to give his Opinion when he is clear and satisfied in it; and if I was in the least dissatisfied, I should venture the Displeasure of the House to absent; but upon the whole Case, and the Proof that hath been given, I am very clear that Sir John Fenwick is guilty of this Treason that he is Accused of; and that it is Treason without any Strain, and well Warranted by Precedents.

I would first take notice of what is said to your Jurisdiction in general; I remember it was said, this was an Incroachment upon *Magna Charta*; for by that, no Person is to be Tried for his Life, but by the Judgment of his Peers. Those Gentlemen that have made that Objection, have intirely forgot the other part, which is the next Sentence; *Nec super eum ibimus, nec super eum mittimus, nisi per regulas Judicium parium suorum vel per legem Terra*. What do they make that to be? 'Tis true, in the ordinary Course of Justice, Persons must be Tried; a Commoner by a Commoner, and a Peer by a Peer; but there are several sorts of Tryals and Laws in the Land: And when you come to consider what is meant by *per legem terra*, you have the Commons *lex terra*; you have the Statute Law, and *lex loci*, the Laws of particular Manners: And there are several sorts of Tryals besides that by Jury; there is Tryals by Battle: The Defendant in Case of Appeal may try it by Battle, and he that is killed loses the Cause. Then there is a Law above all these Laws, and that is the Law of Parliament, which my Lord Coke calls, *Lex Parliamenti*, & *Lex Parliamentaria* in another Place, which he says is, *ab omnibus inquirenda*, but *à paucis nota*; and 'tis not fit it should be known how far they can go (and so 'tis in *Chancery*) and that is a Law that is unlimited, and that is one of the Laws saved by *Magna Charta*: I say therefore, that without any Incroachment upon *Magna Charta*, or any Law whatsoever, you enter regularly upon this Tryal.

I would Answer another Thing that was said against a Tryal in Parliament, and I must confess I did wonder to hear it from that Honourable ancient Member; That if he was to be Tried, he should rather chuse to be Tried in *Westminster-Hall*. Why, Sir, before I should have given so suddain a Judgment as that, I would have considered what my Case was: If I had had such a Case as Count *Conningsmark*, a bad Cause and a great deal of Money, I would rather be Tried there; or if I could be Tried as Sir *George Wake-man* was; but if I had a good Cause, and would use no Corruption, instead of twelve Men that might be Corrupted, I had rather be Tried by four or five hundred Gentlemen that are beyond it. You see how Tryals went below, the Tryal of my Lady *Lisle*, that could neither see nor hear: and there came a Person to her House that was proved to be in *Monmouth's* Rebellion, and she was burned for it.

Then as to the Case before you, I would offer my Reasons why I believe this Gentleman to be guilty; here is Capt. *Porter*, he hath positively sworn, that he had another Meeting at Mrs. *Mountjoys*, and there they did consult, and agree to send *Charnock* over to *France*; and *Charnock* was directed to go with a Message to invite a foreign Power over here. Now the Question is, Whether he is to be believed? And I would go

upon the same Reasons for believing a Witness, as they do in *Westminster-Hall*; and will go as far along with those Gentlemen, as to the Credibility of a Witness: But if he be to be credited in *Westminster-Hall*, why is he not so here? And therefore, if they had brought any Testimony against his Credit, as made him guilty of Perjury, or Forgery, it had been an Objection against his Testimony; but it was so far from that, That they did not offer to prove one Word of that; but what was said, was said from the Council, and that is to go for no Evidence. The Council indeed did alledge against his Credit several Things, but did not prove any; and if they had, they would not have taken away his Testimony in *Westminster-Hall*, That is, that he was concerned in the late intended Assassination, and Treason; this was the same Objection that was made below; and they brought Witnesses to prove that and some other Things, but they did not weigh any Thing; for if it should be an Objection that he was in the Conspiracy, then you can have no Evidence of any Villany, for they will never trust honest Men with it. Therefore I do take it, That *Porter* stands before you as a very credible good Witness, without any Imputation whatsoever. Then, Sir, say they, he is not upon his Oath: that is an Objection to your Jurisdiction; and though they say they own your Jurisdiction, yet when they say so, they speak against your Jurisdiction; and by the same Reason you can go upon no Impeachment whatsoever; for you can in no Case give an Oath. Then, Sir, they tell you, he is but one Witness, and that 'tis in the Case of Treason, and there ought to be two Witnesses, and therefore tho' you have Jurisdiction to do any Thing whatsoever, yet you have no Jurisdiction to go upon this Cause. Now Sir, because this seems to be the most formidable Objection that is insisted on against the Proceedings in this Case, I beg your leave that I may fully answer it.

And taking it to be true, that the Fact is proved but by one Witness, I conceive we may proceed in this Cause, though they can't in *Westminster-Hall*; and I do take it, that there is a great deal of difference between one and the other; and I do not take your proceedings upon this Bill, being there is but one Witness, to be any Strain, but what you may extend the Legislative to, without going beyond what hath been done. I therefore beg you to consider what the Law originally was as to Treason, and how it came to be altered. Before the Statute of 25 *Ed. 3.* it was uncertain what was Treason, and what was not; then the Statute came and reduced it, that as to all inferior Courts, these are your Treasons, and no other shall be adjudged so; but the Parliament reserved to themselves a Power, that if any Case should happen like them, they were to determine it themselves. So, Sir, that at that Time, and after that Time, one Witness was good in Case of Treason; as now 'tis at this Day for Robbery, Felony, or any other Fact but Treason. And till 1 *Ed. 6.* one Witness, was good in all Treasons: Then comes two Statutes in *Ed. 6.* Time, and the first takes notice, That since the 25. *Ed. 3.* by several Statutes Treasons had been made which were unreasonable, and therefore repeals them, and makes several new Treasons. Then comes a *Proviso* at the end of it; *Provided* always, that no Person whatsoever, after the first of *February* then next coming, shall be indicted, arraign-

arraigned, condemned or convicted for any offence of Treason, &c. unless the Offender be accused by two sufficient and lawful Witnesses, or shall willingly, without violence confess the same. Now that *Proviso* relates only to the Treasons particularly mentioned in that Statute. Then comes the next Statute § *Ed. 6.* and pursues the same Words: But now this did not mean any Facts whatsoever that were left to the Judgment of the Parliament, because those Facts were not within their cognizance. They are not parliamentary Words; indicted, arraigned, convicted, but only used by the Courts below. Why, Sir, if it be so that one Witness is sufficient, here you have not only one credible Witness, but he is propt up extremely well by collateral Circumstances; and though I do not allow that below they can proceed upon one Witness with pregnant Circumstances; yet for the Reasons given, considering how this Evidence is propt up, I think it is sufficient before you. For there was another Witness against him, and it hath been proved what that Witness could have said if he was here; and 'tis plain that Men have died upon the same Testimony: I must confess, when I was for reading of *Goodman's* Examination, &c. I was not for reading them as conclusive Evidence, nor do I think them so in any sort, either the Conviction of *Cook*, or *Goodman's* Examination before a Justice of Peace; but it is a stronger Evidence in this Case than any other, because the Witness is not dead, nor is he withdrawn by the means of any body but the Prisoner, or his Friends; which, as I take it, appears upon the Evidence; and if so, I think it comes to the Case, That if any one gets my Deeds, if he will not produce them, they shall be presumed to be what I say they are: I must confess, the Acting of his Wife or any Agent, might not be Evidence, if it appeared they did it officiously without his Knowledge; but being *Clancy* said he came from Sir *John Fenwick*, and it was for Sir *John Fenwick's* advantage, I will believe it was by his Privity: And for my self, I think it no Strain, if in this Case we take him to be a good Second to Captain *Porter*, though it ought not to be admitted in *Westminster-hall*.

Then 'tis said, That you have no Jurisdiction to proceed by Attainder in this Case, where the Person does appear, and he is in the Hands of the Law, and ready to take his Tryal: I quoted you an Instance the other Day, 12 *Car. 2.* where they attainted Persons that were dead, without examining one Witness; and I have viewed all the Books since, and there's nothing appears, but the Bill ordered to be brought in, one Reading, and another, and some Petitions for making of Savings: There is one Rank of People that were dead, a second Rank, which, as you were told from the Bar, were the King's Judges; some of which, it is true, were Tried by the Law; but how? Not by the Direction of the Parliament: It was before they came into the Hands of the Parliament, and the Parliament takes notice they had been Tried. There was another Sort that was never Tried, but absented, and though they might have come into the Hands of the Law and been Out-law'd; the Parliament took cognizance of them, and attainted them of Treason. Sir, I do take notice, that there was a fourth Sort of People convicted at that Time; (for if we were confined to the Rules of *Westminster-hall*, no doubt we could not give a lesser Judgment than that for Treason.) There was

the Lord *Mounson*, Sir *John Danvers*, and others; and the Statute recites that they were concerned in the Murther of the King, yet in regard so many had actually suffered, they did not give them the Judgment of Treason, but to forfeit their Estates, &c.

This is to shew you the Jurisdiction the Parliament have over Offences, and how they can alleviate the Punishment according to the Circumstances as they appear before them; therefore I think this is a plain Proof that we have a Jurisdiction to go on with the Bill, and at the same Time, I say this, I would put it out of the Case, whether the Prisoner be a little Man or a great Man, that is now in Judgment before us; and I would put it out of the Case, what a good Thing his Discovery would be; I do not think that a good Argument: Neither do I think it any Argument if this Man escape, what Danger we shall be in? But I do give my Judgment from the Argument of his Guilt, and our Jurisdiction.

Mr. *Pelham*. Sir, the learned Gentleman that spake last, seemed so very clear in his Opinion, when he began to speak, that I was in hopes he would have given me and every Body satisfaction in this great Point; especially when he began with *Magna Charta*, which says, That every Man shall be Tried by his Peers, or by the Law of the Land; I do take it to be Part of the Law of the Land, that no Man should be condemned for Treason, without two Witnesses; but after that he did lay his Finger upon the Sore, he told you, the great Objection was, That the Courts of *Westminster-hall* are so governed and ty'd down, that they can't pass any Sentence for Treason, but upon two Witnesses; and he told you, they ought to be ty'd so; indeed he did say we were not ty'd so: But I own to you, he did not give me any satisfactory Reason why we should not be ty'd so. 'Tis said, we are not ty'd, and 'tis impossible we should, for no Act can tie the Legislative Power; and several Gentlemen have said, That though there are several Statutes that declare there shall be two Witnesses in Cases of Treason, yet they do say, That in Case of Attainder by Parliament, one Witness may be sufficient. Why may it not be thought, that these Acts extend to the Legislative, as well as the Statute of *Edw. 3.* by which it is presumed, That the Parliament may proceed upon one Witness? And I take it, That there being no such Hint, 'tis a Presumption that the *Lex Terra* does crave an Observation of it by the Legislative Power.

I did presume yesterday to tell you, That Mr. *Algernon Sidney* did stand upon it as his natural Right, that they could not proceed against him, there being but one Witness; I did not bring his Case as parallel to this, or think that his Authority should influence you; but he was a Man that had that Love to Liberty, and the Good of his Country, that he would not have said so, even to save his Life, if he had thought it inconsistent with either of them: But I have looked upon his Tryal since, and there he does declare, That the being condemned by two Witnesses, is the Law of God and the Law of Man; the just Law that is observed by all Men, and in all Places; 'tis certain he reached even by these Words, the Power of Parliament; when I do say Power, I do not mean, but that when such a Law is passed, all are bound by it; but in some Sense we may say, you cannot do what is not just for you to do: You can do but what is just and capable to the Trust reposed in you.

The Gentleman says, he thinks it a strange Opinion of him that said, He had rather be Try'd by a Jury, than the House of Commons; indeed, if he could be sure of such a House of Commons as this, he might retract what he had said: But I have seen that done in the House of Commons, which hath not made me extremely fond of that Tryal. I have sat here when six or seven Noblemen have been declared Enemies to the Kingdom without any Evidence at all, and the Reason was somewhat like what it is now. The Power of Parliaments was brought in as an Argument then; and it was said, it was only in order to an Impeachment, but no Impeachment followed; yet these Noblemen went with that Brand in their Foreheads, and if any Disturbance had been, they had been exposed to the Fury of the People: And though we are sure of this House of Commons, and may be of all in this Reign, yet I know not how Facts may arise, and what Parliaments we may have, and upon that Account I am very unwilling a Precedent should be made, at least contrary to the Usage in all manner of Courts whatsoever.

Sir Thomas Littleton. Sir, I shall not trouble you long in this Debate, that hath taken up so much of your Time already, in the Consideration of some Matters we have been upon; though I did think your Time not very regularly spent, till this Occasion offered it self: I hope therefore, now it will take up less of your Time; I see the great Matter that was insisted on before, is insisted upon still; and I do think we may say it among our selves, though we would not let the Council, That we are ty'd up in this Case, by the Rules of *Westminster-hall*; but I believe if that was the Case, and the Question was no otherwise, than whether or no we are ty'd up by the Rules of *Westminster-hall*, I believe it would receive a Determination that we are not bound up to those Rules.

But I will take leave to tell you what I think is proper for us to ground our Judgment on: I think the great Reason, even of those that are against the Precedent, why they did admit Sir John Fenwick to have Council, and to examine Witnesses, if he had any, and to cross-examine the Witnesses, and why they were willing to hear Evidence on both Sides in the Nature of a Tryal; the great Reason was, because that in a Case of so great Consequence as this is, they would have the best Information they could obtain. Why did they desire to be informed, but that afterwards they could lay their Hands upon their Hearts, and give their Judgment upon their private Opinion, Whether he was guilty or no? They say, we are not to give our Judgment upon our private Opinion; I always will. (It was not long ago we were not to have our Religion upon our private Opinion neither.) And when I am justified in that, I will rely upon it: Whether this be strictly legal Evidence, I do not lay so much Weight upon it, as whether it hath satisfied my Conscience; and I believe there is not a Man in the House but is so, (upon what he hath heard) and doth believe that Sir John Fenwick is guilty; and if we believe he is guilty, I would be glad to know by what Rules in the World any Man can give his Vote against this Bill, being of that Belief. And I tell you why I think every Man believes so; because every Man in the Kingdom that hath not heard so much as we have heard, does believe him to be so; and I can't think that their Representatives only should be of another Opinion.

What Evidence have you had? You have had Captain Porter's Evidence, and that would be good even in inferior Courts; and besides that, you have the Evidence of what Goodman did swear before the Grand Jury; you have heard what he did swear, and the Grand Jury did believe him; you have heard likewise what he did swear in another Cause to the Petit Jury, and they believed him, and convicted the Prisoner upon it; and though this be not legal Proof, strictly speaking, will any Body say that I have Reason to disbelieve this Man, and think he hath sworn false?

Ay, but here is but one Witness, Gentlemen tell you: I will put you a Case where I believe this House would Attaint a Man without any Witness. Suppose two Persons had seen Sir John Fenwick kill the King, (I believe we should not have pulled him in Pieces in a barbarous Manner, but he would have had a Tryal;) and suppose before his Tryal they had been conveyed away, if before they had sworn this to a Grand Jury, and they had found the Bill, I believe this House would have Attainted him for it.

Sir, I do not think that we should stand upon these little Niceties, nor be bound by the little formal Proceedings of other Courts, when the Government is at Stake. We are sent hither to take care that the publick Safety do not suffer any Mischief from the Enemies of it: We have had Plot upon Plot, and I have heard so much said on behalf of the *Lancashire* Plot without Doors, that I wish we do not get an ill Name upon our selves before we have done. We have this Power to exert upon extraordinary Occasions, and here is a Man that hath endeavoured to subvert the Government, and Well-being of them that sent you hither. I hope you will use it now; and if they knew who were not of that Opinion, I believe those that sent them would hardly send them any more.

Mr. How. Sir, as to the Argument that if it was known how we gave our Opinion, those that are against this Bill, the People would not chuse them again: I am not afraid of that. I have been told so often, and yet I find the People I live amongst, use me better and better every Day; and I believe, Sir, they will desire to use me, when they will lay other Men aside. I must in some measure support what was seemed to be reflected on an Honourable Gentleman, in that he said, he had rather be tried by 12 than 400. I am of his Opinion, and this is my Reason for it; I have my lawful Challenge in Case of the 12, and if there be any on the Pannel I have offended, I can desire they may be withdrawn, and that can't be done in any Case here.

But Gentlemen put the stress of their Argument upon that which no Body denies, and prove it handsomely, and well they may; for it is self-evident the Power of Parliament they insist on, when no Body pretends but we have a Power to do what we please: But I must say of their Power what *Bracton* says of the King's Power; *Hoc tamen non potest facere, quod non potest iuste facere*. It is said, We are not ty'd up to the Rules of *Westminster-Hall*, we are not so; but I beg leave to tell them, That what is Reason and Justice in *Westminster-Hall*, is so every where. And I do take these particular Points we speak of, to be grounded upon Reason and Justice, and so far we are to pursue them.

Two Evidences was not given as a Restraint upon *Westminster-Hall*, for fear they should do something that is ill, for they are answerable for every

every Thing they do ill; but they were allowed to the People of *England*, that they might have a fair Trial, and it was thought conformable to the Laws of God, the Law of Reason, and the Law of all Countries, That no Man's Life shall be taken away upon any particular Occasion. And for to say, That a Man's Life may be taken away by two Witnesses in one Place, and by one in another, is to say, That there is no certain Rule to prove a Man guilty of a Crime that may forfeit his Life, which is not admitted in any Country whatever.

But truly Sir, we are going a little further; for the Gentleman before told you, there was no need of two Witnesses, one would serve; but now they go a little further, for they tell you, there needs never a one at all: For I do say, if every Gentleman here is to be guided by his private Opinion, there is no Man but before he heard this Cause did conceive in their Opinion some Judgment of his Guilt. And, Sir, I think no Man, but would have told you, that would have been an unjust Judgment.

But they do say, That the Bill of Treason that was made last Sessions of Parliament was to limit *Westminster-Hall*; and that I will trust that with my self, which I will not trust with my Servant. Why truly, if I, or my Servant, was to commit an Error, or a great Crime, I had rather my Servant did it, than my self: But I do not think that my Servant should be bound up from doing an unjust Thing, and my self should have the Liberty to do it. Another Thing that Law provided against was, the People should not be hanged without sufficient Evidence, and these Things have been long complained of: But I never thought that the Evidence of one Witness, and one Witness would be supported in these Days.

But, Sir, what have you done? We have prevented People being Executed by an Arbitrary Power, and in an unlawful Way in *Westminster-Hall*; but if you give this Example, you have brought the same Proceedings into this House, and that they may be perpetually Executed here, and so the Subject will be never the Safer for the Bill of Treason.

And I do believe likewise, That it is better that a very heinous Fault, or a Mistake, should be committed in *Westminster-Hall* for ten Years together, than once perpetrated in this House. And my Reason is this, Because *Westminster-Hall* have a Law to be tried by, if they transgress that Law; and there is a Way by turning out of Judges, and other Things; and this House hath no Superior Power, and when they do a Thing they make it a Law: So that this House (as it hath often been observed) can make this Nation unhappy; because this House can only establish Arbitrary Power and Misery upon this Nation by a Law.

Sir, as to the Evidence, to say something to it since every Body hath spoke to it; for my Part, I do confess to you, the longer I sit here, and the more I have heard of this Trial, the less I have been convinced within my self, that these Witnesses can know any Thing of Sir *John Fenwick's* Guilt. I have heard Captain *Porter* give his Evidence, but that is no sufficient Proof to me: I have heard what Evidence *Goodman* did give to the Grand-Jury, but whether they did ask such Questions as I should, if I had been of the Grand-Jury; or whether they did confront him with Evidence, I can't tell. Therefore tho' the Grand-Jury was convinced by it, it is no Reason

son to convince us; because we might not be convinced by the same Evidence.

But to go further: There is very great Reason to believe that *Goodman* was not then at this Place, and that not one Word that *Goodman* says is true. I have such Reason for what I say, That if *Cook's* Tryal had been before this House, (not to Arraign *Westminster-Hall*, though I think we are a superior Power, and I may say what I please of that Tryal;) I say, if *Cook's* Tryal had been before this House, and what I have heard, be true, I do think they would hardly have found *Cook* Guilty upon *Goodman's* Evidence: For there were three as positive Evidence as could be, that he was not at the Place when he swore he was. And I observe a little Failure in Captain *Porter's* Evidence in that Point; for I don't think it proved by Captain *Porter*, that *Goodman* was by when this Discourse was: For he says he spake of this Thing at Mrs. *Mountjoy's* and Dined there.

Members. No, no; It was at the *King's-Head*.

Mr. *How*. Well, there was but one Place where it was. Now whether Captain *Porter* heard them talk of it before *Goodman* came in, or whether *Goodman* be a good Witness, he having been there but the latter Part of the Time, which seemed to me to be the Time they should have given over their Talk of the Business; they having been so long together before: But it does not appear to me that *Goodman* can be a good Witness.

But I take it, That it is not just nor reasonable to find a Man guilty upon one Witness, and Circumstantial Evidence. I did mention a Case where there was a positive Witness, and a Circumstantial Witness, it was in my Lord *Delamere's* Tryal; and yet that was not thought a convincing Argument by the Lords to find him Guilty; and I hope no Consideration will oblige us to do that, which I am sure we should blame them for doing.

The Consequence of this, Gentlemen say, they do not fear: I believe if Sir *John Fenwick* had been told, when he was Major-General of King *James's* Army, that I should come here to sit upon his Life, he would have laughed at it, and thought it impossible; but the contrary has happened. And I have seen Parties hang one another with such Violence, I pray God we may keep from it: I do not know, we are all concerned in some Measure; it having been the Unhappiness of this Nation, that at one Time or another, every Body hath been concerned, that they may have a Proceeding of this Sort against them, and this surmounts all that at present Gentlemen can do: For it extends beyond all Pardons, and will reach beyond the Act of Indemnity. God knows who may be served so, notwithstanding all the Act of Indemnity.

Sir, there is one Thing that is said further, which the Gentlemen at the Bar conclude with as a substantial Argument that we do not aim at Sir *John Fenwick's* Blood, (God forbid we should) but at his Confession: You will here read the Bill once, and twice will commit and pass the Bill, (Sir *John Fenwick* not confessing) and still this is not to aim at his Blood: But it happens perhaps that this Man knows no more of this Matter; and this Man is racked in a Manner to Death, from Reading to Reading, because he does not confess; and at last he comes to be Hanged, Drawn and Quartered (instead of High-Treason) for not Confessing it.

This

This I take to be the dangerouſeſt Part of all the Arguments that have been urged : For this I muſt tell you, That according to my private Opinion, I do believe that Sir John Fenwick does know of no more Perſons concerned (nor do I believe that he knows all that he ſays) than he tells you. He hath not been a Man that hath kept Company with great Men : He hath generally relieved the poor *Jacobite* Officers : There are five People, as I take it, he hath told you he did converſe with : I would fain know in what Plot any Man converſes with above Five of the Plotters ? There may be a Plot that may be moſt Dangerous, and yet a Perſon that knows of this Plot, may not know above Two or Three others that are concerned in it.

But the great Argument is, Take care of your Government. In the firſt Place, they muſt ſuppoſe the Safety of the Government depends upon his Execution, or why do they uſe it as an Argument ? But I wiſh they would ſhew me the Government would be one Penny the worſe, if this Bill does not paſs. Do you want Examples of Punishment to deter Men ? No ; you have had lawful Proof againſt Four or Five Perſons, and they have been executed : Here are Examples made, that no Body for the future may preſume to Plot together, and not to be executed.

What is the Reason of this Bill then ? Why, there is a Plot going on ; Sir John Fenwick hath been imprifoned this ſix Months and more, and will you hang him becauſe there is a Plot now going on ? What Conſequence is that ! Do you think that he knows any Thing of it, or that he can diſcover it ? It hath been ſtated ſince his Confinement, it may be, and he knows nothing of it : So that as to what is preſſed of his Confeſſion, I know no one Thing would be gained by it, that could be uſeful to the Government ; for I believe all hath been diſcovered already that he knows, and that Plot hath been utterly diſappointed, and they have been fain to make a new one. Will you proceed in a Bill of Attainder, unleſs the Matter be of the greateſt Conſequence ? The Preamble of the Bill for Attainting the Duke of *Monmouth*, gave a ſubſtantial Reason for it ; That he was in Arms, and could not be brought to Juſtice. That implied, That if he could have been brought to Juſtice they would not have Attainted him.

I think I need not give you more Arguments in this Matter, I wiſh I could hear thoſe that have been given, well answered. I ſhall ſay no more ; but I know this, that my private Opinion ſhall never guide me in this Caſe ; 'tis not the ſame Thing with the Caſe my worthy Country-man put : In the Caſe of Religion, my private Opinion does not affect other Perſons ; indeed it does the Papists, where they will murder others that are not of that Religion.

Mr. Norris. This is a very ſolemn Debate, and 'tis upon a very ſolemn Occaſion. 'Tis a Caſe of Blood ; 'tis a Caſe that in my Life-time, I thank God, I never had to do with yet ; and in this Matter wherein I am now to be a Judge, I will uſe as much Caution as any Gentleman within theſe Walls.

I am ſo conſcious to my own Inability in what I have to ſay, that I can't expect to convince any Body ; but what I ſay, is to diſcharge my own Duty, and ſatisfie my Conſcience in that.

I doubt not, but every Gentleman conſiders the Station that he is in, and the Truſt repoſed in him

by thoſe that ſent him hither : We are intruſted with the Lives, Liberties, and Properties of every Man in *England* ; and we are answerable for them to thoſe that ſent us hither ; to our Poſterity, and to our ſelves.

In this Matter, many Things of great Weight and Importance are before you ; here is the Life of a Man, the Preſervation of the King and Government, and the Power of Parliaments to be conſidered. Sir, as I ſhall be cautious of taking away the Life of a Man, ſo I ſhall be careful of the Preſervation of the King and Government, and the Power of Parliaments ; and though I do not think it requiſite, nor never will give my Conſent to Support the Government, or Honour of this Houſe, at the Expence of Innocent Blood ; ſo I ſhall not be afraid of giving my Opinion in this Matter to bring a Criminal to Punishment ; beſides, the Treason he hath committed, he hath Crimes of a Nature almoſt equal to Treason ; and for which, becauſe he hath evaded the Cognizance of *Weſtmiſter-Hall*, he is now brought before you ; and there are ſeveral Inſtances, where this Houſe hath taken notice of Offences of a leſs Nature, and for a leſs Reason than this is brought before you.

To quote Precedents, is a little dry Subject ; but however, I will inſtance in one, that (I think) does aſſert the Power of Parliaments in this Caſe, which has not been mentioned yet ; and that was (as I remember) in the 3 *Rich II.* of an Agent that came from *Genova*, who was (by a miſfortune) killed upon a Quarrel that happened in the Streets ; he that killed him was brought to his Tryal ; it could not be brought within the Statute of 25 *Ed. 3.* but he was brought to his Tryal, and it was found only *ſe defendendo* ; but he being a Publick Miniſter, it was thought fit that the Nation ſhould take more notice of it ; and he was attainted afterwards by Parliament, and there is a Record of it : They did not think fit to make a General Law, but they made an Example of the Man that committed this Fact.

A great many Gentlemen have ſuppoſed this, and ſuppoſed that, and what ought not to be ſuppoſed ; but I will make an eaſy Suppoſition ; I will ſuppoſe that we are the Commons of *England* in Parliament Aſſembled ; and if ſo, Sir, we have a Diſcretionary Power to do whatſoever we ſee is for the Good of the Kingdom ; and if we are to be circumscribed by the Rules of *Weſtmiſter-Hall*, and we are to do nothing but what they would do, to what Purpoſe do we ſit here ? If we are intruſted with this Power, and may exert it, I think here is a fit Occaſion for you to exert this Authority.

Sir, give me leave to take notice, That the Strain of Argument that was uſed ſome Years ago, is very much altered by the ſame Gentlemen ; (I will mention it) I think it was in 78, when the Bill of Excluſion was brought within theſe Walls, the Arguments ran then (for I have ſeen them in Print.) Thoſe that were againſt that Bill ; What will you do ? Say they ; Will you do this Thing ? Paſs a Judgment againſt a Man without hearing of him ? Hath he been brought to your Bar, to answer what you have to ſay againſt him ? How do you underſtand that he is guilty of the Crimes you accuſe him of ? And they did uſe thoſe Arguments againſt them that were for diſinheriting the Duke of *York* ; but the Answer then was, Do you diſpute the Power of Parliaments ?

ments? Is there not a discretionary Power in the Parliament? I do take notice, That those Gentlemen that used that Argument for the Bill of Exclusion, now use it a quite contrary Way. Sir, I think the Power of Parliaments is not to be trifled with.

It hath been urged and said, a little while ago, by a Gentleman, That he does not believe Captain Porter is a good Witness. I will give you a good Reason why I do think he is a very good one, and they at the Bar think so too, because they would have given a great Reward to have taken him off; and for the same Reason, I believe Goodman to be a good Witness too: Sir John Fenwick was satisfied, that Goodman did know how far he was concerned, and he hath been prevailed with to be out of the Way.

Sir, here are a great many Circumstances that agree so well together, That (I think) no Person can doubt of Sir John Fenwick's guilt; and (I think) 'tis in this Case in the Body Politick, as in the Body Natural, when a Man is almost past the Cure of Physicians; when a Man hath a Gangrene, a rotten Member, which the Physicians by the ordinary Means can't Cure, the Remedy the College of Physicians themselves, in that Case would use, they would say, *Immedicabile vulnus Ense recidendum est*.

I am of Opinion, That the Legislative hath this Power, and that this is a proper Occasion to exert it; and to compare small Things with great, 'tis like Thunder and Vengeance in the Hands of Providence, that is not used, but upon extraordinary Occasions; and then it ought not to fail, for that makes a Man trifle and despise that Power that is not effectually able to exert it self; and if the Sword of Justice be drawn, if they find it rusty, and will not cur, they will have a mean Opinion of your Power for the future.

Gentlemen are afraid of Precedents in this Case; for that Reason I am for committing this Bill, because I would make this a Precedent; and I will tell you why: Because it may happen in future Ages, that Ministers of State, and Persons concerned in the Government, may be faulty (I think I may suppose that) and as the Law stands now, he is but a bungling Politician that can't ruin the Government, and yet not come within the Bill of Treason to be hanged for it; and therefore for the keeping an Awe upon Ministers of State, and because I would have this House always have it in their Power to punish future Offenders, as they shall see cause, as well as this unfortunate Gentleman at the Bar, I am for committing this Bill.

Mr. Finch. Sir, the Question now before you, arises upon a Case wherein you have a Man accused of High-Treason, and for that there is but one Witness, which by the Rules of *Westminster-Hall*, is confessed by every Gentleman, is not Legal Evidence.

I remember the other Day, when this Evidence was offered, and an Objection made to it, the Answer was, That we ought to hear it (though in *Westminster-Hall*, they could not do it) because we sit here as Judges, and we can distinguish what is Legal Evidence, and what is not Legal Evidence, and can give its just Weight to every Part of it: I do observe now, in this Debate, some Part of the Evidence, which no Man can say could have been given according to the Rules of Law, is insisted upon, and Weight laid upon it.

And here they have taken into Consideration the Power of Parliaments; and the Method of Parliaments has been insisted upon; as to the Power of Parliament, Whether the Parliament can do it? And whether if the Parliament pleases to do it, they are tied up (as Gentlemen are pleased to express it) to the Rules of *Westminster-Hall*? That the Parliament can do it, 'tis a hard Matter to gain-say, That any Thing is out of the reach of the Supreme Power of a Nation; the Legislative Authority can do every Thing: Yet though Gentlemen have said this, and others have observed, That there wanted no Authority to prove this, being Self-evident; yet give me leave to Instance in some Particulars in this Case, with the Authority of the Judges upon it, where the Parliament have proceeded according to the Rules of *Westminster-Hall*.

We read in *Hen. 8th's* Time, That the Lord Cromwell, Earl of Essex, was attainted in Parliament; and History tells us, That he was attainted by a Law of his own making. Now, says my Lord Coke, That seems strange; but enquiring of an Antient Person that lived in those Days, he told him the Meaning of it; That Lord had consulted with the Judges, Whether or no, if a Man was Attainted by Parliament, and was not brought to be heard, such Attainder would be good in Law? The Judges started at the Question, but could give no other Answer than this; Truly, if such Attainder be made, we know no Law to find fault with it, for 'tis done by the Legislative Authority. It fell out, That the Instance of Condemning a Person in Parliament (not according to the Rules in *Westminster-Hall*) fell out to be the Noble-man's Case; for he himself was so Attainted immediately after.

Give me leave to Instance in another kind of Authority; the Authority of Parliament touching these Attainders, and what has been the Consequence of them; if you will look into the Record of *Rich. II.* Time, I do not mean the Record that hath been quoted, nor the Case of *John Imperiall*, for killing the *Genoua* Embassador, which was declared Treason in Parliament, Ten Years after the Man had been tried in *Westminster-Hall* for it; but I mean the 11 *Rich. II.* how many were Attainted by the Proceedings of those Times; I do not mean by Acts of Parliament, but those Attainders were in an extraordinary manner, not according to the Rules of *Westminster-Hall*: And 21 *Rich. II.* the whole Parliament and its whole Proceedings were reversed, and the Parliament annulled: In that Year were the Prosecutors of the 11th Year themselves Attainted: And 21 Year of *Rich. II.* the Act that Repealed that Parliament, repealed the Pardon too; but in order to come to the Attainder of those Persons: That being done, was not enough; for the Lord *Arundel* had a Pardon the 17 of *Rich. II.* upon that they made a Law to repeal his Pardon by Patent, that they might come to the Attainder of that Lord; and that Lord was Attainted by Act of Parliament: But I must observe one Thing a little further, That that very Parliament, that doubtless knew their own Power well enough, and that their Attainders were firm, being made by the Legislative Power; yet they had a little Jealousie themselves of their Proceedings; for they passed an Act to make it Capital to go about to reverse any of those Laws;

Laws; and another Act, that all the Lords and Bishops should be sworn. Now see what fell out after; *Rich. II.* was deposed, for consenting to those Laws; and *Henry IVth*, in the first Year of his Reign, abrogated the whole Parliament, and repealed all those Laws: These Turns have been upon these extraordinary Proceedings of Parliaments.

Give me leave to give you another Instance, and that in another Case, as odious as possible could be. In the Murther of *Edw. II.* there was *Roger Mortimer* Attainted in the first Year of *Edward III.* and the Record says, That it was notorious to them all; and what then? They adjudged him to be Attainted in Parliament: When Time had a little worn off that extraordinary Zeal (which truly was commendable, though it had transported them a little too far beyond the Rules of Justice;) and they came to consider what Precedent they had made for Posterity, it had another Face; for in 28 *Edw. III.* was that Attainder reversed, because he was not brought to answer as he ought to have been: There was also an Act for Attainting the Earl of *Arundel*, which in the same 28 *Edw. III.* was reversed, because he was not brought to Judgment by due Process of Law.

But now we are told, we are not tied here to the Rules of *Westminster-Hall*, Gentlemen do not enough distinguish in this Matter; the Forms of *Westminster-Hall*, say some, the Rules say others; and others say there is no difference between the Form of Proceedings, and the Rules of *Westminster-Hall*; but I hope no Gentlemen do think but the Parliament though they have a Power to act as they think fit (as Instances have been given) yet the Parliament it self are tied by the Rules of Common Justice. Now I would have Gentlemen that say we are not tied by the Rules of *Westminster-Hall*, a little to consider the Matter. Are the Rules of *Westminster-Hall* no other than what are necessary for the executing of Justice? If they are no other, how can we be said to go according to Justice, when we go beside those Rules? I desire them to consider of the Consequence of this Proceeding; there is no danger, I hope, of this Parliament: But if we shall say, that the Rules of *Westminster-Hall* are not such as are necessary for the Proceedings in a Course of Justice, we shall shake those Barriers of our Liberty and Property, I am afraid, a little more than Gentlemen think of at present; and shall we declare they are not necessary, when our Ancestors have thought them so, and their Wisdom have derived them to us, and the Wisdom of the Nation in Parliament have established these Rules?

I can't say what Consequence may follow upon this. This Parliament can never do any Thing to endanger the Lives of the People of *England*; but heretofore Parliaments have been Damned with several Brands, set upon them by succeeding Parliaments. As for Instance; One, I think, in the 38 *H. VI.* 39, That Parliament was wholly repealed as packed, and passing Laws through Rancour and Malice, and having passed no good ones. Now, suppose a Parliament should come, that should not be so tender of the Liberties of the People as this; and they should be so bold as to shake those Laws that are made for the Rules of Justice, if they have so good a Parliament to guide them in it; Will not this be an Inducement to such a Parliament as that, to shake

all our Laws and Liberties? But I can't trouble you any longer, my Head will not give me leave: I am against the Bill, and have offered you my Reasons.

Coll. Wharton. I hope, Gentlemen, in a Matter of this Moment, will have Patience to hear one another; and since every Gentleman is to give his Vote in this Matter, I desire to give my Reasons for my Vote; I am of the Opinion of another Gentleman, That we have not touched the Sore yet; yet I do not think that the Rules for *Westminster-Hall*, are Rules for us. The Gentleman that spake last, as he always does, made a very Florid and Elegant Speech, and brought you several Examples of Attainders that have been condemned from one Parliament to another, in several Reigns. But I do not wonder at that, when the Crown went from one to another. An Instance was given in the Case of the Lord *Cromwell*, which was spoke too from the Bar; and Sir *Thomas Powys* laid a great Stress upon it, That this was condemned as a wrong Judgment, because he was not heard: I believe that may be a Reason why many of those Attainders were condemned; perhaps it might be a Custom of our Ancestors to pass Bills of Attainder without hearing the Party: This Person hath been heard, and fully heard; and I believe no Person that hath been Attainted, hath had so fair a Trial; and therefore Parliaments having condemned Bills of Attainder, because the Persons have not been heard, that will be no Reason why any Parliament should condemn us. A Gentleman told you, That the Law of God and Man was not to condemn a Man, but upon two Witnesses; but there are many Instances to the contrary.

It is told you, That *Porter* here before you, is not a good Evidence, because he is not Sworn; and that you are to go by the Rules of *Westminster-Hall*. Says the Gentleman that spake last, you are to go by their Rules, but not by their Forms: I must confess there is a great Difference between them two; for a Form is only the Manner and Method by which we proceed in doing of any Thing; but the Rule is the Foundation we are not to err from; but I can't agree, we are upon the same Rules as *Westminster-Hall* is. The Rules of *Westminster-Hall* are, when a Man is brought upon his Tryal, the Jury are all to be upon their Oaths; by which Oath they are to make a true Judgment according to Law: This is not the Case here; if I was a Jury-Man, and was to Try a Man, and one Witness swore against this Man, and no other Witness, though I did in my Conscience believe him to be guilty, yet in that Case my Conscience is discharged, and I must find him not guilty: But no Man can say this is the Case here.

What are we now a doing? Here is a Bill to Attaint Sir *John Fenwick* of High-Treason; if I reject the Bill, I do declare him not guilty; and if I do think him guilty, I do declare against my own Judgment; for my Judgment here, is not bound up as a Man's Judgment upon a Jury; for his Judgment is bound up to Proof, according to Law; and my Judgment is bound up by my own Belief: This is the Proof I must go by; and I think every Man is bound in Justice and Duty to his Country, as he believes Sir *John Fenwick* to be guilty, to be for the Commitment of this Bill; and till any Gentleman will convince me, that this is not a Rule I am to go by, I must continue in this Opinion.

Mr. Boyle. The Disorder that worthy Gentleman was in, makes me the more concerned for fear of falling into it my self.

I hope in this Debate, Gentlemen will be very cautious of using it as an Argument: what Application our Votes shall have without Doors, and with those we represent, when we are to give Judgment, as far as in us lies, for the Life and Death of a Man; and therefore I must observe, that the eagerness that is justifiable upon Impeachments, may not look so well now we are Judges upon a Bill of Attainder. You have gone over the whole Course of the Evidence, and I believe that this Debate will shew you pretty plainly, what is to be the Fate of this Bill; for I believe all the Arguments will now be used that can be; as to what hath been said of extorting a Confession, I take it to be quite out of the Case.

I am sorry to be engaged one way or another, I would not, if I could help it, out of the House, be upon a Jury of Life and Death; yet in that Case, I should know the Law, or be told it by the Judges; but in this Case, we are both Jury-Men, and Judges, and know not what Rules we are to go by; but set up a Court of Equity which hath no Bounds, but our own Consciences.

As to Sir John Fenwick, I know him not; as to his Cause, I am sure, I am against it; but how far I think him guilty or not, I think is not the single Point to be considered; I must confess, there have been several People accused of this Conspiracy, and have been named by the Evidence at the Tryals; and I believe they are much alike guilty, being upon the same Evidence; but as to all that hath been opened before you, and proved, it can amount to no more than this; there is but one Evidence, which by the Law would be a good Evidence to Convict him in another Place; and therefore I do agree with the Gentleman that spake under the Gallery, that this is a very extraordinary Case; for one Witness is not sufficient at Law to convict him, and the Law would be very different hereof. I am to Judge according to my own Opinion, and not by the Rules prescribed by the Law; but though this Proceeding is not strictly according to the Law of the Land, yet if it was such an extraordinary Case that required you to dispense with those Forms, and come to this extraordinary Manner of Proceeding; I think, for my own Part, it might be supported by the Necessity of it, for 'tis impossible that it should be otherwise in Practice: Thus, when the Government is at Stake, and nothing will preserve it, but the breaking through the settled Forms; then the Government will break through them, and whatever Rule you prescribe, it will always happen so.

There is a very extraordinary Case, and that was in the Conspiracy of the State of Venice, above a hundred Years ago, I think, set on Foot by the Spaniards; then the State, to get the whole Matter out, promised a Pardon to as many as were concerned in it; and after they had promised it, and treated with them about it, they thought it necessary, for the Preservation of the Whole, to break their Faith, and they were all put to Death. This was upon Point of Preservation of the Government.

But, Sir, as to Precedents, give me leave to say; I do not give that Authority to them, unless I know all the Springs, and secret History, and Transactions, that were their Guide in making those Precedents; and as to Precedents that have been quoted, when the Parliament has declared what was Treason,

and what was not Treason, or have declared Constructive Treason, they may be grounded upon the Statute of 25 Ed. III. But I think there is no Statute upon which they can ground the Condemnation of a Man upon one Witness.

In the Case of my Lord *Strafford*, upon Constructive Treasons, it was there said, That it was a Fire that had lain hid for 240 Years; and that it never broke out before, but to consume him, and his Posterity. It was answered by *Pym*, if that was the Case, it was not for want of Law to justify such a Proceeding, but all that Time had not produced such an Offender.

I do not doubt, but if any one will consider the late Conspiracy; and if that was the Question, but it was as Extraordinary as any Thing can happen: For it was to subject their Country to a Foreign Power, which is very Extraordinary, and several Persons were concerned in it: But there is one extraordinary Part which I do not remember this Gentleman is accused of; and that is, the Assassination. Treason it self is a very extraordinary Crime; but give me leave to say, that Extraordinary Part is not alledged against this Gentleman, and this Bill does not seem to be brought in for that, wherein he is concerned in common with some others, but for the subsequent Matter alledged in the Bill. This Bill is grounded, not so much upon that he is guilty, as a great many more are, as upon several Circumstances which have happened to no Body else. Give me leave to instance in a Case, now in my Head; (I beg your Pardon that I ramble, 'tis from the Awe I have upon me from this Assembly.) In *Cælin's* Conspiracy, and if that was our Case, no doubt there would be another sort of Argument for it; there they consulted what to do with *Cethegus*, and the other Conspirators; he was at the Head of an Army, which only expected his Orders to lay Rome in Ashes; the Question was, Whether they should break the *Porcian* Law; and for the Safety of the Senate, they were put to Death before the Assembly rose.

Now to come to this Part of it, though Sir John Fenwick is a great Offender, yet I think his Case is not so extraordinary, as to make you proceed upon this Bill. I do take his living or dying not to be of that Consequence as this Bill of Attainder: I know not how he comes to be so considerable when in Hold; for when he walked about Town, I never heard he was feared or regarded at that Time.

But to come to the Allegations in your Bill, upon which you are to ground your Judgment; The first Part is a new Conspiracy, that is for intending to create a Jealousie between the King and these Noble Persons: As to them, you have already passed a Vote in their Justification; and I think their Actions may justify them to the World, as much as any Vote of the House of Commons; but whatever that may be, I think it was a foolish Piece of Conspiracy, as well an as ill One; for one when he was in danger of being hang'd for one Plot, to venture upon another; and, I think, there was at that Time two Witnesses to bring him to his Trial, and that is an Allegation in the Bill. And as to the Protracting of his Trial, 'tis natural, and so justifiable, whether Innocent or no, and what every Body attempts; and no Body can wonder at it, but in one Case or the other, it can be no sufficient Ground to Attaint him.

The next Thing that is said, is that he hath been the Occasion of the withdrawing of the Evidence. Now I must observe, That is not alledged in the Bill, and is proved but by Hear-say; but suppose it was true, and alledged; if any Man concerned in Treason, shall endeavour by Friends, or otherwise, to get off an Evidence; Can that amount to that which is designed to be punished by this Bill? To High-Treason? 'Tis the Part of those that are intrusted with those Matters, to be in Expectation of such Practices. What are Goals for, but to keep them in Custody? And the People employed in those Businesses, are to take care of it. Are we to supply a Defect of what ought to have been done in another Place?

So that I do say, That a Precedent in an extraordinary Case, is no Precedent to be used in a little Case; it may be urged, but 'tis but a Pretence; when you have passed this Bill, which is the Record, the Matter will appear no otherwise than are the Suggestions of your Bill: A Man hath aspersed great Persons, which is a great Fault indeed, (for he is not charged with the withdrawing of the Evidence,) therefore attain him upon one Evidence; I think by this Bill, you will open a Door for a Precedent of all Treasons of the same Nature. Sir, there have been many Precedents mentioned, I will trouble you with none, because most Gentlemen have read the Argument of Mr. *St. John's* in this Case: I must confess, unless there was that Necessity as is pretended, which I do not see; I do not see how you can justify passing this Bill of Attainder, either by the Law of God or Man, in any Nation allowed.

I must confess, I have no manner of Concern how this Question goes; what I have said, is more to satisfy my own Judgment, than work upon other People; I am not satisfied there is that Necessity that is pretended; and therefore as my Judgment is now informed, I can't give my Vote for Committing of this Bill.

Mr. *Smith*. Sir, I own my self to be very unfit to speak in this Argument, but since I am to give my Vote in a Matter of this Consequence, I beg leave to give my Reason why I give my Vote, as I intend to do; I know the Matter before us, both in the Nature of the Crime and Punishment, as well as the Consequence of it, requires a very deliberate Consideration; but at the same Time, I do take the Hazard and Danger of this Government to be a Matter of great Consequence too.

Though there have been several Precedents instanced in Relation to Attainders; and though I have observed, that most have acknowledged, That they might be justified upon extraordinary Occasions; yet when they have asserted that, they have told you, they were upon a wrong Foundation, and so were laid aside. Now I think it no great Matter to say, That those Attainders that were made in Rancour upon contended Titles, were reversed when the opposite Party got the Power: no more than if any Action, be it never so justifiable, should be Reversed when King *James* comes again, which I hope never will be. Is it any Argument, that when *H. IV.* came to the Crown, and deposed King *Richard*, that he reversed all the Attainders in his Time? There might be Reasons might sway with Persons for reversing particular Acts of Parliament, which might be very good, or might be not so: There was such a Change of Government at that Time; but they take notice it was made a particular Article against *Richard II.*

as if when the Power was come to other Hands, they would not have deposed him if they had not had that Argument: Neither do I take that Argument to be of any Weight; That Attainders have been reversed, because the People have not been heard; when this Gentleman hath had as full a Hearing as ever any Person had upon any Bill of Attainder, or Impeachment whatsoever. And he hath had the Advantage of Council in this Case; which, as has been told you, was excepted out of the late Act of Parliament, and of the most able Council too.

'Tis said this is a Matter of no great Consequence, because it concerns Sir *John Fenwick's* Life singly; and he is not thought to be so considerable, as by his Escape to bring the Publick in danger. Now it hath been always one Principle I have laid down, That if a Plot be discovered, and not thoroughly prosecuted, it strengthens and grows upon you, and ten to one if it does not subvert the Government.

Now, God be thanked, that we have prevented the Design upon the King's Person, and several have been punished for it; but I think we are not gone to the Bottom of it, and that we ought to provide against it in a much other Manner. Can any one think that Sir *William Perkins*, or Sir *John Freind*, and the rest that are discovered were the only Persons concerned in this Conspiracy: I take it, that there have been much greater Men in it; and when I see such a Struggle both to get People out of Goal, and send People out of the Way, and all Arts used that can be; I must suppose, when such extraordinary Courses are taken, that there is something extraordinary still to be done; and I would not have Men by bribing of Witnesses think to secure themselves: It hath been used as an Argument to lessen the Matter, That this was a little after the Act of Indemnity: Can any Thing aggravate a Thing more? Sir, these very Arguments turn against them.

We are told here, that we must not consult our own private Judgments in the Matter; and we are told at the same Time, if there were two Witnesses that we did not believe, we must not find him guilty. We are told of a Judge that though he knew a Person to be not guilty; yet it was a commendable Action in him that he condemned the Man, but that hath been very well answered already, and I shall not meddle with it further; only this I will say, That I never will in any Case be a Jury-man or a Judge, where the Convictions of my own Conscience shall not govern me; but an Evidence that I do not believe. And because that Story was told you, I will tell you another, that I think more commendable: And that was a Man was Try'd for a Murder, and there was positive Evidence against him; the Jury went out, and staid a great while: There was Eleven against One for finding him guilty; but at last the One almost starved them; and they brought the Man in not Guilty: The Judge sent for the Gentleman, and desired to know his Reasons for differing with the rest: And at last, upon Assurance that nothing should be done to him, Why, says he; Would you have me find the Man guilty, when I was he that killed the Man, and he was innocent?

Then, Sir, if you take the Evidence as it is; I think, first, here is Capt. *Porter*: I do not find any Body excepts to him; and his Evidence hath been approved of by several Juries, and several Persons executed upon it; and nothing Ma-

terial hath been objected against it. I will not say, That Sir *John Fenwick* hath owned a great deal of this himself: He hath given every body satisfaction, how far he stands guilty in his Opinion; but it is brought so far home, that there was Sir *John Fenwick*'s own Letter was to convey him abroad. Here hath been attempts upon other Persons; you hear what hath been done by the Solicitor. They say, he was not his Solicitor at that Time. Here are very pregnant Circumstances; one Gentleman said, you ought not to make use of *Goodman*'s Evidence here; and yet he could make use of every Thing to disparage him; for he could say, there were three positive Witnesses against him.

Now when 'tis so notorious what Parties there are for King *James*? and we find Persons plotting in every Part of the Kingdom: When you have an open Invasion before you, and when Designs are laid against the King's Life every Day; if this be not a Time to exert an extraordinary Power, I submit it to you.

Sir *Rich. Temple*. Sir, I shall not trouble you with any Thing that hath been offered to Day. That which calls me up is the Danger of the Precedent you are about to make, and the Arguments that have been used to support it; which I think, are more dangerous than that. I must confess 'tis a new Doctrine to me, That the Laws that are made by the Parliament, are to be no rule and guide to this House. Sir, the Birth-right we have, is in our Laws; and I did ever think till now, That the Laws were not only made for *Westminster-hall*, but for all the Subjects of *England*; and especially, that they were to be a Rule to the Parliament that made them, till they should think fit to alter them.

Here have been great Mistakes between the Power of Parliament and the Jurisdiction of it; the Power of Parliament is to make any Law, but the Jurisdiction of Parliament is to govern it self by the Law; and this, give me leave to say it to you, hath been the Opinion of all your Ancestors, and the Method they ever used: Shall we make a Law here in a particular Case against all the Laws of *England*? 'Tis *ultimum remedium & pessimum*; you may use it in a Case of absolute necessity, but otherwise it may be a Precedent to overturn all.

There are several Things in making this Precedent, that overthrow all the Laws and Liberties of *England*. First, you are passing Judgment upon a Man upon one Witness; I have heard a strange Debate to Day, That there was but one Witness in Treason, before the Statute of *Ed. 6.* you know, that in Case of Treason, there was by the common Law required two Witnesses; for if there was but one, the Party might demand Tryal by Battle, and that was the common Law of *England*.

There is another Thing that is extraordinary; here you are going to pass an Act without any Tryal at all? for to say this is a Tryal before you the Commons, is a mistake, you never did assume a Jurisdiction of Trying any Person, nor can you: You may for your own Information hear what can be offered, but 'tis not a Tryal where Witnesses are not upon their Oaths. There is no manner of Power or Jurisdiction can be pretended for you to Try; in that is a second Thing. All the Bills of Attainder you have had, have been in three Cases, where the Persons have been either Dead or Fled, or have been without

the Compass of the Law, and could not be brought to answer: And you have had some Bills of Attainder after Tryals had in *Westminster-hall*; but never a one of those have been called Tryals, but they have been generally reversed; and for what? They tell you, That they have been reversed by one Party and another Party: It was in the same King's Reign, in *Rich. 2d*'s Reign; they were forward and backward, as the Court Party or the Country Party were uppermost.

There is another Thing in this, that I think of a most dangerous Consequence; and that is, that you are for making way, for what I know, by this Precedent, for a Rack, for so 'tis said; this is to force a Man to be an Evidence. Why, give me leave to say to you, 'tis a new Way not known in *England*, that you will hang a Man unless he will Confess or give Evidence; but I think 'tis something more than a Rack, for here is hanging, drawing and quartering in the Case; and I do not think this Proceeding will make him an Evidence with any Credit or Reputation to this House; nor am I of Opinion that he can discover any Thing worth such a Precedent.

Now give me leave to say one Thing as to the Jurisdiction of Parliament. It hath passed here for Current, That the Parliament hath a Power to declare what they will Treason, though so by no other Law; 'tis the greatest Mistake in the World; I heard a great Debate upon this, upon my Lord *Clarendon*'s Case, and 'tis plain, that Statute relates only to Cases brought from inferior Courts to Parliament; for it says, That if any other Case supposed Treason, which is not in that Statute specified, doth happen before any Justices, the Justices shall tarry without going to Judgment of the Treason, till the Cause be shewed and declared before the King and his Parliament; Whether it ought to be judged Treason, or other Felony, I speak to the Jurisdiction that the Parliament has by that Statute. 'Tis, that if the like Treason (for at common Law there was a great many Treasons) should fall out, and be brought before inferior Courts, of which they doubted, whether they were Treasons or no; then they should be brought before the Parliament to judge whether they were Treasons or Felony: But how shall they judge? By the Laws in being. And who is this judgment in? Not in the Parliament by Bill, but only in the House of Lords: Much less is it' That you may judge that to be Treason in this House, that was not so by the common Law before. So that give me leave to say, therefore there is no such Power reserved to the Parliament, to declare any Thing Treason that is not Treason before.

I must say, 'tis of the last Consequence, that we should make a Law in a particular Case to take away from him all the Liberty that belongs to a Subject: Some Gentlemen talk of the great Favour he hath had at this Bar; I know not what to think of it; I am sure you allowed the King's Council such Priviledges as I never see before, and that was to offer that for Evidence, that every body acknowledged was not so; and I do not think any body would think it a great Favour to be heard in this manner, especially to Things not in the Bill.

'Tis said every Man must go according to his private Opinion, 'tis not said Judgment neither; the Instances that have been given, are of a quite different Nature: A Man is not to give his Judgment against his Knowledge; I think that Judge

ought rather not to have try'd the Cause at all, but if we sit here to judge, we sit to judge him according to the Law of *England*, and then we must judge him according to legal Proof: Will you sit upon a Judgment that is not only not tyed to the Rules of *Westminster-hall*, but is not tyed to the Laws of the Land; and attaint a Man without a legal Tryal, without legal Evidence, and upon one Witness, when the Law says you shall have two; and after all, say 'tis a reasonable Proceeding? I know not how it came about, that the Act of Grace was passed, it did not rise from this House; if it hath any ill Consequence, let them answer for it that were the Cause of it.

They say the Government is at Stake, because the Plot hath not been found out to the Bottom: That is not our fault, this Man hath been long enough in Custody; if he hath trifled with the Government, I am sorry he hath imposed upon them; but if it be so, I think there is nothing in this Case of that Consequence, as to make you make this Precedent.

Sir *Will. Strickland*. Mr. Speaker, I would not make use of any ill Precedent: and yet if the present Occasion, and the Necessity of the Kingdom required it, I would make a Precedent; I am glad the several ill Precedents are avoided in this Case, and I would be bold to say, whether this Gentleman suffers or no, no Man can say that he hath been hared to Death by Council.

Sir, I should be as tender in Point of Blood as any Man; but I do think, if the safety of the King and Kingdom is concerned, 'tis not one private Man that we must have respect for, so as to let the Publick suffer by it: I do think, that upon this Occasion there have so extraordinary Things happened as have hardly happened in former Ages; that One who is known to be in a Conspiracy to bring over a French Power with a popish Army, to destroy our Lives and Liberties, after his Tryal has been deferred by his Equivocations and Pretences to make a great Discovery; when he comes to make it out, he accuses the best of your Friends; and this is only an Artifice to get Time till they could get the Evidence out of the Way. I think, if you do not take notice of it, and let the Legislative supply that Defect, it may be of ill Consequence, and may encourage any one to commit the worst of Mischiefs, upon hopes, that if they can get the Evidence out of the Way, they shall go unpunished.

Sir *Francis Winnington*. I shall trouble you but a little while, it being late; but Gentlemen saying 'tis an extraordinary Case, I shall give my Reasons why this Bill ought not to be committed; for every Member here now, is a Judge, and he must take the Blood of this Gentleman upon him in Judgment, either to condemn or acquit him; and I must confess, I have very much admired, to hear that Doctrine preach'd that every Man, as he is satisfied in his private Conscience, ought to judge this Man guilty. I desire to know by what Authority we sit here? We sit here and have a legislative Authority, and 'tis by the King's Command we come together; but at this Time we are judicially trying this Man for his Life, and therefore I humbly conceive, That we ought to proceed *secundum allegata & probata*, and for any Man in his private Opinion, to say he his guilty, he does not act by the Commission he sits here: for to tell you of the *Lancashire Plot*, or that a Man shall not be chosen hereafter, seems to be Arguments to inflame, but nothing to the Question.

Now, Sir, I will humbly offer to your Consideration, and the Judgment of the House, why I think we cannot judicially condemn this Man, for I think the Question of Commitment to be the same as of his Life and Death.

I do agree upon all the Precedents good and bad that have been cited, and doubt not but in extraordinary Cases, 'tis in the legislative Power of the Parliament to look after the Safety of the Kingdom, but I shall offer why this does not come to that Case.

I humbly conceive in this Case, for I will not speak to the Rules of *Westminster-hall*, but upon the right Reason of the Thing; for if it be Reason in *Westminster-hall*, it may be so here, and that ought to overcome every Thing: But whereas Gentlemen say you have one Witness; I do not apprehend you have one good Witness, and I will give you my Reason for it; for you must take Capt. *Porter* upon his Parole, and consider what he says upon his Word; and then I do appeal, if you take what he says upon his Word, Whether ever they did know that a Bill of Attainder proceeded against any Man upon bare Affirmation? No; in that Case you should have turned it into an Impeachment, if the Thing looked probable, and then you had the Witness upon Oath; and the ancient Method of Bills of Attainder use to be first by Impeachment of the Person, and then to turn it into a Bill of Attainder.

Then see what is it that is insisted on by the King's Council, and recited in the Bill, That there was a Bill of Indictment found by the Oath of two Witnesses, that is *Porter* and *Goodman*: Under favour, I think they are not to be counted as Witnesses in the Point; and I offer this as a Reason; and, I think, 'tis natural Justice in all Courts of the World, That if a Man be accused as a Malefactor, he hath the Liberty to cross-examine the Person that accuses him. Now we very well know, that in Case of Bills of Indictment, when they are found by the Grand-Jury, they never admit the Prisoner to put cross Questions, because the Bill of Indictment is but the Accusation; and if an Accusation be enough, who can be Innocent? Why, then if it be so, then this Oath that was given to the Grand-Jury, is not such an Oath upon which you can put such a Value.

Then, Sir, go to the Paper of *Goodman*, which you would read, and consider the validity of that; *Goodman* being now absent, the Prisoner hath no opportunity to cross-examine him; and I beseech the House to consider the ill Consequence of it; any Minister of State may come and get an Examination before a Justice of Peace, or Secretary of State, and the Man is conveyed away, and a Bill of Attainder is clapped upon his back, and this shall be read as Evidence against him. He is but half a Witness, and a Witness upon an Accusation, not upon a Tryal.

Then come to Sir *John Fenwick's* particular Case; Sir *John Fenwick* is indicted, Issue is joyned, and he hath notice of his Tryal: and one of the Witnesses goes away, no Man can tell upon what account he went; I may believe why, in my private Opinion, but that is not our judicial Knowledge: Then if that be so, was it ever known, that when any Man was indicted, and issue joyned, because his Tryal was deferred, therefore a Bill of Attainder must be brought against him? Here are Plots against the Government, and it may be forty may be taken up for it; and as to twenty, there

there may be two Witnesses, and the others may have the good luck to have but a single Witness against them; will you have Acts of Attainder against all the rest? If this had been an extraordinary Case, wherein the Government had been particularly concerned, it might have weighed with you; for no Man can shew me any Precedent of a Bill of Attainder, but where there was open Act of Hostility, or Men of great Relation and Power were concerned to Subvert the Government: But what is Sir *John Fenwick's* Case? He is in Custody, and the Plot is detected; if he was run away, you might still suppose he was plotting against the Government, because he was fled from Justice: Gentlemen say the Government is concerned, so it is in every Felony and particular Treason, but must there therefore be a Bill of Attainder to punish it? When there is a Bill of Attainder, it must be from an immediate Danger that threatens the Government Established, that such a Man is Attainted: But I do not see that Sir *John Fenwick* hath any of these Circumstances. All Men agree, That this is an extraordinary Way of Proceeding: Then the Question is, Whether Sir *John Fenwick's* Case be extraordinary? or whether he be more than a common Malefactor that is in a wicked Conspiracy? I do not see that this Case of Sir *John Fenwick's* is so extraordinary, that if he be not hanged, the Government must fail.

And, under favour, a Precedent when 'tis once made, I know not what Time may produce from it: It may be, after the Death of his Majesty, that came to restore our Liberties, we may have wicked Members, and Members chosen as in *H. 6.* Time. It may be the Condition of every Subject in *England*. The Power of Parliament we must govern by Reason and common Justice; and if there be not so urgent Necessity to use this extraordinary Remedy, because it may be dangerous to Posterity, Therefore I am against this Bill.

Sir *Tho. Littleton*. The worthy Gentleman took notice, That the *Lancashire* Plot, and some Words I used, were used only to inflame: I can't so well guess at his Thoughts, but I have heard him several Times bring his Wife and Children into his Speeches, to no purpose at all.

Sir *Francis Winnington*. I have a Wife and Children, and that Gentleman none; therefore I think I may make use of that Expression.

Sir *Tho. Seymour*. Mr. Speaker, I have attended your Debate with the best Attention I can; and I have heard a great many Arguments, and some very wild Ones too. I hope, how frightful soever Things have been opened, they will not lead your Understanding out of the Methods and Rules of Justice: I will not take upon me to tell you, what is nothing to the Question; as that Treason is a very great Crime, or that the Parliament hath an unbounded or unlimited Power, and are not tied to the Rules of *Westminster-hall*; I think that is no Part of the Subject Matter before you.

That nothing bounds or can limit the Parliament is what every Body does admit; but 'tis the right Application of that Power which is now to be considered of: For you may Judge the Prisoner, and others will Judge you. The World will Judge you, if you do not apply that Power a-right.

For my part I shall avoid, as much as can be, the saying of any Thing that hath been said; and therefore I hope you will believe that my Discourse must be very short: But that which does move me in this Question is in short this, That I do not give my Judgment to condemn any Man otherwise than

the Law directs how, and upon what Terms, I must give it; If the Law hath said that Treason is not to be Treason, unless it be proved by two Witnesses, I am never to give my Judgment in that Case when there appears but one.

And this I take to be the state of the Case, not to enter into Matters of Precedent of Attainders; for those are only Instances of so many Facts that have been done. And in all those Instances that have been urged and quoted, When Times have been sedate and quiet, Marks have been put upon them; as was hinted by a Gentleman that spake very Ingeniously upon this Subject at the beginning of this Debate; I say, Marks have been put upon them for you to avoid, but not to imitate. I take it, that the Law hath determined that there shall be two Witnesses to the Proof of Treason, and there is no Treason that hath not two Witnesses to it. There is but one Attainder that we meet withal in sacred History, and that is the Attainder of *Naboth*: he was attainted, and we know what induced that Attainder; he had nothing to object as to the Formality of the Proceedings there was set up against him: And though *Jezabel's* Letter had disposed the Rulers to deal by him as they did, yet there were two Witnesses that did appear against him.

I take it, that two Witnesses are requisite for the Knowledge of the Truth, that you may make a right Judgment whether they swear right or no. I will give you but one small Instance more; I must tell you *Susannah* had been but in a bad Condition, if one Witness and circumstantial Evidence would have made her guilty.

A Gentleman here says, 'tis Apocrypha: But that which weighs with me is, that there may be Inconveniences on one side, and there are no Inconveniences on the other. I know not what may be the Consequence of this Precedent, nor where it may bring you: I know the Consequence if Sir *John Fenwick* be not executed upon a Bill of Attainder: for no Body will believe there is a Necessity for this extraordinary Remedy to be applied for an Offence, a Year and half after he hath been Indicted and Arraigned for it, and they might have proceeded to his Tryal. And I know not whether 'tis his Fault that they did not; for it was not in his Power to prevent it: And if you, upon every Occasion, come to supply the Defects of them that are remiss in the Government, it will make them more so.

As to the Matter of Precedents, Why; It may fall out, that by this Precedent an innocent Man may be punished, and then we that make this Precedent are guilty of his Blood; and if he suffer never so remotely, it will be required of us, if they proceed from this Precedent. Now, if Sir *John Fenwick* be not Executed, unless in a legal Way, What is the Consequence of That? Is it that Sir *John Fenwick* shall go unpunished? Though they are deprived of one Evidence that would make it Treason, he may be punished for a Misdemeanour and imprisoned for his Life; and I had much rather he did languish in that Condition, and I am sure it is much safer for you, for no Inconveniency can arise that Way; and I take it, That when those that are our Guides dispute which is the Way, we are to take that which is safest.

The Learned have disputed, Whether this Matter, as now it is charged upon Sir *John Fenwick*, be Treason? I will not take upon me to determine it, they differ about it; and when they can't determine

termine it, will you by a Question determine it absolutely?

Upon the Whole, there hath been so much said by the Council for the Prisoner, and so little said by the Council against him, and so few Arguments urged against him, that I must still retain the Opinion I had, That there is not Evidence enough for you to proceed upon this Bill of Attainder.

Mr. Boscawen. Sir, I desire to give my Reasons for my Opinion in this Matter. I have no personal Disgust against Sir John Fenwick; the great Argument for Sir John Fenwick against this Bill is, That this is an extraordinary Proceeding, and therefore should be against an extraordinary Person; and in the next Place, that it is against the Rules of Law. The Rule of the Law is, That there must be two living Witnesses: As to that Matter, Gentlemen generally agree, That 'tis within the Law of Parliament to attain People by Bill of Attainder; but they say they have been often misapplied, which I do easily believe, because some have been Attainted and have not been heard; and some have been in tumultuous Times; but this Gentleman hath had a fair Tryal, and a Debate in this House; but I would fain know, though they confess Bills of Attainder may be, how it can possibly be, if the Lawyers at the Bar say true, That it must be upon Oath, and you give no Oath?

To say it may begin in the House of Lords; under Favour, I take it, That a Bill against a Commoner can't begin in the House of Lords. And if you can't have Witnesses upon Oath, you must have as much Evidence as the Nature of the Thing will afford; that is, you must have Witnesses to convince your Consciences in the Thing; for if all this great Assembly are satisfied in their Consciences, that he is guilty of inviting an Army of French to come into England, I am astonished to think that you should not pass this Bill against him: I think, as to this Witness Porter, they have not endeavoured to blemish him, but their Argument seems to run more upon Goodman's not being present. I would know if there are two Witnesses, and I do not believe them in my Conscience, Whether I can pass this Bill? But I appeal in this Case, *res ipsa loquitur*. The Thing is so plain, How many have been attainted and suffered for the same Crime, that have acknowledged Sir John Fenwick to have been present. There were several Members of the House sent to examine Sir John Freind and Sir William Parkyns, in Newgate; and they were sent with this Intention, That the House would intercede with the King for a Pardon for them, if they discovered the Full of the Plot; (it was not the Death of Sir William Parkyns and Sir John Freind that was aimed at, but the Preservation of the Publick) and when they were examined, they did acknowledge, that they were privy to the Calling in of the French, and that Sir William Parkyns was to have a Troop of Horse; there was to be 2000 Horse; but he would not redeem his own Life with the Blood of others. Now I do take it, that there is Evidence against Sir John Fenwick sufficient, in a Parliamentary Way, to attain him.

The Gentleman says, the Consequence of throwing out this Bill, would be nothing, and that Sir John Fenwick is a little Man; I agree he is, but 'tis the Consequence of bringing in a French Army that is to be considered: Would you pave the Way for them to come over, and make their Entrance

easy? I hope the People of England are concerned in the Case, as well as their Wives and Children: If you let him go, what will be said? I have not heard one say, That he believes he is not guilty; there is none but think him guilty, and yet will you let him escape? What Encouragement will this be to your Enemies? He hath not denied the Matter himself. Nay, he hath not brought one Gentleman to vindicate him, That he is a Man of a Behaviour, not to be believed to be guilty of such a Thing, which was done in other Tryals.

I desire you would consider what the French King said of his Brother King James; how could he think to bring in Popery with a Protestant Army? I am sure the Bringing in of a French Army must be for the Destruction of the People of England, and the Protestant Religion, and will bring your People to go in wooden Shoes: 'Tis the Example of this Thing you are to consider. It was said at the Destruction of Carthage, That the Commonwealth was always to be minded: I think you ought always to be mindful for the Preservation of England; and I believe he is guilty, and I am therefore for the Bill.

Lord Digby. I shall trouble you but with a Word or two: I suppose as long as we act by the known Rules of Justice, and the Laws of our Land, we shall not need to fear any Censure in our own Kingdom, or any where else; but 'tis a very uncertain Thing for Gentlemen to be Judges in the Case of Life and Death, without any Rule to walk by; a great many will not allow us any Rule at all: I always took our Rule to be the Law of the Land, and that even our selves are bound by the Laws our Ancestors have made, till we think fit to repeal them; and I am confirmed in this Case by one particular Argument from the Bill of Treason that passed last Sessions; in which there is a Clause, That it should not extend to future Parliaments. The only Argument for exercising of this Power, is the extraordinary Case of this Gentleman. When a Gentleman speaks of the Power of Parliament, I take it to be the just Power of Parliament; I think a Man may say a Parliament can't do what they can't justly do. But all Gentlemen allow, that this Power ought not to be exercised but in an extraordinary Case, wherein the Government is nearly concerned: I believe very few but think, that if it had not been for the Vindication of some particular Gentlemen, we never had had this Matter before us; and then I will leave it to Gentlemen to consider, if the Government can be in so much Danger if Sir John Fenwick does escape.

Mr. Brotherton. Mr. Speaker, I perceive the Question whether this Bill shall be Committed, arises very much upon a Supposition that seems to be granted, That there is no other Law to try this Person by; and it hath been hinted, That before the Statute of Ed. 6. one Witness was sufficient: Now, if I shew you that here is a Law in being, and hath continued for several hundred Years, whereby a Man may be tryed, and that by one Witness, I think it is something that hath not been spoke to yet.

Sir, I ground my Reason and Opinion upon the Authority of the Law, and upon the Historians of all Times, who agree in the Thing, and come down to my Lord Coke, which is Printed by Authority; and he is express, That where there is but one Witness, he treats of what Witnesses are necessary, and he tells you two Witnesses were required by the common Law for Treason, if the Person was

tryed by a Jury; but says he, if there be but one Witness in Case of Treason, he shall be tryed before the Constable and Marshal. And in treating of the Statute of *H. 8.* which does appoint how Treason beyond Sea shall be tryed; says he, that is only where there are only two Witnesses; but if there is but one Witness, he shall be tryed before the Constable and Marshal; because, says he, the Statute of *Hen. 8.* does not take away that Tryal before the Constable and Marshal; and for that, Sir, there are several Precedents in this Case, of Persons that have been attainted by a Court Marshal: And if the Accuser was vanquished, he was to suffer the same Judgment the Defendant was, if he was found guilty. I am upon a Gentleman's Life, and never was so before, and desire to be never so again; there have been several Precedents I say in this Case, and my Lord *Coke* is express in the Point; and I desire any Gentleman to shew me any Law that hath repealed this.

In Case of Murther; suppose a Man be wounded upon the Land, and die upon the Sea, and I could shew several Cases where the common Law can't try a Man by Jury, but he shall be tryed by the Custom of Merchants before the Statute of *Ed. 6.* If a Man was wounded in one Countrey, and died in another, he could not be tryed. That which I aim at, is to shew you, that though the common Law should fail, yet they need not come with a Bill in this Case: If two English Men beyond Sea fight, and one kill the other, it can't be tryed by the common Law; How then shall it be tryed? It must be tryed by the Court Marshal. It was Sir *John Amesley's* Case in *Rich. 2d's* Time; and *Wells's* Case, and Lord *Herbert's* Case, in *H. 6.* Time, who (there being but one Witness) was Accused before the Constable and Marshal.

Memorandum. [*Mr. Brotherton was here interrupted by the great Noise the House made upon the Novelty of the Argument, and did not go on further with it.*]

Mr. Paget. Sir, I attended to the Debate of this Day, and have not hitherto troubled you my self, because I did expect to be better informed by this Debate.

I think the Substance of the Debate of this Day, hath been not so much to shew us by what Rule we are to go, as to shew us that we have no Rule to go by but our Judgments. Sir, I never had the Honour to sit in Parliament before this Time, and therefore can't quote Precedents of what hath been done in former Parliaments; others have taken a great deal of Pains to shew you, that it is in the Discretion of Gentlemen, and they are only to be satisfied in their Consciences; I am not fond to hear my self speak, and therefore I hope I shall be favourably heard at this Time, and I do think I have the more Reason to speak at this Time, from something that fell from a very honourable Gentleman at the Bar: If I do misrepeat him, I hope he will excuse me, for I do not do it with an ill Design; but I think his Words were to this Effect, That he did not know, but if it was known in the Country that Gentlemen did give their Judgment against passing of this Bill, it might hinder their Election in future Parliaments. Sir, since there seems to be so great stress upon our determination in this Matter, I hope I may at this Time shew you my Reasons why I can't come up to agree in this Bill; and I shall submit it to them, whether they will do me the Honour to chuse me again.

I must confess, I do think this is as nice a Case as I can pretend to give my Opinion in; and as it is so, I shall desire the best Assurance of the Truth of this Matter, before I give my Opinion for the passing of this Bill.

Sir, you have had before you one Evidence, I will admit him to be as much as a single Evidence can be; as to the Paper of *Goodman's* Examination, I have heard that, and other Matters too, which I shall not repeat: But I do remember, that in the Debate of Yesterday, it was not insisted on to be Evidence: and if not so, I shall only take the Matter as depending before you upon one Evidence only.

Sir, it is true, I believe this House, as to its Legislative Proceeding, is not tied by the Methods of inferior Courts: But I hope I shall be excused, if in the Methods of Prosecution and Conviction of Offenders, after they have been prescribed by the Wisdom of the Parliament, I hope I shall be excused, if I believe this House can't take away any Person's Life upon less Evidence than inferior Courts could do.

And, Sir, I shall not enter into any very long Vindication of my self, and my Zeal and Willingness to serve the Government; I never was employed in any other Government, and I think my Actions have been such, that no Body can instance in any one Thing that hath looked otherwise; and when I have said this, I shall trouble you no further about that; But there hath been so much stress laid upon this Bill, that whosoever speaks against it seems to speak against the Government; because it is said, the passing of it is so necessary for the Support of the Government. And I was the more willing to offer you my Reasons, because, as the Nature of this Debate has been, I can't satisfy my self where my Judgment and Opinion shall rest: For if it be so, that you are not tied to have as much Evidence as inferior Courts, and, as they say, one Evidence is enough, and my Judgment is to be guided by Papers; then they, without any Evidence, may be enough to satisfy: And if you take up with less Evidence than inferior Courts, I can't come to declare how little Evidence may take away a Man's Life.

As to the Prisoner I know him not; but I think this Bill is for all that he hath to lose, and is for all the best *English-man* can lose upon the like Occasion.

Sir, I shall be very tender in giving my Opinion for the Bill, unless it was very clear to me that it was reasonable. Truly I have heard very little of the whole Plot, or of this Matter that hath been examined, or for which others have been executed; my Life has been generally in the Country, and I have not had the Curiosity to buy the Tryals; and as this is the first Person that hath been called before me, to give my Judgment on, I hope I may be excused for taking this Liberty, upon such Evidence as appears before us, to tell you, I can't give my Consent to this Bill.

Sir William Lowther. Sir, you have had a very long Debate in the House, and long Discourse from the Bar; and though the Council was directed that they should not dispute the Priviledges and Authority of this House, yet, as far as my Judgment carries me, their whole Discourse was against it: And most of the Gentlemen that have spake against the Bill, it hath been because it hath not been adequate to the Proceedings in *Westminster-Hall*, because there hath been but one Witness. Sir, if there had been two Witnesses this House had not been troubled with it: It is a Case of a very extraordinary Nature,

ture, and so required an extraordinary Proceeding.

It hath been questioned by some Gentlemen, Whether one Witness be sufficient in this Case, or no? Which I wonder at, since a great many have been Convicted upon his Evidence, and every one of them has Confessed, which shews it to be a notorious Truth.

There is another Inference they draw from the Proceedings here; because a great many of those Precedents of Attainders have been reversed, and those with Notes of Ignominy. If they did consider the Times they were made in, and the Times they were reversed in, there might be a great deal of Cause for it: We find that it was contrary Factions that reversed them, and that makes it never the worse. And truly, Sir, I do not know but where Circumstances are so notorious, but they are *tantamount* to a second Witness, as I have heard in *Westminster-Hall*, and in Cases of Life too. If a Man be murdered, and two in a Room, and one comes out with a bloody Sword, the Law does presume that Man murdered him, though there is no particular Evidence that he murdered him, but only this Circumstance; and yet the Man's Life is concerned in that Case. So that upon the Whole, it appears to me that he is guilty, and, I think, nothing can be plainer.

There is another Circumstance, That he fled for it; and that is a Presumption of a Man's guilt: For a Man loses his Goods if he flies for Felony.

Mr. *Harley*. It would be very unreasonable and impertinent to trouble you long after such a Debate; I shall avoid Repetition of what hath been suggested to you, much better from other Persons than would have been from me.

I own 'tis a Case of great Concern, and 'tis my Misfortune that I should ever sit upon a Thing of this Nature; but I will discharge my Conscience always, and give what Arguments occur to me, why I am against this Bill.

Gentlemen have been pleased in their Arguments to enter upon the Debate of your Power and Authority, and have made that a part of their Argument; but I think, with submission, we need not dispute that at all. It is admitted, that there have been Bills of Attainder passed formerly, and your Authority is not under Dispute; for the Legislative in all Nations have a Power lodged in them, for the Safety of the whole.

But your proper Enquiry is, Whether this is such a Case as you ought to exercise this extraordinary Power; *omne regnum sub graviore regno*. Though you have this absolute Authority, yet 'tis to be executed by the Rules of Reason; and by the Rules (for such there are) of Eternal Justice; and I look upon this as one that is inviolable, That no Man can forfeit his Life, in such a Case as this is, without two Witnesses. I must adhere to that, because I have heard nothing in this Debate that can make me quit that Maxim: And 'tis such an Antient Land-mark, that I will never draw a Curse upon me, and my Posterity, for removing of it. I beg leave that I speak with this Earnestness to you.

Gentlemen have been pleased to make it part of their Arguments, The great Danger the Government is in, if this Bill does not succeed. I will not use many Words, but I think that Argument ought not to be taken in the Gross, but to be ex-

amined, Whether this Argument, of the Hazard of the Government, is of equal Poize for you to break the Eternal Rules of Justice. I won't quote the Case before, every Gentleman knows it, (though there was two Witnesses in that Case to put an innocent Person to Death) where it is urged, the *Romans* will come and take our State and Nation. But with how much Reason that was urged, every Body knows; and how far Government is now in Danger. Let us consider, Is this Gentleman out of your Power? Is the Government in Danger of a Man that is your Prisoner? Is he in open Rebellion against you, if this Law does not pass? If you have not your Hands in this Blood? Is he not under the Power of the Law? Did not he tell you so himself.

Every Gentleman ought to have a Zeal for the Government, and I wish it was as visible in every Thing else; but if that be so, give us leave also to speak with Zeal for our Liberty, and Antient Constitution. The Argument is turned two Ways; on one Side you are told, That this probably may make him Confess something; and by others, he is to be made an Example of Punishment. This is the first beginning of a Bill of this Nature; but the same Reason that leads you to this, must lead you to all the rest: The same Reason that is urged for this Bill to make him confess, will lead you to bring in a Bill to make him a good Evidence; this every Body must allow to be the Consequence of it.

How does this Bill come before you? It comes before you upon a Villainous, Scandalous Aspersions of some great Men; though I know them not all, yet I have a great Value for them, and I would make their Case my own: But if they were the nearest Relation I had, I would be against this Bill upon their Account; and let any one examine the Reason of it.

Sir, I won't run into Precedents; but only because it hath been told you, That the Precedents were made in one Reign by one Faction, and then the Attainders were reversed in another Reign by another Faction. There is one occurs to my Mind, which hath been touched at, and is at least of Instruction to me: There was a Case in *Ed. III*'s Time; there was the Deposition of a King, a King barbarously murdered; and his Son upon the Throne; and there was the Notoriety of the Fact, for which a great Man was Attainted in his Son's Reign, and no different Title; and four Years after a Bill was brought in against the Earl of *March*: And one of the Articles against him was, That he had procured that Attainder of that Noble Lord, under Pretence of some Letter, or Paper, that was signed by him; which, if it was so, says the Record, was no Evidence.

I lay this before Gentlemen, to shew them how Things have turned; and Precedents that have been made very unanimously; but in bad Times have been turned to shed the best Blood in *England*. It grieves me to my Soul to hear of Mr. *Cornish*, whose Attainder you have reversed, to hear that quoted as a Precedent in this House: 'Tis not whether two Witnesses be the Rule of *Westminster-Hall*, 'tis the Rule of right Reason; and 'tis a Maxim in your Law, Make what Law you will against the Law of God, 'tis void: And this is the Law of God, and right Reason.

You must provide for the Government, and when you can't do it by Course of Law, then Armies must do it, when the Courts are shut. I hope

Gentlemen will not put a hard Construcion upon what I have said, I have done it to discharge a good Conscience.

Mr. *Chancellor of Exchequer*. Sir, I am for the Commitment of this Bill, because in my Conscience I think Sir *John Fenwick* is guilty; and because I think the Power of Parliaments may interpose in this Matter: And if they have such a Power, I think they may justly exercise it in this Case.

Gentlemen say, they will not dispute the Power of Parliament; and yet in their Arguments they tells us, we are not to proceed otherwise than according to the Forms of inferior Courts. And if the Parliament is not to proceed without two Witnesses in the Case of Treason, give me leave to say, there is no room left for a Bill of Attainder, unless you will take the Business of inferior Courts upon your selves: And I am confident several Gentlemen, if there were two Witnesses, would use it as an Argument, What have you to do with it, refer it to the ordinary Courts of Justice; And I am sure that would be very reasonable. But I do think that Parliaments have this Power, and they have always used it; and I believe 'tis for the Advantage of your Constitution. The inferior Courts are to go by the Letter of the Law, and whoever can avoid that, is to escape Punishment there; but the Legislative is not to be dallied with: And if the Offence be of that Nature that inferior Courts can't reach it, they can go beyond all Forms to preserve the Government. This they have done, and upon that Principle you sit here. Was it by the Forms of common Justice below, that you declared the Throne to be vacant, and King *William* to be Lawful King? Is it upon the ordinary Rules of *Westminster-Hall* that his Title does depend? No, it depends upon this Maxim, That the Parliament of *England* are intrusted for the Whole, and may constitute a Government for the Preservation of the Whole. And upon the same right Principle that I gave my Vote to declare him Rightful and Lawful King, by the same Principle I declare his Enemies to be Traytors.

You are told here, 'tis according to the Law of God and Nature, that there must be two Witnesses in Cases of Treason: I do not pretend much Skill in other Parts of the World, I think 'tis our particular Happiness to have this Way of Tryal; I think in any other Part of the World, if he had dealt thus with the Government, he would have had another manner of Proceeding against him, than to be Condemned by King, Lords, and Commons: But that is your Constitution, but it does not hold in other Parts of the World.

Some Gentlemen lay the Stress of their Argument upon the ill Consequence it may have in another Reign; I would avoid ill Consequences in another Reign as much as I could, but our immediate Care is the preserving of the present Constitution.

But if Gentlemen are apprehensive, that by such an Example, if King *James* should return, others may be punished; if we may judge what he would do, by what he hath done, he would go another way to work: If he came to *London* he would proceed as his Party did at *Dublin*, and attaint all the Protestants in one common Bill; that is the Precedent he hath set, and he will follow. And therefore in order to prevent that, and in order to punish our Enemies, and to preserve our Constitution and

Prerogative of Parliament in all Points; and because I am convinced in my Conscience he is guilty, I shall give my Concurrence for Commitment of this Bill.

Coll. Granvil. Sir, I would not presume to trouble you at this time of Night; was the Debate upon a less Subject than it is; but since you are going to pronounce Judgment in a Case of Life and Death, and that this House is above any Rules, and we have no Precedent for it, but every Gentleman is to find out private Rules to walk by; the Rule that I shall take to is, That I would deal with Sir *John Fenwick* as I would have Mankind to deal with me, If I was in Sir *John Fenwick's* Place; and were indicted of High-Treason, and were not allowed any Tryal, nor the Benefit of making my Defence, according to the known Laws of the Land; I should think my Blood unjustly spilt, let me be never so guilty.

The Laws are what are set up for the Defence of every Man; and when once we break through them, whatever our End may be at that Time, and tho' it may in some manner seem to justify us, because 'tis to come at an ill Man; yet pray consider, the best of Men may be come at as easily as the worst of Men: And what makes me cautious is, That my Hands are guiltless of Blood yet, and I will take care how I begin to dip them in it. And that which will make me cautious in any Case of this Nature is, when I read in the Story of the late Time, That when once a Set of People had begun to dip their Hands in the Blood of my Lord *Strafford*, nothing would quiet them till they had stained their Hands with Royal Blood. The Lords are the common Defence between the King and the People; but the King is safest when the Laws are most strictly observed.

I shall not pretend to talk of your Power, which hath no other Bounds but your Justice and Discretion; and what you think so, will, I hope, meet with Approbation abroad. And in this Case I shall always be against what is called a Tryal to Day: But I do not think it any; for I do think we are an unfit Court to determine this Matter. We sit in so many Capacities, 'tis hard to distinguish in what Capacity we are here: Some are accused, 'tis hard to be accused, and to be a Judge at the same Time. I am sure I am as much concerned as if I was accused my self; and 'tis for my Innocence and Honour that I think my self bound to speak against this Bill. For as no Resentment shall make me do any Thing that is unjust, so I fear nothing that he can say: And I will never go about to stop his Evidence, by cramming a Bill of Attainder down his Throat.

Besides, 'tis an unfit Thing for any Gentleman who is obliged to be of Council for the King; 'tis hard for him to be so, and sit here as a Judge: I think also to proceed in this Manner, is a disrespectful Thing to the King himself; for in this Case you turn the Throne of Mercy into the Seat of Judgment. The King, who should have all the Ways to ingratiate himself with his Subjects, you make him, by this Proceeding, to pronounce the Sentence himself upon the Life of a Subject; and 'tis hard to offer a Bill to the King in such a Manner, by which you oblige him either to reject it, (which was always look'd upon as an Hardship) or to pass Sentence upon this Gentleman, which perhaps his Gracious Temper and his Mercy make him averse to.

Sir,

Sir, 'tis too late to give you other Arguments, you have heard a great many better than I can give: But I think this Bill is unjust in it self, and dangerous in its Consequence, and therefore I hope you will not commit it.

Sir *Herbert Crofts*. Sir, I did not think to trouble you in this Debate, but only for the Arguments that have been used by some that spake lately; who seem to lay a great Load upon Men, according as they give their Vote in this Matter; because 'tis in relation to the Blood of a Man. I have considered the Point, I hope, with as much Caution as any Man within these Walls, and hope to act with as strict a Conscience as any Man whatsoever; and shall be glad to be informed from those Gentlemen, that have laid the Stress so hard upon Religion; how they can shew me, that I do not as strictly; as to all Points of Religion, give my Vote for passing of this Bill, as they would excuse themselves from it. I must agree with those Gentlemen; That you are no ways bound, or limited, to the Rules of *Westminster-Hall*; and therefore what was said upon that, I did not think worth taking notice of: But when we are told, we are bound up by the Laws of Nature and Religion, and the Law of God in this Matter, this touches me so nearly; that I must desire those Gentlemen to shew me in Scripture the Law that they quote.

If it be the Law of Nature, and the Law of God, that every Man that dies must be convicted by two Witnesses, as an honourable Person observed, I wonder it is not observed by all Christian Nations and Governments, That they are not all governed by this Law; if there be any Direction from the Law of God, that no Man is to die for Treason without two Witnesses, but he may suffer for Murther and Felony with one Witness. Now, I say, I must desire the Gentleman that asserts it, That he would be pleased to shew me it in Scripture, and I will be entirely of his Opinion: But till I hear that very plainly proved, 'tis not within my Reading nor Remembrance; and therefore I desire it may have no Weight. And now I am up, I shall give you my Reasons why I shall give my Vote for this Bill.

The Reason that governs me, is the Preservation of the Government; and the Common-wealth under which I live; and which I think I am in the Station wherein I stand bound to preserve, by all the Rules of Justice imaginable. Now if your Law hath bounded inferior Courts, but have not bounded you in this Matter, though you have said inferior Courts shall not determine and give Judgment in such a Case; yet, I think, you are not bound up so here: But if the Matter be proved to my Satisfaction, I may give my Judgment according to the Evidence that comes before me, without that Restriction.

But, Sir, this ought not to be done, 'tis said but upon extraordinary Occasions. You were told, some time since, of the Case of the Duke of *Monmouth*; but it was said, that he was attainted because he was in Arms, and could not be come at otherwise: But I think this is a parallel Case to that, if not much stronger; for here is a Person that hath been accused, and fully proved to have been in Rebellion, and in Treasonable Practices with your Enemies, to bring an Invasion upon you, and to subvert your Government; and though he hath not been proved to have been in that single Act of the Assassination, yet there is such a Cor-

respondency between one and the other; that I do look upon him as equally guilty of both. Therefore this having been so fully proved, and the Person that stands accused being out of the reach of the common Course of the Law; What Remedy have you, but to fly to your Legislative Power, to attain him upon the Grounds and Allegations of your Bill, that one Witness is withdrawn? And I am very well satisfied, and I think we may presume 'tis by his own, or his Friends Incouragement and Procurement. And I do take this to be as reasonable a Ground for your Bill, as any Thing in the other Case: And I know not what is an extraordinary Case, if this be not one. Is it not an extraordinary Case, for a Plot to be laid for the total Subversion of this Constitution, and our Religion for ever, and we can't come at it to punish it another Way? But it hath been said, the Safety of the Government does not depend upon him: If we acquit him, we are to acquit every one alike: I hope the Government does not depend upon him alone; but if you clear him, there is the same Right to clear any Criminal whatsoever. Sir, since I am brought up upon giving my Judgment in this Matter, (though I come as unwillingly as any Body to it) I must go according to my Conscience; and till I can see somewhat of the Law of God, that has been hinted at, made out, I must go according to the Law of my Reason; and that is, that I must be for the Bill.

Lord Norry. I will not pretend to tell you what the Authority of this House is, 'tis what they please to make it: But I am sure they will ground it upon good Reason; but I think the Reason chiefly given for the Commitment of this Bill, leaves you a Latitude to do what you please, and give no Reason at all; for it is only to say, I am convinced in my Conscience this Man is guilty; no Matter upon what Proof, no Matter whether any Proof or not, you may believe it from his Life and Conversation, and the Company he keeps; or from his Interest; and that may be Argument enough to find a Man guilty. But till I know a Reason better grounded than this, I cannot be for the Commitment of this Bill.

Sir Christopher Musgrave. I am sure at this Time of Night I am unfit to speak in so great a Matter; I must confess I should not have troubled you, if it had not been in the Case of Blood.

You have had a great Debate before you of the Power of Parliaments, and that hath been sufficiently argued; and I have not Learning enough to give you any Precedents that have not been already quoted: But every Body does agree in this, That what Power you have of this kind, is not to be exercised but upon extraordinary Occasions. Now I would be glad to know, What this extraordinary Occasion is?

Every Body allows, That Treason is the greatest Crime a Man can be guilty of; and the Charge of this Gentleman is High-Treason: But therefore in this Case, must you exercise this Authority? Pray wherein does this Case differ from any other Case of High-Treason, that any other Person will be practising against the Government? All the Difference I can make of it, consists in two Points; the One is, that he hath prevaricated with the Government; and the other, That Gentlemen say he hath been a Means of *Procrastinating* his Tryal, in which Time an Evidence hath made his Escape. I will allow you, that 'tis

a very

a very great Crime for any one to asperse so great Men as he hath done; but I would be glad to know, whether there being such an Ingredient, it be sufficient to attain him upon High-Treason upon that Account.

Then as to that of a Witness being gone, Gentlemen have said, They are apt to believe, and there is great Presumption that he hath been the Occasion of this Witness being gone. Is that an Ingredient sufficient, though at present it hath not been proved to you? But if it had been proved, I should not however think that is Treason; then if this be the only difference between this Gentleman, and any other Person that shall be practising to subvert the Government, I would know, if there be but one Witness against any Man, for Conspiring against the King, if they may not have recourse to this Precedent, to proceed against him by Bill of Attainder? For the Argument is, Whosoever is endeavouring to subvert the Government, provided there be but one Witness, you are obliged, by virtue of your Legislative Power, to bring a Bill of Attainder against him. And what then? Of what Use is the great Care and Wisdom of your Ancestors, and your selves, that where a Crime is so great, and the Punishment so great, there should be two Witnesses;

I was mightily surprized to hear Gentlemen tell you, That two Witnesses is a Form in your Law, and a Form in inferior Courts: I never could believe that was a Form; for according to your Law, no Man shall be declared guilty of Treason, unless there be two Witnesses against him; so that it gives in a manner, a Determination to the Crime; that I take to be the Case.

A Gentleman told you, That he was fully satisfied by the Proof, that this Gentleman is guilty: But how can a Man satisfy his own Conscience, to condemn any Man by a Law that is subsequent to the Fact? For that is the Case; and pray see the danger of Precedents: It now will appear upon your Journals that you have caused to be read, a Deposition of a Person that was absent, taken before a Justice of Peace, when the Person accused, had no opportunity to interrogate him; and likewise that you have heard a Witness as to what a Man swore in the Tryal of another Man: All this will appear upon your Books.

And truly, I would be glad to know if another Age may not be apt to think that you took these to make good the Defect of another Witness; and then I must appeal to you, if you have not admitted of a Testimony, which according to no Law is admitted.

They say you are not tied to the Rules of *Westminster-Hall*, nor their Forms: Is there any Law in Being, that says a Judge may hear a Witness as to what was sworn upon the Tryal of another Person, to condemn him that was not Party to that Tryal. If there be no such Law, then the Rule is founded upon Justice and common Right, that nothing shall be brought against a Man when a Man was not a Party when the Oath was made, and he had no Opportunity to examine him.

I thought it my Duty to tell you, That when you have made this Precedent, if any Person shall be accused of Treason but by one Witness, there will be the same Reason to proceed thus against him.

Then (being a little before Eleven a Clock at Night) the Question was put, Whether the Bill should be Committed? And the House divided.

Ayes 182.

Noes 128.

So it passed in the Affirmative, and the Bill was Committed to a Committee of the whole House.

Veneris 20 die Novembris 1696.

The House resolved into a Committee of the whole House upon the said Bill, and several Words being offered as an Amendment to the said Bill, to Import Sir John Fenwick's being Guilty; at last the Words that were agreed on, were these (Of which Treason the said Sir John Fenwick is Guilty :) It was also proposed to the Consideration of the said Committee, Whether the Lords Spiritual should stand in the enacting Part? But upon looking into the several Acts of Attainder, it appeared they were unconcerned in all those Acts of Attainder, in the Enacting Part, and so the Committee was satisfied in that Point; and they were left to stand in the Bill by general Consent; and the Bill was ordered to be reported to the House; and afterwards upon the Report, the House agreed with the Committee in the aforesaid Amendment of the Words, Importing Sir John Fenwick's being Guilty.

Mercurii 25 die Novembris 1696.

The said Bill against Sir John Fenwick was read the third Time.

Mr. Methwin. Mr. Speaker, I have not troubled you in any of this long Debate, and do it unwillingly now; but I do think it every Man's Duty, in a Case of this great Importance, freely to own his Opinion, and give his Reasons for it.

The greatest part of the Debate hath run upon two Things; the Inconveniency of Bills of Attainder, and the having them too frequent. That it is necessary to have them sometimes, that any Person might not think they are not out of reach, if they could evade the Laws that were made to protect the People.

I think, in general, That this Bill, as every other, ought to have its Fate upon the particular Circumstances before you; and whoever gives his Affirmative to this Bill, ought to be convinced, That Sir John Fenwick is guilty of High-Treason; and also, that there are extraordinary Reasons why the Nation does prosecute him in so extraordinary Manner; and I do think one of these is not sufficient alone.

If between the Indictment and Arraignment, or Tryal, Goodman should have died, and there had been no other Reason for Attainting Sir John Fenwick, only the defect of his Evidence, I should not have thought it a sufficient Reason, though we should have had an Opportunity of being informed of his particular Evidence, and believed him guilty; and if Sir John Fenwick does not appear guilty, I do not think any Reason of State, though he hath prevaricated, and behaved himself to the dissatisfaction of every Body; therefore, I think, there must be both these.

You

You have heard the Evidence, I shall not repeat it, but rather come to these Things that distinguish Sir *John Fenwick's* Case; only thus, you have received the Evidence against Sir *John Fenwick*, and given him Liberty to make his Defence, and have fully heard him; which I think hath altered the Reason of a great many Precedents cited from my Lord *Coke*, and other Authors.

That which distinguishes this Case, is the great Danger the Nation was in from this Conspiracy, and the Sense the Nation hath had of it; and I find, by the general Opinion of all Persons, this Danger is not at an end.

There seems likewise to be an Opinion as general, That Sir *John Fenwick* could have contributed to your Safety by a Discovery.

The next Circumstance, that Sir *John Fenwick*, knowing of this, and the Expectation the Nation had from him, for that he could have contributed to your Safety, hath made use of that to put off his Tryal; and at last, has made such a Paper as does shew an Inclination to do you all the Prejudice he can, and tended to the creating of New Dangers; and by this means Sir *John Fenwick*, against whom there was two Witnesses when he was Indicted, hath delayed his Tryal, so that now there is but one; and there is a violent Presumption, That this Person is withdrawn by the Practice of Sir *John Fenwick's* Friends.

There remains yet with me, as great a Consideration as any of these; the Publick Repentment of the Nation for such his Behaviour, is the only Means his Practice has left you; and it seems necessary for your Safety, to come the next best Way to what he could have done.

Against the Evidence that hath been given, there have been great doubts raised, not so much whether it be such Evidence as may incline us to believe him to be guilty: But whether it be such as you should hear in the Capacity you are in; and whether after it is found such as it is, That is not such as would convict him upon another Tryal. Whether you ought to credit it, and that should influence you to give your Vote for this Bill of Attainder; This is a Doubt that I find weighs generally with them that differ from me in Opinion about this Bill; and therefore I desire leave to speak to that particular.

'Tis said, That you are trying of Sir *John Fenwick*; That you are Judges; and that you are both Judges and Jury; and that you are obliged to proceed according to the same Rule, though not the Methods of *Westminster-Hall*; *Secundum allegata & probata*.

But the State of the Matter, as it appears to me, is, That you are here in your Legislative Power, making a new Law for the Attainting of Sir *John Fenwick*; and for exempting his particular Case, and trying of it; (if you will use that Word though improperly) in which Case the Methods differ from what the Law requires in other Cases; for this is never to be a Law for any other afterwards.

Methinks this being the State of the Case, it quite puts us out of the Method of Tryals; and all the Laws that are for limiting Rules for Evidence at Tryals in *Westminster-Hall*, and other Judicatures: For it must be agreed, the same Rule of Evidence must be observed in other Places, as well as *Westminster-Hall*; I mean

in Impeachments, and it has always been so taken.

This Notion of two Witnesses, has so much gained upon some Gentlemen, that we have had some Gentlemen say, That this is required by the Law of Nature; the Universal Law of Nature: Nay, by the Law of God. And I think, if it was so, there would be no doubt but it will oblige us.

But therefore I go to the bottom of the Matter: That any Man deserves to be Punished, is because he is Criminal. That this or that Man deserves it, is because he is guilty of a Crime, let his Crime be made evident any Way whatsoever; for whatsoever makes the Truth Evident is, and is accounted in all Laws to be Evidence.

Now as to the Rules for examining any Person, whether he is guilty or not, and the Evidence that is allowed in all Nations, no two Nations agree in the same Evidence for the Tryal of Criminals, nor in the Manner of giving the Evidence against them.

Your Tryals differ from all other Nations; not only that you are tryed by a Jury, which is particular to you, but that the Witnesses are to be produced Face to Face before the Offender; and you have made Laws that there shall be two Witnesses in Cases of High-Treason, and herein you are the Envy of all other Nations.

Sir, the Evidence that is to be given against Criminals, differs in the same Nation where the Offences differ; there is a difference between the Evidence that will Convict a Man of Felony, and the Evidence that is to convict a Man of Treason; and the Evidence to convict a Man of the same Crime, hath been different in the same Nation, according to the Reason of the Law. No doubt, by the common Law of *England*, that Evidence was sufficient, which was sufficient to incline the Jury to believe the Person guilty. This before the Statute of *Edward 6.* though that was made upon great Reason, and appears to be for the Publick Good, by the general Approbation it hath received; but I don't think in your Proceedings here, you are bound by it.

But, Sir, it is said, Shall we that are the Supreme Authority (as we are part of it) go upon less Evidence to satisfy our selves of Sir *John Fenwick's* Guilt, than the other Courts; and shall we resort to this Extraordinary Way in this Case?

Truly, if it did shake the Manner of Tryals below, I should be very unwilling to do it; but I do take it clearly that it cannot; but on the contrary, I think there is no stronger Argument for your resorting to this extraordinary Way, like to that of the Caution which your Law hath provided for the Innocency of all Persons. For if we consider all those Laws that have been made, 'tis plain it must be in the view of our Ancestors; That Criminals might escape; and the Laws are made for your ordinary Tryals, and for those Things that happen usually; and your Government hath this Advantage, That they can keep to that which others cannot: For in a very wise Government (as was observed by a Person that sat in this House the last time this was debated) the Ways of punishing Crimes of this Nature, are extraordinary when Persons are condemned: They are not only unheard, but they are condemned

demned before they are accused; and that is thought necessary there which will not be indured here: And yet that Government hath continued so long, and no Endeavours have been to alter it, though so many Noble Families have suffered by it, because they are convinced as to their Constitution 'tis necessary.

The next Argument is from the Precedent we are about to make; and whatever the other Precedents have been, what you do now will be a Precedent for you and your Posterity; and whilst that is used to make you cautious, and tends to make you consider well; whether it is according to the Duty to your Country to pass this Vote; (which no doubt is the only Question before you) 'tis a good Argument.

Sir, if this Precedent shall appear to Posterity to be a Precedent, concerning an Innocent Man, or a Person whose Guilt was doubted of, or one whose Guilt did not appear, and this Bill should be carried by a prevailing Party; I do agree it was a very ill Precedent: But if the Case be, that this Precedent will appear to Posterity upon the Truth of the Thing, to be a Precedent made of a Man notoriously guilty; of a Man that had deserved this extraordinary Way of Proceeding, this extraordinary Resentment of the Nation, and that nothing could have hindered this Man from the common Justice of the Nation; but his having endeavoured to elude it in this Matter; and if it appears that you would not be put off so, but made an Example of this Man, I shall not be sorry it should appear to Posterity; but I believe Posterity will (as I think they ought) thank you for it.

Sir, I do say for my own particular, while I am Innocent, I should not think my Life in danger to be judged by 400 *English* Gentlemen, and the Peerage of *England*, with the Royal Assent; and when I reflect, I can't be of Opinion, That the Government could have procured a Parliament to have passed a Bill of Attainder against my Lord *Ruffel*, or Mr. *Cornish*, or Mr. *Colledge*: I don't think all the Power of the Government, could have prevailed with the Parliament to have done it; and here I see that a great many Gentlemen have opposed every Step of this Bill, for fear of making an ill Precedent; yet those Gentlemen do believe in their own private Consciences, that he is guilty; and I can't think, that any Person can be in danger by such a Bill, when Gentlemen oppose this Bill only upon the Prudential Part, though they still confess him to be guilty.

All the Conclusion I make to my self is, that I do believe, I am convinced in my Conscience (which I think is sufficient, when I act in the Capacity I now do) that Sir *John Fenwick* is guilty: But there are Reasons so extraordinary to support this Bill of Attainder, that I do not see how any Person that is so convinced, can refuse to give his Affirmative to this Bill.

Sir *Godfrey Copley*. Sir, I am very sensible a great deal hath been said upon this Subject; but I think there is something in Duty incumbent upon every Man, especially upon me, who can't concur with the general Sense of the House, to give my Reasons for my disagreement; and I will make no use of Arguments but such as I can't Answer my self: A great deal hath been said upon this Debate, by Gentlemen Learned in the Law; and many of these, though they have said they would not speak as to the Power of Parliaments, yet the greatest part of their Arguments have touched upon your Method

of Proceedings; and to shew you how they interfere with the Rules of *Westminster-Hall*, so great is the force of Custom and Education; but I acknowledge some have brought us Arguments quite of another strain.

This is a Matter of so extraordinary Importance, that I think it proper to consider what Rules we have to go by; but I take the Punishment of Offenders and Criminals to be the necessary support of all Governments whatsoever, without which no Government can continue; but all Societies of Men have supposed to themselves some Rules, whereby it may be known, whether Offenders are guilty or no.

It is the Custom of our Nation to have two positive Witnesses to prove Treason; now it may be imagined, that I make use of this as an Argument, that we are tied up to these Rules: No, I am not of that Opinion, that we are bound by the Rules of any Society whatsoever. The Parliament have a Power to abrogate all Laws that they have passed, if they think good, and so certainly cannot be tyed up by any Rules now in being. But, Sir, there are the eternal Rules of Equity, and Justice, and right Reason, and Conscience; and these I think are unalterable, and never to be swerv'd from; and therefore I shall take the Liberty to see how far agreeable our Proceedings are to these Rules.

Sir, I do look upon it, that 'tis no Rule agreeable to what I speak of; that no Man shall be accused by he knows not whom; and that no Man shall be accused, but that the Evidence against him, and he should be confronted and brought Face to Face.

I am one of those that believe Sir *John Fenwick* to be guilty, and there is clear Proof of it by one Witness; and you have added to this an Indictment that is found: But I must needs own, That I think that to be so far from giving any Addition or Strength to the Evidence; that when that is brought in, I look upon the Scales to be lighter than they were before; for if any Record or Writing that is sworn to behind a Man's Back, shall be brought here to supply another Part of the Evidence (and if not so, why is it brought here?) And if that be to be interpreted to make up a Part of the Evidence, I do, by parallel Reason argue, that the like may make up the Whole at one time or another; and may be so far made use of, That any profligate Knave, that gives Information before a Justice of Peace, or a Secretary of State, this may rise against any Man whatsoever, when he is obnoxious to the Government; or a Person may be accused for his good Service in this Reign, and this may be set up against him, and he run the hazard of his Life.

Then, Sir, as to the Necessity of this Matter; I must confess, that those that brought this Matter before us, are much wiser than I, and therefore I will not examine what Reason they had to do it: But it is so little agreeable to me, I wish it had not come here. But is it to be supposed, That your Government is in hazard of any Man that is fast in *Newgate*? Can any Man think, That Sir *John Fenwick* can do any thing in his Condition to hazard it? Can you expect that a Man that hath been six Months in Prison, and no Body came at him, that he may make such a Discovery as may be worth your while? But suppose you had a Man of Invention and Practice, what a Spur do you put to it? May not a Man of Parts, when he hath no other Way to save himself; may not he frame such a Plot as may make the best Subjects in *England* tremble?

Why

Why then, Sir, I do say, by this you are in a very dangerous Way to suffer by the Invention of any Man; and suppose he should be so ignorant as to know nothing, or so great a Block-head to be able to invent nothing, Would you hang him either for Ignorance or Insufficiency? I must confess, I read the Consequence of this for the Nation in general, and for our Posterity: 'Tis not Sir *John Fenwick's* Life I argue for; I do not think it worth a Debate in this House, nor the Consideration of so great an Assembly; but I do say, if this Method of Proceeding be warranted by an *English* Parliament, there is an End to the Defence of any Man living, be he never so Innocent.

Sir, I remember I heard it mentioned on the other side of the Way, by an honourable Person, who never lets any Argument want its Weight; That King *James* Attainted a great number of Persons in a Catalogue, in a Lump. Sir, I am not afraid of what Arbitrary Princes do, nor an *Irish* Parliament; but I am afraid of what shall be done here; I am concerned for the Honour of your Proceedings, that it may be a Precedent to a future Parliament in an ill Reign, which I am satisfied you would not do. I had some other Thoughts which I cannot recollect, &c.

Mr. *Foley, the Speaker's Son*. Sir, the Worthy Gentleman that spake first upon this Debate, calls me up: He said, That he thought in this Matter, every one ought to give the Reasons of his Opinion; and in giving the Reasons of my Opinion, I do solemnly protest, I do it with the same Sincerity as I would do, if I was upon my Oath, and of a Jury.

The worthy Gentleman said, That if there could be any Danger from this Precedent, that an Innocent Man might lose his Life, he would not be for it; I desire that he would consider, whether there be almost any Instances of any innocent Men that have lost their Lives, but what has proceeded from Precedents that have begun upon guilty Men. The same Gentleman told you, That if we did not believe Sir *John Fenwick* to be guilty, no other Consideration ought to move us to be for this Bill. Now the Reason I am against this Bill, is, because it does not appear to me from the Evidence that hath been given at the Bar, that Sir *John Fenwick* is guilty. And I do think, that which is not legal Evidence, is no Evidence; and I do think, That all the Lawyers that have spoke in this Matter, have allowed it to be no legal Evidence. And I desire Gentlemen will consider, if it has not been thought reasonable that Men should be convicted upon such Evidence, Why now it should be said to be necessary? I think the Saying of my Lord *Strafford* upon his Tryal was this; If the Pilot was to direct a Ship in a dangerous Sea, and there was no Buoy to direct his Course, if he there split his Ship it was excusable; but if there was a Buoy up, then he was accountable for it. Now comparing our Government to the Sea; there have been many Rocks and Sands, and many Men have lost their Lives by them; but the Treason Bill seems to be set as a Buoy to avoid that Mischief for the future. Now if we split upon these Rocks, I shall think we are but ill Pilots.

Upon a former Debate we were told, we are not tied up to the Rules of *Westminster-Hall*, and it was sufficient to justify a Man in giving his Vote for this Bill, That he was satisfied that Sir *John Fenwick* was guilty: See the Consequence of that, In Things that I have as much believed as I do this, I have found my self mistaken.

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When a Jury acts according to Legal Evidence, that they have no Reason to mistrust; when a Jury finds according to Legal Evidence, they are in no manner of Blame: And if this Man be innocent, when you have taken away his Life, and his Estate, and ruined his Family, all that you have to say for it is, That you have acted according to the best of your own Understandings, guided by your own private Opinion.

Were this the Case of Sir *John Fenwick* only, and I not to give my Vote; I reckon him so despicable, and because I believe him to be a Traytor, and I think the worse of him for the Part he hath acted since he was in Custody, I should not concern my self about it. But when I speak against this Bill, I speak on the Behalf of all those that may hereafter suffer by such a Precedent as this. Those Precedents that have been urged, don't come near this Point. And though the Power of the Parliament is above that of other Courts; yet there hath been no Precedent that comes up to this, That we should pass a Bill to attain Sir *John Fenwick*, because he will not give Evidence, or there is no Evidence against him. If Sir *John Fenwick* be to be hanged, because there is but one Evidence against him, any Man in the World may; and then I think every Man's Life depends upon it, Whether this House do like him or not. Consider what a Reverse of Opinion this will be, to what former Parliaments have given in Cases of the like Nature: I think if this Bill does Pass, every Man's Life will be as precarious as his Election.

We have been told, how much Danger the Government will be in, if this Bill does not Pass: I have as much Zeal for this Government as any Man; but all the Government is concerned in, That a Man that you think a Traytor, should live: And I do think the Government is no more concerned in this Life, than in the Living of any *Jacobite* in *England*. But, on the other Hand, I think the Lives and Liberties of the Subjects of *England* are concerned; and, by this Bill, you will make all their Lives and Liberties precarious.

I am not for bringing the Blood of Sir *John Fenwick* upon me, or my Posterity; nor can I consent for to make a Precedent that a Man may be hanged without Evidence.

Lord *Cutts*. The worthy Member that spake last but one, told you, That he thought the Life of Sir *John Fenwick* was not worth the Consideration of this Assembly; I do differ from him in That. If the Scripture tells us, That the most insignificant Creature does not fall without God Almighty's Consideration, I think the Life of a Gentleman may be thought worth ours.

The worthy Gentleman that spake last, told us, That he did believe in his Conscience Sir *John Fenwick* to be guilty: But because he hath found himself mistaken formerly, when he believed Things with the same appearing Certainty, therefore he may be mistaken now. I hope Gentlemen will not press an Argument upon our Judgments, from Precedents that are only Mistakes: I do agree, That any Man may be mistaken in a Thing which at that Time he thinks himself most certain of; but till that Mistake appears, I say, it ought not to make him doubt of any Thing that he does clearly and distinctly perceive: If otherwise, there is an End of all Religion and Law; and it shakes the Foundation of the most certain Belief a Man can entertain.

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As it appears to me, some Gentlemen seem to lay a greater Stress on some Things than they deserve; and are not pleased to answer some Arguments; and therefore I desire leave to speak to two or three Points in short. I shall not say any Thing of the Authority of Parliaments, it speaks it self; nor of the different Consideration of our Proceedings; and that of inferior Courts, that seems to be agreed: But I shall apply my self particularly to mention some Things upon Sir *John Fenwick's* Case, and in that take Care, as near as I can, not to trouble you with any Thing I have said upon this Subject.

I can't but observe, That every Gentleman that speaks against this Bill, begins with an Introduction that he believes him Criminal, which does somewhat astonish me; I hope they will explain themselves a little. But to the Point, as to Sir *John Fenwick's* Case; I did take the Liberty in a former Debate to observe, That it was not only a Conspiracy against the lawful King of England, and had such Parts in it, but also in bringing in a Tyrannical and foreign Power upon you. But there is one Consideration I did not mention then, because I thought what I said carried so great Weight it needed it not; I do say, not only as a Christian, as an Englishman, and as a Subject of this Government, against which he hath committed a Crime of the highest Nature: But I will say, as a Man of Honour, that he hath acted contrary to the Rules of Honour; I think Sir *John Fenwick* had made a much better Figure, if he had appeared in Arms in *Flanders*, where he might have charged this Prince at the Head of his Troops, than basely have contrived his Death in this Manner.

Sir, I have only one Thing more that I desire to speak to; for what I say, is more for my own Information than to desire any Man's Opinion further than he agrees with it: I say, most Gentlemen have likewise owned, That if they thought this an extraordinary Case, they would be for this Bill: I do say, as it appears to me, I do think, if ever there was an extraordinary Case, this is one; and if ever any Government was in Danger, this is, or may be, upon your Resolution to Day. A great deal of Stress hath been laid upon this Argument, That Sir *John Fenwick* is in Hold: I take that to be nothing; for they keep a Combination together still: 'Tis by Rewards and Punishments that all Governments are supported. Robberies, that were so common in *France*, that you could not walk after it was dark, by Punishments they have been brought to that, That you may ride from one end of it to another, with a Purse of Gold in your hand! And if you think it a trifling Matter, That wicked Men that have such Inclinations should escape, I don't doubt but you may have Plots every Day.

I don't doubt but this Gentleman knows a great deal that he hath never laid before you; I would not be thought to press it as an Argument that he should be condemned, because he won't Confess; but I will be bold to say, If he does know of a great many Persons that have been concerned in this Business; if he knows of a Rising that was designed, when this Conspiracy was to be Executed; (and it may be Executed still, if Things shall be ripe for it) I say, though you keep him in hold, it will be an Incouragement to them to go on in their Cabals, in buying of Arms, &c. I think the Matter before you is no less than the Fate of England, and the Fate of Europe, and of all your Posterity; I am sure it is: And give me leave to say to you one

Thing that is Matter of Fact, There are those Stories insinuated abroad, and those Matters of Fact asserted, with relation to a Conspiracy, and reviling this House, that are not fit for me to repeat. But your Enemies last Year, before the breaking out of this Conspiracy, had the same sort of Meetings, and the same sort of Discourse, as they have now. I will end with protesting to you, That I deal with Sir *John Fenwick* with the same Candour and Honour, as I shall always desire to be dealt with my self.

Sir *Godfrey Copley*. That Noble Lord misunderstood what I said, as to the small Value I put upon Sir *John Fenwick*: I did say, That Sir *John Fenwick*, considered in his single Capacity, I did not think it was worth the while of this House to act in their legislative Capacity upon him.

Sir *Charles Gurnwright*. I think this Bill is of very great Moment, and ought well to be considered before it passes; for when it is passed, it will be too late to retrieve the ill Consequence which may attend it: There is so much Roguery in the World, I think it a hard Matter to arrive at the Truth. 'Tis not long ago there was a Plot contrived by one *Young*, and others, against the Bishop of *Rochester*; and so cunningly contrived, That if a Bill of Attainder had been brought in against the Bishop of *Rochester*, before the Truth had been discovered, I do not know what might have been the Consequence of it. I suppose no Body questions the Truth of this Plot; but God forbid that every Body that hath been named for it should be guilty. It may be true, That there was such a Meeting that Sir *John Fenwick* is Accused of being at, and yet Sir *John Fenwick* might not be there; and I do not think it sufficiently proved, and therefore I can't give my consent to this Bill.

Mr. *Manley*. Sir, I have, as well as I could, attended to this Debate in this Matter; and I did not trouble you in the last Debate, because I was willing to take all the Opportunities I could to inform my self.

'Tis to me an extraordinary Thing, not only for the Matter, but Manner of your Proceedings; which, considering all Circumstances, appears to me to be not only not Common but Unprecedented; and as we are all in this Matter Judges, so I hope we shall apply our selves to consider of it with that Temper, as may lead us to give a right Judgment. And if I had never so great Obligations upon me, and Dependancies, though from the Crown, I would lay them by, at least they should not influence my Judgment in this Matter. We are to pass Judgment in a Matter of Life and Death upon this Person, and 'tis urged we should do it, because the common Course of Justice will not reach him for the Crime objected against him, which is high Treason; and the Species of that Treason as it is laid in the Indictment is, &c.

Sir, the Evidence that hath been given to support it, hath been the Affirmation of a single Witness at the Bar: Indeed other Things have been alledged in the Bill: but as hath been said in *Westminster-hall* upon another Occasion, They look like Pepper and Salt to me; for in themselves they are not Crimes (I speak with submission to your Judgments) at least to bear Company with an Accusation of high Treason.

As to the Evidence; first Captain *Porter* tells you, That Sir *John Fenwick* was at a Meeting at the King's Head, and at Mrs. *Mountjoys* afterwards, when there were treasonable Discourses amongst them

them, and *Charnock* was directed to go into *France*; but the End of that is not proved; For the Witnesses that told you of those Meetings, did not tell you, as I observed, that *Charnock* did go to *France*; and what he said upon other Occasions is no Evidence to me. And though we are not tyed up to the Rules of *Westminster-hall*, I am so Young a Member, I know not what Methods are observed in Parliament, that I may in some Measure make them a Rule to me.

The Law of *England* requires two Witnesses upon the greatest Reason; and 'tis not only the Policy of *England*, but the general Consent (in this Case) of the whole World, and it is grounded upon the Law of God. It was objected by an honourable Gentleman the other Day, to a Gentleman, that he said the Law of God required two Witnesses. A Gentleman who is very near allied to one, from whom he might have early informed himself, made us a Challenge, to shew him where it was to be found: If he will look into *Numbers* and *Deuteronomy*, there are three particular Texts very plain in it. The Reason of this is illustrated in the Story of *Susannah*, her safety depended upon it; and the Jews, when they prosecuted our Saviour, though they wanted no Malice, nor nothing to animate them, to put him to Death; yet, *St. Matthew* tells us at last, there was two Witnesses found against him; and this being the Law of the Land, and the Law of God, must be my Rule; I must have this Matter proved against Sir *John Fenwick*, as full as the Law of the Land, and the Law of God requires. The other Evidence brought to maintain this Bill, is what is sworn by *Goodman* before a Justice of Peace, and the Account of the Evidence given by *Goodman* to the Grand-Jury, which I must confess I declare I am very far from being convinced ought to have Weight with us: But, I think, they must lay a great Weight upon it, who give their Vote for this Bill, or otherwise they must give their Vote upon the Testimony of one Witness.

The Reason for this extraordinary Proceeding is, 'tis urged, There is a Necessity for it; The Plot will be lost else, say some; Sir *John Fenwick*, says others, will escape else. As for the Plot, I wish to God there was no such Thing; but 'tis probable the best Way of ending this Plot would be, if his Majesty in his Wisdom thought fit, to interpose with his Mercy and Grace at this Time; and better than for the legislative Power, in an extraordinary Manner, to take off a Person against whom there is not a legal Evidence. Gentlemen say they are convinced in their Consciences; but I will appeal to their Consciences, Whether there be legal Proof against him: And shall we then interpose, in an extraordinary Manner, to take away his Life?

No Man pretends to answer, but that this Proceeding may be dangerous to Posterity? if we had any Security this might be done without that Danger, it might be some Incouragement to Gentlemen to come into it; But since it may be dangerous, are not we, who are intrusted by the People, to have an equal Care of the Liberty of the People? We are to take Care of his Majesty's Life and Government; and the Reason is, because upon him, and his Government, the Publick Safety does depend. 'Tis *Salus Populi*, is the great Reason that the Law takes such Care of the King; and as we are to do nothing to the Detriment of the King, so we are to do nothing for the King that may be of detriment to the People.

An honourable Lord hath been pleased to say, We are not yet out of Danger; I am sorry to hear it, and could not think it, when so noble a Lord is so near the King, and hath so great a Share in taking Care of the publick Safety. But sure nothing can happen from this Person; there hath been Care taken he should have no Conversation with any Body: If I thought there was a Hazard to the Government, or to the King, and no Way to secure us, but taking away this Gentleman's Life; such a Reason as That would make me go Counter to my own Reason and Judgment. But I can't be of Opinion, That a Man of Sir *John Fenwick's* Size, who in his best Circumstances indeed, is a Gentleman by Birth, and hath a Gentleman's Fortune, but is now in a great Measure without his Estate; so his Fortune can't do any hurt, and his Alliance I suppose is not Considerable enough to do any neither.

Then as his Circumstances do not make him so Considerable, as to do us any Hurt; let us take Care that we do not in any Case, by his Blood, wound our selves.

Gentlemen lay but little Stress upon the Dangerousness of the Precedent; I do lay more; and 'tis chiefly upon that Reason I can't come up to be for this Bill. I would not that so good a Parliament should lay the Foundation of any, by which, in after Ages, the least Men in *England* may suffer: 'Tis said, an ill Parliament will not want a Precedent, but will make use of their Power: But they will fall sooner into it, if led by a good Parliament.

Sir, This is a Matter I would not have presumed to have troubled you in; for I can't think any Thing I can say, will have any Weight with any one that is not of my Opinion: But as an *Englishman*, and as I have the Honour to be of this House, when a Thing of this Nature comes before us, and I am to give my Opinion as a Judge in it, I was willing to give my Reasons for my Opinion. I think this Bill is unprecedented; and you will give me leave to say, it appears to me to be unreasonable. I think it contrary to the fundamental Rules of Reason and Justice; I doubt it may be dangerous to our Constitution; and I fear future Ages may have Reason to repent what we do. And therefore I am against this Bill, and I hope it will not Pass.

Sir *William Strickland*. Sir, I do assure you I shall not in any Thing of this Bill, or any Thing else, run counter to my Conscience or Judgment: But I do think, and I think few deny it, I do think in my Conscience that Sir *John Fenwick* is guilty; and thinking him so, I ought to condemn him. I do think if we should spare this Gentleman for Want of Form, as they call it, now we are in our Legislative Capacity, and there should be any ill Effects of it; and other People, by thinking they might avoid Punishment by the Forms of *Westminster-hall*, should have the like Imaginations against his Majesty, and they should take Effect, I should think my self in a great Measure guilty of that Misfortune. I think the Kingdom is concerned, and the King's Preservation, in this Bill; and I hope you will Pass it.

Mr. Dolben. Mr. Speaker, I am against passing of this Bill; and I shall, with as much brevity as I can, lay before you my Reasons, why I am against it; and probably I should not have troubled the House with them, but that I think it necessary to justify my Opinion in a Case of this Importance.

I do admit that the Fact that is charged upon Sir *John Fenwick* is an Overt-Act of High Treason, within the 25th of *Edw. 3.* though I must take leave to say, That a Judgment upon a Case, at least as strong as this, has lately been very much arraigned and controverted; but 'tis not my Intent to dispute the Nature of this Fact; for I am persuaded, That to consult how to procure an Invasion of this Kingdom with foreign Forces, is an Overt-Act of compassing the Death of the King; and I do think this Charge does amount to such an Overt-Act. But I beg leave to reflect, How far Overt-Acts of this Nature, which fall directly within any Species of Treason mentioned in the 25th of *Edw. 3.* how far such Treasons are cognizable in Parliament, and within the Intention of that Statute: Indeed, that they are cognizable by the absolute Power of Parliament, there is no doubt.

Sir, That Statute doth first enumerate several Species or Branches of Facts, which it says shall be adjudged Treason, that is, in the Courts of Judicature; and then afterwards it goes on, and says, *If any other Case, supposed Treason, not specified in that Act, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or Felony.* Now, Sir, with Submission, this is a great Argument that the Intention of those that made this Law was, That these Treasons, which were directly under any of these Particulars enumerated by the Statute, that they should be left and be appropriated to the Decision of the inferior Courts: But that Facts of another Nature, which did not come under the Particulars enumerated in the Act, as extraordinary Offences, and misbehaviour of Magistrates and great Men, and the like; these indeed should be reserved for the Consideration and Judgment of the Parliament, who are only a Match for powerful Offenders, whom the common Justice of the Kingdom can't grapple with. And as this seems to be the Intention of the Makers of the Act, so I think the Instances generally have been pursuant to that Institution; for I know of but one single Instance of any one that ever was attainted by Bill for any Treason that is contained under any Species enumerated in the 25th *Edw. 3.* 'Tis true, where Persons have been out of the reach of the Law, in open Rebellion, or fled from Justice; in these Cases the Parliament have thought fit to Attaint them, as in the Case of Sir *John Mortimer*, and others who made an escape out of the Tower: And the Case of the Regicides; and likewise the Case of the Duke of *Monmouth*, who was in open Rebellion. But I say, that I have not found in my Reading, upon the best Search I could make, where any that were in Custody were Attainted by Bill for any Treason within 25 *Edw. 3.* and that was the Case of *Ferham*; but I think there is no Precedent of any Man, who is not only in Custody, but hath been indicted, arraigned, and Issue joyned; and he hath put himself upon his Country for his Tryal; And the Person Accused was to be convicted, or acquitted, by the Verdict of twelve Men: I never heard of any Instance, when after all this Proceeding a Person was taken off from this Tryal, and debarr'd the Benefit of the Judgment of his Peers, and the Benefit of his Challenges; and destroyed, and cut of extrajudicially, by an Act made on purpose, *ex post facto*. I never met with any Instance like it, unless it be that of

my Lord *Strafford*: And I believe no Body will cite that, if they reflect upon the Preamble of the Act for reversing his Attainder: For in the Preamble, 'tis said, That the turbulent Party did attempt the procuring of that Act, on purpose to Condemn him. This shews the Opinion of our Predecessors in relation to proceedings of this sort; they esteem it contrary to the fundamental Rules of Justice and Right, which Parliaments, as well as other Courts must be governed by.

Roger Mortimer was attainted, and afterwards his Attainder was reversed; and the Reason declared, because he was attainted against the good Laws and Customs of the Kingdom.

Ferham's, that I mentioned before, and declared for the Future, That it should be, &c.

Another Attainder there was of Sir *Thomas Haxey*; but that was reversed, and declared to be against all Law. Then there are the Attainders of *H. 8's* Time, I shall not particularize them; but besides that, all the History of those Times, and Law-Books condemned them, as Proceedings against all Law and Justice, There is the Statute of 1 *Edw. 6. c. 12.* seems directly levelled against those Attainders in the preceding Reign; for it says, That the Proceedings in King *H. 8th's* Time, were grounded upon Laws that were extream and terrible; and therefore that there might be no Proceedings of that kind for the future, it reduces all Treasons to the ancient Standard of 25 *Edw. 3.* and goes on, and enacts, That no Man shall be convicted or condemned for Treason, but upon the Testimony of two lawful Witnesses.

Now I take that to be a general Law, and to extend to all convictions and condemnations for Treason, and can't but declare my Opinion of it, That it must extend to Bills of Attainder, since these are the Principal and most powerful Convictions and Condemnations; and if that Statute does extend to Bills of Attainder, then pray consider, whether this Bill of Attainder now be supported by such Evidence as the Statute requires? There was indeed one lawful Witness produced; but instead of the other, they have only produced a Record between Parties not concerned in this Bill, and the Depositions of a Person whether living or dead, *Non constat*; and I believe no Body will say these Depositions will be equivalent to a second Witness.

I do believe a great many Gentlemen are of Opinion, That those Rules of Evidence are not to guide you here; but I beg Pardon that I can't possibly be of that Opinion, I rather incline to my Lord Chief Justice *Vaughan's* Notion, That though we are not bound by the Forms of Law, yet we are bound by the Rules of Law; every Body allows we are bound as to the Nature of the Fact: every Body will take himself bound by the Statute of 25 *Edw. 3.* to form his Judgment as to the Fact: Why are not we then bound by these Acts? Likewise as to the Evidence, and the Proof of the Fact. If 25 *Edw. 3.* be binding to us, so as to prescribe us a Rule to judge the Fact by; Why are not the Statutes of *Edw. 6.* binding to us as to the Evidence of that Fact?

But say some Gentlemen, if there be not two Witnesses that is from Sir *John Fenwick* or his Agents: Sir, no Gentlemen will say that there hath been any Proof of that; the very Bill does not charge him with it, but taking it for granted, what shall follow upon that? Shall it therefore follow, that Sir *John Fenwick* shall immediately be put to Death? No, God forbid; I think there is

no Parity between the Crime of seducing away a Witness, and the Judgment of Death; but I think this a more reasonable and natural Inference to be made, that because Sir John Fenwick hath seduced away a Witness, therefore it is just to make a Law that the Depositions of that Witness should be of as good Force and effect, as if Goodman was here, to give it *Viva Voce*; for then you will not take from him the Benefit of his Tryal, nor the Benefit of his Challenges, which is the Birth-right of every English Man.

And one Thing I will say further, These Bills of Attainder are like *Sisyphus's* Stone, they have rolled back upon those that have been the Promoters of them. 'Tis known that my Lord *Cromwell* was the first Man that promoted them in *H. 8.* Time, and the Advice that he gave his Master for the Ruine of others, proved fatal to himself.

Sir, this is the last Time we shall have the Opportunity of considering this Matter; I must take leave to declare, That my Opinion is, that if I consent to the passing of this Bill against Sir John Fenwick's Life, upon any other grounds than such as are intirely agreeable and justifiable by the Laws of God and Man, I am guilty of the Death of Sir John Fenwick. I am not satisfied that I can give my consent to this Bill upon those grounds, and therefore I beg leave to be against it.

Sir *Edw. Seymour*, Mr. Speaker, you all know I have born my Testimony against this Bill, being not persuaded that it is just, now we are come to the finishing Part of it; And I shall lay before you those Reasons that prevail with me, and submit them to the Judgment of the House; and if I am more tedious than I used to be, I hope the Occasion is such, that you will Pardon me; for I will endeavour to contract my self into as near a Compass as I can.

I shall not trouble you with any Arguments that have been laid before you already; nor shall I enter into the Examination of Precedents; a great many have been laid before you, and a great many of them have been reversed, most of them; and the Reasons why they have been reversed, because the Persons condemned, have not had the due Benefit of the Law: And if that be a good Reason for reversing of such an Attainder, 'tis a good Reason why you should not do it.

I can't but take Notice, That the beginning of this Bill in the House of Commons is the first step of this kind, that hath been made in Parliament, except that of the Duke of *Monmouth*; and the Reason of it, I take to be this, because you hear not upon Oath; you condemn not upon Oath: You, nor the Party under Accusation have that advantage against a forsworn Evidence, as there is in the other House; the Method has been to pass such Bills in the House of Lords, and transmit them hither, upon which you then Judge.

I think, in this Case, you have no Evidence; and instead of two Witnesses, you have no Witness at all; for as to Goodman, *De non apparentibus, & non existentibus eadem est ratio.* As to Porter, he hath been examined; but when you consider that he was a Person engaged in this Conspiracy, and that he had no repentance of his Crime till he was discovered, and then he comes to be an Evidence; how far that shall sway, every Man must allow that I must submit to you; but thus much I may say, every Man must allow me, that in far less Cases no Man that does swear for himself, or upon his own Account, is to admitted as an Evidence. If a Robbery be committed in an Hundred,

though a Man be but to pay a Groat towards it, he shall not be an Evidence; how much more then in Case, when a Man comes to swear to take away another Man's Life to save his own; for he is not in the Condition of a Freeman, who gives his Evidence without check or controule, but he is drudging on for his Pardon, as the Council told you, which depends according to the Evidence he does give or not give.

For my part, I can't go so far as some Gentlemen have done, to say Sir John Fenwick is guilty; for where there is no Law, there is no Transgression; a Man that is guilty, must be guilty according to the Law: And the Law hath required and said, That there shall be no Treason but what is proved by two Witnesses, and here it appears that you have not one. The same Law that calls it Treason, says it shall be so proved; then if you pass this Bill, you make that Treason which before was not Treason.

Sir, the Law does require two Witnesses, and there is divine Authority for it too: It hath been hinted at, the Place in *Numbers*, *No Man is to die upon single Evidence*; and it says, *These are the Statutes you shall observe throughout your Generations and Dwellings*: But I will go a little further, because a worthy Gentleman declared, there was no such Law of God. He will find in the 19th of *Deuteronomy*, a Case just as 'tis here; for the Case of high Treason was Idolatry at that Time, and the Law says, *Whoever shall set up Idols shall be stoned to Death*; but it says; *no Man shall be condemned to die by the Mouth of one Witness, but by two or three Witnesses he shall suffer*; I think this is positive enough. I shall not trouble you with more Instances, though I could repeat several.

Sir, the Law enjoyns Forms strictly, even to the least Circumstance; if a Man be condemned to die, and after he is condemned to die, another take away the Life of that Man, 'tis Murder. I will go further; if the Officer that is to do Execution, if a Man be condemned to be hanged, drawn and quartered; if the Officer shoot him, it is Murder in him; so that Men are not left to a discretionary Power to act according to their Consciences.

I take the Reason by which this Bill is supported, to be destructive to all human Society; for if that be admitted, that a Man shall act according to his Conscience, and not according to the Rules that are prescribed him, I know not who is safe; for how can an innocent Man make his defence upon that Principle? It is a safe Consideration for them that take upon them that Way of Judging, because they are bound by no Rules; but what hath not that done almost within Memory; *Felton* that killed the Duke of *Buckingham* what was his Justification, but he was persuaded in Conscience he did well in so doing. *Ravillack* that killed *H. 4.* in *France*, he justified the same by his Conscience, and said he had done a good Thing; and I may say this Argument of Conscience hath acted all the Villany of the last Age, and I am afraid hath gone a great Way to disturb the happiness of this.

For if this be a Rule to this House, How is the King bound? I thought he had been bound by Law; but if this shall be admitted as an Argument, 'tis enough to say, if this House be Arbitrary, the King is. I do not reflect upon this Reign; but it will be enough to say, tho' he act against Law, and turn twenty Colledges out of Doors, his Conscience persuades him to it. We see how unbounded Liberty the Lords take, is, they are become Masters of all our Estates; and I would be

be very loth for my Estate to depend upon the feeble Tenure of a Lord's Conscience.

If then this be the Case, as it is, according to this Method, I desire to know into what Condition we shall bring our selves?

You have been told, it is expected from you by your Country, that you should exert this Authority and Power: Sir, I would have been glad that in Cases more reasonable, we had exerted this Authority and Power of Parliament; I wish it had gone to the preventing the debasing and abusing your Coin; I wish it could be exerted, that we might not see our selves cheated under countenance of an Act of Parliament; but contrary to that, you are fond of being sprinkled with the Blood of Sir *John Fenwick*: As long as the Government is not in danger, I believe the Country would be glad that their Blood might run secure in their Veins, and not be tapt upon every Occasion to serve a Turn, for if you break the Laws, what Man can promise himself security?

We know the Consequence, if this Bill does not pass; Sir *John Fenwick* may live in misery all his Time.

But what this Precedent may make, no Man can foresee. This Bill is against the Law of God; against the Law of the Land; it does contribute to the Subversion of the Constitution, and to the Subversion of all Government; for if there be Rules to be observed in all Governments, and no Government can be without them, if you subvert those Rules, you destroy the Government; and therefore for these Considerations no Body will think it strange, if I give my Negative to this Bill.

Mr. Chancel. of the Excheq. Sir, the Gentleman that spake last, hath carried the Reason against this Bill a little further than some others; for it seems now, we are not to reject the Bill for want of one Witness that is legal in *Westminster-hall*, but it seems there is no Evidence at all; and by *Capt. Porter's* not being pardoned, and yet drudging for his Pardon; as to all that have been condemned upon his Testimony, he hath arraigned the Evidence as not sufficient, and hopes that will be the Judgment of the House upon this Bill. I think if the House reject this Bill upon that Argument, it will go further than many mean that oppose it.

Another Thing he says; he compares the Convictions that I have upon my Judgment, and of every Body else that speaks from the Proofs that are made, that he is guilty of the Whimsy of two or three mad Men, whereas we go according to the Evidence brought at the Bar; we don't go upon the Whimsies of *Ravillack* nor *Felton*, but upon the Proofs that have been made here; and though there are not two Witnesses, yet upon what appears in Proof, I am convinced that he is guilty; and upon that Conviction, I think, according to the Duty I owe my Country, and the Constitution of *England*, when a Bill does come to punish the Man whom I think guilty, I think I ought to be for the Bill. As to what is said out of *Deuteronomy*, That the Law of God was against it, if you will argue *a Fortiori*, 'tis literally true, in the Case of Murther; but whether Murther or Treason, there is the Life of a Man concerned, and 'tis not the Punishment whether to be hanged, or hanged, drawn, and quartered that makes any great Difference; and give me leave to say, if you go to make Precedents from the Jewish Law, then I say, the Law of *England* is against that Law,

in Case of Murther; and by the same Reason you may desire leave to bring in a Bill to repeal all those Laws.

Sir, if this was the eternal Law of God and Man, where was this eternal Law in *England* before *Edward 6.* Time? If it be the eternal Law that there must be two Witnesses, why does it not hold in *England* even in some Cases of Treason to this Day; I mean the Treason of Clipping and Coining; so that if Gentlemen will argue, the Nature of these Faults are what the Law of every Country Ordains, and that is the Law.

And the Way of Evidence and Proof too differs in every Country; and I may affirm, That there never was any Government in which there was not a Power lodged somewhere to be exerted upon extraordinary Occasions, beyond the Legal Way of Prosecution.

I don't care to travel into the several Countries to see how their Constitution is, but I believe there is not one Place in *Europe* in which it is strictly necessary there should be two Witnesses to take away the Life of a Man; but it is generally so, as it is here in all ordinary Cases, but in this very Law; this last Law does not go upon two Witnesses, but you have a Proviso in it does absolutely exempt Proceedings in Parliament: I do not infer from thence, that you should not have two Witnesses, if you proceed by way of Impeachment, I think you ought; and so for having Witnesses upon Oath, &c. When these Proceedings are in Parliament, there is a direct Proviso by which the Parliament is exempted from those Rules: Upon the whole Matter, I think this Man is guilty; I think the Precedent would be more fatal, to say, that a Parliament can't proceed in such a Case, than that a guilty Man should suffer. I think this Bill comes before you with more Circumstances, and Reason to justify it, than any that hath been brought here before; here is a Bill found against him by his Country, the Evidence of his Friends having tampered with one of the Witnesses, confirmed by a Jury, &c.

A Learned Gentleman says, he would come up to make this Paper Evidence; but can't come up to make such a Law by which every Man that is concerned in that Deposition would be affected; but here is something particular in this Case, a Man that hath been abroad, and hath not used the like Artifice, I think you ought not to use the like Power to punish him that is not Guilty of the like Crime. And therefore I shall conclude, but I must take notice of one Thing; it was said, That this was the first Precedent of this kind begun in this House, but that of the Duke of *Monmouth*; but I believe, if this Bill of Attainder is not to be begun in this House, 'tis not to be brought in at all; for I believe there is a Statute, That the Life of a Commoner is never to be meddled with by the Lords originally. I will not trouble you any further, I do in my Conscience think that Sir *John Fenwick* is guilty, and therefore I am for this Bill.

Mr. Pelham. I did not think to have troubled you this Day; I did rather intend to have left it to others that can speak better, or have not spoken upon this Subject; but that which hath been mentioned by several, as if they did think that we who mentioned the Law of God upon this Occasion, did it as if we did think the Law of God was binding to you at this Day; I never thought any such Thing otherwise than as to the Morality of it, so far forth as it is grounded upon Reason and Justice, and tends to the clearing of an Innocent Man; and so far

far we and all Mankind are bound by it; and that Law having been afterwards Confirmed in the *New-Testament* by our Saviour and Apostles, at least approved of by them; and this having been confirmed by the Law of *England*; likewise I do not think this a fit Occasion for you to pass by so fundamental a Law as that is: And I conclude with this, That I can't satisfy my self in my Conscience, and should think some misfortune might follow me and my Posterity, if I passed Sentence upon Sir *John Fenwick's* Life, upon less Evidence than the Law of *England* requires.

Sir *H. Crofts*. I shall endeavour as much as I can, to give you little trouble in this Matter; but because it hath been hinted and remarked so particularly upon me, I must beg leave to discharge my Duty as well as my Conscience, as to what I said here the other Day.

Sir, I do very much forget my self, if I did assert that there was no such Place in Scripture that required two Witnesses; the Thing that I said, was this, That if any Gentleman could shew me any Rule from Scripture that required two Witnesses more in the Case of Treason than in the Case of Murder and Felony, I should be glad to see it. I do say that the Scripture shall be a Rule to me, as far as the Scripture requires; but I do take the *Jewish* Law not to be so absolutely literally binding upon us here. And as to the Text out of *Numbers*, that very Text of Scripture is particularly and literally applicable to Murder; and if that be binding now, we have been very much misguided by our Predecessors, and I think we are bound to take it in hand, to repeal all Laws that are against it.

Sir, he is pleased to deny us, in some measure, the Liberty of being guided by our Consciences; truly, I don't know what he would have Gentlemen go by; truly, let him go by what Rules he pleases, I will go by the Rule of my Conscience, and will not do any thing against it upon any Consideration or Consequence whatsoever; nor will I part from the Liberty and Power of Parliaments, for any Rule or Law of inferior Courts whatsoever.

Sir, you are told, you ought to be guided by the Rules of Law, that is not the Forms of Law, but the Rules of Law. Sir, I say, if these Rules were made to bind Parliaments, it was reasonable they should be bound by them; but if they were made only to bind inferior Courts, they were far enough from being intended to put a Cramp upon the Proceedings of Parliament; and if you shall subject your selves to them, you give the Lawyers such a Power, that I don't doubt, but their Books will be of greater Authority than your Journals; therefore in Consideration of that, and because I would leave that which is the Right of Parliaments to my Successors, I shall not submit to that.

Therefore, I say, I come clear to the Point whether Sir *John Fenwick* be guilty or not, only I must observe a little back; That as to those Instances that the worthy Member was pleased to make use of, of *Ravillack*, and of *Felton*; shall those extraordinary Cases, that which Men did in heat of Blood and private Malice; shall these be brought to bear a Parallel with what is done in Parliament for the Justice of the Nation? I don't doubt but there are Men enough, in their Consciences, at least with pretence of it, will justify the Destruction of your Government and Religion, and every

Thing else: All those Men that deny the Right of your Government, have Conscience and Justice enough to subvert it if they could; and therefore I do not so much wonder, that many Men without Doors have argued in that Nature.

But I say, my Conscience is the Rule I must go by; and to me the Question is, only whether Sir *John Fenwick* be guilty, or not guilty, and I am called to give my Judgment in it; and I think I am bound by the Law of Nature, by the Law of the Nation, and I see nothing in the Law of God that prohibits me, to give my Judgment according to the Evidence, and the Opinion I have in my Conscience of the Truth of it.

If there be no such Rule that requires two Witnesses binding upon me; if I may go upon one Witness; if I believe he speaks true, and that the Person is guilty, then I am bound to act for the Preservation of the Nation, and all our Posterity: They that made this Attempt, made it upon you and your Posterity for ever; 'tis not so small a Matter as some represent it; 'tis not the Person so much as the Nature of the Fact we are to consider; and we are not to let Men escape Punishment according to their Greatness or their Smallness; but according to the Nature of the Fact, and their Guilt. I think I have that freedom, and I am so little bound by those Rules that have been urged, that if both Witnesses were here, and gave Testimony against him, if I did not believe him to be guilty, I would lose my Life rather than Vote him so; but on the contrary, if here be sufficient Evidence to convince me, though not according to the Rules of inferior Courts, I will not subject the freedom of Parliaments to those Rules.

Sir, you have been told formerly, and I think it a Matter of that Weight, I beg leave to urge it again, because 'tis a great Reason that guides me in this Matter; if you lay it down for a Doctrine in this House (for a Resolution here taken, is as much a Rule as a Law, for it shall be brought as a Precedent) and therefore, if it shall be laid down as a Rule here, That you will never attaint any Man, or find him guilty, but upon two Witnesses; I think the Government, and all you have, stands upon a tottering Foundation: He must be a very ordinary States-man that can't lay his Plot so, as you shan't reach him by two Witnesses.

Therefore I say, I think it becomes the Wisdom of Parliament, not to declare themselves bound in that respect; I would have them bound by Justice, but not by the common Rule of the Law.

Sir *Robert Cotton*. Sir, I do find that Gentlemen do very much insist in this Case, That if a Gentleman does believe that Sir *John Fenwick* is guilty, he must give his Vote for the passing of this Bill; if that be so, I am glad that Opinion did not take place in the last Reign, if it had, I am of Opinion I should not have been here now; and I believe my Lord *Warrington*, who was very instrumental in promoting this Revolution, would not have died in his Bed. My Lord and I were accused of a Crime, which I believe, if proved by two Witnesses, had been Treason: I have heard some Gentlemen say in this House, they did believe my Lord *Warrington* was guilty (though he was not guilty of the Fact as it was laid.) There was a Man swore, &c. and there was some corroborating Evidence; but as to Mr. *Fley*, and my self, there was none but this particular Person, and they indicted us of Misdemeanour; though it would have been Treason, if there had been two Witnesses;

ses: Now if the same Fact was Treason when proved by two Witnesses, and but Misdemeanor when proved by one, Methinks we are doing an extraordinary Thing: We are going after the Fact committed, to make that which is but a Misdemeanor, to be Treason. And for these and other Reasons, I can't agree to the passing of this Bill.

Lord Norris. Sir, though I had always an Apprehension of the ill Consequence of this Bill, yet never so much as now; for this Gentleman hath given Arguments that shake me more than all that I have heard before; for he says, there are a great many Men, if they may proceed according to their Consciences, will subvert this Government, and bring in King James and Arbitrary Power; and he tells you, That every Precedent in this House, is equal to a Law, and will justify the like for the future. I am sure I am very unwilling to make a Precedent that shall justify Men in such ill Actions, in saying their Consciences prompted them to it.

Then a Question was put for bringing in Candles, which passed in the Affirmative, and they were brought in.

Mr. Hamond. I don't think the Power of Parliaments in question in this Case; but then, as all other Powers, it must be founded upon Justice, and never used but upon extraordinary Occasions, and when Criminals are not to be met with otherwise. The Power of Parliament is not lessened if this Bill does not pass: But the Question is, whether this Power should be exerted in this Case? What Gentlemen say of being guided by Conscience, hath no Weight with me, further than that is governed by the Law of the Land; if it be to be admitted in the Case of Life and Blood, why not in *Meum & Tuum*? Why was he brought to the Bar then, if according to our private Judgement we are to determine this Matter? No Man thought but he was guilty.

I beg leave to mention one thing that is come to my Knowledge; after the Tryal and Condemnation of Mr. Cook, I had an Order sent me, that I might see him, and I went to him by Vertue of that Order; and the greatest Part of the Time I spent with him, he took up in declaring against the Evidence of *Goodman*, and that he would receive the Sacrament upon it, and give it in Writing, as his dying Words. I saw also three positive Witnesses confront him at his Tryal; and when I heard him say this, it weighed so much with me, that I have very great ground of Suspicion, That *Goodman* was perjured in the Case of *Cook*.

Here hath been Popular Expressions of Plots, and Jacobites, that no Man can apply to this particular Case, or say this is a Case wherein we ought to use this extraordinary Power; he was in the Hands of the Law, and no Body can say, that the Government must sink, if he does not die. If we go from the Rules of Justice, I believe it will give a great Blow to the Government.

Mr. Vernon. Sir, I rise up only upon what that worthy Gentleman hath offered unto you; for I did not think to trouble you with any thing of that Nature. But if you will give me leave to acquaint you with what I believe, who have been later with him than this Gentleman, and much oftner. Sir, he does tell me, that he is very far from denying

what hath been sworn against Sir *John Fenwick* and himself, concerning the Consultation to bring over the *French*, for he hath a very particular remembrance of it; and if that Gentleman was to speak with him now, he would satisfy him, I believe, in that Point: And since I am up, I think every Man that speaks upon this Occasion, should likewise give some Account of himself, in what manner, and for what Reason he discharges his Conscience here; I hope I may use that Word, since Gentlemen make use of Conscience for his Acquittal; and a Man ought to have a very good Conscience for his Condemnation.

As to Sir *John Fenwick's* Innocence, I wish he had given no Occasion to have it called in Question; and since he did fall under this Accusation, I wish he or his Council for him, would have taken some Pains to have made his Innocency appear; but I don't find the Question is, Whether Sir *John Fenwick* is guilty, but whether there be any Evidence of his Guilt? And I shall tell you, in short, my Opinion of that; I take the Proof of the Fact to be in general, such a Demonstration as the Nature of the Thing is capable of; and that is sufficient, and capable to convince a reasonable, honest, unprejudiced Man, of the Truth of what is asserted: And there is no manner of Doubt left, Whether it is so or no? Nor Appearance of any Possibility, that it could be otherwise. I think there hath been that Proof in this Case, and nothing attempted to disprove it, and nothing hath been proved on Sir *John Fenwick's* Behalf, that any Wrong hath been done him; and therefore in short, my Sense is, That whereas some Gentlemen think him guilty, but the Matter not proved; I think him guilty, because 'tis proved, and there hath been no Offer made to disprove it.

Mr. Bromley Warr. Some Gentlemen have spoke of the Power of Parliaments, but I shall say nothing to their Power, which I have learned from my Lord *Coke*, is so Transcendent and Absolute, that it can't be confined within any Bounds: But the more Just and Honourable it ought to be in its Proceedings, to give an Example to inferiour Courts; and though their Power can't be deny'd, yet the Exercise of it hath been often censured and condemned; and Acts that have passed in one Parliament, have been in the same Reign repealed; and sometimes, several branded; *Id possumus, quod jure possumus*. 'Tis certain, here is a defect of legal Evidence: We are not tied here to the Forms of *Westminster-Hall*; but certainly, with Submission, we ought to tie our selves up to the Rules of *Westminster-Hall*, especially when they are founded upon Common Justice, which is the same, is not mutable, and ought to be universal.

By the Law of the Land, no Person ought to be convicted in Cases of Treason, but upon two Witnesses; the Law of God is the same. However, if you will pass this Bill, all Persons must acquiesce; and there is no disputing of your Power afterwards. It hath been an Argument used to Day, That the Security of the Government requires the passing of this Bill, which I think to be a good one too, if they can make it appear, that unless you proceed in this Way, the Government is in Danger; though I must observe, it was not that Consideration, but the Vindication of an honourable Person's Reputation, that brought this Matter first before you.

It does not appear to me, That Sir John Fenwick's Life or Death, can endanger the Government. You have been told of a Design that he hath been engaged in, and is carried on at this Time: That an Invasion from France seems to threaten us; The former Design hath been happily discovered and defeated; and 'tis not probable that Sir John Fenwick should have any great share in any that is carrying on at present: And as far as I can learn, he is not so considerable a Man in his own Person or Interest, that we need fear him.

An honourable Person said, if we do not pass this Bill, they that sent us here, would give us no Thanks: 'Tis not a good way of arguing; but I believe, if those look forward, they will thank us. Sir, in the Act for declaring the Rights and Liberties of the People, you have it said, That the late King James, by the Assistance of divers evil Counsellors, &c. How comes it to pass, that we have never attainted any of them? And if we are for proceeding in this way of Attainder, because it pleases them that sent us hither, I dare say, the Attainting one of those Men, would gratifie those that sent us hither, more than the Attainting Twenty such as Sir John Fenwick. It was pretty well known what share some Gentlemen had in bringing in of Popery and Arbitrary Power; and I will take the Liberty to say, That there is never a Gentleman in this House, but believes them to be the worst of Criminals.

Upon the whole Matter, I do not think you have any occasion to exert a Power, that no Body denies; I see no Security this will be to the Government, and consequently, no Necessity of it: I think you are making a most dangerous Precedent, and that it will be of ill Consequence to you, and therefore I am against this Bill.

Mr. Smith. Sir, I will be as short as I can, and if it had not been for something in this Day's Debate, I should not have troubled you. As to what was said by the Gentleman that spake last, of making Examples of some that had been Criminal in the last Reign; how that came to happen, that no such Examples were made, I shall not now entertain you; but I believe most of the Gentlemen in the House, know pretty well.

But I take the Matter before you is, what Evidence you have to prove Sir John Fenwick to be guilty, and whether there be not an Extraordinary Occasion at this Time, to exert the Legislative Power.

I shall not enter into the Matter of Precedents, those are out of my Province; but I have read some; however it shall not pass upon me for a Rule, because some Bills have been reversed, no others shall be brought in; it is possible that the reversing of them, may be worse than the first bringing of them in.

But to apply my self to the Evidence, I can't but observe one Thing that seems this Day extraordinary: We are told by some Gentlemen, they are against our Proceeding upon this Bill, because it does not *quadrare* to the Rules of *Westminster-Hall*; and at the same time, Gentlemen take Liberty to make Exceptions here against that Evidence that *Westminster-Hall* has allowed: That they should take Exceptions to that Evidence which the Law of England allows to be good!

For it is notorious, it hath been admitted in *Westminster-Hall*; And Gentlemen might have as well have told you, That those Men that suffered, died innocent, as to have denied it; and I think there is a further strengthening of his Evidence; for there is not one Man, who hath died upon his Evidence, but hath acknowledged himself guilty of what he hath charged him with.

As to the Matter of the other Evidence. Sir, I do not say that it is Evidence that will come at *Westminster-Hall*; but at the same time, give me leave to tell you, They seem to lay a little stress upon it, when they tell you, they believe it was false Evidence; and instance in what Cook said to a Gentleman of this House, after his Condemnation; but I think thus far I may say, That when you sent some of your Members to examine Sir John Freind, he did own all those Persons to be at that Place, and that is a much better Argument for the Validity of Goodman's Testimony: But as to the Matter before you, some Gentlemen have made it a Question, Whether Sir John Fenwick be so considerable a Man, as you should proceed in this extraordinary manner with? Though they all say, you may do it; yet at the same time they tell you, this was never put in execution; but they were in the wrong that did it.

Now, Sir, the Question is, Whether you should make use of this Power at this time? Say some, The Plot is over; I wish it was: But when a Conspiracy hath been laid so deep and general as this was, 'tis not the Hanging of one or two that will make us safe: When 'tis apparent to you, here is all the Artifice in the World; all the Endeavours in the World, by Sir John Fenwick's Friends, to remove Goodman out of the Way; 'tis some Argument that he had something to say to him: And when we see Prisons broke open daily, we have known Persons murdered in the Streets for giving Evidence. Very notorious is the Case of *Dodsworth*; you have Plots all about you, and yet can you think there is no occasion to make Use of this Extraordinary Power.

I would have as great a Conviction upon my Conscience as I could, but 'tis very hard a Man must throw his Conscience aside in the Case; 'tis very hard to believe, That if there be two Witnesses produced, though I don't believe the Witnesses, yet I am safe if I condemn the Man; and if there be but one Witness, I am to acquit the Man, though I believe him to be guilty.

And though they go to Scripture, to tell you there must be two Witnesses, yet they don't go so far as to tell you there have been very extraordinary Things done, even by God himself, for the preserving a Community.

And there is the Reason of it, that one Witness may take away a Man's Life in one Case, and not in another! There was a Thing said; that was one Thing that occasioned my standing up: A Gentleman said, truly, it seemed to him to be a better way to put an End to the Plot, to have an Act of Indemnity, than the Conviction of Sir John Fenwick would be. Sir, there seems very little Reason for Acts of Indemnity, when we have seen an Act passed so lately, which has not restrained Persons, nor brought them to a Sense of their Duty; and we have heard Persons own at your Bar, That the Fact was committed just after the Act of Indemnity.

Sir, I do heartily, according to my Conscience, Vote for this Bill.

Mr. *Harcourt*. Sir, I am sensible it is very difficult to say any Thing, and not seem tedious at this Time of Night; but I take it to be my Duty not to be silent in this Matter.

All the Arguments that I remember have been made use of in any former Debate, or in this Day's, may be reduced in short, to these two Heads; the Danger of the Government, and Gentlemen's private Opinion.

Sir, as to the Danger of the Government, if any Body will convince me there is such danger, (I promise him, if it be worth his while so to do) I will be his Profelyte, and Vote for this Bill: But, to tell me the Government is in Danger, and that the Fate of *England* and *Europe* depends upon this Bill, is certainly rather offered to amuse, than to convince.

It hath been asked, Can the Circumstances that Sir *John Fenwick* is in admit of any Danger to the Government, which hath Power over his Liberty every Day, and may restrain him of his Liberty during his Life? A Man, by the Account I have had of him, of little Interest, not worth Nine-pence. (I have no Acquaintance with him, and so I may easily mistake his Circumstances.) But, Sir, whatever his Circumstances are, he is in safe Custody, and no doubt there he will be kept; and to say the Government is in danger by such a Man, sure, that can't be thought by any Man living: And God forbid this should be the Case of the Government, that it can't support it self without taking away this unfortunate Gentleman's Life, contrary to the Rules of Law.

For the Argument of private Opinion, 'tis almost as dangerous as the Precedent you are making. I will not urge it from the Case of the People, *Enthusiasts* and Madmen; but I will urge it in the Case of Men that sate in Judgment: if Opinion is to justify the Condemning of a Man, let us never more call the Verdicts against Mr. *Cornish*, Mr. *Sidney*, Lord *Russel*, and others, Murthers. Ask the Jury, no doubt none of them are so silly, but in his Opinion they were guilty; but if Opinion may condemn a Man without Proof, why not acquit him as well where there is Proof? Such a Practice, I am sure, would never be endured.

The properest Method, I think, was proposed by the Gentleman that began the Debate; and I beg leave to follow the same Steps, to consider his guilt, How it appears to us, and whether there be any Reason for this extraordinary Manner of Proceeding.

The Recital of that Bill are the Arguments for it; and those we send up to the House of Lords, for the Passing of this Bill: And first, it says, That Sir *John Fenwick* was indicted by the Testimony of *Porter* and *Goodman*, &c. It says that several Days were appointed for his Tryal; and at one of those Days the Tryal had come on, if it had not been for the Discovery that he pretended to make; but it does not say it was put off at any other Days or Times, for that Reason: But it goes on, and says, he hath made several Reflections, &c. instead of making an ingenuous Discovery; and then it recites how that *Goodman* is withdrawn.

I would beg leave to put Gentlemen in mind of what was a great Inducement to bring this Bill in: It was said, That Sir *John Fenwick*, and his

Relations had done it; That they would prove that *Goodman* was withdrawn by his Means. Give me leave to say, That there was no Proof of it, unless the Hearsay of *Clancy*, and the Actions of my Lady *Fenwick* are to be Evidence, contrary to the known Laws of *England*, to affect this unhappy Gentlemen in the Case of his Life. I say, if any Gentleman had been of another Opinion, no doubt, he would have offered that Amendment to the Committee.

As to the Discovery that Sir *John Fenwick* hath made, it does not appear to me, whether it be true or false: It is one Thing to give a Vote to clear a Gentleman's Reputation, and another Thing to carry it so far, as to give Judgment, That the Person that made those Reflections shall die, and that before any Proof of their Falschood.

Here is an Indictment found, and here is an Evidence withdrawn, that is all I am satisfied in: And supposing the Person guilty, it is no manner of Inducement from these Arguments, to proceed in this extraordinary manner.

But I would consider the Matter of the Amendment made at the Committee (of which Treasons he the said Sir *John Fenwick* is guilty.) I can't say that; and therefore I can't vote for the Bill. If he be guilty, it does not appear so by legal Evidence, and there I am to judge him as he appears to me an innocent Man. The Law requires two Witnesses to convict a Man of this Crime. 'Tis the greatest Crime, and the Law is so merciful, that it won't expose a Man to such great Penalties, without demonstrative Evidence.

The first Act of Parliament that requires two Witnesses is, 1 *Edward 6*. The next is, 5 *Edward 6*. And upon that Act, give me leave to take Notice: That Act goes a little further than the First; for the 5 *Edward 6*. does not only say there shall be two Witnesses; but it goes on, and says: — which two Witnesses; (they are there called Accusers, but mean the same Thing) shall be produced in Person before the Party at his Arraignment; and shall there before his Face, maintain and avow what they have to say. So the Parliament particularly provided, That there should not only be two Witnesses; but that they should appear in proper Person, in open Court.

I beg leave to observe, That after the making of the first Act, in the 2 or 3 Year of *Edward 6*. there was an Attainder of Sir *Thomas Seymour*, in Parliament, without hearing of him; and that very self same Parliament, within two Years afterwards, seems so to have resented that Matter, that they made that Provision I have mentioned, in the 5 *Edward 6*. And to secure, That that ill Precedent should do no harm, they put in that Clause. If this Act passes, I wish we do not repent in it less time than that Parliament did the Attainder of Sir *Thomas Seymour*. Let us be guided by the Reason, the Justice, and the Discretion of that Act; though we are not bound in our Legislative Capacity, by the Power of it; I can't but observe, that from the making of that Act, no Person has been attainted in any other manner, till the Duke of *Monmouth*. So great a Veneration has that Law always had in all Reigns, though multitude of Conspiracies have happened in them all. I do not think it so material that there should be two Witnesses, as that these Witnesses should be heard Face to Face, and cross examined. It hath been told you, that 'tis Natural Justice and Reason, that there should be

be two Witnesses: A Gentleman asked you, where that natural Justice was before the Statute of *Ed. 6.* Sir, the Statute of 25 *Edm. 3.* says, That every Person that is Attainted, shall be provablement Attaint; and somewhat may be from thence inferr'd more than that the Crime should be prov'd, for so must every Crime. But as to the Proof required by that Act, and the Acts of *Ed. 6.* all those Acts, by very learned Opinions, have been thought declarative of the common Law; but that's scarce worth the Enquiry, since 'tis certain how the Law stands at this Day.

An honourable Gentleman took notice, That such Evidence as we have had, and such Proceedings as these, would not be reasonable in Case of Impeachment; but distinguished between that proceeding and this; but certainly, the Reason is the same: 'Tis true, the same Persons that accuse in one Case, give their Judgment in the other; but in each Case, such Priviledges as are just and reasonable, ought to be allowed to the Party accused.

I shall add no more, but that we are making a Precedent which can't be made without breaking through all the Fences of the Law; and when 'tis made, we know not who may suffer by it.

Sir *Rich. Temple.* As to the Evidence you have before you, I appeal to any Man, whether at the common Law, if there was but one Witness against a Man, Whether he was not at liberty of demanding Tryal by Battle? Those Acts that have been made since, are made certainly to provide, That in no Case whatsoever, a Man should be so much as accused without two Witnesses of the Treason.

As to what hath been said of the particular Evidence before you; what hath ben observed here, is a good Objection in the Courts below. I do not say it does disable a Man from being an Evidence, because he his not pardoned, but he is not so good an Evidence as if he was pardoned: But that I stand upon is this; Shall you come here and make a Precedent in this Place to condemn a Man to the highest Penalties, upon less Evidence than you will allow any Body else to do it? That is what was never done in Parliament before. Will you make a Precedent in Parliament, that at any Time they may bring in a Bill here, and judge a Man to Death for Treason upon one Evidence?

As to this Bill it self, consider what a Precedent you will make. There is nothing that any Bill was condemned for in Parliament, that is not in this Bill. All Mankind must perceive, That you have but one Evidence, and such a one as I have told you. And whatever any Man's private Persuasion is, 'tis the Proof must govern you. Then this is a Law *ex post Facto*, and that hath always been condemned; you make that Evidence that was not so before. Sir, this is, besides making a Law in a particular Case, against the common Law of *England*, and the Right that every Subject has. It is making a Law to hang a Man without a Tryal; 'tis making a Law here, that was introduced here upon a Pretence to make him an Evidence: Every one said, That they did not seek his Blood, and if that be the secret Inducement in this Case, 'tis a dangerous Precedent: The Earl of *Exeter*, when he brought the Rack into the *Tower*, every Body knows the Fate that came upon him afterwards.

Let any Body shew me there was any Reason for reversing any Act of Parliament; they are all against this Bill.

Then to the Necessity of it, I can't imagine any Thing that hath been said to you upon that, is a ground for this Bill. Pray consider first, how this

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Matter came before you; it was for an honourable Person's Vindication, and it was not transmitted to you by the King, but by the honourable Secretary: He told you, That if you had a Mind to see these Papers, and required it, he had leave to let you have them; but if it had been a Thing of this Consequence, That the Government had been in the utmost Danger, Would it have been transmitted only at the Request of a private Gentleman, and left unto you, whether you would proceed upon it or no?

But 'tis observed, That the Plot may go on still; pray if this Gentleman he cut off, does that cure it? You are secure of him now, that he can't Act in it; so that I have not heard the least ground to convince me, That the Government would be in less Danger, if this Gentleman was cut off.

Sir, we are told here of going according to our Consciences; give me leave to say to you what was Instanced in the other Day, That in the worst of Times, when they did not stick at murdering of the King, yet they stuck at this. They would not allow any Man to suffer upon one Witness: And they did not admit of Depositions against my Lord *Mordent*, and my Lord *Mordent* saved his Life by it.

You have deposed King *James* for breaking in upon the Law; and did any Body believe that Mr. *Hampden* was not guilty of the Treason he was charged with; He owned it before this House; and yet he was tryed only for Misdemeanour, there being but one Witness against him: and they that strained all other Laws, stuck at this, and would not violate this Law; so that I think there is no Necessity for making such a Precedent, and I think it would be the worst of Precedents.

Mr *Boscawen.* I have observed upon this Debate, That some Persons deny that 'tis justifiable at any Time, to proceed upon Bills of Attainder, and yet they don't dispute the Power of Parliaments; but at the same Time say, they ought to go according to the Rules of *Westminster-hall*.

Another says, 'tis the same Thing whether we proceed by Way of Impeachment, or Bill of Attainder; I think him much out of the Way; for in that Case, the Lords only are Judges, and you are the Prosecutors; and you don't use your legislative Power in that.

A worthy Friend of mine said, he had often been mistaken, in his own Conscience; when he thought himself very much in the Right. That might be so, and if there was any room rationally to suppose, That Sir *John Fenwick* was not guilty, I should be of Opinion to be of the more favourable Side; but I take it, there is no room for any Man to believe but he is guilty.

Now I would examine what grounds we have to believe him guilty. Upon Tryals, when they charge a Jury with a Prisoner, one Part of their Charge is to enquire, whether he fled for it or no? 'Tis notorious, That Sir *John Fenwick* fled for this, which is no small Argument of his Guilt. Another is, That he was here at the Bar, and did not deny the Fact; if he had confessed it, no doubt but you would have concluded him guilty; and when he does not deny it, this is next Door to it.

It hath been told you, many Bills of Attainder have been reversed as unjust; It hath been as notorious, That the Verdicts of twelve Men, and when Men have been tryed by their Peers, have been reversed too, I will Instance in two or three. The first I begin with, was that of the Duke of *Somerset*; but no Body could say, but he was guilty of the Fact, for he confessed it: But there was a powerful Enemy, the Duke of *Northumberland*. The

next is, the Duke of *Norfolk*, who was attainted in Queen *Elizabeth's* Time; and they were not by Parliament, and yet both were reversed. And I think, as this Matter stands now, some Gentlemen are of Opinion, by the Evidence they have heard, That he is guilty: But I think no Body hath said, That it appears to him by the Evidence he hath heard, That he is Innocent. Now I desire to know, whether every Man must not use his Conscience to Judge, whether there be sufficient Evidence? I acknowledge there is not sufficient Evidence to convict him in *Westminster-hall*; but there is more to satisfy my Conscience, and the World abroad, than if *Goodman* was here; besides his not denying it, you have the Evidence of the Persons that died, who owned the same Thing: And I mention that, the rather, because they confessed it to Persons sent from this House; and did not only confess themselves to be guilty, but acknowledged, That there was such a Conspiracy: and Sir *William Parkins* acknowledged in particular, That he was to raise a Troop of Horse, and that the *French* were to be invited over: Is this nothing, for the legislative Power, that is to secure the Peace and Welfare of the Government?

Gentlemen say, there is a great deal of Danger in this Matter: Some, If you acquit him; others, if you condemn him. If you are satisfied he is guilty; by this Bill, you set up a Land-mark, that others may take care they do not come into this Predicament. On the other Hand, if you reject this Bill, you will give advantage to your Enemies; when they shall see a Man that is so notoriously concerned in calling in a *French* Army, the worst of your Enemies, to be Scot-free. If he be guilty, what Danger is there of the Precedent? When a Person in the like Nature, that hath fled for it, that does not deny it: When living Persons confess it, and dying Persons confirm it, then there will be danger to such a Person.

Upon the whole Matter, I think there is no Man that ever I heard That does not believe him to be guilty; and 'tis strange you should want Evidence, and yet every one think him guilty; and I think no Man must be acquitted or condemned, but according to a Man's Conscience.

An honourable Person said *Porter* was no good Witness: If *Goodman* was here, he would not be so much; and yet we must acquit him because *Goodman* is not here: And therefore, upon the whole, I think you will give your Enemies a great Advantage, if you acquit him; and if you condemn him, you will do your selves right.

Mr. *Cooper*. Sir, being concerned in Prosecutions of this Nature without Doors, I have hitherto declined concerning my self in any Debate of this Evidence, though unconcerned in the Conduct of the Evidence against Sir *John Fenwick*; but being to give my Opinion and Vote as a Judge, I shall crave leave to give my Sense of this Matter.

I would beg leave in the first Place, to make use of a Distinction, which, I think, will serve to answer several of the Arguments that have been made use of: I think there are two Things to be considered; First, his Crime, and the Proof of that Crime, and then the other Matters done by him subsequent, &c.

The Crime and Proof of it that hath been given against him at your Bar is, the ground by which, I think, before God and Man, I ought to give my Affirmative to this Bill, by which you judge him to die. What he hath done subsequent, convinces me in my Judgment, That we are here in a pro-

per Method and Course of Proceeding against him; therefore let no Man say, That you have condemned him because he hath protracted his Tryal: No, you have condemned him for having been guilty of high Treason, manifestly proved against him: Then let them not say on the other Hand, Will you condemn any Man that is at any Time guilty of high Treason? No; but when a Man is guilty of the worst of Treasons, and this would have been manifestly proved against him in the ordinary Course of Proceedings; but that he undertaking to atone for his Crime, and serve his Country, hath protracted his Tryal till one of the Evidences is gone: And then, though he pretended to have a reserve, which he would make known to the King's Person, yet when he thinks he is out of the ordinary Reach of Justice, he sets the Justice of his Country at defiance. These are grounds, not why he is to die, but to justify our Proceeding in this Manner.

Sir, I would beg leave in a few Words, to take notice of a few Things said in this Matter; Gentlemen are afraid, That this will be made use of by Posterity, to the disadvantage of honest Men: And you have been told, That Precedents have begun with the Punishment of the guilty, and then have been carried on to the Punishment of those that have not been so. 'Tis true, there hath been a very bad use made of very just Acts in relation to the Publick: But what do Gentlemen infer from that? Must we have no such Thing as Justice? Must not the Guilty be punished because the same Methods may be made use of for the Punishing of honest Men?

I am not afraid of what use Posterity will make of it; if there come Times of Violence when there are no Parliaments, they will not want this Precedent. There are others that have been cited, that will much more justify those Proceedings; nay, this may protect the Innocent: If a Bill come to be proceeded in against another, he may say, Sir *John Fenwick* was heard personally, and by his Council: That the Evidence was produced before him, and confronted with him. An Innocent Man may say, There was that extraordinary in his Crime, which is not in mine. He would have introduced a foreign Army, and afterwards have aggravated his Crime, by endeavouring to abuse the King, and creating a Jealousie between the King and his Ministers.

Sir, in the next Place it is said, That here is not legal Evidence, which I think is a Mistake: And say some, Though here is an Evidence that really convinces them in their Consciences (I am not ashamed to make use of that Word) yet they are not for passing this Bill, because there is not a legal Evidence: With Submission, that is a Mistake; before 1 *Ed. 6.* one Witness was a good Evidence in high Treason; but there was variety of Opinions touching Treason before that Time; but neither the 1 nor 5 *Ed. 6.* in the Penning or Word-ing of them, nor in the Reason of them, were intended to extend to the High Court of Parliament; so that, for ought that hath been said, though one Witness corroborated by Circumstances, as this Case is, and the Confession of the Party, would not be legal Evidence below; yet, with submission, it is a legal Evidence in Parliament, even according to the strict Rules of Law, because no Law hath made two Witnesses requisite in this Case; so that 'tis a convincing Evidence: I think it may be justified to be a legal Evidence, and as it convinces me that I can't resist the belief of it, I must be for this

this Bill; notwithstanding what some Gentlemen have said, by Way of endeavouring to explode Conscience as a Rule not to walk by in this Case. One Instance given against it was, because a Hangman has not a discretionary Power to execute a Man according to his Conscience, and put him to what sort of Death he pleases; as if we had not a better and more legal and discretionary Power in the High Court of Parliament, than the Hangman has.

But we are told of several Instances, where mad, and hair-brain'd Men have made use of their Conscience, to palliate their Extravagancies: No doubt it hath; and let me tell you, Religion hath been made use of, as a pretence to the worst of Villanies in all Ages; and yet I hope they will not argue that there ought to be no Religion neither, for a Guide to Men's Actions.

When Men come to be Judges, I would know what Rule they can have better than a sedate, well informed Conscience? Below, when a legal Evidence is given; yet the Jury are not bound to go by that legal Evidence; they are, when they have heard it, Judges of the Fact, and are to go by no other Rule, than what is ridiculed here, even the Rule of their own Conscience.

It was said early in the Debate by a Member of great Reputation; That this (except *Monmouth's* Case) is the first Precedent of a Bill of Attainder, that began in this House. It seems the antient Way was, for the Lords to give the Witnesses their Oaths, and when they thought fit, they sent down a Bill, and the Commons were to proceed upon it: But I think, with submission, this is a much better Way; and I had much rather give my Consent upon hearing convincing Evidence, and that the Party has nothing to say for himself, than upon any Bill transmitted from the Lords; and no other Evidence, than that they thought fit to pass it.

Some Gentlemen have set a great Weight, or rather mistaken the Argument: Say they, Sir *John Fenwick* is not a Man so considerable as to endanger the Government. Admit that those that have spoke for the Bill, have not made that use of the Argument; but this is that I lay my finger upon in particular; 'tis plain he was to be General, and knew a great many of the Officers. I am satisfied he hath not made that Atonement to his injured Country, that he ought to have done. I am satisfied that unless this Bill proceed steadily against him, you will have none of that Discovery—

[Here he was interrupted by the Noise of some Gentlemen, shewing dissatisfaction at that Way of Arguing.]

Mr. *Cooper* proceeds. Don't let Gentlemen pervert this Argument, and say; Will you hang a Man if he don't confess? No; but when I have heard Proof, that he is guilty of the worst of Treasons, and hath aggravated his Crime in that manner which he hath done, he deserves to die; unless he will merit his Life by a Discovery of what he knows. I think it of the highest Importance to you, that can be, that you should come to the further Knowledge of the other Branch of the Conspiracy; the Meeting of the French King's Forces in *England*. I think you are in a proper Method, and perhaps may have a better Issue of this Bill than his Death: But if not, he will but pay the Debt, which he owes to the Justice of his Country.

Mr. *Paget*. Sir, I can't believe but I shall be heard, as to the little I have to say, with some uneasiness, after so long a Debate. But, Sir, since I did take the Liberty to give my Opinion, why I was against this Bill before; I think it as reasonable to give you my Reasons, why I don't stand convinced by the Arguments I have yet heard. And that I may the better give you my Reasons, I shall, as well as I can remember, repeat some of the Arguments that have been urged for the Passing of it.

If I mistake not, some of the Arguments have run upon the Power and Prerogative of Parliaments; some upon what was proper Evidence in this high Court of Parliament, other than what would be in other Places; others upon the Extraordinariness of the Occasion.

As to the First of these Arguments; since Gentlemen much more experienced in Rules of Parliament, do not think fit to deliver their private Opinion, what Rules Parliaments may in Reason be supposed to have; I shall not say any Thing to that.

As to the Arguments of what Evidence shall be sufficient to adjudge a Man to Death in this House: I confess, I shall at all Times be very careful, how I give my Opinion in Matters of Life and Death; because I think the greatest Caution is to be used in that Case. And for this Reason, I can't consent to give my Opinion in one Case, that I shall think fit to retract in any Case afterwards.

If I understand the Meaning of the House, 'tis not in favour to Sir *John Fenwick* himself, that Gentlemen oppose this Bill; but for fear of ushering in a Precedent, that may be made use of against a better Man.

I confess, here is a worthy Member that spake last, said something in his Argument that hath some weight with me. I did apprehend by the general Debate of the House, That the Parliament had no Rules at all, but what they would fix to themselves; But I have a great Regard for his Opinion. But if he says true, The Evidence before you is not legal Evidence in *Westminster-hall*; but 'tis legal Evidence according to the Rules of Proceeding in the high Court of Parliament: But I think truly, if they may be presumed to have any Rules to go by, nothing is so plain to me, as that a Rule of their own of so late date, as the Act for regulating Tryals in Cases of Treason, should be a Rule to them: And 'tis said in that Act, That after such a Day, no Person shall be brought to Tryal in any Case of Treason, &c. but he shall be condemned upon the Evidence of two Witnesses; and I must needs say, that Act that was passed last Sessions, is so much for the Liberty of the People of *England*, that I think it will be very hard to repeal that substantial Part of the Law so soon after it was made.

As to the Extraordinariness of the Case, I am sensible what stress hath been laid on that Argument, as if the Strength of this Government did in some Measure depend upon your Disposal of this Matter one Way or the other; and since that is the Case, I shall speak tenderly of it; for I do as much abhor Acts of Treason against the Government, as any Man that hath spoke for this Bill: I think, as the Crime is to be distinguished from all others, as being a more than ordinary Crime; so I think the Person that is concerned, must be extraordinary: And I think, with submission, there is some difference between Principals and Seconds in an Act of Treason. When you can't come at a

Man

Man being the Head of a Rebellion; it may be reasonable to proceed by Bill of Attainder: but I think 'tis not to be used upon all Occasions, or when you may come at a Person another Way; which I think, is the Case of this Gentleman. I am of Opinion, that there does not depend more upon Sir *John Fenwick* now, than when he was first taken. Why he was not tryed, I shall not examine the Reason; I suppose it was because he gave some Assurance of his Confession: truly, I have heard no other Reason for proceeding against him now, but those Papers which have been adjudged scandalous, and are so to all intents and purposes, I do think truly: But the Liberty of the People of *England* is very much concerned in the Revocation of that Act, which was promoted for the Liberty of the People; and none of the Arguments that have been used can convince me, That I ought to give Judgment upon less Evidence than is provided by that Act.

Mr. *Sloane*. Sir, I hardly thought I should have needed to have troubled you with my Thoughts in this Matter, but that this honourable Gentleman that spake last, has gone so far in his Reason, as to speak to Matter of Law; he seems to extenuate the Fault of Sir *John Fenwick*; and gives it as a Reason why he should not be attainted by this Bill, for that he was none of the Principals, but only an Accessary; there is no Gentleman of the Gown, but will tell you, That there is no Accessaries in Cases of Treason, but they are all Principals, and equally guilty; and there is no Evidence in this Case to make him Accessary, but he is either Principal or nothing.

When I have made this Observation, give me leave to tell you my own Thoughts; as every Man is to be saved by his own Faith, so may my Salvation depend, upon my Opinion according to my Conscience in this Matter, which is for passing this Bill.

The last Time I gave you my Reasons why I was for this Bill; and yet I have not heard them answered, though a Gentleman said I answered myself; but I will state the Case, and desire him to reply to me. I did say then, Sir, and do so again, That I do not think those scandalous Papers any Reason to provoke you to pass this Bill; and I do think, if he should be threatened, it would be a Blemish upon his Confession. Another Thing I put out of the Case, That he is a Man so dangerous to the Government, that if he escape, we are all undone. I do take him, that in his Person, Interest and Friends, he is not so; and would not have that be a Motive for the passing of this Bill: But take it upon the Evidence that is before us, and in the Nature of our Proceedings; Then I will say, we have great Reason to proceed upon this Bill, for the Preservation of the Government, and for this Reason; whereas it is insisted on one side, That here are the Laws and Liberties of *England* at Stake, and no Body knows whose Case it may be next. Sir, if we don't go upon good Grounds and Reasons, that we don't fear any Bodies following, God forbid we should make this a Precedent: But pray turn the Tables on the other side, and see what the Case will be; that here is a Gentleman that every Body of the House does believe guilty; that he hath been in a Conspiracy to bring in the French, and depose the King; and the Man came before us, and we had no Power to reach him; What will be the Precedent on the other Side? It will be easie to take off one of the Witnesses by Men of great

Estates, and then there is no coming at them, even by the Parliament themselves; This Parliament was of Opinion, That they could not come at Sir *John Fenwick*, though they were of Opinion that he was guilty.

But now, Sir, to that which is the Question, 'Tis allowed by every Body, you may do what you please; but without straining your legislative Power, I shall offer my Thoughts and Reasons for it, upon these three Points; That the Fact is Treason; that he is plainly guilty; and that we have a plain Jurisdiction in this Case, in the ordinary Methods and Proceedings of Parliament.

Sir, the Fact is Treason, the Meeting at several Times, and conspiring, and consulting to bring in a french Power to depose the King: You have been told by several Persons, and the Council at the Bar, That such Meetings without some other Overt-Act, is not Treason; but I affirm, the contrary, for that is an Overt-Act of compassing the Death of the King; and Sir *Bartholomew Shower*, who did insist upon it at the Bar, did otherwise act his Part upon it at the Tryal of Mr. *Cook*; for he offered it at first, but afterwards he deserted it as a Thing he could not stand upon; for 'tis the Opinion of all the Judges, upon a late Resolution.

Then, Sir, the Fact being Treason, is no Act *ex post Facto*. We are not making that Treason which was not so, but we are only judging of the Fact that was Treason before; though if it was a doubt whether it was Treason or no, the Parliament hath a Power by 25 *Ed. 3.* to judge that Treason, that the Courts below have no Power of.

The next Thing is, Whether there be sufficient Evidence of his Treason before us? I will put out of the Case, as no conclusive Evidence at all, what *Goodman* hath said upon his Oath (further than that there was such a Witness that did and could swear such a Thing, and that he was examined before the Jury;) and this I will take upon me to say; (and I will give my Reason for my Opinion) That the Parliament is not obliged to two Witnesses by any Law now in being.

It hath been told you, That from the Time of *Ed. 3.* one Witness was sufficient till the Statute of *Ed. 6.* Now I will prove to you, from the Statute of *Phil. and Mary*, That by the common Law, and all the Time between the Reign of *Ed. 3.* and *Ed. 6.* one Witness was sufficient for this Treason. For that Statute of *Phil. and Mary* does say, That any Person that shall bring from beyond Sea, any false and counterfeit Coin, or be accused or impeached of any Offence concerning the Impairing, Counterfeiting, or Forging of any Coin current within this Realm, shall, and may be indicted, arraigned, convicted, or attainted by such-like Evidence, and in such-like Manner as was accustomed before the first Year of *K. Ed. 6.* Now, What was the Reason of that Statute before the Statute of *Ed. 6.*? Those Counterfeits were to be tryed by one Witness; and therefore at this Day all the Counterfeiters, and Utterers of false Coin, have been attainted by one Witness.

'Tis said again, That there is the Law of Nations, and the Law of God to the contrary, Gentlemen have said several Times already, That in Murther and Felony, one Witness is sufficient, which saving some little Parts of the Judgment as to the Forfeiture and Attainting of the Blood, is the same Penalties. We are not in the Land where that Law was in Force; for by that Law, as to common

common Felons, there was Restitution only: But I would put a Gentleman that sits by the Bar this Case, by the same Law of *Deuteronomy* and *Numbers*, that he hath quoted; Adultery is Death: Will you be contented, that That should be so here? They are either all of them in Force, or none of them in Force?

I do say, That by the Statute of *Ed. 3.* and ever after till the Statute of *Ed. 6.* one Witness was sufficient to convict any Man of Treason. And I do say; That the Statutes of *Ed. 6.* does not conclude the Parliament from any Method of proceedings.

The Statute says, That no Man shall be indicted, &c. nor shall they proceed upon such Indictment; from which Words in the Statute, I do plainly make it appear to any Gentleman that will read it, 'Tis confined only to the Courts of *Westminster-hall*: For certainly, you can't call a Bill of Attainder, to be a Proceeding upon an Indictment. What I say, is only to discharge my own Conscience, and to save the tender Consciences of them that hear me; and therefore, I desire them never to say, That there ought to be two Witnesses, before they answer what I have said upon that Statute.

Then, Sir, you have need but of one Witness, and you have had Capt. Porter before you; who, I think, notwithstanding all that hath been said, is a credible Witness. A Gentleman made some Objections to his Credit, and told you, he was not to be believed, because he was in the same Conspiracy, and had been in such a villainous Action: But, Sir, the same Gentleman hath often confined you to the Rules of *Westminster-hall*; and he hath told you, 'Tis a wrong Place here, and that a Man has not so good a Tryal here, as in *Westminster-hall*. Why? the Thing that was spoke of, of his being concerned in the Assassination, and of his being a fellow Conspirator with them, which is now urged as an Objection before you, is no Objection in *Westminster-hall*?

I would only take notice of another Objection this Gentleman made to the Witness, which he said he had from the Bar; which was, That Capt. Porter was not pardoned, and he was now drudging for his Pardon; but that is so far from what ought to be quoted, that he that said it, ought to be reprimanded for it.

He made another Objection against his being a good Witness, and compared it to the Case of an Hundredor; but he did not remember, that the Man that was robbed is a good Witness; and the Reason is, because of the Necessity of the Thing, and that no others can be; and the Defendant in an Hundred can't be a Witness, because there may be others; and that is the Reason of this Case.

And for the Precedents in *Richard 3d's* and *Henry 4th's* Time, no Gentleman can insist upon them considering the difference of the Crown, and the one Attainted the other; and they were not reversed upon the Point of Jurisdiction, but because of the different Rights of the Kings; and no Body had pretended to Answer the Case of the Regicides, they were not left to the Law; I mean such as were actually Tried before the Parliament: But the Parliament passed different Judgments on them; and some of them were in Custody. What was told you of *Cromwell's* Case and others, they go upon the same Reason; That they were not heard though they were in Custody.

Col. Wharton. A Gentleman lately told you, we had lately passed an Act for Tryals in Cases of Treason, and how we are in this Proceeding, about doing something that is contrary to it; that is a Thing that would stick with me, if I could not answer it, but I appeal to every Gentleman in this House, whether that Act hath any sort of Relation to Tryals in Parliament; for that is only to direct the Courts in *Westminster-Hall*.

I have only this to say, I think the Evidence very full before you; I think you have had one very good Witness, and the Council for the Prisoner, had liberty to confront him: If he had not been guilty, the Prisoner at the Bar would have deny'd it; I am convinced of the Truth of it, and my Conscience is to make a Judgment upon it, and that is all we can go by here.

Mr. Jefferys. A worthy Gentleman of the long Robe hath taken Pains to find out Precedents to justify our Proceedings; and another says there is no Act to circumscribe our Proceedings; but since Gentlemen differ so much, it gives me a great deal of Caution. This I know, there is a Law of the Land, by which Persons ought to be governed: I take this to be an extraordinary Method of Proceedings, and I hope the Lords will take more Care of the Matter, than the Commons.

Mr. Edward Harley. Sir, I can't satisfy my self to be for this Bill, and in a few Words, I shall give my Reason for it: It hath been said, That the Parliament is unlimited; I do agree that we are not tied to the Rules of *Westminster-Hall*; I shall only mention the Reason why two Witnesses are required in Cases of High-Treason. If any will look into the History of *England*, they will find it hath been often the Design of the Crown, to trump up Plots upon the Subject; and therefore these Acts took particular Care there should be two Witnesses to prove the Fact; this is the Reason of the Law, and I think, upon it the Liberty of the Subject is founded, and therefore I can't be for this Bill.

Then the Question for passing this Bill was put, and the House divided.

Ayes 189.

Noes 156.

The Writ for Executing Sir John Fenwick being under the whole Broad-Seal, and inclosed in it,

GUilielmus tertius Dei Gratia, Anglia, Scotia, Francia & Hibernia, Rex, Fidei def. &c. Vic. Com. London, & Vic. Com. Midx. Salutem: Cum Johannes Fenwick, Bar. per quendam actum ad sessionem presentis nostri Parliamenti apud Westminster. super vicesimum diem Octobris Anno Regni nostri octavo per prorogationem tent. Edit. de alia prodicione per ipsum perpetrat. & Commiss. attinctus fuit, & executio super inde adhuc restat faciend. & quia pro certis causis & considerationibus nos specialiter moventibus totam executionem Actus attinctura pradiet. super dict. Johannem Fenwick præter amputationem Capitis sui omitti volumus, ideo præcipimus vobis & per presentes firmiter injungendo mandamus quod in & super vicesimum tertium diem instantis mensis Januarii. inter ho-

ras nonam & undecimam ante meridiem ejusdem diei dictum Johannem Fenwick in Goala nostra de Newgate sub Custodia vestra nunc existent. à goala prædict. usque ad Tower-Hill, ducatis & Caput ipsius Johannis Fenwick ad tunc & ibidem amputari & à Corpore suo omnino separari facietis. Teste meipso apud

Westmonast. decimo octavo die Januar. Anno Regni nostri octavo. Chute.

The Label.

Vic. Com. Lond. & Midd. de executione faciend. John Fenwick, Bar. autoritate Parl. Antist. Chute.

The TRYAL of Captain THOMAS VAUGHAN.

Die Sabbati, tricesimo primo Octobris, Annoque Regni Regis Willhelmi Octavo, Annoque Domini. 1696.

The Court being sate, at which were present, Sir Charles Hedges, Judge of the High Court of Admiralty, the Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr. Justice Turton, and others of his Majesties Commissioners. The Court proceeded on this manner.

Cl. of Arr. MAKE Proclamation.

Cryer. O Yes, O yes, O yes. All manner of Persons that have any Thing more to do, &c. and were adjourned to this Hour, draw near, and give your Attendance. God save the King.

Then the Grand Jury were called over, and the Appearances mark'd. And Witnesses being Sworn in Court to give Evidence to them, against Thomas Vaughan, they withdrew to hear the same.

Then the Keeper of Newgate was ordered to bring his Prisoner Thomas Vaughan to the Bar. (Which he did.)

Cl. of Arr. Tho. Vaughan, Hold up thy Hand. (Which he did.) Thou standest Indicted, &c.

How say'st thou, Tho. Vaughan, Art thou guilty of the High-Treason whereof thou standest Indicted, or not guilty?

T. Vaughan. Not guilty.

Cl. of Arr. Culprit, How wilt thou be try'd?

T. Vaughan. By God, and this Country.

Cl. of Arr. God send thee a good Deliverance.

And then the Court proceeded to the Tryal of the Pirates, and gave notice to Mr. Vaughan to prepare for his Tryal on Friday next, the 6th of November, 1696.

Die Veneris, sexto Novembris, Annoque Regni Regis Willhelmi Octavo, Annoque Domini, 1696.

Cl. of Arr. MAKE Proclamation.

Cryer. O Yes, O yes, O yes, All manner of Persons that have any Thing more to do at this Sessions of Oyer and Terminer, adjourned over to this Day, draw near and give your Attendance. And

you Sheriffs of the City of London, return the Precepts to you directed, upon Pain and Peril which will fall thereupon.

Then the under Sheriff returned the Precepts.

Cl. of Arr. Make Proclamation.

Cryer. O yes, You good Men of the City of London, summoned to appear this Day, to try between our Sovereign Lord the King, and the Prisoner at the Bar, answer to your Names, as you shall be called, every one at the first Call, and save your Issues.

The whole Pannel was called over, and the Appearances of those that answered, recorded, and the Defaulters were again called over.

Mr. Phipps, Will your Lordship please to order, that two Men may be brought from the Marshal-sea, in the behalf of the Prisoner?

L. C. J. Holt. You shall have an Order.

Then the Court went on the Tryal of the Six Pirates, and after the Tryal was over, Thomas Vaughan was called to the Bar.

T. Vaughan. My Lord, my Irons are very uneasy to me, I desire they may be taken off.

L. C. J. Holt. Ay, ay, take them off.

Mr. Phipps. If your Lordship please, we have some doubts as to the Indictment.

L. C. J. Holt. If you have any Exceptions, you ought to have made them before the Prisoner pleaded to it.

Mr. Phipps. I thought you had allowed it, my Lord, in former Cases.

L. C. J. No, we did not allow it as of Right due to the Prisoner; the Exceptions should have been made before the Plea. You were indulg'd in being heard at first in the Cases of Rookwood, Cranburne, and Lowick, but it was not the Intent of the Act, to alter the Method of the Proceeding; and so upon consideration hath it been determined. The Prisoner hath Time given by the

the Act to make any Exception to the Indictment before he pleaded, but you may move what you will afterwards in Arrest of Judgment, if it be material.

Cl. of Arr. Thomas Vaughan, Those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Tryal of Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, before they be sworn.

Mr. Phipps. There was one Man here that desired to be excused, because he was on the Grand Jury; therefore it seems there are some returned upon this Jury that were on the Grand Jury, which I think ought not to be.

L. C. J. Challenge them then.

Mr. Phipps. We do not know the Men.

Then the Panel was called over, and a great many Challenges made, and the Twelve Men that were Sworn, were these.

Edward Leeds	}	Caleb Hook
Nath. Green		Joceline Roberts
Hen. Sierbrook		Tho. Parker
Jo. Sierbrook		Peter Gray
Tho. Emms.		Roger Poston
Peter Parker		Woolley.

Cl. of Arr. Cryer, Make Proclamation.

Cryer. O yes, If any one can inform my Lords, the King's Justices and the King's Serjeant, the King's Attorney-General, the King's Advocate, in his High Court of Admiralty, before this Inquest be taken of the High-Treason, whereof Thomas Vaughan, the Prisoner at the Bar, stands indicted; let them come forth, and they shall be heard, for now the Prisoner at the Bar stands upon his Deliverance; and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance.

Cl. of Arr. Thomas Vaughan, Hold up thy Hand. (Which he did.) You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Thomas Vaughan.

Whereas, That before and until the 8th Day of July, in the 7th Year of the Reign of our Sovereign Lord King William III. there was open War between our said Lord the King, and Lewis the French King: And that the said War continued on the said 8th Day of July, in the 7th Year aforesaid, and doth still continue. And that for all the Time aforesaid, the said Lewis the French King and his Subjects, were, and at present are Enemies of our said Lord the King that now is: And that at the Time of the said War, and before the said 8th Day of July in the 7th Year aforesaid, the said Lewis the French King, set out, amongst others, a certain small Ship of War called the Loyal Clencarty, of which Thomas Vaughan, a Subject of our said Lord the King that now is, was Commander, with several French Subjects, Enemies of our said Lord the King, to the Number of 15 Persons, in a Warlike manner to take and destroy the Ships, Goods, and Moneys of our said Lord the King, and his Subjects, and against our said Lord the King, to wage War upon the High-Seas, within the Jurisdiction of the Admiralty of England. And that at the Time of the said War between our said Lord the King, and the aforesaid Lewis the French King, Tho. Vaughan, late of Galloway, in the Kingdom of Ireland, Mar-

iner, being a Subject of our said now Lord the King, as a false Rebel against the said King his Supreme Lord, and not having the Fear of God before his Eyes, nor considering the Duty of his Allegiance, but being moved and seduced by the instigation of the Devil, and altogether withdrawing the cordial Love, and true and due Obedience which every true and faithful Subject of our said Lord the King, ought, by Law, to have towards the said King; and the said War, as much as in him lay, against our said Lord the King, designing and intending to prosecute and assist. The said Tho. Vaughan on the said 8th Day of July in the said 7th Year of the King, being a Soldier aboard the Ship of War called the Loyal Clencarty, in the Service of the said Lewis the French King, And being then on the High-Seas, within the Jurisdiction of the Admiralty of England, about Fourteen Leagues from Deal, did then and there by Force and Arms, falsely, maliciously, wickedly, and traiterously, aid, help, and assist the Enemies of our said Lord the King, in the Ship of War called the Loyal Clencarty. And afterwards the said Thomas Vaughan, in the Execution and Performance of his said aiding, helping, and assisting, maliciously, falsely, and traiterously sailed a Cruising to several Maritime Places within the Jurisdiction aforesaid, by Force and Arms to take the Ships, Goods, and Money of our said Lord the King, and his Subjects, against the Duty of his Allegiance, the Peace of our said Lord the King, and also against a Statute in that Case made and provided.

And the said Jurors for our said Lord the King, upon their said Oaths, farther represent, That the aforesaid Thomas Vaughan, as a false Traitor against our said Lord the King, further designing, practising, and, with his whole Strength, intending the common Peace and Tranquillity of this Kingdom of England to disturb. And War and Rebellion against the said King upon the High-Seas within the Jurisdiction of the Admiralty of England, to move, stir up, and procure. And the said Lord the King, from the Title, Honour, Royal Name, and Imperial Crown of his Kingdom of England, and Dominions upon the High-Seas, to depose and deprive, and miserable slaughter of the Subjects of the said Lord the King, of this Kingdom of England, upon the High-Seas, and within the Jurisdiction aforesaid, to cause and procure, on the said 8th Day of July, in the said 7th Year of the King, upon the High-Seas, about Fourteen Leagues from Deal, and within the Dominion of the Crown of England, and within the Jurisdiction of the Admiralty of England aforesaid, falsely, maliciously, devilishly, and treacherously by Force and Arms, with divers others false Rebels and Traitors, (to the Jurors unknown) War against our said now Lord the King, prepared, promoted, levied, and waged. And that the said Thomas Vaughan in performance of his said War and Rebellion, then and there by Force and Arms, maliciously, wickedly, and openly assembled and joined himself with several other false Traitors and Rebels (to the Jurors unknown) to the Number of Fifteen Persons, being Armed and Provided in a Warlike Manner, with Guns and other Arms, as well offensive as defensive. And the said Thomas Vaughan, then and there being aboard the said Ship of War, called the Loyal Clencarty, assembled with the other false Rebels and Traitors as aforesaid, maliciously, wickedly and traiterously sailed a Cruising to several Maritime Places, with the aforesaid Ship of War, called the Loyal Clencarty, with an intent to take, spoil, and carry away the Ships, Goods, and Money, of our said Lord the King, and his Subjects, by Force and Arms, upon the High and open Seas, within the Jurisdiction aforesaid; against the Duty of his Allegiance, the Peace of our

said Lord the King, his Crown and Dignities; and likewise against the Form of a Statute in this Case made and provided.

Thomas Noden, } Jurors.
Samuel Oldham, }

Upon this Indictment he hath been Arraigned, and upon his Arraignment he hath pleaded not guilty, and for his Tryal he hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be guilty of the High-Treason whereof he stands indicted, or not guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the Time of the High-Treason committed, or at any Time since. If you find him not guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him guilty. If you find him not guilty, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

Mr. Whitaker. May it please you, my Lord, and you Gentlemen of the Jury. The Prisoner at the Bar, *Thomas Vaughan*, stands indicted for High-Treason, That whereas on the 9th of July, there was a War between his Majesty the King of England, and *Lewis the French King*; amongst other War-like Preparations, that the *French King* did make, he did set forth a Ship called the *Loyal Clencarty*; That the Prisoner at the Bar, as a false Traytor, did lift himself aboard this Ship; And on the High-Seas, about Eleven Leagues from *Deal*, did traiterously aid the King's Enemies, to take the King's Ships. This is said to be against the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. He stands further Indicted, for that he, the said *Thomas Vaughan*, with several other false Traytors, did levy War, and Arm themselves with Arms, Offensive and Defensive, and was cruising on the High-Seas, off of *Deal*, with an Intent to take the King's Ships, and to kill and destroy the King's Subjects, against the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment he has pleaded not guilty. We shall call our Witnesses, and prove the Fact, and doubt not but you will do your Duty.

Dr. Littleton. Gentlemen of the Jury, you have heard the Indictment opened, and also what sort of Crime the Prisoner at the Bar stands charged with, viz. That he being a Subject of the Crown of England, has, together with his Accomplices, armed himself in a Military Way, to murder and destroy his fellow-Subjects, and as much as in him lay, to ruin his Native Country, by ruining the Trade and Traffick, which is the great Support and Riches of the Nation. And that his Crime might be consummate, he, with his Accomplices, has done what in him lay, to dethrone, and dispossess his sacred Majesty, as well knowing it was in vain to expect to make the Nation unhappy, as long as we enjoy so great and good a Prince. So that you are to look on the Prisoner as an Enemy and Traytor to his own Country; and not only so, but as one of the worst and most dangerous Enemies: Since he being a Subject of these Islands, was the better able to spy out our Weaknesses and Defects, and thereby to do us the greater Mischief. It is not to be express'd what Ruin and Desolation it would have caused to this Nation,

had this Man and his Accomplices brought their wicked Intentions to effect; and all this was done to aid and assist the Grand Enemy of *Christendom*; and of our own Country in particular, the *French King*. Therefore as you are Lovers of your King and Country, and your fellow-Subjects, whom the Prisoner and his Accomplices would have destroyed; I am sure you will take care to do the Nation Justice, and that he be brought to condign Punishment. Gentlemen, there is one Thing further that I must not omit, viz. That the Prisoner at the Bar being in Custody for these very Crimes about a Twelve-month since, did not think fit to trust to his Innocency, nor to his pretended *French Extraction*, but the Day before he was to be Tried, he thought fit to break Prison, withdraw from Justice, and run his Country: Which though not a Confession and full Proof, yet is a great Evidence of his Guilt.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, *Thomas Vaughan*, stands Indicted for two Sorts of Treason. The one is for levying War against the King, the other is for aiding and abetting the King's Enemies. And to prove the first, the levying of War, we shall prove that he was a Captain of a *French Ship*, call'd the *Granado* of *St. Maloes*, and that with that Ship, he took and carried away many of his Majesty's Subjects, and took several Merchant Ships, and carried them to *France*. We shall likewise prove that he was Captain of another *French Ship*, called the *Loyal Clencarty*, with which he was cruising off of *Deal*, where we had several Ships lying at the same Time: And there he being on Board the said Ship *Clencarty*, was taken Prisoner, with a Commission, by which he was constituted Captain of the *Loyal Clencarty*, under the Hand of *Lewis the French King*.

And to prove him aiding and abetting to the King's Enemies, we shall prove against him this particular Fact; that he and his Accomplices did in the Year 1692, come to *London*, and went to *Tower-Wharf*, to enquire what Vessels were ready to go down the River; and there was one laden with Piece Goods, and he put himself, and several other of his Accomplices into this Vessel, to go down the River; but they had contrived the Matter, and brought it so to pass, that they fell on those Men who had the Government of the Ship, and carried away this Vessel to *France*. Now if this be true, the Prisoner is certainly guilty of aiding the King's Enemies: And to prove he was guilty of this, we will prove to you, that even in *France*, where he was at perfect Liberty, he owned he was the Contriver of all this, and that he had a thousand Pound for his Share of what was taken from our Merchants. If we prove these two Facts against him, I doubt not but you will find him guilty. We will call our Witnesses.

Cl. of Arr. *T. Eglington, Rich. Crouch, Samuel Oldham, John Bub,* Noden (Who appeared, and were sworn.)

T. Vaughan. With Submission to your Lordships, and the honourable Bench, I beg that they may be put asunder, out of hearing of one another.

L. C. J. Let it be so, though you cannot insist upon it as your Right, but only a Favour that we may grant.

Mr. Cowper. Set up *Richard Crouch*. Is your Name *Richard Crouch*?

R. Crouch. Yes, Sir.

Mr. Cowper. Give my Lord and the Jury an Account of what you know of the Ship *Coventry* taking of the *Clancarty*, and what you know concerning the Prisoner at the Bar in taking of her.

R. Crouch. We weighed our Anchor about four a Clock.

Mr. Cowper. Where were you?

R. Crouch. At the *Nore*.

Mr. Cowper. In what Ship?

R. Crouch. The *Coventry*. After we had been under Sail a matter of an Hour, we came to an Anchor with a little Wind; so, Sir, this *Thomas Vaughan* met with a Couple of Pinks, they were small Vessels that he designed to take; but he saw us, and so lay by all Night.

Mr. Cowper. Who lay by?

R. Crouch. *Thomas Vaughan*, the Prisoner at the Bar.

Mr. Cowper. In what Vessel was he?

R. Crouch. In a Two-and-twenty-Oar Barge, he lay by at the *Gunfleet*; the next Morning we weighed Anchor at Day-light; we saw him, and chased after him; and we made them, and he made us, and we made what haste we could, and coming up we fired a Gun at him, and then we fir'd another, and then he went ashore.

Mr. Cowper. What, do you mean that he run his Vessel on the Sands?

R. Crouch. Yes, and then we fired another Gun at him, and then he got off again; and then we fired another Gun, and could not bring him to, and then he got off the Sands again; and when we came up to him, we Manned our Long-Boat, and Pinnace, and Barge, and had him at last. When he came on Board, he said I cannot deny but I am an *Irish-man*, and that my Design was to burn the Ships at the *Nore*.

Mr. Cowper. Did he himself confess it?

R. Crouch. Yes he did, that is the Man, I know him well enough.

L. C. J. When you took him, in what Ship was you?

R. Crouch. In the *Coventry*.

L. C. J. Out of what Ship was he taken?

R. Crouch. The Two-and-twenty-Oar Barge.

L. C. J. What Ship did it belong to?

R. Crouch. I reckon it was my Lord *Barclay's* Barge.

L. C. J. Who did it belong to then?

R. Crouch. To the King of *France*.

L. C. J. What Company was there in her, how many Men had she aboard?

R. Crouch. About five and twenty Hands.

Mr. Cowper. Did you ever hear him say any Thing of a Commission he had?

R. Crouch. I heard he had a *French* Commission, but I did not see it.

Mr. Cowper. Did you hear him say any Thing of it?

R. Crouch. No.

Mr. Cowper. But he told you his Design was to burn the Ships at the *Nore*?

R. Crouch. Yes.

Mr. Cowper. What Ships?

R. Crouch. The *English* Ships; there were several Ships there then.

L. C. J. Were there no *Frenchmen* aboard the Barge.

R. Crouch. No, that I can tell.

Mr. Lechmere. From whence did he come, from *England*, or *France*?

R. Crouch. From *Calice* in *France*.

L. C. J. Prithee hear me, this Two-and-twenty-Oar Barge, did it belong to any other Ship?

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R. Crouch. No, not that I can tell.

L. C. J. Did he call that Vessel the *Loyal Clancarty*?

R. Crouch. Yes, my Lord.

Then Edmund Courtney was called.

Mr. Sol. Gen. Mr. Courtney, pray tell my Lord and the Jury what you know of the going away of a *Custom-House* Boat?

Ed. Courtney. I will tell you, if you please.

Mr. Phipps. My Lord, I think they ought not to examine to that, because it is not laid in the Indictment. The carrying away of the *Custom-House* Barge is not mentioned in the Indictment, and by the new Act for regulating Tryals in Cases of Treason, no Evidence is to be admitted or given of any Overt-Act, that is not expressly laid in the Indictment.

L. C. J. Nothing else? Suppose a Man be indicted for levying War against the King, or adhering to the King's Enemies, can't they prove any Act that makes out a levying of War, or an Adherence to the King's Enemy?

Mr. Phipps. With Submission, not by that Act, my Lord, unless it be laid in the Indictment.

L. C. J. Levying of War is the Treason; may they not prove that levying of War, without being confined to any special or particular Act?

Mr. Phipps. With Submission, by the 25 of *Edward* the III. Levying of War, as well as imagining the Death of the King, must have the Overt-Acts, that are to prove it, express'd in the Indictment.

L. C. J. Levying War is an Overt-Act.

Mr. Sol. Gen. The Business of Overt-Acts is; where the Compassing and Imagining the King's Death is a Crime and Question, and this must be discovered by Overt-Acts. But if Treason be falsifying of the King's Money, this is Treason, but there can be no Overt-Act of that, for that is an Overt-Act it self; but there must be an Overt-Act to prove the Compassing and Imagining the Death of the King, and in no other Sort of Treason.

L. C. J. Levying of War that is an Overt-Act; so is Adhering to the King's Enemies. Now Compassing and Imagining the Death of the King is not an Overt-Act in it self, but is a secret Imagination in the Mind, and a Purpose in the Heart; but there must be external Acts to discover that Imagination and Purpose.

Mr. Phipps. What is the Meaning of the New Act then, that there shall be no Evidence of any Overt-Act, but what is laid in the Indictment?

L. C. J. What Overt-Acts are there in Clipping and Coyning?

Mr. Phipps. That is not within the new Act of Parliament.

L. C. J. That is most true, the one is excepted, the other is not comprehended; but the Question is upon the Statute of 25. *Ed. 3d.* to which the late Act doth refer. Now proving the Adherence to the King's Enemy, is proving an Overt-Act. Suppose it be the Killing of the Chancellor, or Treasurer, or Judge in the Execution of his Office, What Overt-Acts will you have then? Adhering to the King's Enemies, is a Treason that consists in doing an Overt-Act.

Mr. Phipps. Yes, my Lord, I take it that it is for the new Act, by saying that no Evidence shall be admitted of any Overt-Act that is not expressly laid in the Indictment, must be intended of such Treasons,

of which by Law Overt-Acts ought to be laid. Now the Killing the Chancellor, or Treasurer, or Judge, in the Execution of his Office, are not such Treasons of which it was necessary to lay any Overt-Acts in the Indictment, and so not within the Meaning of this new Law. But levying War, and adhering to the King's Enemies, which are the Treasons in this Indictment, must by the express Purview of the 25 Ed. 3. be proved by Overt-Acts, which are to be alledged in the Indictment.

Mr. Sol. Gen. The new Act does not alter the Law in this particular, what was Law before, is Law now, it leaves the Overt-Acts as they were before, and it says not that an Overt-Act need to be express, where it was not needful before. Now if a Man be Indicted for compassing the Death of a private Person, there ought to be some Overt-Act to prove his Design; but if there be an Indictment for Murther, there needs no other Overt-Act to prove it, but the Murther it self.

L. C. J. But the Force of the Objection lies in this, viz. To say a Man levyed War, or adhered to the King's Enemies, is no good Indictment; but it is necessary to alledge in what manner he levyed War, or adhered to the King's Enemies; as that he appeared in such a War-like manner, or did adhere to and assist the King's Enemies, by joyning Forces with them, or otherwise assisting them, or confederating with them, that must be specified. But if you Indict a Man generally for adhering to the King's Enemies, and not say how and in what manner he did adhere to them, that is not a good Indictment; therefore if you particularize what Enemies, and how and in what manner he adher'd to them, no Evidence can be given of any other Kind of adherence, but that which is so specified in the Indictment.

Mr. Sol. Gen. Then we must put all our Evidence into the Indictment.

Mr. Phipps. So you must, as to the Overt-Acts.

Mr. Sol. Gen. That will be the same Thing as to put in all our Evidence, if we must give Evidence of no Overt-Act but what is express in the Indictment. But I do not take it, that the Act requires all Overt-Acts to be put in the Indictment.

Mr. Phipps. The Act says so. Suppose you had left out the Overt-Act, would the Indictment have been good?

Mr. Sol. Gen. We did not intend to put in all the Overt-Acts, but only what related to that Part of the Treason.

Mr. Phipps. The Treason must be proved by Overt-Acts, and the Overt-Acts that prove the Treason, must be mentioned in the Indictment.

Mr. Sol. Gen. What! the Overt-Acts of the Treasons before mentioned, as Counterfeiting the King's Money, and the like, are all to be mentioned?

L. C. J. Consider; if you can make that a good Indictment, to say, that the Prisoner adhered to the King's Enemies, without mentioning any Overt-Acts to manifest such an adherence, then your Answer to Mr. Phipps is full; but if it be not a good Indictment, without alledging particular Acts of Adherence, then it necessarily follows, that if Particulars are alledged, and you do not prove them as is alledged, you have failed in the Indictment, and so his Objection will lie hard upon you.

Mr. Sol. Gen. My Lord, we framed our Indictment according to the Letter of the Statute.

L. C. J. In compassing the Death of the King, you must shew how that is manifested by the Overt-Acts.

Mr. Sol. Gen. But compassing and imagining must be discovered by some Overt-Acts.

L. C. J. Treby. This is a doubt I have often thought of, I thought it most natural that the Word Overt-Act should relate to the first Article, viz. compassing and imagining of the King's Death. For Overt-Act seems to be opposed to something of a contrary Nature: Act is opposed properly to Thought, Overt is properly opposed to secret. And that sort of Treason consisting in secret Thought and Internal Purpose, cannot be known, tried, and judged of, without being disclosed and manifested by some external open Act. Wherefore it is pertinent and reasonable, in order to attain a Man of such Treason, that the Indictment should charge and set forth the Act, as well as the Thought. And so it hath been used to be done.

But, such order or manner doth not seem so natural or necessary, in framing Indictments for other Treasons, where the Treason consists in visible or discernible Facts; as levying War, &c.

Nevertheless I think an Overt-Act ought to be alledged in an Indictment of Treason for adhering to the King's Enemies, giving them Aid and Comfort. And the Overt-Act, or Acts, in this Case, ought to be the particular Actions, Means, or Manner by which the Aid and Comfort was given.

My Lord Cook declares his Opinion to this purpose. His Words (which I read out of his Book here) are these. *The Composition and Connection of the Words are to be observ'd, viz. [thercof be attained by Overt Deed] This, says he, relates to the several and distinct Treasons, before express'd, and especially to the Compassing and Imagining of the Death of the King, &c. for that it is secret in the Heart, &c.* Now the Articles of Treason, before express in the Statute of 25 Ed. 3. are four. 1. Compassing, &c. 2. Violating the Queen, &c. 3. Levying War, and 4. This of Adhering, &c. (And yet it is hardly possible to set forth any Overt-Act concerning the 2d. otherwise than the Words of the Statute, That Article expressing so particular a Fact.)

I do observe also, that these Words [*Being there-of Attainted by Overt Fact*] do, in this Statute, immediately follow this Article of Adhering, &c. And it would be a great Violence to construe them to refer to the first Article only, and not to this last, to which they are thus connected. If they are to be restrained to a single Article, it were more agreeable to the strict Rules of Construing, to refer them to this of Adhering only.

L. C. J. That which I insist on is this, whether the Indictment would be good, without expressing the special Overt-Act. If it be, then this is a surplusage, and we are not confin'd to it; but if it be not a good Indictment without expressing it, then we are confin'd to it.

Mr. Phipps. I believe Mr. Solicitor never saw an Indictment, of this Kind, without an Overt-Act laid in it.

L. C. J. Can you prove the Facts laid in the Indictment? For certainly the Indictment without mentioning particular Acts of Adherence, would not be good.

Mr. Comper. Yes, my Lord; and as to the Evidence before you, we would only offer this; whether in this Case, if the Indictment were laid generally, for Adhering to the King's Enemies in one Place, and in another Place levying of War, and nothing more particular, it would be good; I doubt it would not. But when there is laid a particular Act of Adhering, we may give in Evidence matter

matter to strengthen the direct Proof of that particular Act of Adhering to the King's Enemies, tho' that matter be not specially laid in the Indictment: For the Act goes only to this, That the Prisoner shall not be convicted, unless you prove against him the Overt-Acts specially laid in the Indictment; But whether it shall not be heard, to make the other Overt-Act which is laid, the more probable? Now we have laid a special Overt-Act in the Indictment; and we have produced Evidence of it, and we would produce likewise collateral Evidence, to induce a firmer Belief of that special Overt-Act, by shewing you that he hath made it his Practice, during the War, to aid and assist the King's Enemies; But if the Jury do not find him guilty of the special Overt-Acts laid in the Indictment, they cannot find him guilty by the Proof of any other Overt-Act not laid in the Indictment. But if we prove he has made this his Practice, in other Instances, during the War, whether that Proof shall not be received?

Mr. Phipps. My Lord, I desire the Act may be read. It expressly contradicts what Mr. Cowper says; for it says, That no Evidence shall be given of any Overt-Act, that is not expressly laid in the Indictment. [*The Act was Read.*]

L. C. J. That is, you may give Evidence of an Overt-Act, that is not in the Indictment, if it conduce to prove one that is in it. As if consulting to kill the King, or raise a Rebellion, is laid in the Indictment, you may give in Evidence an acting in pursuance of a Consult, that is an Evidence that they agreed to do it, tho' that doing of the Thing is, of it self, another Overt-Act, but it tends to Prove the Act laid in the Indictment.

Mr. Phipps. The Overt-Act laid in this Indictment, is his Cruising in the *Clancarty*; and this Overt-Act you would prove, is no Evidence of that; nor relates to it, but it is a distinct Overt-Act of it self.

L. C. J. You cannot give Evidence of a distinct Act, that has no relation to the Overt-Act mentioned in the Indictment, tho' it shall conduce to prove the same Species of Treason.

Mr. Cowper. We would apply this Proof to the Overt-Act laid in the Indictment.

L. C. J. Any Thing that has a direct tendency to it, you may prove.

Mr. Cowper. We have laid the Overt-Act, that he did voluntarily put himself on Board this Vessel of the *French King*, the *Loyal Clancarty*, and did go to Sea in her, and Cruise, with a Design to take the Ships of the King of *England*, and his Subjects. Now Part of the Overt-Act, is his Intention, in the Act of Cruising, we do not charge him with taking one Ship, so that his Intention is a Member of the Overt-Act, and it must be proved, to make his Cruising Criminal, that he design'd to take the Ships of the King of *England*. Now we think it a proper Intention, to shew, that during this War, before and after the Time of the Treason laid in the Indictment, he was a Cruiser upon, and Taker of the King's Ships, and this fortifies the direct Proof given of his Intention.

L. C. J. I cannot agree to that, because you go not about to prove what he did in the Vessel call'd the *Loyal Clancarty*; but that he had an Intention to commit depredation on the King's Subjects: So he might, but in another Ship. Now, because a Man has a Design to commit depredation on the King's Subjects in one Ship, does that prove he had an Intention to do it in another?

Mr. Phipps. He was Cruising in the *Clancarty*, that

is the Overt-Act laid in the Indictment; and the Overt-Act you would produce, is his being in another Vessel.

L. C. J. Go on, and shew what he did in the *Clancarty*. You the Prisoner, will you ask this Man any Questions?

Mr. Phipps. *Crouch*, you said, that the Prisoner did say he could not deny but he was an *Irish-man*; how came you to talk about it?

R. *Crouch*. He said, I cannot deny but I am an *Irish-man*.

L. C. J. Did he say he was an *Irish-man*? What were the Words he used?

R. *Crouch*. He told the Lieutenant he was an *Irish-man*.

Mr. Phipps. What Discourse was there? How came he to say that?

R. *Crouch*. I went by only, and heard the Words spoken to the Lieutenant.

L. C. J. Did he speak English?

R. *Crouch*. Yes, my Lord.

L. C. J. If he spoke English, that is some Evidence he is an *English-man*, tho' the contrary may be proved by him.

T. *Vaughan*. That would no more prove me an *English-man*, than if an *English-man* were in *France*, and could speak *French*, would prove him a *French-man*, because he could speak *French*.

L. C. J. You shall be heard by and by to say what you will on your own behalf.

Mr. Phipps. Were there any *French-men* on Board the *Clancarty*?

R. *Crouch*. No, Sir.

Mr. Phipps. Mr. *Vaughan*, will you ask him any Questions your self?

Mr. Cowper. Call T. *Noden*.

T. *Vaughan*. How did you know that there were no *French-men* aboard? Did I address my self to you when I came aboard?

R. *Crouch*. No, Sir.

T. *Vaughan*. Did I not address my self to the Captain when I came aboard? How came I to tell you I was an *Irish-man*?

R. *Crouch*. They were all *Scotch-men*, *English-men*, and *Irish-men*.

Mr. Phipps. Mr. *Vaughan*, you need not take up the Time of the Court about that Matter. Mr. Cowper, you may go on.

Mr. *Sol. Gen.* Did the Prisoner own that he acted by the *French King's Commission*? Did you know any Thing of his having a *French Commission*?

R. *Crouch*. Yes, I heard he had one, but I did not see it, but I heard so by the Company.

L. C. J. Were there any *French-men* aboard?

R. *Crouch*. No, not that I know of. They were *Dutch-men*, and *English-men*, and *Scotch-men*, and *Irish-men*.

M. Cowper. Call T. *Noden*. (Who appeared and was Sworn,) Do you give my Lord and the Jury an Account of taking the Vessel, call'd the *Two-and-Twenty-Oar-Barge*.

T. *Noden*. Last Year, about June or July, to the best of my Remembrance, I belong'd to his Majesty's Ship the *Coventry*, and we took the *Two-and-Twenty-Oar-Barge*.

L. C. J. How many *Dutch-men* were aboard?

T. *Noden*. I do not know of above one.

L. C. J. Treby. What were the Rest? Were there any *French-men*?

T. *Noden*. Yes, there were several *French-men* aboard. I belong'd to the *Coventry*. And as we were sailing by the *Nore*, and the *Gunfleet*, our Captain spy'd a small Vessel sailing by the Sands, and he

he suppos'd her to be a *French Privateer*, and he fir'd a Gun to make them bring to, and they did not obey; and at last fir'd a Gun, Shot and all, and they would not come to. Then the Captain order'd to man the Boat, and row after them: So the Barge, and Pinnace, and Long-boat were mann'd; and they came pretty near them. This Barge we took, was aground also, and they got her afloat, and she run aground again: And as they were aground, most of them out of the Boat, our Long-boat struck aground; and waded after them near half a League, and when we came to the Barge, there was this Captain *Vaughan*, and two or three and Twenty more. And there was two *Dutch-men*, and, as I apprehended, some *French-men*; there was in her a Blunderbuss, and small Arms, and a considerable Quantity of Hand-Granadoes.

L. C. J. What Vessel was you aboard?

T. Noden. The *Coventry*.

Mr. Sol. Gen. What Country Man did Captain *Vaughan* say he was?

T. Noden. I did not hear any Thing of it. Our Captain examin'd the *Dutch-man* what Countryman the Commander was, and he said he was an *Irish-man*; but I did not hear it my self. When Captain *Vaughan* was brought aboard the *Coventry*, was put aboard the Prize we had taken.

Mr. Cowper. Had you any Discourse with Captain *Vaughan*.

T. Noden. No.

L. C. J. Did they endeavour to take your Ship?

T. Noden. No, but endeavoured to get away from us.

L. C. J. What Guns or Ammunition had they?

T. Noden. I cannot tell particularly, there was some Convals Bags, every Man had a Carteridge Bag, and there were some Hand-Granadoes,

Mr. Whitaker. What Fire-Arms had they?

T. Noden. I cannot say how many, but they had Muskets and Pistols, and two Blunderbusses.

Mr. Cowper. Did you understand whence this Ship the *L. Clancarty* came?

T. Noden. The *Dutch-men* said they came from *Calis*. As near as I can guess, we spy'd them about Eleven a Clock, and we weigh'd Anchor in the Afternoon, on *Sabbath day*, and they took us to be a light Collier, and endeavour'd to board us, as the *Dutch-man* said; but when they knew what we were, they endeavour'd to escape from us.

Mr. Cowper. Call Sam. Oldham. (Who appear'd and was Sworn.) Mr. Oldham, was you aboard the *Coventry*, when she took the Ship call'd the *Clancarty*?

Sam. Oldham. Yes, I was.

Mr. Cowper. Pray give an Account what you observed of the Prisoner T. *Vaughan* then?

Sam. Oldham. We weigh'd our Anchor first at the *Boy and Nore*, so we saw a Prize in the Morning, the Captain said it was a Prize, and we made Sail after him, and they ran on the *Goodwin-Sands*; And the Captain seeing the Barge run aground, we fir'd at her to bring her to; we fir'd a Second, and she would not come to, but ran aground again. When she was aground, by the Captain's Order, we Mann'd our Boats, and out we went after her.

Mr. Cowper. Did you take her?

Sam. Oldham. We went and our Long-Boat ran aground; I was in the Long-Boat, and we waded; I believe, a Mile and half after her.

L. C. J. What *French-men* were aboard?

Sam. Oldham. I cannot justly say whether there were any.

L. C. J. Were there any?

Sam. Oldham. I think one or two.

Mr. Cowper. Were there any *Dunkirkers* or *Wal-loons* aboard?

Sam. Oldham. There was a *Dutch-man*, who they call'd a *Fleming*, and I discours'd him.

L. C. J. How many *Outlandish-men* were there aboard? was there a dozen, or how many?

Sam. Oldham. I cannot say the Quantity.

Mr. Cowper. Was there more than two or three.

Sam. Oldham. Yes, more than two or three.

L. C. J. What *Forreigners*?

Sam. Oldham. Yes. And there were two *English-men*.

Mr. Cowper. What did you observe of the Prisoner at the Bar, at the taking of the Ship?

Sam. Oldham. I did not come aboard along with the Prisoner, but with his Man, and his Man said he was an *Irish-man*, and that he was Commander of the Boat.

Mr. Sol. Gen. What was there Design in that Ship *Clancarty*?

Sam. Oldham. I cannot tell that.

Mr. Cowper. Did they resist, in their being taken?

Sam. Oldham. I cannot tell that, I saw no Arms.

Mr. Cowper. You were in the Action, was there any resistance made?

Sam. Oldham. I saw no resistance, they offered to run, they were aground once, and got off again.

Mr. Phipps. You say there were *Forreigners*, what Country-men did you believe those *Forreigners* to be?

Sam. Oldham. I cannot justly say, I believe *Dutch-men*.

L. C. J. How many *Dutch-men* were there?

Sam. Oldham. I cannot say.

Dr. Oldish. But you said there were some two or three *French-men*, and that they spoke *French*; do you understand *French*?

Sam. Oldham. No Sir.

Dr. Oldish. Then how do you know they were *French-men*, and spoke *French*.

Sam. Oldham. They said they were, they did not speak *English*, several of the Ship's Company said they were *French*.

L. C. J. If they were all *Dutch-men*, and appear in a hostile Manner against the King of *England's* Subjects, they are *Enemies*, tho' we are in League with *Holland*, and the Rest of the seven *Provinces*.

Mr. Phipps. The Indictment runs, That the *French* King, *quandam Naviculam vocat'* The loyal *Clancarty*; *cum quamplurimis Subditis Gallicis Inimicis Dom. Regis nunc ad numerum quindecim Personarum replet' preparavit.*

L. C. J. Suppose it doth.

Mr. Phipps. It is *Subditis Gallicis*, my Lord.

L. C. J. They will be Subjects in that Matter, if they act under his Commission: They are *Enemies* to the King of *England*, and they have made themselves the *French* King's Subjects by that Act.

Mr. Phipps. It appears not that they are *French-men*, my Lord.

L. C. J. If *Dutch-men* turn Rebels to the State, and take Pay of the *French* King, they are under the *French* King's Command, and so are his Subjects. Will you make them Pirates when they act under the Commission of a sovereign Prince? They

are then *Subditi* to him, and so *Inimici* to us.

Mr. Phipps. It does not take away their Allegiance to their lawful Prince. They may go to the *French King*, and serve him, yet that does not transfer their Allegiance from their lawful Prince to the *French King*, and make them his Subjects. But however, to make them Subjects within this Indictment, they must be *Gallici Subditi*; so they must be *French* men as well as Subjects.

L. C. J. Acting by Vertue of a Commission from the *French King*, will excuse them from being Pirates, tho' not from being Traitors to their own State, but to all other Princes and States against whom they do any Acts of Hostility, they are Enemies: And their serving under the *French King's* Commission, makes them his Subjects as to all others, but their own Prince or State. And tho' they be not *French*-men, yet they are *Gallici Subditi*; for it's the *French* Subjection that makes them to be *Gallici Subditi*.

Mr. Phipps. Pray, my Lord, suppose a Subject of *Spain* should go over to the *French* and fight against *England*; I take it, he may be termed an Enemy of the King of *England*, tho' his Prince be in League with ours, but with Submission, he cannot properly be said to be a Subject of the *French King*: For suppose an Indictment of Treason against a Forreigner, should say, *that he being a Subject, did commit Treason*; and it be proved he is not a Subject, with Submission, he must be acquitted.

Mr. Cowper. There is a local Allegiance while he is in the Country, or Fleets, or Armies of the *French King*.

L. C. J. *Dutch* men may be Enemies, notwithstanding their State is in Amity with us, if they act as Enemies.

Mr. Cowper. Call R. Bub. (He was sworn) Was you aboard the *Coventry*, when she took the *Clenarty*?

R. Bub. Yes, Sir.

Mr. Cowper. Give an Account what you know of the Prisoner, *Tho. Vaughan*, at the taking of that Ship.

R. Bub. We came aboard the *Coventry*, and were at the *Nore* at Anchor, our Pennant was taken down to be mended. So in the Night Captain *Vaughan*, with his Two-and-twenty-Oar Barge, rounded us two or three Times. In the Morning we weigh'd Anchor, and fell down in order to go to the *Downs*: and we came up with them, and fir'd at Captain *Vaughan*, and he would not bring to. With that our Captain order'd to have the Barge, and Pinnace, and Long-Boat, to be Mann'd, to go after him. They follow'd him, and at last came up with him, and came up pretty near; but could not come so near with the Long-Boat, but were fain to wade up to the middle a Mile and a half. We hoisted our Colours; in order to fight them, and bore down still upon them; and they would not fight our Men. And we took them out, and when they came aboard, the *English*-man that was a Pilot was to have his Freedom, to Pilot them up the River. He confest to the Captain, that Captain *Vaughan* intended to burn the Ships in the Harbour. And the next Day after the Pilot had confessed it, Captain *Vaughan* himself confessed it on the Deck, that he came over with that Design.

Mr. Cowper. Who did he confest it to?

R. Bub. To the Boat-swain and Gunner, as he was on the Deck, on the Lar-Board side, that he came on purpose to burn the Shipping in the Harbour.

L. C. J. Did he confest that himself?

R. Bub. Yes, my Lord.

L. C. J. Whereabout was this, at the *Buoy* in the *Nore*?

R. Bub. In the *Downs*, my Lord.

L. C. J. Where did the Ships lye, that were to be burn'd?

R. Bub. At *Sheernefs*.

Mr. Sol. Gen. He own'd himself to be an *Irish*-man, did he not?

R. Bub. Yes.

Mr. Cowper. And that he came from *Calis*?

R. Bub. Yes.

Mr. Cowper. Had you any Discourse with him about a Commission?

R. Bub. No. But our Lientenant and Captain had, but it was not in my hearing; I will not speak further than I heard, and what I can justify.

Mr. Sol. Gen. Will you ask him any Questions?

Mr. Phipps. No.

Mr. Sol. Gen. Then call Mr. *Jo. Crittenden*, Marshal of *Dover Castle*, (who was sworn) Mr. *Crittenden*, Pray what did you hear the Prisoner at the Bar confest of his Design in coming to *England*?

Mr. *Crittenden*. I did not hear him say any Thing of his Design.

Mr. Sol. Gen. What did he confest?

Mr. *Crittenden*. He confest he was an *Irish*-man?

Mr. *Whitaker*. Upon what occasion did he confest that?

Mr. *Crittenden*. When I enter'd him into my Book, I ask'd him what Countryman he was.

Mr. Cowper. What are you?

Mr. *Crittenden*. I am the Marshal of *Dover Castle*.

Mr. Cowper. By what Name did he order you to enter him.

Mr. *Crittenden*. *Thomas Vaughan* an *Irish*-man.

L. C. J. Upon what Account did you enter him;

Mr. *Crittenden*. As a Prisoner.

Mr. Cowper. Did he speak any Thing of a Commission?

Mr. *Crittenden*. I did not hear him say any Thing of that.

Mr. Phipps. Have you your Book here?

Mr. *Crittenden*. Yes, Sir.

Dr. *Oldish*. Was he not in Drink when he said so?

Mr. *Crittenden*. I believe he was not very sober indeed.

Mr. Phipps. Did you ever after hear him say he was an *Irish*-man?

Mr. *Crittenden*. The next Day he deny'd it.

Mr. Cowper. When he had considered the Danger of it.

Mr. *Crittenden*. The next Day he was Examined by some of the Justices of the Peace.

Mr. Sol. Gen. Was you by when he was Examined by the Justices?

Mr. *Crittenden*. Yes.

Mr. Sol. Gen. What did he then say?

Mr. *Crittenden*. Then he said he was of *Maritenico*.

Mr. Sol. Gen. Set up Mr. *Bullock* (who was sworn) Mr. *Bullock*, do you know the Prisoner at the Bar.

Mr. *Bullock*. Yes.

Mr. Sol. Gen. Pray what have you heard him say of his Design that he came into *England* for?

Mr. *Bullock*. He came to *Dover* about the 14th of July 1695, as I remember: I went with several others, who were brought by the Captain of the *Coventry*, and the Lientenant, and some others: And when we came thither, he there own'd himself

self an *Irish-man*? but when he went the next Day to be Examined, he said he was of *Martenico*. He told me he had that Barge from the Duke of *Bulloign*, and came on the Coast, and was Chased into the *Flatts*, where they took him.

L. C. J. Did you ever hear him say he had any Commission from the *French King*?

Mr. Bullock. I know nothing of that; it was late, and we did not examine him then; but the next Day, when he came to be examined, he said he was of *Martenico*.

Mr. Sol. Gen. What did he say his Design was?

Mr. Bullock. He said, that seeing the Boat at *Bulloign*, he bought it of the Duke of *Bulloign*; and the Duke ask'd him what he would do with her; And he said, he would fit her up, and go and take a Ship at Sea, that is upon our Coasts.

Mr. Phipps. We are in your Lordship's Judgment, whether we need give any Evidence; for we think they have not proved their Indictment: For the Indictment sets forth, *That the French King fitted out the Loyal Clencarty, of which Thomas Vaughan was Commander; and that very many French-men, Subjects of the French King, were put on Board.* Now the first Witness swears, there were no *French-men*; and another swears there was one or two; another, that they were *Forreigners*, But does not believe they were *French-men*: So there is no Proof of that Part of the Indictment; nor is there any Proof that he was Captain of the *Loyal Clencarty*: So that none can say, it is the same Vessel mentioned in the Indictment: Nor is any Act of Hostility proved; for all the Witnesses say, that *Vaughan* never pretended to attack them, but run from them. So that all they depend on, to support the Indictment, is to prove that he had a Design to burn the Ships at *Sheerness*; Which will not serve their turn; for the Words of the Indictment are, *ad predandum super altum Mare.* Now *Sheerness* is not *super altum Mare*, but *infra Corpus Comitatus*, and then not within the Indictment.

Mr. Cowper. The Words, Ships at *Sheerness*, do not imply, that the Ships lay within the Town of *Sheerness*, but off of *Sheerness*, which is *altum Mare*.

Mr. Phipps. Then it is not in your Indictment; for that says, at *Sheerness*.

Mr. Cowper. No, off of *Sheerness*.

Mr. Sol. Gen. It is no Contradiction, to say the Sea is within Part of a County.

Mr. Phipps. The Indictment says, at *Sheerness*.

Mr. Sol. Gen. Off of *Sheerness*, is the high Sea.

Mr. Phipps. *Sheerness* is not the Buoy in the Nore. Then you must prove he was Captain at this Time: For the Indictment says, *Ad tunc fuit Capitaneus & Miles.*

L. C. J. One Overt-Act of Adhering to the King's Enemies, is, that he put himself as a Soldier on Board the Ship.

Mr. Phipps. You will make one Part agree with another, that the *French King* did set out a Ship, and gave him a Commission to be Captain of her.

L. C. J. The Witnesses have proved he acted as a Captain.

Mr. Phipps. He was taken, and sure if he was taken, he must have his Commission with him.

Mr. Sol. Gen. Examine the Marshal, he took an Account of him: and by Direction of Mr *Vaughan* himself, he entered him as Captain; and he entered several Men in the Ship as *French-men*, by their own Direction. (Mr. Crittenden was call'd)

Mr. Crittenden, have you got your Book in which you made the Entry?

Mr. Crittenden. Yes, I have it.

Mr. Sol. Gen. By whose Order did you enter them?

Mr. Crittenden. By the Direction of Captain *Vaughan*, the Prisoner at the Bar.

Mr. Cowper. How did you know he was a Captain?

Mr. Crittenden. Because he told me he was Captain, and I enter'd him as such in my Book.

Mr. Sol. Gen. Captain of what?

Mr. Crittenden. The *Loyal Clencarty*.

Mr. Sol. Gen. Pray read your Entry, in your Book.

Mr. Crittenden. *Thomas Vaughan*, Captain, *Irish-man*, the 14th of July 1695; and so of all the rest of the Ship's Crew.

Mr. J. Turton. Did you write these in the presence of Captain *Vaughan*?

Mr. Crittenden. Yes, in the same Room where he was.

Mr. Phipps. Did you write it by his Direction?

Mr. Crittenden. For his own Part, by his Direction; and for the rest, by their Direction.

L. C. J. Take all the Circumstances together, it is great Evidence, considering what they were about, and what Vessel they had. Mr. Crittenden, can you tell how many *French-men* were there.

Mr. Crittenden. I will tell you presently (he counts them in his Book) there were thirteen.

Mr. Sol. Gen. Did Captain *Vaughan* hear any of them bid you enter them as *French-men*?

Mr. Crittenden. I cannot be positive in that, I suppose he did, he was in the same Room.

L. C. J. Do you expect Witnesses from *France*, to testify where they were Born and Christen'd?

Mr. Phipps. One Witness says there was not one *French-man* there.

L. C. J. Not to his Knowledge.

Mr. Sol. Gen. What do you know of his having a *French Commission*?

Mr. Bullock. I did not see it.

Mr. Whitaker. Did he own his having any *French Commission*?

Mr. Bullock. I cannot tell.

Mr. J. Turton. He own'd himself a Captain.

Mr. Phipps. He might be a Captain in another Ship, but not in this Ship; they ought to prove he was Captain at that Time, in that Ship, by the *French King's Commission*.

L. C. J. All the Witnesses say he acted as a Captain at that Time.

Mr. Cowper. He own'd himself the Captain of the *Loyal Clencarty*.

Mr. Bar. Powis. What can be plainer, than that he owned himself Captain?

Dr. Oldish. This seems to me a very strange Proof, to be built only upon the Sayings of these Persons, that they were *French-men*, and this to a Man who had no Authority to examine them, when it might have been easily proved in a regular Way, in Case they had been so; they might have been examined before a Magistrate, and thereby it would have appeared whether they were *French* or no. And 'twas absolutely Necessary in this Case, because of the Contrariety of the Witnesses; for the first Witness said, there was no *French-men* aboard; the next said there were two *French-men* and a *Dutch-man*; and Crittenden said, there were thirteen. Now how can these be reconciled, unless there had been a legal Examination of the Parties? But the Thing we would chiefly go on is this,

this, I think they have fail'd in the Foundation of the Treason; that is, to prove the Prisoner a Subject of this Crown; neither is there the least Colour of Proof thereof. At Night he came to Mr *Crittenden*, and is in Drink; there he says he is an *Irish*-man; the next Morning, when he is examin'd before the Justices, then he comes in a Kind of Judgment, and then such a Confession would be of Moment; but then he confesses himself to be a *French*-man of *Martenico*. Now, my Lord, what Credit is to be given to these Confessions; when before the Marshal he shall say, I am an *Irish*-man; and the next Day, when he is on Examination, he declares himself a *French*-man; in one Confession he is in Drink, in the other Sober? Now, my Lord, I say, what Proof is here? Here then the Foundation of the Treason fails: For the Indictment is, *That he being a Subject of the King of England, levies War.* Now, my Lord, if this Quality be not proved, all the Rest of the Indictment falls to the Ground: for it is impossible for him to commit Treason, where he is not a Subject, because there can be no Violation of Allegiance. So that if he be a *French*-man, as he declared before the Justices, he cannot be guilty of Treason. So that herethey have fail'd in the Foundation of all; that is, to prove him a Subject of *England*. And because they affirm him to be so, it lies on those that affirm it, to prove it. But perhaps now they will say, that these little Confessions of his will throw the Burthen of Proof on him. By no Means; when here is a stronger Presumption on the other Side; a meer extrajudicial Saying to Seamen, that he is an *Irish*-man, cannot ballance his Confession Examined before the Justices, wherein he says he is a *French*-man; and so can never throw the Burthen of Proof on him. Therefore it lies on them that assert this, to prove it. But, my Lord, tho' it doth not lie on him, yet we will prove him to be a *French*-man, and Born at *Martenico*, by those that were at the Christening of him, and have known him from Time to Time ever since. And because they say he can speak *English*, if you please to examine him, you shall hear him speak natural *French*; so that That cannot prove him to be a natural *Irish*-man.

Mr *Phipps*. Such a Saying of a Foreigner will be of no great Weight; because if a Man go into a foreign Country, he may say he is that Country man to get the more Favour.

L. C. J. What, to hang himself?

Mr *Phipps*. No, my Lord, a Man that comes into a strange Country, may very well think he shall find better Usage, by pretending to be of that Country, than by owning himself to be a Foreigner. But we will prove *Vaughan* to be a *French*-man. Call *Robert French*: (Then *Robert French* was sworn.) Mr *French*, Pray give the Court and Jury an Account, whether you know Mr *Vaughan*, the Prisoner at the Bar, and how long you have known him, and what Countryman you take him to be, and the Reason why.

Rob. *French*. I have known him this fourteen Years.

Mr *Phipps*. Where did you see him then?

Rob. *French*. I saw him in Saint *Christophers*.

Mr *Phipps*. Pray give an Account how you came to know him.

Rob. *French*. About sixteen Years ago I was at *Mount-Surat*, and I came to St. *Christophers*, and there I chanc'd to come into *English* Ground, among the Factors; and so they brought me to the *French* Ground; and coming there, I was in Com-

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pany with several others that Night, and it happened I was told there was one Mr *Vaughan* there; and I coming acquainted with him, he shewed me this Youth (he was a Youth then;) He told me he was his Son, and recommended him to me, because he look'd on me to be a Man in Trust and Business.

Mr *Phipps*. From that Time what has he been reputed?

Rob. *French*. A Sea-faring Man.

Mr *Phipps*. But what Countryman?

Rob. *French*. To be Born in *Martenico*.

Mr *Phipps*. In whose Dominions is that?

Rob. *French*. In the *French* King's Dominion.

Mr J. *Turton*. What Occasion had you to Discourse of the Place of his Birth?

Rob. *French*. Because his Father was look'd upon to be a *French*-man?

Mr J. *Turton*. His Father was a *French*-man?

Rob. *French*. Yes, my Lord, and lived at *Martenico*.

Mr *Cowper*. How old might he be at that Time?

Rob. *French*. About fifteen or sixteen.

Mr *Cowper*. How came you to be talking of his Birth, and with whom?

Rob. *French*. One that was talking with me, told me, his Name was *Vaughan*, and that he was Born there.

Mr *Cowper*. What introduc'd this Discourse? How came he to tell you this, that he was born in that Place?

Rob. *French*. His Father told me so.

Mr *Cowper*. You were talking of one *Vaughan* of his Name: How many were in Company when there was this talk?

Rob. *French*. There were many of them.

Mr *Cowper*. Name them.

Rob. *French*. It is so long ago I cannot remember them.

Mr *Cowper*. Name as many as you can of them; as many as you do remember.

Rob. *French*. One Mr *Bodiken*, a Factor.

Mr *Cowper*. Who else?

Rob. *French*. Several others.

Mr *Cowper*. you named one *Vaughan* before.

Rob. *French*. Yes, I did.

Mr. *Cowper*. But you had forgot him now.

Rob. *French*. No, there was one *Vaughan*.

L. C. J. Were there any more?

Rob. *French*. Yes, there was, I remember the Company that went along with me.

L. C. J. Who were they?

Rob. *French*. There were several Passengers that went over with me.

L. C. J. How came you to talk of this Man's Nativity?

Rob. *French*. Because his Father said, he had not been out of the Island in twenty Years; (at which the People laugh.)

Mr *Cowper*. What Place was this Discourse in?

Rob. *French*. At St. *Christophers*.

Mr *Cowper*. How did his Father's saying, he had not been out of that Island in twenty Years, prove his Son was Born there?

Rob. *French*. Because he recommended him to me as a Sea-faring Man.

Mr *Cowper*. What is that a Reason of? What is that to his being Born at *Martenico*?

Mr J. *Turton*. What Countryman are you?

Rob. *French*. I am an *Irish*-man Born.

L. C. J. His Father acknowledg'd himself to be an *Irish*-man Born, did he not?

X x

Rob;

Rob. French. No, my Lord, he did not say where he was born: I do not know.

Mr Justice Turton. Have you continued any Acquaintance with *Mr Vaughan* since? How long did you stay at *St. Christophers*?

Rob. French. I stay'd but Four and twenty Hours, to take in Water.

L. C. J. How long was it after this, before you saw this Gentleman, Captain *Vaughan*?

Rob. French. I never saw him since, till I saw him in London. *(Then the People laughed.)*

L. C. J. Pray Gentlemen have Patience. How do you know now that this is the same Man, that you saw fourteen Years ago? For there must be a great Alteration in a Man in fourteen Years time, from what was at that time, being but fifteen Years of Age.

Rob. French. I believe in my Conscience this is the Man.

L. C. J. Can you take it upon your Oath he is the Man?

Mr Bar. Powis. In what Language had you this Discourse?

L. C. J. How long were you in Company with him and his Father?

Rob. French. I believe five or six Hours.

Mr Bar. Powis. In what Language was this Discourse with his Father?

Rob. French. My Lord, he spoke *English*, a sort of broken *English*.

L. C. J. Where do you live your self?

Rob. French. I live in *Ireland*.

L. C. J. How long have you lived there?

Rob. French. Nine or Ten Years.

L. C. J. Whereabout in *Ireland*?

Rob. French. In *Connaught*.

L. C. J. Nine or Ten Years?

Rob. French. Yes, my Lord.

Dr Littleton. Did not Captain *Vaughan*, nor his Father speak *Irish* to you in that six Hours?

Rob. French. No, my Lord.

Mr Justice Turton. How long have you been in *England*?

Rob. French. Not above two Months.

Mr Justice Turton. Did you hear of Captain *Vaughan* being to be try'd?

Rob. French. No, my Lord.

Mr Justice Turton. How did he come to hear of you then?

Rob. French. I heard he was in Town.

L. C. J. It is a strange Thing, you have a most admirable Memory, and Captain *Vaughan* has as good a Memory as you; that you should never have any intercourse for fourteen Years, and yet should remember one another after so long a Time; it is a wonderful Thing too, that when he could not know you were in Town, yet he should call you a Witness on his Behalf, sure he must have the Spirit of Prophecy.

Rob. French. He did not send to me at all.

L. C. J. How did you come to be here then?

Rob. French. I will tell you. It was my Custom always to go and see Prisoners, and I heard there were Prisoners in *Newgate*, so I went to *Newgate*, and I met with one *Dwall*, and I asked him of another Gentleman that was there; and I went to the other Side by Chance, and I met with Captain *Vaughan*.

L. C. J. What was thy Design? Why didst thou visit *Newgate*?

Rob. French. Because it was my Custom, because it was an Act of Charity.

L. C. J. Did you go to *Newgate* out of Charity?

Rob. French. I went to see my Friend, and carried a Letter to him. I went out of Charity.

Mr. Phipps. You were in the *West-Indies*, upon the *French Ground*; don't they speak *English* on the *French Ground*, and *French* on the *English Ground*?

Rob. French. Yes.

Mr. Cowper. So they do here. Did you ever see Captain *Vaughan* before that Time?

Rob. French. No.

Mr. Whitaker. Did you visit lately any other Prisoners in *Newgate*, besides Captain *Vaughan*?

Rob. French. Yes.

Mr. Whitaker. Give their Names.

Rob. French. I have visited *Mr. Noland*, and another Gentleman that is with him, and I went into the House and drank with him there.

Mr. Whitaker. What is that other Gentleman's Name?

Rob. French. I do not remember his Name at present, but he is a Companion of *Mr. Noland's*.

Mr. Whitaker. Do you know him if you see him?

Rob. French. I, I would.

L. C. J. Treby. How long have you been in *England*?

Rob. French. But two Months.

L. C. J. Treby. Have you usually visited Prisoners in former Years?

Rob. French. My Lord, where-ever I have been, it was my Custom to do so.

L. C. J. Treby. But how doth it consist, that you, who are an *Irish* man, should come hither to visit Prisoners in *Newgate*?

Rob. French. I can prove under my Lord-Mayor of *Dublin's* Hand, that I came here upon Business; and I went to the Prison to visit the Prisoners for Charity-sake, and did bestow it according as I was able.

L. C. J. You had best stay there, and not go away, for we may have Occasion to ask you some Questions.

Mr. Cowper. Do you not use, out of Charity, to be Evidence for them?

Rob. French. No, never before in my Life.

Mr. Whitaker. What other Prisons have you visited, besides *Newgate*?

Rob. French. I did visit none.

L. C. J. Treby. Had you no Charity for other Prisons?

Mr. Bar. Powis. When you so visit Prisons, on what Account is it? Is it to give Ghostly Advice?

Rob. French. Upon a charitable Account, my Lord.

L. C. J. Ghostly Advice, is Charity.

Mr. Phipps. Where is *Mr. Lefleur*? (He did not appear.) Call *Mr. Gold*, (who appeared.)

Cl. of Arr. That Man is attainted, but pardoned.

Mr. Phipps. *Mr. Gold*, how long have you known Captain *Vaughan*?

Mr. Gold. I never knew *Mr. Vaughan*, before I saw him in the *Marshalsea*.

Mr. Phipps. Is *Monsieur Lefleur* here? Is *Mr. Deherty* here? (*Mr. Deherty* appeared and was sworn.)

Mr. Phipps. Do you know *Mr. Vaughan*, the Prisoner at the Bar?

Mr. Deherty. Yes.

Mr. Phipps. How long have you known him?

Mr De-

Mr Deherty. Five Years.

Mr Phipps. What has he been reputed all along, since you have known him?

Mr Deherty. A Frenchman.

Mr Phipps. Did you know him in France?

Mr Deherty. Yes, and he was reputed a Frenchman there.

Mr Justice Turton. What Occasion had you to enquire into that, the Place of his Nativity?

Mr Deherty. I did not enquire at all, but one that was his Servant, was my Comrade a great while.

Mr Phipps. Now we will prove where he was Christened, by one that was at his Christening, Mr. Dascine. (He appeared, and stood up, being sworn, and spoke in French to the Court, pretending he could not speak English.)

L. C. J. If he cannot speak English, there must be an Interpreter.

Mr Soll. Gen. They must find an Interpreter; he is their Witness.

Then a Person in Court stood up, and told the Court he could speak English as well as he, that he had been a Bailiff's Follower for several Years.

L. C. J. You can speak English, can you not?

Mr Dascine. I will speak as well as I can.

King's Messenger. I am a Messenger to the King, do you know me?

Mr Dascine. Yes.

L. C. J. Prithee speak English.

Mr. Dascine. As well as I can, my Lord, I will speak.

Mr. Phipps. Are you sworn?

Mr. Dascine. Yes, my Lord.

Mr. Phipps. Do you know Captain Vaughan?

Mr Dascine. In 1669, I was in St. Christophers; I went from Rhoan, and from thence I went with Hats and Cloth to Crebeck, and had a Letter to one Thomas Williams, a Factor in Martenico. And after I had done, as I was coming away, Mr Williams desired me to go to a Christning, a Mile and half from Port-Royal. He told me, there was one Mr Vaughan had a Plantation there; and desired him to be Godfather. And about two Days after, I went from Port-Royal to St. Christophers again, and I came to Rhoan again in a Ship called St. Joseph. So in 1677, I went to St. Christophers again; and from thence to Matenico, to Mr Williams; I asked him, what is become of that young Man we were at the Christening, and so he shewed me him that is here (pointing to the Prisoner.)

L. C. J. That was in 1677.

Mr Dascine. In 1677. So I came from Port-Royal; I went to St. Christophers, and so took Sail, and came to France again. And 13 Years ago I went to St. Christophers again, and to Mountserat, and Martenico; and so when I was at Martenico, and asked Mr Williams of this young Man, that I was at his Christening, and he said, he is at such an House, and I saw him there.

L. C. J. Thirteen Years ago.

Mr Dascine. And we went and drank Punch together, and I came back for Rhoan.

L. C. J. When did you see him since that?

Mr Dascine. Never till I saw him here a Prisoner.

L. C. J. How do you know he is the Man?

Mr Dascine. He has a Bruise in his Side.

Mr Phipps. What was the Gentleman's Name, at the Christening of whose Child you were?

Mr Dascine. Thomas Vaughan.

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Mr Phipps. What was the Child's Name?

Mr Dascine. Thomas Vaughan.

Mr Phipps. When you went the next time to Martenico, did Mr. Williams, you speak of, that was the Godfather, present this Person, Captain Vaughan, to you, as the Man who was then Christened?

Mr Dascine. Yes, the next time.

Mr Phipps. Now, is Captain Vaughan, that stands at the Bar, that very Gentleman?

Mr Dascine. I am sure it is he.

L. C. J. You say this Meeting was about 1669.

Mr Dascine. Yes.

Mr Soll. Gen. Pray what was the Reason you were so inquisitive to know what became of that Person that was Christened when you was there?

Mr Dascine. Because I being at the Christening, I ask'd him how the Child did.

L. C. J. How came you to take such extraordinary Observation of that Child? Was he such a remarkable Child?

Dr Newton. Where were you born?

Mr Dascine. In France.

Mr Whitaker. What are you?

Mr Dascine. A Barber by Trade.

L. C. J. What Employment have you?

Mr Dascine. An Officer in the Marshal's-Court sometimes.

Mr Justice Turton. What was this Man's Father, what sort of Man was he?

Mr Dascine. A tall Man.

Mr Baron Powis. What was his Father's Name?

Mr Dascine. Thomas Vaughan.

Mr Justice Turton. Was his Father living when you was there the second time?

Mr Dascine. The last time I was there I did not see his Father, but I saw his Father the second time?

Mr Justice Turton. But you saw Mr Williams, his Godfather?

Mr Dascine. Yes.

Mr Phipps. Call Simon Damméaun.

Tho. Vaughan. My Lord, he is sick, and not able to come out of his Bed.

Mr Phipps. Call Francis Harvey. (Who was sworn.)

Mr Phipps. Do you know Captain Vaughan?

Francis Harvey. Sir, In the Year 1693, I was in France, with one Captain Bontée, who was taken Prisoner in August the same Year; and my Captain he had the Liberty to go up to Paris with a Guard, for his Pleasure, and to learn the Speech. And, as it happened, we came to lodge in a Street, called Dolphin-street, at the Sign of the Crown. And there was some Gentlemen, that were there to learn the Speech, that were my Countrymen; and there was a young Man there, and he was acquainted over the Way, where this Gentleman, Captain Vaughan, lodged; He lodged at his Aunt's, that sold Silks, her Name was Madam Wotton; I saw this Gentleman there; I am sure it is he; and with that I came acquainted with him, as well as the rest.

Mr Phipps. What was he reputed there?

Fr. Harvey. A Captain of a Ship.

Mr Phipps. What did he go for there? A Frenchman, or an Englishman, or an Irishman?

Fr. Harvey. He went for a Frenchman, as I heard; One time his Aunt, she said, that he was born in the West-Indies, at Martenico, and that he was her Sister's Son, that lived in Martenico.

Mr Soll. Gen. You say he was a Captain of a Ship; what Ship?

Fr. Harvey. That I cannot tell.

Mr Soll. Gen. When was that?

Fr. Harvey. In 1693.

Mr Phipps. Is Mr Lefleur here?

Cl. of Arr. He is a Prisoner in the Savoy; he was taken in the same Ship with Mr Vaughan.

Mr Phipps. It is reasonable he should have been here, to give an Account of the Prisoner.

L. C. J. Then they should have taken care to have had him here. Have you any more Witnesses?

Mr Soll. Gen. I think we have given sufficient Evidence that he is an Irishman: But now we shall shew you, that all your Witnesses have given a very extravagant Evidence to prove that he is a Frenchman. All he hoped for was, that the Prosecutors for the King could not be able to prove him an Irishman; He believed there were but three Men could prove him so; that was David Creagh and two more; and so he writes to David Creagh, and tells him, That his Life was in his Power, and he hoped he and the other two would not discover it. This David Creagh was his Neighbour in Ireland; We will call him to prove that Captain Vaughan was born at Galloway in Ireland.

Mr Whitaker. And here is his Letter under his Hand. Bring David Creagh, (Who was sworn.)

Mr Comper. I desire, before he give his Evidence, he may look upon those that have given Evidence about the Prisoner, one by one. (Then he look'd upon Robert French.) Mr Creagh, do you know him.

Dav. Creagh. No. (Then he looked upon the rest.)

Mr Comper. Have you had any of these Men come to you on a Message?

D. Creagh. No, Sir.

Mr Soll. Gen. Do you know Thomas Vaughan, the Prisoner at the Bar,

D. Creagh. Yes, I do.

Mr Soll. Gen. How long have you known him?

D. Creagh. About two Years.

Mr Soll. Gen. Was that your first Acquaintance with him?

D. Creagh. Yes.

Mr Soll. Gen. What Place was he born at, as you have heard?

D. Creagh. At Galloway in Ireland.

Mr Soll. Gen. From whom did you hear it?

D. Creagh. From all Persons that I have heard speak of him.

Mr Soll. Gen. Did he ever own to you that he was born there?

D. Creagh. Yes, oftentimes in my Company.

Mr Soll. Gen. Did you ever receive a Letter from him about your giving Evidence in this Matter?

D. Creagh. Yes, Sir.

Mr Soll. Gen. Do you know this Letter? (which was shown him.)

D. Creagh. Yes, Sir.

Mr Soll. Gen. Do you know his Hand?

D. Creagh. Yes, I partly know it.

Mr Whitaker. Did you ever see him write?

D. Creagh. This is the Letter I received from him.

L. C. J. Read it. Do you think it is his Hand.

D. Creagh. I cannot swear it; but I believe it is his Hand.

Mr Phipps. Have you seen him write?

D. Creagh. I have seen him write several times.

L. C. J. Do you believe it is his Hand?

D. Creagh. Yes, my Lord, but I cannot swear it.

Then the Letter was read.

To Mr David Creagh, in Newgate, These.

Mr Creagh,

I Have some Assurance that Mr Whitaker has no Witness to prove me a Subject of England, but you, and Two more, which I am glad of with all my Heart: I hope I may have none against me that wish me worse than you and Captain Etherington. If Mr Whitaker has not sworn you yet, I hope you will not appear against me. I declare, if I had more than my Life, I would lay it in your Hand. I am like to be sent to Newgate this Day, and it is like you and some more will be sent here, that we may not talk together. The Dutch Dogs took from me Eleven Hundred Dollars in Money, which certainly troubles me more than the Thoughts of Death, which I value not a Straw; but I hope in four or five Days to be supplied. I fear they will keep me close. I have all the Liberty imaginable here to write, and my Friends suffered to see me. I can say nothing that is comfortable, but that I am very well in Health, and nothing concerned, if my Money come in time.

Friday Morning.

T. Vaughan.

Mr Phipps. Is that Letter proved? That is not to the Purpose. Nor of any Weight considering who proves it.

L. C. J. No, that none could prove him a Subject, but he and two more?

Mr Soll. Gen. We will produce only one Witness more, call Mr Jo. Rivet. The Court being informed by some Gentlemen then on the Bench, that there was a Gentleman then in Court one Mr Rivet, who being of Galloway; could probably give some Account of the Prisoner, he was immediately called, and required to depose what he knew.

Jo. Rivet. My Lord, I am sorry I am called, where Life is concerned, when I came hither only out of Curiosity; but the Service I owe to this Government, obliges me to speak what I know, now I am called to it. (Then he was sworn.)

Mr Soll. Gen. Do you know the Prisoner at the Bar? What Countryman is he?

Jo. Rivet. I have known him a great many Years, we were Children together in the same Town, we lived in Galloway in Ireland. I knew his Father, and Mother, and Brothers, and Sisters; and I remember him a Child, as long as I can remember any Thing, I cannot determine to a certain Number of Years; and I remember him not only a School-boy, but also an Apprentice to one Mr Coleman. And I wonder very much at what Mr French says, for by the Name and Place of his Birth, he must have sworn what he knows to be otherwise: For the French's are a Family in Galloway; his Father was an honest Gentleman, and went over into Ireland in the Rebellion in 1641. and he there married a Woman, a Native of Galloway, and had several Children, one of which, in the latter End of King Charles's Reign, turned Papist, and I believe the Grief for it hastened his Father's Death. I own part of the Evidence may be true, about his being in the West-Indies, but his Mother, I believe, was never out of Ireland in her life.

Dr. Oldish. What was his Father's Name?

Jo. Rivet. John.

L. C. J. You say, you knew this very Gentleman an Apprentice to one Tho. Coleman at Galloway.

Jo.

Jo. Rivet. I did so, my Lord.

L. C. J. How long is it since you saw him?

J. Rivet. I cannot be positive, I think at the Execution of *Galloway* in 1691. I cannot say whether at or after; but I saw him about that time, and knew him, and have known him from a Child; I knew him a School-boy, and knew his Brothers.

Mr Justice Turton. What Year did you know him first?

J. Rivet. I dare not be positive, I remember him particularly well.

L. C. J. Are you sure this is the Man?

J. Rivet. I know him as well as any Face I ever saw. I came accidentally into Court out of Curiosity; and one that knew me, that was of *Galloway*, gave Account to the King's Council, and so I am called to give Evidence.

L. C. J. Do you know this *Robert French*?

J. Rivet. I cannot say I know him, for I see him but in the Dark; if I saw him in a better Light, it may be I may. (Then *Robert French* was set up for *Mr Rivet* to see him) I think I recollect the Face, I am not certain.

L. C. J. Do you know this Gentleman?

Rob. French. No, my Lord.

L. C. J. Where did you live?

Rob. French. In *Connaught*.

L. C. J. Did you know *John Vaughan* of *Galloway*?

Rob. French. I have heard of him, my Lord.

Mr Baron Powis. What Trade was the Prisoner's Father?

Jo. Rivet. He had the Market several Years, he lived very well, and kept a Publick House in the Town.

Mr Phipps. Did you know any other *Tho. Vaughan* but this?

Rob. French. No, not in *Galloway*.

Jo. Rivet. This may be a Confirmation of what I say; if it be the same Gentleman, his Hair is reddish.

L. C. J. Pull off his Peruke (which was done.)

T. Vaughan. My Hair is not red.

L. C. J. How are his Eye-Brows?

T. Vaughan. A dark brown, my Lord, the same as my Wig.

Mr Bar. Powis. Let some Body look on it more particularly, (then an Officer took a Candle, and look'd on his Head; but it was shaved so close, the Colour could not be discerned.)

Mr Phipps. We can give an Answer to this, my Lord; we shall prove, that there was one *John Vaughan* at *Galloway*, and he had a Son *Thomas*, that died ten Years ago. As for *Mr Rivet*, he is a meer Stranger to us, we know nothing of him; and by what I can perceive, he comes in as a Volunteer, not sub-pena'd by either Side. And for *Mr Creagh*, we shall shew he is not to be credited in any Thing, for we shall prove him guilty of Felony, and that he swore, that if his Brother would not supply him with Money, he would swear Treason against him, and shop him in *Newgate*; and that he should not come out till he came upon a Sledge; and if so, there is no Body surely can believe he will stick at Perjury, or Forgery, or any Thing else which may be for his Advantage; Call *Mr Christopher Creagh*. (who was sworn.)

Mr Phipps. Pray do you know *David Creagh*?

C. Creagh. Yes.

Mr Phipps. Is he any Relation to you?

C. Creagh. Yes, he is my Brother.

Mr Phipps. Give the Court and the Jury an Account what you know of your Brother.

C. Creagh. It is an unnatural Thing to come on this Occasion, and I am sorry I am called upon this Account.

David Creagh. Speak what you have to say.

Mr Phipps. What do you know of your Brother, whether you have not found him guilty of stealing any Thing?

C. Creagh. My Lord, I am upon my Oath, I have known something of it, he has stolen some Gold from me.

L. C. J. You pretend to be so very nice, you are to answer to what you know of his Reputation in general, and of his Way of living.

C. Creagh. His Reputation has been but very slender, I am very sorry for it; several in the Court can give Account of it, as well as I. He served a Relation of his in *New-Castle*, he served there some Time, and came to Town, and came to me, and depended upon me, and I subsisted him; and he took an Opportunity one Day, when I and my Wife were gone abroad, and no Body at home but the Maid, and went up Stairs, where my Wife's Room is, and there being a Sash-Window, he opens it, and took out of my Wife's Closet several Pieces of Gold.

L. C. J. How did you know that he did it?

C. Creagh. I found it out afterwards; he was my Brother and therefore I did not prosecute him. I did not know he had it, till afterwards, that I found to whom he had disposed of the Gold. I enquired who was in the House, and thought the Maid had it; and she said none had been there, but my Brother; and he at last owned the Fact, and I had it again.

L. C. J. Have you any more to say of your Brother?

Mr Phipps. Did he ever threaten to swear against you?

T. Vaughan. Or me?

C. Creagh. He has been confined in *Newgate* Eighteen Months, and I subsisted him in Charity, I allowed him all along; and he has been sending to me by several Messages, that if I subsisted him not with more Money, than I did allow him, he would swear me into a Plot.

L. C. J. Did he tell you so?

C. Creagh. No, but he has sent me Word so.

L. C. J. Is the Man here that he sent this Word by?

C. Creagh. Yes, the Man is here.

Mr Phipps. Let him stand up.

L. C. J. Where do you live?

C. Creagh. In *Watlin-street*, I am a Merchant; I declare it is not in Favour or Affection, but only in Conscience, that I declare this.

D. Creagh. This is only to hinder me from giving my Evidence against a Merchant that I have taken up.

T. Vaughan. What Character had he in *Spain*?

Then *David Creagh* spoke but was not heard.

L. C. J. What do you say of the Gold?

C. Creagh. He had it, my Lord.

D. Creagh. Why did you not prosecute me then, if I had it?

L. C. J. You are not sure he took the Gold.

C. Creagh. I was so sure he had it, because I had it from him again by another hand.

L. C. J. Did he tell you so, that he had it?

C. Creagh.

C. Creagh. No, but I had a Letter about it.

L. C. J. Where is that Letter?

C. Creagh. I have it not here.

L. C. J. Give not an Evidence of a Letter, without the Letter were here, it ought to have been produced.

Mr Phipps. Call *Christopher Heyden* (he was sworn.) Do you give the Court an Account what *David Creagh* has said to you of swearing against any Body.

C. Heyden. Several Times, when my Master has sent me to him, to pay him Five Shillings a Week, or Five and Six-pence a Week to subsist him.

Dr Oldish. Who are you servant to?

C. Creagh. He is my Servant.

C. Heyden. This *David Creagh* has often told me, that I should tell his Brother, that if he would not supply him with more Money, he would swear against him. When I came to the *Sessions-House*, when the *Pirates* were tried the first time, I was going through the *Bail-Dock*, where this *David Creagh* called to me; and I asked him what he did there? He said he was to be Evidence against *Captain Vaughan*. No certainly, said I, you do not know him; do you? Says he, here's the Thing, it had been better for me, that I had been an Evidence against him before this; and I am forced to be an Evidence against him, to save my self: And he bid me tell his Brother, God damn his Soul to all Eternity, if he did not send him Supply that Day, he would have him in *Newgate*, and that he should not come out again, till he came out upon a Sledge.

L. C. J. Did he say so?

C. Heyden. Yes, my Lord.

D. Creagh. How long is it ago, *Mr Heyden*?

C. Heyden. It was the Day the *Pirates* were tried; more than that, here was *Mr Wroth's* Man was with me at the same time; and because he should not hear what you said, you took me to the Door.

Mr Phipps. Is *Daniel Bryan* here? (He appeared and was sworn.)

Daniel Bryan. I was subpena'd here for I know not what: For I know not *Captain Vaughan*.

Mr Phipps. Give me leave to ask you a Question. Do you know, or have heard of *David Creagh*?

Daniel Bryan. Yes, Sir.

Mr Phipps. Will you give an Account of what he has said of Swearing against any Body?

Daniel Bryan. He has threatened his Brother several times, that if he would not send him relief, he would bring him in for something, and would inform against him.

Mr Phipps. Did he say he would swear against him?

Daniel Bryan. He did say he would inform against him.

Mr Phipps. What did you hear him say of swearing against any one?

Daniel Bryan. He said, he had rather others should perish, than himself.

Mr Whitaker. This Man was Condemned for the same Crime.

Mr Phipps. *Mr Vaughan*, have you any other Witnesses? Call *Creighton* (who was sworn.) What Countryman are you?

Creighton. A *Connaught* Man, I was born in *Galloway*, I believe *Mr Rivet* knows me.

Mr Phipps. Did you know one *John Vaughan*, that lived at *Galloway*?

Creighton. I knew him very well.

Mr Phipps. Do you know the Prisoner at the Bar?

Creighton. No.

Mr Phipps. Do you remember, that That *John Vaughan* had a Son *Thomas*, and what became of him?

Creighton. Yes, he had a Son *Thomas*, but I understood that he went somewhere into the Country, and there died, and it was spread all about the Town.

Mr Phipps. Do you know what he died of?

Creighton. I cannot tell.

L. C. J. How long ago did he die?

Creighton. About ten Years ago. I knew all the Brothers.

Mr Phipps. Did you know that *Thomas Vaughan*?

Creighton. I knew him very well.

Mr Phipps. Is that Gentleman, the Prisoner, he?

Creighton. No.

Mr Phipps. Do you believe that is not the Man?

Creighton. I believe not.

Mr Phipps. Did you ever know any other *Thomas Vaughan*?

Creighton. No.

Mr Justice Turton. Had not *John Vaughan* a Son Apprentice at *Galloway* to one *Thomas Coleman*?

Creighton. No as I know of.

Mr Justice Turton. How old was that Son, *Thomas Vaughan*, when you knew him?

Creighton. I was born at the next Door to that *Thomas Vaughan* that was reputed to be dead.

Mr Justice Turton. Was not that *Thomas Vaughan* Apprentice to *Mr Coleman*?

Creighton. I cannot certainly tell.

Mr Justice Turton. How old was that *Thomas Vaughan* when he went away from *Galloway*?

Creighton. I cannot tell.

Mr Justice Turton. What is your own Age?

Creighton. My Age is about Five and Twenty.

L. C. J. You have not seen him in Ten Years?

Creighton. No, my Lord.

L. C. J. Can you take it upon your Oath, this is not the Man you saw ten Years ago, that *Thomas Vaughan* that you knew?

Creighton. Yes, my Lord.

L. C. J. How old was he when you were acquainted with him?

Creighton. I cannot tell certainly; I believe he might be about fifteen.

L. C. J. How long is that since?

Creighton. Ten Years.

L. C. J. What is your Name?

Creighton. *Creighton*.

Mr Cowper. You say you knew him ten Years ago; Pray what sort of Person was he, and how did he differ from this Man?

Creighton. He was better Set, and not quite so Tall as this Man, and full of the Small-pox; he was the quarrelsomest Boy in the whole Town.

Mr Soll. Gen. You say he was not quite so Tall as this Man.

Creighton. No, he was not quite so Tall.

Mr Soll. Gen. Do you think he might not grow since? This was Ten Years ago, when he was but fifteen Years old.

Mr Cowper. You knew him at fifteen; How long had you known him?

Creighton. From my Infancy, till he departed the Town.

Mr Cowper. During all that Time what Employment was he in? Tell some Circumstances.

Creighton. I think this Vaughan went to one Mr Ruffel's School.

Mr Cowper. What to do?

Creighton. To learn to write and read.

Mr Cowper. And was he not an Apprentice in that time?

Creighton. I cannot tell.

Mr Cowper. Were you acquainted with him?

Creighton. Yes.

L. C. J. You lived next Door to him, Sure you must be acquainted with him?

Creighton. He was a fighting Boy, for I remember he did once thrash my Coat soundly.

L. C. J. Where do you live now?

Creighton. At the Castle and Falcon in Aldersgate-street.

L. C. J. What Trade are you?

Creighton. A Shoemaker.

Mr Baron Powis. How long have you lived here?

Creighton. This Ten Years.

Mr Baron Powis. What did that Thomas Vaughan die of, that you say was dead before you came away, as it was reported up and down?

Creighton. I cannot tell.

Mr Cowper. Just now you said he went away from Galloway, and it was reported then that he was dead ten Years ago; now you say you have been in England ten Years.

Creighton. I came into England about ten Years ago.

Mr Cowper. Did you hear it at Galloway before you came away?

Creighton. I heard it at Galloway before I came to London, and there are many can testify that there was a Report that he was dead.

Mr Justice Turton. How long was he gone from Galloway before you came away?

Creighton. I cannot say to an Hour; I heard he was dead.

L. C. J. Well, well, he went away from Galloway.

Mr Justice Turton. Have you not been here twelve Years?

Creighton. I think not; I came a little before the Revolution.

Mr Justice Turton. That is eight Years ago. Just now you said you had been here ten Years.

Mr Phipps. Call John Kine. (who was sworn.) John Kine, Did you know one John Vaughan in Galloway?

John Kine. Yes, I lived with him.

Mr Phipps. What Children had he?

John Kine. Four Sons.

Mr Phipps. Had he any one of those Sons that was named Thomas?

John Kine. Not of those four.

Mr Phipps. Had he a Son Thomas?

John Kine. Yes, he had; he died about ten or eleven Years old of the Small-pox.

Mr Phipps. You say you lived with this John Vaughan; look upon the Prisoner at the Bar, is he any of those Sons?

John Kine. No, Sir; I never saw this Man till now.

Mr Phipps. How long did you live with him?

John Kine. About Eight or Nine Years.

Mr Phipps. But how long have you been come away from him?

John Kine. About Ten Years.

Mr Justice Turton. How well do these two Witnesses agree together? The other said he died at

fifteen, and was pitted with the Small-pox. This Man says he died at ten, and of the Small-pox.

L. C. J. Where do you live now?

John Kine. I live in the City.

L. C. J. How long have you lived there?

John Kine. Twelve Years.

L. C. J. How long was this Thomas Vaughan dead before you came hither?

John Kine. Really I cannot be positive, I believe about eight or nine Years.

L. C. J. Did Thomas Vaughan die of the Small-pox?

John Kine. Yes.

L. C. J. That you are sure of.

John Kine. I am sure that was the Disease he died of.

L. C. J. You know him well, I believe.

John Kine. Yes, my Lord.

L. C. J. How old was he when he died?

John Kine. About ten Years.

L. C. J. Where was he buried?

John Kine. At Galloway.

Mr Justice Turton. Why does not the Officer take Care? There is one talking with the Witness. Can you now reconcile your Evidence? (To the Prisoner's Council.)

L. C. J. Have you any more Witnesses?

Mr Phipps. No, my Lord.

Mr Justice Turton. What were the Names of all the Sons?

John Kine. The eldest was John Vaughan, the other William Vaughan, another Edward Vaughan, and another James Vaughan; that was all that he has alive.

Mr Whitaker. There is never a Thomas Vaughan among these.

Mr Cowper. Thomas died up and down in several Places.

Mr Phipps. Mr Rivet, Do you know the Sons of that John Vaughan?

Mr Rivet. He had all these Sons, John, William, Thomas and James. He speaks of a Son Edward, I cannot exactly remember whether there was such a Son or no; though I have a rude Idea of it, but am not certain. I knew this Thomas, I went to School with him, and I saw him in the Year 1691. about the Surrender of Galloway.

Fury-man. Is that Man at the Bar the same Thomas Vaughan?

Mr Rivet. I am positive of that.

L. C. J. You saw him at the Surrender of Galloway?

Mr Rivet. I did; it was about that time.

Thomas Vaughan. I am a Subject of the most Christian King, and I desire, though I speak English, that I may be examined in French, in a Matter that touches me so near. And you may see by my Commission, my Lord, that I am a French-man; which I desire may be read.

L. C. J. We shall not trouble you with that.

Thomas Vaughan. I can shew you my Commission, wherein the King, my Master, declares me to be a Subject of France.

Dr Oldish. Mr Vaughan, I think, you need not trouble the Court to read the Commission; the Commission is the same as for all other Subjects of the French King, wherein he is look'd upon as a Natural born Subject of France; and so he owns himself upon his Examination before the Judge of the Admiralty.

L. C. J. Have you any more to say? As to the Examination, who can prove that?

Mr Cawley.

Mr Cawley. I can prove that, my Lord. (Mr Cawley was sworn.)

L. C. J. Is that Thomas Vaughan's Examination?

Mr Cawley. Yes, my Lord, it is signed by him; and taken before Sir Charles Hedges the 25th of July, 1695.

L. C. J. Read it. Then Mr Cawley read the Examination of Thomas Vaughan.

The 27th of July, 1695.

Officium Domini contra Thomas Vaughan Capnem' Navicule, The Loyal Clencarty.

The Examination of Thomas Vaughan late Commander of the Ship, the *Loyal Clencarty*, aged Twenty Six Years, taken before the Right Worshipful Sir Charles Hedges, Kt. Judge of the High Court of Admiralty of England.

THIS Examinee saith, That he was born at Martenico within the Dominions of the French King, and is his Subject, but refuses to answer of what Parents he was born; That he came last from thence about four Years ago as Commander of a Ship called the *Hare*, which had been before taken from the English, and came in her to Nants in France, and hath ever since been in France, or cruizing in French Ships; That he hath been a Commander ever since he was Sixteen Years of Age, and hath Commanded several French Privateers, and was Commander of a Privateer of St. Malo, called the *Granada* of 36 Guns, which about two Years ago took the *Diamond*, and the Examinee was never till now taken. Being asked, Whether he ever lived in England, or in Ireland? he refuses to answer. Being asked, Whether he knew any Thing of the taking and carrying of a Custom-House-Boat from the Downs to Bulloigne? Or, Whether he was then in London, or did give directions to any Persons, or knew of her being carried off? he answered nothing, but said, That if any Person would prove it against him, he was present to answer it: But saith, That in France he heard of her being brought to Bulloigne; and he the Examinee bought her at Bulloigne of the Men that carried her away, and that she cost him 900 and odd Livres, and was then called the *Elizabeth* and *Anne*, or *Michael* and *Anne*, but which doth not remember; That he the Examinee still hath the said Vessel at Bulloigne; That he cannot tell the Names of the Persons he bought her of, and that took her away, but believes they had a Commission; That something above three Weeks ago the Examinee went with a Commission from the French King on Board a Two-and-twenty-Oar Barge, called the *Loyal Clencarty* then at Bulloigne as Commander thereof, and on Monday last was a Fortnight was taken by the *Coventry* Man of War at the Buoy in the Gunfleet; And that the Commander of the *Coventry* took away this Examinee's Commission; being asked upon what Design he came out with the Barge, replied that it was not to take the Air; That the Barge formerly belonged to the Lord Danby, and was taken by a French Privateer about a Year ago; That before he came out, he met with two English Seamen upon the Court of Guards at Bulloigne, who told the Examinee, That they had been taken Prisoners, and the *Grigate* took them in upon Charity; and afterwards an English Man, who told the Examinee

that he had been taken in Land-Service, and believes it was before Fort Kenoque; and the said Person sitting upon a Stone at Bulloigne, and not knowing what to do with himself, the Examinee took him on Board for charity, and designed to put the said three Persons ashore in England. Being asked whether he did not put in a Claim for the said Custom-House-Boat by reason of her Captain? Or, whether the Persons that took her had any Commission from him? He the Examinee answered, That they that took her must answer for what they did, and he must answer for his Actions only.

Bodem die Capt'
coram me.

C. Hedges.

Thomas Vaughan.

L. C. J. Mr Vaughan, Have you any more to say?

Tho. Vaughan. It is very hard Circumstances I am under; if an English Man was in France, under the straights that I am here, it would be very hard for him to prove himself an English Man.

L. C. J. You have had a very fair Tryal, and you shall have Justice, be it for you, or against you.

Thomas Vaughan. I hope your Lordship will do me Right.

L. C. J. Gentlemen of the Jury, The Prisoner at the Bar, Thomas Vaughan, stands Indicted for High-Treason, for adhering to the King's Enemies, viz. That he put himself as a Soldier in the Service of the French King, in a Vessel called the *Loyal Clencarty*, with diverse other Persons on Board her, that were Subjects to the French King, and Enemies to the King of England, with a Design to burn the King's, and his Subjects Ships; and for that purpose went in that Ship. That the Prisoner was on Board the Ship, and with such a Design, is proved, without all Contradiction, by several Witnesses that have been produced; that is, that the Two-and-twenty-Oar Barge, which is the same called the *Loyal Clencarty*, lay hovering about the Buoy in the Nore; those Men in the *Coventry* imagined they had some Design of Mischief to the Ships, and they made after him with the *Coventry*. It was apprehended by Captain Vaughan and his Crew, that the *Coventry* would be too hard for them, and so they did submit, and were taken. And being examined on what Account he came on our Coasts, it is confessed by him, That he came with a Design to burn our Ships. You may observe what sort of Men were a Board. You have heard it proved to you, that Crittenden, the Marshal of Dover, entered those Persons taken a Board the French Vessel, of what Nation, and what Quality they were; and there were about a Dozen of these French Men, for they were entered as such. Now for a Subject of England to join with the King's Enemies, in pursuit of a Design to burn or take any of the King's, or his Subjects Ships; that is, an Adherence to the King's Enemies. But it appears, not only that Captain Vaughan was in their Company, but that he was their Commander; which commanding the Vessel, on Board which were French Subjects Enemies of the King and the Kingdom of England, is High-Treason, and the particular Fact of Treason for which he is indicted. And it appears that he had a Commission from the French King to Command this Vessel, the *Loyal Clencarty*.

Now the Prisoner having this Commission to be Commander of this Vessel, though they who served under him were not Native *French*-men but other Foreigners, yet their subjecting themselves to him, acting by Virtue or Colour of that Commission, makes them to be the *French* King's Subjects, during their continuance in that Service; for otherwise all Prizes, which they should take, would make them to be Pirates; which none will pretend to maintain, when they acted by a Commission from a Sovereign Prince, that was an Enemy. And if they shall cruize upon our Coasts with a Design to take, or destroy any of the King's, or his Subjects Ships, they are Enemies, though they were the Subjects of a Prince, or State in Amity with the King of *England*. But at this Time there is no necessity of entering upon this Question, because it is proved that diverse, who were on Board this Vessel were *French*-men, the joyning with whom, in Prosecution of such a Design, is that kind of High-Treason of adhering to the King's Enemies. So that if Captain *Vaughan* was a Subject of *England*, he is proved guilty of High-Treason, if you believe the Evidence.

But now it is insisted on by Mr *Vaughan* and his Council, That though he was exercising Hostility against the King of *England*, and designing Mischief to his Subjects; yet, says he, I was not a Subject of *England*, I was Born a Subject to the *French* King. If that be true, then is he not guilty of High-Treason; he is an Enemy, but not a Traytor: And that is the Point you are now to consider of, whether he be a Subject of *England* or *France*?

Now as to that, he being taken under such Circumstances, and speaking *English*, it is reasonable to be presumed that he is a Subject of *England*, unless he proves the contrary. But then you have heard by several of the Witnesses, That when he was at first taken, he acknowledged himself to be an *Irish*-man; and he did not only acknowledge it to them that assisted in apprehending him, but being carried to *Dover*, when the Marshal entered him in his Book as a Prisoner, he entered him not as a *French*-man, but he declared at that Time he was an *Irish*-man. It may be he did not consider the Consequence of it, for the next Day he was carried before the Mayor of *Dover*, and then having considered better of it, that it was not for his Interest to acknowledge himself an *Irish*-man, he said he was born a Subject to the *French* King, and at *Martenico*. There were *Scotch*-men and *Irish*-men taken at the same Time, and they were entered as of the Nation they belonged to, and so were diverse entered as *French*-men. So that unless he hath given sufficient Evidence to the contrary, this is sufficient to induce you to believe him an *Irish*-man Born.

But he has endeavoured to take off this Evidence that hath been given. First, he says, It was when he was in Drink that he did confess himself to be an *Irish*-man; but when he was sober, he said he was a *French*-man. And besides that, he calls a Witness, whose Name is *Robert French*, to give an Account of him. And *French* says, That about fourteen Years ago he was at *St. Christophers*, on *French* Ground, and he did then see this *Thomas Vaughan*, he did take him then to be about the Age of fifteen. He says he stay'd there about four and twenty Hours, and that he was in the Company of this *Vaughan* and his Father about five or six Hours. He says his Father told him at that Time, that this Young Man, who was then about

fifteen Years of Age, was born at *Martenico*. He says farther, That his Father Did recommend this Son to him to be a Sea-faring Man, being the Imployment he intended him for; and he is sure this is the Man. This *Robert French* was ask'd, whether he ever saw this *Vaughan* from the Time he first saw him at *St. Christophers* until this Time; He says he never saw him since that Time, till about two Months ago. He gives you this Account how he came to meet with him; he says he came to Town, and being a charitable Man, he used to visit the Prisons; and he came to *Newgate* to one *Knowles*, and there he saw Captain *Vaughan*; and though he had not seen him for fourteen Years before, yet he knew him again, and is positive that he is the same Person.

Another swears he knew the Prisoner about five Years, and he was reputed a *French*-man.

There has been another Witness produced which is that *Dafine*, who came up as a *French*-man, and talked *French*, pretending he could not speak *English*; but on examination it was discovered that he had an Imployment in *England*, and was a Bayliff's Follower, and it appears he can speak *English* very well; and notwithstanding his pretence has given his Evidence in *English*. And he tells you, That he about the Year 1669 did go to *St. Christophers*, and afterwards to *Martenico*, and there he went to one *Williams*, who had a Friend whose Name was *Vaughan*, at whose House there was a Christning to be of his Son, to whom *Williams* was to be Godfather; and this Witness was carried thither, and the Child was Christned *Thomas*. He tells you he went over again to *St. Christophers*, and to *Martenico* in the Year 1677, and that then he enquired for this Child, and did see him. Then he says, after that, he went over again to *St. Christophers* and to *Martenico* about thirteen Years ago, and then saw him again, and, I think, never saw him since until very lately; and this Prisoner, he undertakes to tell you, is the very Person.

But then one *Harvey* tells you he saw him in *France* in the Year 1693. and there he was taken to be a *French*-man, and he lived with a Woman that sold Silk that said he was her Nephew, her Sister's Son, and that he was Born at *Martenico*. This is the Evidence he gives you to induce you to believe he is a *French*-man.

Now in the first Place, before I open the Evidence in Answer to it, I desire you to observe the Weight and Import of this Evidence that hath been produced by the Prisoner. First, for this *French* that says he saw Captain *Vaughan* fourteen Years ago, when he was about fifteen Years of Age; he had no former Acquaintance with him, stay'd in his Company but six Hours, and came away within four and twenty Hours after his arrival, and never saw him again in fourteen Years; it is a strange Thing that he should know him again so well as to be positive that he is the same Person, for in fourteen Years there is a great Alteration in a Man: For a Man that has known one at the Age of fifteen, and not seen him in fourteen Years after, though before he was very well acquainted with him, cannot so easily know him again. But however he is positive, upon his Oath, that he is the same Person that he saw at *Martenico*.

Then as for *Dafine*, you may consider him that he should take notice of a little Child that he saw Christned several Years before, and that he should now remember him when he had not seen him in thirteen Years; sure he had a great liking to this Child, that when he went to *Martenico* many

Years after he should be so inquisitive after him ; I must leave these Things to you to consider of : That he might have an *Aunt* in *France* that is very possible too.

But now consider how this Evidence hath been endeavoured to be answered ; two Witnesses have been produced to contradict that which they have sworn. The first is *David Cray*, who tells you he has known the Prisoner for two Years, and says he was always reputed to be an *Irish-man*, and Born in *Galloway* ; he has often discoursed with him about his Country, and he told him that he was an *Irish-man*, and Born at *Galloway*. Then you hear what a Letter is produced writ to *Cray* when he was to come upon his Tryal, he mentions what his Defence was, and that it was impossible that any could do him any harm but he and two more. *Cray* swears it is his Hand ; that he hath seen him write, and he believes it is his Hand.

Then there is a Gentleman, *Mr River*, that came here by chance, who is a *Galloway-man*, he saith he knew the Prisoner's Father, who was reputed to come thither about the Time of the Rebellion in *Ireland*, in 1641. and lived at *Galloway* ; and that this Prisoner, *Mr Vaughan*, was his Son, and he knew him of a Child, was well acquainted with him, lived hard by him, remembers him an Apprentice in *Galloway*, and tells you to whom, and says he is sure this is the very Man ; and that he saw the Prisoner in 1691, about the Time of the Reduction of *Galloway* ; and he is confident that the Prisoner is the Son of *John Vaughan* at *Galloway*, and he gives you a particular Account of him and his Family ; viz. of the Reputation and Manner of living of his Father, and what other Brothers he had ; so that there is no Objection against his Credit, and it is hard to believe, since he is so positive and circumstantial, that he can be mistaken.

But the Prisoner and his Council have endeavoured to answer all this Evidence ; and first they have called *Cray's* Brother to prove that he is an ill Man, for that he came into this Town where his Brother lives, who subsisted him and took him into his House, and one Day when he and his Wife went abroad, he made bold with some of his Money ; but they thought the Maid had it, and he charged her with it, but to his satisfaction it did afterwards appear that *David* had it.

Then there is another, *Christopher Hyden*, *Christopher Cray's* Servant, who says, he heard *D. Cray* say he was forc'd to be an Evidence against *Vaughan* to save himself ; and that he used to threaten his Brother, that if he would not give him more Money he would swear against him. *Bryan* saith much to the same purpose. These are produced to take off the Credit of *D Cray's* Testimony.

But then Gentlemen, as to the Place of the Prisoner's Birth, two other Witnesses are produc'd to give you satisfaction that this Captain *Vaughan* was not the Son of that *Mr Vaughan* of *Galloway*, whose Evidence I will open to you, and then you will see how coherent they are in their Testimony. The first is *Creighton*, a Shoemaker, he says he knew *Thomas Vaughan*, the Son of *John Vaughan* of *Galloway*, about ten Years since ; he was a *Galloway-man* Bred, and lived the next Door to *John Vaughan* that had a Son *Thomas*. He says he has been here about ten Years in *England*. He says he thinks that *Thomas Vaughan*, the Son of *John Vaughan*, was about the Age of fifteen Years, but that this Prisoner is, not he, for that *Thomas Vaughan* was disfigured with the Small-pox ; he re-

membered him well, he had reason for it, for he once basted him soundly, and that he went away from *Galloway* when he was about fifteen Years of Age, and was reported to be Dead ; and if it were so this Prisoner cannot be the Person.

The other Witness is as positive as *Creighton*, for he saith, He knew this *John Vaughan* of *Galloway*, and his Son *Thomas* ; and that *Thomas Vaughan*, Son of *John Vaughan*, died about ten Years since of the Small-pox. So that they have found two *Thomas Vaughans* ; one tells you of one that was fifteen Years Old, and was disfigured with the Small-pox ; and the other tells you of *Thomas Vaughan* who died of the Small-pox when he was ten Years of Age.

You are therefore to consider the Evidence on both Sides. The Question principally is, Whether the Prisoner be a Subject of the King of *England* ? If you are satisfied that he is not an *English* Subject, but a *French-man*, then he is not guilty of this High-Treason ; but if you are satisfied, by the Series of the whole Evidence, that he is an *Irish-man*, and that he had a Commission from the *French King*, and that he cruized upon our *English* Coasts, in Company with the King's Enemies, with a Design to take, burn, or destroy any of the King's or his Subjects Ships, you are to find him guilty of the high Treason whereof he stands indicted, otherwise you are to acquit him.

Cl. of Arr. Swear an Officer to keep the Jury ; (which was done.)

After a short stay, the Jury returned into Court, and gave in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names. *E. Leeds.*

Mr. Leeds. Here.

Cryer. Vous avez, and so of the rest.

Cl. of Arr. Gentlemen, are you all agreed of your Verdict ?

Jury. Yes.

Cl. of Arr. Who shall say for you ?

Jury. Our Foreman.

Cl. of Arr. *Thomas Vaughan*, Hold up thy Hand. (which he did) Look upon the Prisoner. How say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty ?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the Treason committed.

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court hath recorded it : You say that *Thomas Vaughan* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods or Chattels, Lands or Tenements at the Time of the High-Treason committed, or at any Time since to your Knowledge, and so you say all.

Jury. Yes.

Tho. Vaughan. My Lord, let me beg one Favour, that I may be used like a Gentleman, that I may be sent to a Chamber, and not to a Dungeon, and that my Friends may come to me.

L. C. J. Captain *Vaughan*, they say you once made an escape, and therefore the Keeper must keep you with Humanity, but with all Security.

Tho. Vaughan. I desire I may be kept like a Christian.

L. C. J. The Keeper must do his Duty.

Cl. of Arr. *Thomas Vaughan*, hold up thy Hand, (which

(which he did) Thou standest convicted of High-Treason against our Sovereign Lord the King; What hast thou to say for thy self why Judgment shall not pass against thee to dye according to the Law?

Tho Vaughan. I am altogether a stranger to the Law, my Lord, I refer my self to my Council.

L. C. J. Well, then you refer your self to your Council. You have had a fair Tryal, and have no reason to complain of it: If your Council have any Thing to say in arrest of Judgment they shall be heard.

Mr. Phipps. My Lord, the Indictment has two sorts of Treason laid in it; the one for adhering to the King's Enemies, the other levying of War; and, with submission, I take it that the first is not well laid, for it says that the Prisoner did adhere to the King's Enemies, but says not against the King. Now every Body knows that the *French King* is in War, not only with *England* but *Holland*, and *Spain*, and the Emperour: But if a Man joyn with the *French* against any of them, he adheres to the King's Enemies, and yet it cannot be said to be against the King; therefore they ought to have laid it that he did adhere to the King's Enemies *contra Dominum Regem*; it must be aiding and comforting them against the King that makes the Treason.

L. C. J. It does say so.

Mr. Phipps. No, my Lord, it only says that Captain *Vaughan* did adhere to the King's Enemies, and does not say it was against the King; and if that be Treason, is what we desire to know.

L. C. J. If he adhere to the King's Enemies, it must be against the King, though he assist them only against the King's Allies, for thereby the King's Enemies may be more encouraged and enabled to do mischief or Damage to the King: Suppose you assist the *French King* against the King of *Spain*, that is now in Alliance and League with the King of *England*, and the *French* in actual Enmity, that is to adhere to the King's Enemies against the King.

Mr Phipps. Would that be Treason my Lord?

L. C. J. Yes certainly, though that is not a Point in this Case, and so not necessary to be determined now; for the Act of Parliament of 25 of *E. 3.* defines Treason in adhering to the King's Enemies, and expresses the Overt-Act in giving them aid or comfort; it is sufficient to alledge the Treason in the Words of the Statute, adhering to the King's Enemies. An Overt-Act alledged, shews it to be against the King; and in pursuance of that adherence he did so and so; he was a Captain and Soldier in the Ship, did joyn with the King's Enemies, &c. with a Design to destroy the King's and his Subjects Ships; surely that is most manifestly an adherence to the King's Enemies against the King.

Mr Phipps. The Overt-Act, if it were alledged sufficiently, would not help it; for if there can be an adhering to the King's Enemies that is not Treason, they ought to alledge such adhering as is Treason, and if the Treason it self is not well alledged, the Overt-Act will not help it.

L. C. J. There is an Overt-Act to shew it to be against the King. It is said all along, he being in this Vessel *Clencarty, cum diversis Subditis.*

Mr Phipps. But then that Overt-Act is not well alledged, for 'tis said only he went a cruizing; whereas they ought to have alledged that he did commit some Acts of Hostility, and attempted to

take some of the King's Ships; for cruizing alone cannot be an Overt-Act, for he might be cruizing to secure the *French Merchant Ships* from being taken, or for many other purposes, which will not be an Overt-Act of Treason.

L. C. J. I beg your Pardon. Suppose the *French King*, with Forces, should come to *Dunkirk* with a Design to invade *England*, if any one should send him Victuals, or give him Intelligence, or by any other Way contribute to their Assistance, it would be High-Treason in adhering to the King's Enemies.

Mr Phipps. If the *French King* had designed an Invasion upon *England*, and Captain *Vaughan* had assisted in his Vessel in forwarding the Invasion, it would have been Treason; but here is nothing mentioned but cruizing.

L. C. J. Cruizing about the Coasts of *England* with a Design to destroy the King's Ships.

Mr Phipps. That Design ought to be made appear by some Act of Hostility; for in the Case of *Burton* and *Bradshaw*, and others, which my Lord *Coke* cites, the agreeing to rise and pull down Inclosures, and meeting and providing Arms for that purpose, is agreed not to be levying of War; and they were indicted for conspiring to levy War upon the Statute of Queen *Eliz.* And in this Case, here being only a Conspiring, and nothing attempted, it can be no more Treason than it was in that Case.

L. C. J. When Men form themselves into a Body, and March Rank and File with Weapons offensive and defensive, this is levying of War with open Force, if the Design be Publick. Do you think when a Ship is armed with Guns, &c. doth appear on the Coast, watching an opportunity to burn the King's Ships in the Harbour; and their design be known, and one goes to them, and aids and assists them; That this is not an adhering to the King's Enemies? Here are two Indictments, one for levying War, and the other for adhering to the King's Enemies; but the adhering to the King's Enemies is principally insisted on, and there must be an actual War proved upon the Person Indicted in the one, yet need not be proved in the other Case.

Mr Phipps. The same certainly is necessary in one as well as the other; for barely adhering to the King's Enemies is not Treason, but there must be an actual aiding and comforting them; and a meer Intention to assist the King's Enemies, is not an adherence within the Statute of 25 *Ed. 3.*

L. C. J. If there be not High-Treason in the Act alledged, that is, if it do not make out an adherence to the King's Enemies, than your Objection would hold good.

Mr Phipps. The going to cruize, my Lord, does not make out an adherence to the King's Enemies; for his cruizing might be for other purposes as well as to take the King's Ships, and your Lordship will intend the best in favour of Life.

Mr Whitaker. To burn the King's Ships.

L. C. J. Treby. The Indictment is laid for adhering to, and comforting and aiding the King's Enemies. You would take that to be capable to be construed adhering to the King's Enemies in other Respects; but I take it to be a reasonable Construction of the Indictment, to be adhering to the King's Enemies in their Enmity. What is the Duty of every Subject? It is to fight with, and subdue, and weaken the King's Enemies: And contrary to this, if he confederate with, and strengthen the King's Enemies, he expressly contradicts this Duty of his Allegiance,

Allegiance and is guilty of this Treason of adhering to them. But then you say here is no aiding, unless there were something done, some Act of Hostility. Now here is going aboard with an intention to do such Acts; and is not that comforting and aiding? Certainly it is. Is not the *French* King comforted and aided, when he has got so many *English* Subjects to go a cruizing upon our Ships? Suppose they man his whole Fleet, or a considerable part of it; Is not that aiding? If they go and enter themselves into a Regiment, Lift themselves and March, though they do not come to a Battel, this is helping and encouraging; such Things give the Enemy Heart and Courage to go on with the War; or else, it may be, the *French* King would come to good Terms of Peace. It is certainly Aiding and Comforting of them, to go and accept a Commission, and enter into their Ships of War, and Lift themselves, and go out in order to destroy their Fellow-Subjects, and ruin the King's Ships; these are Actings of an hostile Nature. And if this be not Adhering, &c. it may as well be said, That if the same Persons had made an attack upon our Ships and miscarried in it, that had not been so neither, because that in an unprosperous Attempt there is nothing done that gives aid or comfort to the Enemy. And after this kind of Reasoning they will not be guilty, till they have Success; and if they have Success enough, it will be too late to question them.

Mr *Phipps*. Intending to levy War is not Treason, unless a War be actually levied.

L. C. J. *Treby*. Is it not actual levying of War, if they actually provide Arms, and levy Men, and in a Warlike manner set out and cruize, and come with a design to destroy our Ships?

Mr *Phipps*. It would not be an actual levying of War, unless they commit some Act of Hostility.

L. C. J. Yes, indeed, the going on Board, and being in a Posture to attack the King's Ships. As to the Fault you find with the Indictment, there is a Fault, but not in point of Law; they might have laid it more generally, so as to have given more Evidence.

Mr *Baron Powis*. However it is well enough.

But for you to say, because they did not actually fight, it is not a levying of War; Is it not plain what they did intend? That they came with that Intention, that they came in that Posture, that they came armed, and had Guns, and Blunderbusses, and surrounded the Ship twice, they came with an armed Force; that is a strong Evidence of the Design.

L. C. J. You would make no Act to be aiding and assisting but fighting.

Mr *Phipps*. Then next I am in your Lordship's Judgment, whether the Statute of 28 of *Hen.* 8th. by which Captain *Vaughan* is tried, is in force, and be not repealed by the first and second of *Philip* and *Mary*, which saith, that all Tryals, in Cases of Treason, shall be at the Common-Law. Now by the Common-Law before the Statute 28 *Hen.* 8. Treason done upon the Sea, was tried before the Admiral, or his Lieutenant, and my Lord *Coke* in the 12 *Rep.* in the Case of the Admiralty, saith the Jurisdiction of the Admiralty is by the Common-Law. By the Statute 33 *Hen.* 8. Treason confessed before three of the Privy-Council might be tried in a foreign County, but that Statute is repealed by the Statute 1 and 2 of *Philip* and *Mary*; for by the Statute 33 *Hen.* 8. c. 4. Treason committed in *trales*, might be tried in what County the King would assign; but since

the Statute of *Philip* and *Mary*, it must be in the proper County; so that we are in your Lordship's Judgment, whether the Statute of 28 *Hen.* 8. be in force; and whether, since the Statute of 1 and 2 *Philip* and *Mary*, Treasons done upon the Sea, ought not to be tried before the Admirals, or anciently at the Common-Law?

L. C. J. This is Treason by the Common-Law, and the Trial is by the Method of the Common-Law.

Mr *Phipps*. 'Tis true that my Lord *Coke*, and other Authorities say, That the Statute 35 *H.* 8. for trying Treasons committed beyond Sea, is not repealed by the Statute of 1 and 2 *Philip* and *Mary*, but they do not say that this Statute is not repealed by the Statute of *Philip* and *Mary*; and the Books being silent in this, is the Reason why I propose this Question for your Lordship's Judgment.

L. C. J. It is no more a Question than the Tryals of foreign Treason, and then the Determination of the Tryals upon the 35th determines the Question upon this.

Dr *Oldys*. We must have two Witnesses by the Rules of the Civil-Law, an extrajudicial saying of a Party may be retracted by them at any time, that is the Civil-Law, and so there can be but one Witness.

L. C. J. That is not the Law of *England*.

Dr *Oldys*. I do humbly conceive that the Civil-Law is not taken away in this Case; for though the Statute prescribes the Form of Proceedings according to the Rules of the Common-Law, yet as to the Crimes and Proofs the Civil-Law is still in force, and then the Party may retract his Confession in Judgment, much more any extrajudicial saying.

Mr *Whitaker*. You are arraigning the Verdict.

L. C. J. That you should have taken notice of before the Verdict was given. But we think there is no danger in hearing this Objection, because it is so easily answered. How many Witnesses were to the Confession?

Sir *Charles Hedges*. We are not in a Court that proceeds according to the strict Rules of the Civil-Law; but if we were, that Law is not so absurd as to allow that a Party may retract his Confession at any time, so as to make it have no Effect.

Dr *Oldys*. There must be two Witnesses at any time.

Sir *Charles Hedges*. So there are here to the Confession; but you mistake if you think that every particular is to be proved strictly as the Civil-Law requires, for the end of the Statute which directs the Proceedings of this Court was to facilitate the Method of making Proofs, that being found difficult by the Course of the Civil-Law; and therefore was that Statute made, as plainly appears, by the Preamble thereof.

Dr *Oldys*. There is a new Statute that revives that Statute again, and that requires two Witnesses; whereby it is reduced to the Rules of the Civil Law again.

L. C. J. Two Witnesses there must be; but then consider it is not necessary to have two to every individual Overt-Act: For suppose there be two Overt-Acts laid in the Indictments, for one Species of Treason, Compassing and Imagining the Death of the King; if there be one Witness that he bought a Dagger, and said he would kill the King, and he is seen, it may be, going to the King's Bed-chamber with the Dagger; another Wit-

Witness says, he said he would kill the King with a Pistol, and bought a Pistol, and he stood waiting to kill the King as he came by; that is another Overt-Act of the same Treason. If one Witness prove one, and another Witness prove the other, this is sufficient Proof with us.

Dr Oldys. It is another Question, Whether he be a Subject?

L. C. J. That is not an Overt-Act; if there be one Witness to that, it is enough, there needs not two Witnesses to prove him a Subject; but upon the Tryal there were above two Witnesses to prove it: That was *Crittenden*, the Marshal of *Dover*, *Cray* and *River*. I must tell you, as to the Doctrine of the Civil Law, it is not universally received in all Countries; it is received in several Countries as they find it convenient, and not as Obligatory in it self.

Dr Oldys. Yes, in all Places, as to Proof; for 'tis the Law of God and Nations, *ex ore duorum, vel trium*, &c. And one Witness is no Witnesses.

Sir Charles Hedges. Two Witnesses may be necessary to convict a Man of any capital Crime, but then it doth not follow that there must be two Witnesses to prove every particular Fact and Circumstance. In this point, touching the Place of the Nativity of *Thomas Vaughan*, was there not sufficient in his own Confession, together with the other Proofs on the King's behalf, to throw the Burden of Proof upon the Prisoner? You yourselves seem to have been of that Opinion; you undertook to prove it, and 'tis you that have failed in that particular.

L. C. J. Our Tryals by Juries are of such Consideration in our Law, that we allow their Determination to be the best, and most advantageous to the Subject, and therefore less Evidence is required than by the Civil-Law. So said *Fortescue* in his Commendation of the Laws of England.

Dr Oldys. Because the Jury are the Witnesses in reality, according to the Laws of England, being presumed to be *ex vicineto*; but when it is on the High and open Seas, they are not then presumed to be *ex vicineto*, and so must be instructed according to the Rules of the Civil Law by Witnesses.

Mr Baron Powis. This is not a Tryal by the Civil Law; for that Statute was made to avoid the Niceties of your Law.

Mr J. Eyres. He is tried with like Evidence, as in other Cases of High-Treason.

Dr Oldys. No, the late Act requires two Witnesses.

Cl. of Arr. Make Proclamation of Silence.

Cryer. All manner of Persons are commanded to keep Silence, while Judgment is giving, upon Pain of Imprisonment.

And then Judgment was given, according as the Law directs in Cases of High-Treason.

The Commission of Captain *Thomas Vaughan*, which he had by Order of the French King.

Lewis Alexander of Bourbon, Earl of Toulouse, Duke of Amville, Commander of the King's Orders, Governour and Lieutenant-General for his Majesty in the Province of Britany,

Peer and Admiral of France. To all those who shall see these present Letters Greeting; The King having declared War against his Catholick Majesty, the Favourers of the _____ of the Crowns of England and Scotland, and the Estates of the United Provinces, for the Reasons contained in the Declarations Published by his Majesty throughout the Extent of his Kingdom, Countries, Lands and Lordships under his Obedience; and his Majesty having commanded us to take care that the said Declarations be observed, in what doth depend upon the Power and Authority which his Majesty hath been pleased to commit to our said Charge of Admiral, We have according to the express Orders of his said Majesty, given Leave, Power and Permission to *Thomas Vaughan*, living at *Bulloigne*, to arm and set forth in Warlike Manner a Bark, called, *The Loyal Clencarty* of the Burthen of Ten Tuns, or thereabouts, which is at present in the Port of *Bulloigne*, with such Number of Men, Cannons, Bullets, Powder, Shot, and other Ammunitions of War; and Provisions which are necessary to set her out to Sea, in a Condition to sail and cruize upon the Pirates, and others without Commission, as also upon the Subjects of his Catholick Majesty, the Estates of the United Provinces, the Favourers of the _____ of the Crowns of England and Scotland, and other Enemies of this Estate, in what Places soever he can meet them, whether it be upon the Coasts of their Country, in their Ports, or Rivers, also upon their Shores, or Places where the said Captain *Thomas Vaughan* shall think fit to land to annoy the said Enemies; and there to make use of all the Means and Arts permitted, and used by the Laws of War, to take them and bring them Prisoners with their Ships, Arms, and other Things in their Possession.

Provided the said *Vaughan* shall keep, and cause those of his Crew to keep the Maritime Orders, and that he shall carry, during his Voyage, the Flag and Ensign of the King's Arms and of Ours, and cause the present Commission to be registred in the Registry of the nearest Admiralty where he shall be equipped, and leave there a Roll Signed and Certified by him, containing the Names and Surnames, the Births and Residence of his Crew; and make his Return to the said Place, or some other Port of France, and make his Report before the Officers of the Admiralty, and no others, of what shall have happened during his Voyage, and give us Advice thereof, and send his said Report to the Secretary-General of the Marine, with the Papers justifying the same, that we may give such Orders thereupon as may be necessary.

And we pray and require all Kings, Princes, Potentates, Sovereigns, Estates, Republicks, Friends and Allies of this Crown, and all others, to whom it shall appertain, to give the said *Vaughan* all Favour, aid, assistance and succour in their Ports, with his said Vessel, Company and Prizes, which he shall take during his Voyage, without doing, or suffering to be done to him any Trouble or Hindrance; offering to do the like when we shall be by them thereunto required.

And we do command and require all Marine Officers, and others, to whom it shall appertain, to let him safely and freely pass with his said Vessel, Arms and Company, and the Prizes which he shall take, without doing, or suffering to be done to him any Trouble or Hindrance; but on the contrary, to give him all Succour and Assistance that shall be necessary. These Presents to be of no force after one Year, from the Day of the Date hereof.

In Witness whereof we have signed these Presents, and caused them to be Sealed with the Seal of our Arms, and Counter-signed by the Secretary-General of the _____

the Marine, at Versailles the tenth Day of the Month of July, One thousand six hundred ninety five.

L. A. de Bourbon.

L. S.

of Bulloigne, Exercising the Charge of Lieutenant-General of the Admiralty, in the presence of the King's Proctor, at the Request of the said Captain Vaughan, being present, whom we have permitted to sail and cruize upon the Enemies of the Estate. Done at Bulloigne the fourteenth of July, one thousand six hundred ninety five.

By my Lord De Vallencour.

Maginon.

The present Commission was registred in the Registry of the Admiralty of Bulloigne, after having been seen by us James Abbot de la Cocherine, the King's Councillor, deputed to the Intendancy

Versionem hanc Anglicanam in omnibus, cum suo Originali Gallico convenire testor,

Wilhelmus Roche, Notar. Publ.

The TRYAL of EDWARD Earl of Warwick and Holland.

Die Martis 28. Martii, 1699.

About Eleven of the Clock the Lords came from their own House into the Court erected in Westminster Hall, for the Tryals of Edward Earl of Warwick and Holland, and Charles Lord Mobun, in the Manner following.

The Lord High Steward's Gentlemen Attendants, two and two.

The Clerks of the House of Lords, with two Clerks of the Crown in the Courts of Chancery and King's-Bench.

The Masters in Chancery, two and two.

Then the Judges.

The Peers Eldest Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeoman Usher of the House.

Then the Peers, two and two; beginning with the youngest Barons.

Then Four Serjeants at Arms, with their Maces.

Then one of the Heralds, attending in the Room of Garter, who by reason of his Infirmary could not be present.

And the Gentleman Usher of the Black Rod, carrying the White Staff before the Lord High Steward.

Then the Lord Chancellor, Lord High Steward of England alone.

When the Lords were seated on their proper Benches, and the Lord High Steward upon the Wooll-pack.

The Two Clerks of the Crown in the Courts of Chancery and King's-Bench, standing before the Clerk's Table with their Faces towards the State.

The Clerk of the Crown in Chancery having his Majesty's Commission to the Lord High Steward in his Hands, made three Reverences towards the Lord High Steward, and the Clerk of the Crown in Chancery on his Knees presented the Commission to the Lord High Steward, who delivered it to the Clerk of the Crown in the King's-Bench, (then

likewise kneeling before his Grace) in order to be opened and read, and then the Two Clerks of the Crown making three Reverences, went down to the Table; and the Clerk of the Crown in the Court of Kings-Bench Commanded the Serjeant at Arms to make Proclamation of Silence, which he did in this Manner.

Serjeant at Arms. O Yes, O Yes, O Yes, My Lord High Steward his Grace does straitly Charge and Command all manner of Persons here present, to keep Silence, and hear the King's Majesty's Commission to his Grace my Lord High Steward of England directed, openly read, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward. Your Lordships will be pleased to stand up, and be uncovered, while the King's Commission is Reading.

All the Peers stood up, and were uncovered, while the Commission was read.

Clerk of the Crown. **G**Uilielmus Tertius Dei Gratia Angl.

Scot. Franc. & Hibern. Rex Fidei Defensor, &c. Prædilecto & fideli Consiliari. nostro Johanni Domino Somers Cancellari. nostro. Angl. Sciatis quod cum Edrus. Comes Warwic. & Holland nuper de Paroch. Sti. Martini in Campis in Com. Middlesex. & Carolus Dominus Mobun nuper de Paroch. prædict. in Com. prædict. coram dilectis & fidelib. nostris Carolo Lee Milit. Samuel. Buck Willielmo Withers & Francisco Tysson Armigeris & aliis sociis suis Justiciari. nostris ad inquirend. per Sacramentum probor. & legalium hominum de Com. nostro Middlesex. prædict. ac aliis quib. modis & mediis quibus melius sciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius sciri poterit & inquire de quibuscunque prodicionibus Misprisionibus prodicion. Insurrectionib. Rebellionib. Controfact. consur. lotur. falsis fabricacionib. & aliis falsitat. Monet. hujus Regni nostri Angl.

Angl. & alior. Regnor. sive Dominior. quorumcunque ac de quibuscunque Murdris Feloniis Homicid. Interfectionibus Burglar. Raptib. Mulier. Congregationib. & Conventicul. illicit. verbor. prolationib. Coadunationib. Misprisionib. Confederationibus falsis Alleganciis Transgressionibus Riotis Routis Retentionib. Escapiis Contempt. Falsitat. Negligentiis Concelament. Manutenen. Oppressionibus Cambiparciis Deceptionib. & aliis Malefactis Offenc. & Injur. quibuscunque Necnon Accessar. eorundem infra Com. prædict. tam infra libertat. quam extra per quoscunque & qualitercunque habit. fact. perpetrat. sive commiss. & per quos vel per quem cui vel quibus quando qualiter & quomodo & de aliis Articulis & Circumstanc. præmiss. seu cor. alicujus vel aliquor. qualitercunque concernen. plenius veritat. & ad easdem proditiones & al. præmiss. audiend. & terminand. secundum legem & consuetud. Regni nostri Angl. nuper assignat. de Felonia & Murdro per ipsos Edrum. Comitum Warwic. & Holland & Carolum Dominum Mohun Commiss. & Perpetrat. per sacrament. probor. & legal. hominum Com. nostri Middlesex. prædict. Indictat. Existunt Nos considerantes quod Justitia est virtus excellens & altissimo complacens Volentesque quod prædict. Edrus. Comes Warwic. & Holland & Carolus Dominus Mohun de & pro Felonia & Murdro unde ipsi ut præfertur Indictat. existunt. coram nob. in presenti Parliament. nostro secundum Leg. & consuetud. Regni nostri Angl. Audiantur Examinentur sententientur & Adjudicentur Ceteraque omnia que in hac parte pertinent debito modo exerceantur & exequantur; Ac pro eo quod Officium Seneschalli Angl. (cujus presentia in hac parte requiritur ut Accepimus jam vacat) Nos de Fidelitate Prudentia provida Circumspectione & Industria vestris plurimum confidentes Ordinavimus & Constituimus vos ex hac causa Seneschallum Angl. ad Officium illud cum omnibus eidem Officio in hac parte debitis & pertinent. (hac vice) gerend. occupand. & exercend. Et ideo vob. Mandamus quod circa præmiss. diligenter intendatis & ea omnia que in hac parte ad Officium Seneschal. Angl. pertinent & requiruntur (hac vice) faciatis exerceatis & exequamini cum effectu. In Cujus rei Testimonium has literas nostras fieri fecimus Patentes Teste meipso. apud Westmonasterium vicesimo quinto die Martii Anno Regni nostri Undecimo.

Per ipsum Regem propria Manu Signat.

Serjeant at Arms. God save the King.

Then the Herald and the Gentleman Usher of the Black Rod, after three Reverences, kneeling, presented the White Staff to his Grace, and his Grace removed from the Wooll-pack to the Chair, which was placed upon an Ascent just before the uppermost Step of the Throne, and seated himself in the Chair.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O yes, O yes, My Lord High Steward of England, his Grace, does straightly Charge and Command all manner of Persons here present, to be uncovered upon Pain of Imprisonment.

Then the Judges and Masters in Chancery sat down in their Places upon the Wooll-pack, uncovered.

Then the Clerk of the Crown read the Return of the Certiorari in hac verba.

Gulielmus Tertius Dei Gratia. Angl. Scoc. Franc. & Hibern. Rex Fidei Defens. &c. Justic. nostris. per

Literas. nostras. Paten. confect. ad inquirend. per Sacrm. probor. & legal. hom. Com. nostri. Midd. ac aliis viis mod. & med. quibus melius sciverint aut poterint de quibuscunque prodict. mispris. prodict. insurrection. Rebellion. controfact. censur. lotur. falsis fabricac. & aliis falsitat. monet. hujus Regni Angl. & alior. Regnorum sive Dominiorum quorumcunque ac de quibuscunque; murdris felon. homicid. interfection. burglar. raptibus mulierum. congregacon. & conventicul. illicit. verborum prolationibus coadunat. misprision. confederat. falsis Alleganc. transgres. riot. rout. retention. escapiis contempt. negligenc. concealment. manutenen. oppression. deception. & aliis malefactis offens. & injur. quibuscunque; Necnon accessariis eorundem infra Com. prædict. tam infra libertates quam extra per quoscunque & qualitercunque; habit. fact. perpetrat. sive commiss. ac de aliis articulis & circumstanciis præmiss. & eorum quodlibet seu eorum aliquod vel aliqua qualitercunque; concernen. plenius veritat. & ad easdem Prodition. & al. præmiss. audiend. & terminand. Assign. Necnon Justic. n. stris ad Gaol. nostram de Newgate de prisonar. in ea existen. deliberand. Assign. & eorum cuilibet Saltm. volen. certis de causis omnia & singula Indictament. & Inquisition. de quibuscunque; felon. & murdris unde Edrus. comes Warwic. & Holland & Carolus Dominus Mohun & al. coram vobis Indictat. sunt Necnon Record. conviction. Ric. French Rogeri James & Georgii Dockwra pro felon. & homicid. unde Indictat. sunt Et superinde per quandam. Jur. Pris. inde inter nos & præfat. Richardum French Rogerum James & Georgium Dockwra capt. convict. exist. ut dicitur coram nobis & non alibi terminari vobis & cuilibet vestrum mandamus quod omnia & singula in Indictament. & Record. Convict. prædict. cum omnibus ea tangen. quibuscunque; nominibus iidem Edrus. Comes Warwic. & Holland Carolus Dominus Mohun Richardus Rogerus & Georgius nuncupentur in eisdem coram nobis sub sigillis vestris aut unius vestrum in octab. sibi. Hillaris ubicunque; tunc fuerimus in Angl. mittat. seu unus vestrum mittat una cum hoc brevi ut ulterius inde fieri fac. quod de jure ac secundum legem & cons. regni nostri Angl. fore viderimus faciend. Teste J. Holt Mil. apud Westm. xxviii die Novembris Anno regni nostri Decimo

per Cur.

Astry

Ad instanc. prosecutor. quoad duos Def. & ad instanc. caterorum Def.

J. Holt.

Virtute cujus brevis mihi & aliis direct. Indictament. & Inquisition. inframentionat. necnon Record. conviction. infranominat. Ric. French Rogeri James & Georgii Dockwra pro felon. & homicid. unde Indictat. & superinde per quandam Jur. prie. convict. exist. cum omnibus ea tangen. coram Dom. Rege in quibusdam Sched. huic brevi annex. mitto prout interius præcipitur.

Respons. Fra. Child. Mil. Major. Civit. Lond. un. Justic. infrascript.

Midd. ss. Memorandum quod ad deliberation. Gaol. Domini Regis de Newgate tent. pro. Com. Middlesex. apud Justice-Hall in le Old Bailey in Suburbis Civit. London. die veneris (scilicet) decimo tertio die Januarii Anno Regni Dom. nostri. Gulielmi tertii Dei gra. nunc Regis Angl. &c. Decimo coram Fran. Child Mil. Majore Civit. London. Edro. Ward Mil. Capital. Baron. Scii. dict. Dom. Regis Henrico Harfel Milit. un Baron. Scii. Dicti Domini Regis Thoma Stamp Mil. Edro. Clarke Mil. Aldris. dict. Civit. London Salathiel. Lovell Mil. servien. dict. Dom.

Dom. Regis ad legem ac Recordator dict. Civit. London & aliis sociis suis Justic. dict. Dom. Regis ad Gaol. ipsius Dom. Regis de Newgate predict. de prisonar. in eadem existen. deliband. assign. ven. hic in Cur. Carolus Lee Mill. Samuel Buck Will. Withers & Fran. Tysson Ar. Justic. dict. Dom. Regis per Literas patent. ipsius Dom. Regis eidem Justic. pronomiat. & aliis ac quibuscunq; quatuor vel plur. eorum sub magno Sigillo dict. Dom. Regis Angl. confect. ad inquirend. per Sacrament. probor. & legal. hom. de Com. Midd. prad. ac aliis viis modis & mediis quibus melius sciverint aut poterint tam infra libertat. quam extra per quos rei veritas sciri poterit de quibuscunq; prodicion. misprison. prodicion. insurrection. rebellion. contrafactur. tonsur. lotur. falsis fabrication. & al falsitat. moneta hujus Regni dict. Dom. Regis Angl. & al. Regnorum sive Domin. quorumcunq; ac de quibuscunq; murdris felon. homicid. interseccon. burglar. Rapt. mulier. congregac. & conventicul. illicit. verborum prolation. Coadunac. misprison. Confederac. falsis Alleganc. transgr. Riot. Rout. retention. escapis contempt. negligenc. conclamen. manutenen. oppressio. Cambiparcus Deception. & aliis Malefact. & Offenc. quibuscunq; nec non accessar. eorund. infra Com. pred. tam infra libertat. predict. quam extra per quoscunq; & qualitercunq; habit. fact. perpetrat. sive commiss. ac de aliis articulis & Circumstanc. premissa & eorum quodlibet seu eorum aliquod vel aliqua qualitercunq; concernen. plenius veritat. & ad easdem prodicion. & al. premissa audiend. & terminand. Secundum legem & consuetud. hujus Regni dict. Dom. Regis Angl. Assign. & per manus suas propr. deliberaver. hic in Cur. dict. Dom. Regis quoddam Record. Indictament. coram eis & aliis sociis suis nuper praantea presentat. & capt. versus Edrum. Comit. Warwic. & Holland Carolum Dominum Mohun de Oakehampton in Com. Devon. Ricum. French Rogerum James & Georgium Dockwra pro murdro cujusdam Ricci. Coote Ar. in forma juris terminand. &c. (eisdem Rico. French Rogero James & Georgio Dockwra prisonar. in dict. Gaol. dict. Dom. Regis de Newgate causa in eodem Indictament. content. adtunc. existen.) Record. cujus quidem Indictament. patet in quibusdam Schedul. huic annex.

Midd. ss. Memorandum quod ad Sessionem de Oyer & Terminer Domini Regis tent. pro Com. Middlesex. apud Hicks-Hall in St. John-street in Com. prad. die Mercurii scil. septimo die Decembris Anno Regni Domini nostri Gulielmi Tertii Dei gratia nunc Regis Anglie &c. decimo coram Carolo Lee Mil. Samuele Buck, Willielmo Withers, Francisco Tysson Armigeris & aliis Sociis suis Justic. dict. Dom. Regis per Literas Patent. ipsius Dom. Regis eidem Justic. pronomiat. & al. ac quibuscunq; quatuor vel pluribus eorum sub magno Sigillo dict. Domini Regis Anglie confect. ad inquirend. per sacrament. probor. & legalium hom. Com. Middlesex. prad. ac aliis viis mod. & med. quibus melius sciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius sciri poterit de quibuscunq; prodicion. misprison. prodicion. insurrection. rebellion. contrafactur. tonsur. lotur. falsis fabrication. & aliis falsitat. monet. hujus Regni dict. Dom. Regis Angl. & al. Regnor. sive Dominior. quorumcunq; ac de quibuscunq; murdris felon. homicid. interseccon. burglar. rapt. Mulier. congregat. & conventicul. illicit. verborum prolation. coadunac. misprison. confederat. falsis alleganc. transgr. riot. rout. retention. escapis contempt. negligenc. conclamen. manutenen. oppressio. cambiparcus deception. & aliis malefactis & offensis quibuscunq; necnon Accessar. eorundem infra Com. prad. tam infra libertat. quam extra per quoscunq; & qualitercunq; habit. fact. perpetrat. sive commiss. ac de aliis articulis & circumstantiis premissa & eor. quodlibet vel aliqua qualitercunq; concernen.

plenius veritat. & ad easdem prodicion. & al. premissa audiend. & terminand. secund. legem & conf. hujus Regni dicti Dom. Regis Angl. assign. per sacrm. Egidii Riddle, Richardi Read, Roberti Leg, Josephi Partherich, Johannis Marriott, Jonathan Hall, Nicolai Baker, Roberti Teague, Thome Briggs, Willielmi Brace, Thome Williams, Georgii Bishop, Thome Hodges, Johannis Lynn, Samuelis Lee, Richardi Rogers, Josephi Rogers, Johannis Cheney, Johannis Fowler, & Roberti Nicholson, probor. & legalium hominum Com. prad. adtunc & ibidem jurat. & onerat. ad inquirend. pro dicto Dom. Rege & corpore Com. prad. presentat. existit. qd. Billa Indictament. huic Schedul annex. est vera.

Midd. ss. Jurator. pro Domino Rege super sacrum. suum presentant quod Edwardus Comes Warwic. & Holland. nuper de Paroch. S. Martini in campis in Com. Middlesex. Corolus Dominus Mohun Baro Mohun de Okehampton in Com. Devon nuper de Paroch. prad. in Com. Middlesex. prad. Richardus French nuper de Paroch. prad. in Com. Middlesex. prad. Gen. Rogerus James nuper de Paroch. prad. in Com. Middlesex. prad. Gen. & Georgius Dockwra nuper de Paroch. prad. in Com. Middlesex. prad. Gen. Deum pra oculis suis non habentes sed instigatione diabolica moti & seducti Tricesimo die Octobris Anno Regni Domini Gulielmi tertii Dei gra. Angl. Scot. Franc. & Hibern. Regis fidei defens. &c. decimo vi & armis &c. apud paroch. prad. in Com. Middlesex. prad. in & super quendam Richardum Coote Ar. in pace dei & dicti Domini Regis nunc adtunc & ibidem existen. felonice voluntarie & ex malitiis suis pracogitat. insult. fecer. & qd. prad. Edwardus Comes Warwic. & Holland. cum quodam gladio. (Anglice a Sword) de ferro & chalibe confect. valor. quinque solidor. quem ipse idem Edwardus Comes Warwic. & Holland. in manu sua dextra adtunc & ibidem extract. habuit & tenuit prafat. Richardum Coote in & super sinistram partem pectoris ipsius Richardi Coote prope os Collar. (Anglice the Collar Bone) ipsius Richardi Coote adtunc & ibidem felonice voluntarie & ex malitia sua pracogitat. percussit pupugit & inforavit (Anglice did strike stab and thrust in) dans eidem Richardo Coote adtunc & ibidem cum gladio extract. prad. in & super dict. sinistram partem pectoris ipsius Ricci. Coote prope Os Collar. (anglice the Collar Bone) ipsius Ricci. Coote unum vulnus mortal. (anglice one Mortal Wound) latitud. dimidii unius pollicis & profunditat. quinq; pollicium De quo. quidem vulnere mortal. prad. Ricus. Coote adtunc & ibm. instanter obiit Et qd. prad. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra adtunc & ibm. felonice voluntarie & ex malitiis suis pracogitat. fuer. presen. auxilian. abettan. consortan. assisten. & manutenen. prafat. Edrum. Comit. Warwick & Holland. ad prafat. Ricum. Coote modo & forma pred. felonice voluntarie & ex malicia sua pracogitat. interficiend. & murdrand. Et sic Jur. pred. super sacrm. suum pred. dic. qd. prad. Edrus. Comes Warwici & Holland. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra prafat. Ricum. Coote modo & forma pred. felonice voluntarie & ex malitiis suis pracogitat. interfecer. & murdraver. contra pacem dei. Domini Regis nunc Coron. & Dignitat. suas &c.

Ricus. French 13 Januar. 98. pon. se Cul. de Felon. & Homicid. tant. Non cul. de Murdro. Catala nulla. Pet. Librum. Legit ut Clericus. Crematio respectuatur quousq; &c.

Rogerus James 13 Jan. 98. pon. se cul. de Felon. & Homicid. tant. Non cul. de Murdro. Catala nulla. Petit Librum. Legit ut Clericus. Crematio respectuatur quousq; &c.

Billa vera. Samuel Cowthorne de paroch. sti. Martini in Campis in Com. Midd. Yoman.

Willus. Cripps de paroch. præd. in Com. præd. Yoman,
Henricus Pomsret de paroch. præd. in Com. præd. Yoman,
Willus. Salmon de paroch. præd. in Com. præd. Chirurgus,
Robtus. Applegate de paroch. præd. in Com. præd. Yoman.

Jur. in Cur.

Midd. ss. Memorand. qd. ad Deliberation. Gaule Dni. Regis de Newgate tent. pro Com. Midd. apud Justice Hall in le Ola Bailey in Suburbis Civitat. London. die Mercurii scilicet. Septimo die Septembris Anno Regni Dni. nri. Gulielmi tertii Dei gra. Angl. Scoc. Franc. & Hibnie. Regis Fidei Defens. &c. decimo coram Franco. Child. Mil. Majore Civitat. London. Georgio Treby Mil. Capital. Justic. dci. Dni. Regis de Banco Littleton Powis Mil. uno Baron. Socis. dict. Dni. Regis Thoma Stamp Mil. Edro. Clarke Mil. Aldris. dict. Civitat. London. Salathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dict. Civitat. London. & aliis Sociis suis Justic. dci. Dni. Regis ad Gaolam ipsius Dni. Regis de Newgate præd. de Prisonar. in eadem existen. deliberand. assign. ven. Robertus White gen. Coronator dci. Dni. Regis infra libertat. Decani & Capituli Ecclesie Collegiat. bti. Petri Westm. Civitat. Burgi & Ville Westm. in Com. Midd. præd. Et per manus suas proprias deliberavit hic in Cur. quandam Inquisition. de morte Ricci. Coote Ar. coram eo nuper capt. in Cur. hic de Recordo in forma juris terminand. Que quidem Inquisitio huic Schedule annex. est

pon. se

Civitas, Burgus }
& Villa. Westm. in } ss. **I**nquisitio indentat. capt. pro
Com. Midd. } Dno. Rege apud paroch. sci.
Martini in Campis infra Libertat. Decani & Capituli Ecclesie Collegiat. bti. Petri Westm. Civitat. Burgi & Ville Westm. in Com. Midd. tricesimo die Octobris Anno Regni Dni. nri. Gulielmi tertii Dei gra. Angl. Scoc. Franc. & Hibernie Regis Fidei defensoris &c. decimo Coram Roberto White gen. Coronatore dci. Dni. Regis Libertat. præd. super visum Corporis cujusdam Ricci. Coote Ar. ibm. jacen. mort. per sacrm. Johis. Harris Petri Solomon Ricci. Newgent Willi. Fryer Samuelis Thomson Jacobi Timberlick sen. Jacobi Timberlick jun. Ricci. Jackson Johis. Finch Samuelis Powell Samuelis Dimont Robti. Giltrick Johis. Paulin Josephi Vernon Thome Smithson Andrea Rogers & David Jones proborum & leglium. homin. Libertat. præd. jurat. & onerat. ad inquirend. pro dco. Dno. Rege quando qualiter & quomodo præfat. Ricus. Coote ad mortem suam devenit dicunt super sacrm. suum præd. qd. Edrus. Comes Warwic. & Holland. nuper de paroch. sci. Martini in Campis infra Libertat. præd. in Com. præd. Carolus Dnus. Mohun nuper de paroch. præd. infra Libertat. præd. in Com. præd. Ricus. French nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. Rogerus James nuper de paroch. præd. infra Libertat. præd. in com. præd. gen. & Georgius Dockwra nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. Deum præ oculis suis non hentes. sed Istigatione diabolica moti & seducti dco. tricesimo die Octobris Anno decimo supradicto vi & armis &c. apud paroch. præd. infra Libertat. præd. in Com. præd. in & super præfat. Ricum. Coote in pace Dei & dci. Dni. Regis. nunc adtunc & ibm. existen. felonice voluntarie & ex maliciis suis precogit. insult. fecer. & qd. præd. Ricus French cum quodam Gladio (anglice a Rapiet) de ferro & chalibe conjeçt. valoris quinq; solid. quem ipse idem Ricus. French in manu

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sua dextra adtunc & ibm. extraxit. buit. & tenuit præfat. Ricum. Coote in & super sinistram partem Pectoris ipsius Ricci. Coote prope Os Collar. (anglice the Collar Bone)) ipsius Ricci. Coote adtunc & ibm. felonice voluntarie & ex malicia sua precogitat. percussit & pupugit dans eidem Rico. Coote adtunc & ibm. cum gladio præd. extraxit. in & super præd. sinistram partem pectoris ipsius Ricci. Coote prope dict. Os Collar. ipsius Ricci. Coote unum vulnus mortale longitudinis dimid. unius Pollicis & Profunditatis quinq; Pollicium de quo quidem vulnere mortali præd. Ricus. Coote apud paroch. præd. infra Libertat. præd. in Com. præd. instanter obiit Et qd. predicti Edrus. Comes Warwic. & Holland. Carolus Dnus. Mohun Rogerus James & Georgius Dockwra adtunc & ibm. felonice voluntarie & ex maliciis suis precogitat. fuer. presentes auxiliantes abstantes confortantes assistentes & manutentes præfat. Ricum. French ad predictum Ricum. Coote in forma præd. felonice voluntarie & ex malicia sua precogitat. interficiend. & murdrand. Et sic Jur. præd. dicunt super sacrm. suum præd. quod præd. Edrus Comes Warwici & Holland. Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra præfat. Ricum. Coote modo & forma predict. felonice voluntarie & ex maliciis suis precogitat. interfecer. & murdraver. contra pacem dci. Dni. Regis nunc Coron. & Dignitat. suas &c. Et ulterius Jur. præd. dicunt super sacrum. suum præd. qd. immediate post Feloniam & Murdrum præd. per ipsos modo & forma præd. fact. & perpetrat. apud Paroch. præd. infra Libertat. præd. in Com. præd. fugam. fecer. Qua bona & catalla terras sive tenementa præd. Edrus Comes Warwici & Holland Carolus Dnus. Mohun Ricus. French Rogerus James & Georgius Dockwra tempore Felonie & Murdri predict. per ipsos modo & forma præd. fact. & perpetrat. sive aliquo tempore postea usque diem Captionis hujus Inquisitionis habuerunt Jur. præd. penitus ignorant. In cujus Rei Testimonium tam præfat. Coronator quam Jur. præd. huic Inquisitioni Sigilla sua alternatim apposuerunt die anno & loco primo supradictis.

Ricus French 13 Jan. 98. pon. se cul. de felon. & homicidio tant. Non cul. pro Murdro. Catalla nulla. Judicium super Indictamentum.

Rogerus James 13 Jan. 98. pon. se cul. de felon. & homicid. tant. Non cul. pro Murdro. Catalla nulla. Judicium super Indictamentum.

Georgius Dockwra 13 Jan. 98. pon. se cul. de felon. & homicid. tantum. Non cul. pro Murdro. Catalla nulla. Judicium super Indictamentum.

Midd. ss. Memorandum qd. ad Sessionem de Oyer & Terminer Domini Regis tent. pro Com. Middlesex. apud Hicks Hall in S. John-street in Com. præd. die Mercurii scilicet. septimo die Decembris Anno Regni Domini nostri Gulielmi Tertii Dei gratia nunc Regis Anglie &c. decimo coram Carolo Lee Mil. Samuele Buck Willielmo Withers Francisco Tysson Armigeris & aliis Sociis suis Justic. dict. Dom. Regis per Literas Paten. ipsius Dom. Regis eisdem Justic. prænominat. & al. ac quibuscunque quatuor vel pluribus eorum sub magno Sigillo dict. Dni. Regis Anglie confect. ad Inquirend. per sacrm. probor. & legalium hom. de Com. Middlesex. præd. ac aliis viis mod. & med. quibus melius sciverint aut poterint tam infra Libertates quam extra per quos rei veritas melius sciri poterit & inquiri de quibuscunque Prodition. Misprison. Prodition. Insurrection. Rebellion. Controfactur. Tonsur. Lotur. & falsis Fabrication. & aliis falsitat. Monet. hujus Regni dict. Dni. Regis Anglie & ali-

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orum

orum Regnorum sive Dominior. quorumcunque ac de quibuscunque Murdris Feloniis Homicidiis Interfection. Burglar. Rapt. Mulier. congregat. & conventicul. illicit. Verborum prolation. coadunat. Misprision. Con-federat. falsis Alleganc. Transgr. Riot. Rout. Reten-tion. Escapiis Contempt. Negligen. Concelamen. Ma-nutenen. Oppressionibus Cambiparciis Deception. & aliis Malefactis & Offensis quibuscunque necnon Accessar. eorundem infra Com. pred. tam infra Libertat. quam extra per quoscunque & qualitercunque habit. fact. perpetrat. sive commiss. Ac de aliis Articulis & Cir-cumstantiis premissa & eorum quodlibet seu eorum ali-quod vel aliqua qualitercunque concernen. plenius ver-itat. Et ad easdem Praditiones & alia Premissa audiend. & terminand. sedm. Legem & Conf. hujus Regni dci. Dni. Regis Anglie assign. per sacrm. Egi-dii Riddle Ricci. Read Roberti. Legg. Josephi Parther-rich Johis. Marriot Jonathan Hall Nicholai Barker Roberti Teague Thome Briggs Willi. Brace Thome Wil-liams Georgii Bishop Thome Hodges. Johis. Lynn Sa-muelis Lee Ricci. Rogers Johis. Cheney Johis. Fowler & Roberti Nicholson proborum & legalium Hominum Com. pred. & tunc & ibm. jurat. & onerat. ad inqui-rend. pro dco. Dno. Rege & corpore com. pred. presen-tat. existit qd. Edrus. Comes Warwici & Holland. nuper de paroch. S. Martini in campis in Com. pred. Carolus Dnus. Mohun Baro. Mohun de Oakehampton in Com. Devon nuper de Paroch. pred. in Com. Midd. pred. Ricus. French nuper de Paroch. pred. in Com. Midd. pred. gen. Rogerus James nuper de paroch. pred. in com. Midd. pred. gen. & Georgius Dockwra nuper de paroch. pred. in com. Midd. pred. gen. Deum pre oculis suis non hentes. sed instigatione diabolica mor. & seduct. 30 die Octobris Anno Regni Gulielmi tertii Dei Gratia Angl. Scoc. Franc. & Hibernie Regis fidei defensoris &c. decimo vi & armis &c. apud paroch. pred. in Com. Midd. pred. in & super quendam Ri-cum. Coote Ar. in pace Dei & dci. Dni. Regis nunc adtunc & ibidem. existen. felonice voluntarie & ex maliciis suis precogitat. insult. fecer. Et qd. pred. Co-mes Warwici & Holland. cum quodam Gladio (anglice a Sword) de ferro & Chalibe confect. valoris quinq; solid. quem ipse idem Edrus. Comes Warwici & Hol-land. in manu sua dextra adtunc & ibm. extract. huit & tenuit prefat. Ricum. Coote in & super sinistram partem Pectoris ipsius Ricci. Coote prope Os Collar. (an-glice the Collar Bone) ipsius Ricci. Coote adtunc & ibm. felonice voluntarie & ex malicia sua precogitat. percussit pupugit & inforavit (anglice, did strike, stab, and thrust in.) Dans eidem Rico. Coote adtunc & ibm. cum Gladio extract. pred. in & super dict. sinistram partem pectoris ipsius Ricci. Coote prope Os Col-lar. (anglice the Collar Bone) ipsius Ricci. Coote unum Fulnus Mortale (anglice one Mortal Wound) lati-tudinis dimidii pollicis & profunditatis quinq; pollicium de quo quidem vulnere mortali pred. Ricus Coote ad-tunc & ibm. instanter obiit Et qd. pred. Carolus Dnus. Mohun Ricus French Rogerus James & Georgius Dock-wra adtunc & ibm. felonice voluntarie & ex maliciis suis precogitat. fuer. presentes auxiliantes abettantes confortantes assistentes & manuteneentes prefat. Edrum. Comitum Warwici & Holland. ad prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex mali-cia sua precogitata interficiend. & Murdrand. Et sic Fur. pred. super sacrm. suum pred. dicunt qd. predict. Edrus. Comes Warwici. & Holland. Carolus Dnus. Mohun Ricus French Rogerus James & Geor-gius Dockwra prefat. Ricum. Coote modo & forma pred. felonice voluntarie & ex maliciis suis precogitatis in-terfecer. & muredraverunt contra pacem dci. Dni. Regis nunc Coron. & Dignitat. suas &c. Per quod Preceptum est Vic. Midd. qd. non omitteret &c.

quin caperet predictos Edrum. Comitum Warwici & Holland. Carolum Dnum. Mohun Ricum. French Ro-gerum James & Georgium Dockwra ad respondend. &c. Quod quidem Indictamentum prefat. Justic. dci. Dni. Regis (per dcas. Literas paten. ipsius Dni. Regis eisdem Justic. prenominat. & aliis ac quibuscunq; qua-tuor vel pluribus eorum sub magno Sigillo dci. Domini Regis Anglie ut prefertur confect.) postea scilt. ad Deli-berationem Gaule dci. Dni. Regis de Newgate tent. pro Com. Midd. pred. apud Justice-Hall in le Old-Baily in Suburbis Civitat. Lond. dci. die Mercurii scilt. septimo die ejusdem Mensis Decembris Anno Regni dci. Dni. Regis nunc decimo supradicto coram Francisco Child Mil. Majore Civitat. London. Georgio Treby Mil. Capital. Justic. dci. Dni. Regis de Banco Littleton Powis Mil. uno Baronum Secii. dci. Dni. Regis Thoma Stamp Mil. Edro. Clarke Mil. Aldris. dce. Civitat. London. Salathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dce. Civitatis London. & aliis Sociis suis Justic. dci. Dni. Regis ad Gaolam dci Dni Regis de Newgate pred. de Prisonar. in ead-tem existen. deliberand. assign. per manus suas pro-prias deliberaverunt hic in Cur. de Recordo in forma juris terminand. &c. Super quo postea scilt. ad deli-berationem Gaule dci. Dni Regis de Newgate pred. die Veneris scilt. 13 die Jan. Anno Regni dci. Dni. Re-gis nunc decimo supradicto coram Francisco Child Mil. Majore Civitat. London. Edro. Ward Mil. Capital. Baron. Secii. dci. Dni. Regis Henrico Hatsall Mil. uno Baron. Secii dci. Dni. Regis Thoma Stamp Mil. Edro Clarke Mil. Aldris. dce. Civitat. London. Sa-lathiel Lovell Mil. Servien. dci. Dni. Regis ad Legem ac Recordatore dict. Civitat. London. & aliis sociis suis Justic. dci. Dni. Regis ad Gaolam ipsius Dni. Regis de Newgate predict. de Prisonar. in eadem existen. deliberand. assign. vener. predict. Ricus. French Roge-rus James & Georgius Dockwra sub Custod. Willi. Goare Militis & Josephi Smart Militis Vic. Com. pred. (in Custod. cujus ex causa pred. in Gaolam de Newgate pred. preantea commissi fuer.) Ad Bar-ram hic duct. in propriis personis suis & statim de Premissis in Indictamento pred. superius specificat. eis superius separatim imposu. separatim allocut. qualiter se velint inde acquietari iidem Ricus. French Rogerus James & Georgius Dockwra separatim dicunt qd. ip-si non sunt inde Culpabiles nec aliquis eorum est inde Culpabilis & inde de bono & malo separatim pon. se su-per Priam. &c. Jo. immediate ven. inde Jura. coram prefat. Justic. dci. Dni. Regis ult. noiat. hic &c. Et qui nec &c. Ad recogn. &c. Et Fur. Jure. ill. per prefat. Vic. ad hoc inpanellat. (scilt.) Chrus Red-nap, Thomas Moody, Thomas Dunck, Simo Smith, Johes. Smith, Michael Miles, Thomas Rowell, Natha-niel Lee, Josephus Devenish, Henricus Bradbury, Willus. Giles & Johes. Burgoyne exacti vener. qui ad veritat. de & super Premissis pred. dicend. ele-cti triati & jurati dicunt super sacrm. suum qd. pred. Ricus. French Rogerus James & Georgius Dock-wra sunt Culpabiles Et quilibet eorum est Culpabilis de Homicidio & felonica Interfectione prefat. Ricci. Coote in Indictamento pred. superius noiat. Et qd. iidem Ricus. French Rogerus James & Georgius Dockwra tempore Felonie & Homicidii pred. per ip-sos Ricum. French Rogerum James & Georgium Dock-wra in forma pred. commiss. seu unquam postea non huer. nec aliquis eorum huit. nec hent. nec aliquis eo-rum het. aliqua bona seu catalla terras sive tenementa ad Noticiam Fur. pred. Sed. iidem Fur. ulterius di-cunt super sacrum. suum pred. qd. pred. Ricus. French Rogerus James & Georgius Dockwra non sunt Culpabiles nec eorum aliquis est Culpabilis de Murdro pred. in Indictamento pred. superius specificat. eis superius sepa-

separatim imposit. prout iidem Ricus. French Rogerus James & Georgius Dockwra pro seipsis superius plitando. allegaver. nec seipso eâ occone. unquam retraxer. nec eorum aliquis se eâ occone. unquam retraxit Super quo visis & per Cur. hic intellectis omnibus & singulis premisis Conf. est per Cur. hic qd. pred. Ricus French Rogerus James & Georgius Dockwra quoad Murdrum pred. in Indictamento pred. superius spec. eis superius separatim imposit. sint quiet. Et eant & quilibet eorum sit quiet. & eat inde sine die &c. Et superinde statim separatim per Cur. hic quesit. est de presat. Rico. French Rogero James & Georgio Dockwra si quid pro se habeant vel dicere sciant vel aliquis eorum aliquid pro se habeat vel dicere sciat quare Cur. hic ad Judicium & executionem de eis & eorum quolibet super Verdicto pred. quoad Homicidium & feloniam Interfectionem presat. Ricci. Coote procedere non debet Qui separatim dicunt qd. ipsi sunt Clerici Et quilibet eorum est Clericus Et separatim petunt Beneficium Clericale eis & cuilibet eorum in hac parte allocari Et super hoc (tradito eisdem Rico. French Rogero James & Georgio Dockwra separatim per Cur. hic Libro) iidem Ricus. French Rogerus James & Georgius Dockwra separatim legunt ut Clerici & quilibet eorum legit ut Clericus Sed quia Cur. dci. Dni. Regis hic & presat. Justic. dci. Dni. Regis ult. noiat. de Judicio suo de & super Premisis pred. quoad Homicidium pred. & feloniam Interfectionem presat. Ricci. Coote reddend. nondum advisantur Ideo dies inde dat. est presat. Rico French Rogero James & Georgio Dockwra in statu quo nunc &c. usq; prox. Gaule deliberationem dci. Dni. Regis de Newgate pred. pro Com. Midd. pred. tenend. de Judicio suo de & super Premisis illis aud. &c. Eo qd. presat. Judic. dci. Dni Regis ult. noiat. & Cur. hic inde nondum &c.

Lord High Steward. Is it your Lordships Pleasure that the Judges may be covered?

Lords. Ay, ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, chief Governor of the Tower of London, bring forth the Body of Edward Earl of Warwick and Holland, your Prisoner, forthwith, on Pain and Peril will fall thereon.

[Then the Earl of Warwick was brought to the Bar by the Deputy-Governor of the Tower of London, having the Ax carried before him by the Gentleman Jaylor, who stood with it at the Bar, on the right Hand of the Prisoner, turning the Edge from him; the Prisoner at his Approach to the Bar making three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand; and his Grace and the Peers returned the Salute.]

Lord High Steward. My Lord of Warwick, your Lordship is brought before this great Judicature, in order to your Tryal. You stand Indicted by the Grand Inquest for the County of Middlesex, as Guilty of the Murther of one of the King's Subjects, for whose Blood Justice requires a strict Inquisition should be made.

Your Lordship is call'd to answer this Charge before the whole Body of the House of Peers assembled in Parliament. It is a great Misfortune to be accused of so heinous an Offence, and it is an addition to that Misfortune, to be brought to Answer as a Criminal before such an Assembly, in Defence of your Estate, your Life, and Honour. But it ought to be a Support to your Mind, suffi-

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cient to keep you from sinking under the Weight of such an Accusation, that you are to be Try'd before so noble, discerning, and equal Judges, that nothing but your own Guilt can hurt you. No Evidence will be received, but what is warranted by Law; no Weight will be laid upon the Evidence, but what is agreeable to Justice; no Advantage will be taken of your Lordship's little Experience in Proceedings of this Nature; nor will it turn to your Prejudice, that you have not the Assistance of Council in your Defence, as to the Fact, (which cannot be allowed by Law) and their Lordships have already assigned you Council, if any Matters of Law should arise.

Your Lordship, throughout your whole Tryal, may assuredly promise your self, to find all the Candor and Compassion which is consistent with impartial Justice; beyond that, nothing is to be expected: Their Lordships can never so far forget themselves, as to depart from what is Right, and to draw the Guilt of Blood upon their own Heads, but if your Lordship is Innocent you are safe.

My Lord, It will be requisite for you to recollect your self upon this Occasion, in the best Manner you can. You ought to hear with Temper, what the King's Council have to say, without interrupting them, and to hearken carefully to the Witnesses produced against you, that you may be ready to Cross-examine them if you find Cause, and to make your Observations upon the Evidence when the proper Time comes for your Lordship to make your Defence; of which I will not fail to give you Notice, and when that Time does come, your Lordship may be assured, your Self and your Witnesses will be heard with great Patience and Attention; and when my Lords have heard and considered the whole Matter, the Judgment will unquestionably be according to the Rules of Justice, and such as will become the Honour of this High Court.

Read the Indictment to my Lord.

Earl of Warwick. My Lord, I beg I may have the Use of Pen, Ink, and Paper.

Lord High Steward. Will your Lordships please to allow my Lord Warwick Pen, Ink, and Paper?

Lords. Ay, ay.

Lord High Steward. Carry Pen, Ink, and Paper to my Lord. (Which was done by the Clerk.)

Lord High Steward. My Lord, your Lordship will do well to give Attention while the Indictment is read to you. Read it to my Lord in English.

Clerk of the Crown. **Y**our Lordship stands Indicted by the Name of Edward Earl of Warwick and Holland, late of the Parish of St. Martin in the Fields in the County of Middlesex, for that your Lordship, together with Charles Lord Mohun, Baron Mohun of Oakehampton in the County of Devon, late of the Parish aforesaid in the County of Middlesex aforesaid, Richard French, late of the Parish aforesaid in the County of Middlesex aforesaid, Gent. Roger James, of the Parish aforesaid in the County of Middlesex aforesaid, Gent. and George Dockwra, late of the Parish aforesaid in the County of Middlesex aforesaid, Gent. not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil the 30th Day of October, in the tenth Year of the Reign of our Sovereign Lord William the Third, by the Grace of God King of England, Scotland, France, and Ireland, Defender of the Faith, &c. with Force and Arms. &c. at the Parish aforesaid in the County of Middlesex aforesaid, in and upon one Richard Coote Esq; in the Peace of God, and of our

said Sovereign Lord the King, then and there being Feloniously, Voluntarily, and of your Malice afore-thought, did make an Assault, and that your Lordship, the said Edward Earl of Warwick and Holland, with a certain Sword made of Iron and Steel of the Value of five Shillings, which you the said Edward Earl of Warwick and Holland, in your right Hand then and there had and held drawn, the aforesaid Richard Coote in and upon the left Part of the Breast of him the said Richard Coote, near the Collar Bone of him the said Richard Coote, then and there Feloniously, Voluntarily, and of your Malice afore-thought, did Strike, Stab, and Thrust in, giving to the said Richard Coote, then and there with the Sword drawn aforesaid, in and upon the left Part of the Breast of him the said Richard Coote, near the Collar Bone of him the said Richard Coote, one Mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said Mortal Wound the aforesaid Richard Coote then and there instantly died: And that the aforesaid Charles Lord Mohun, Richard French, Roger James, and George Dockwra, then and there Feloniously, Voluntarily, and of their Malice afore-thought, were present, aiding, abetting, comforting, assisting, and maintaining you the said Edward Earl of Warwick and Holland, the said Richard Coote, in Manner and Form aforesaid, Feloniously, Wilfully, and of your Malice afore-thought, to Kill and Murther, and so you the said Edward Earl of Warwick and Holland, and the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the aforesaid Richard Coote, in Manner and Form aforesaid, Feloniously, Voluntarily, and of your Malice afore-thought, did Kill and Murther, against the Peace of our Sovereign Lord the King, that now is, His Crown and Dignity, &c.

How say you Edward Earl of Warwick and Holland, are you guilty of this Felony and Murther whereof you stand Indicted, or not guilty?

Earl of Warwick. Not Guilty.

Clerk of the Crown. Culprit, How will your Lordship be tryed?

Earl of Warwick. By God and my Peers.

Clerk of the Crown. God send your Lordship good Deliverance.

Then at the Motion of some Lords who sat towards the upper end of the House, and by reason of the distance could not distinctly hear the Clerke, the Indictment was read again, the Clerk standing near the upper end of the House.

C. of the Crown. Serjeant at Arms make an O Yes.

Serjeant at Arms. O Yes, O Yes, O Yes, If any one will give Evidence on behalf of our Sovereign Lord the King, against Edward Earl of Warwick and Holland, of the Felony and Murther whereof he stands Indicted, let them come forth, and they shall be heard, for now he stands at the Bar upon his Deliverance.

L. H. St. Will your Lordships give me leave to go down to the Woolpack that I may hear the better.

Lords. Ay, Ay.

Then his Grace removed to the Woolpack, and delivered the White Staff to be held by the Gentleman Usher of the Black Rod, who during the whole Tryal always received and delivered back the white Staff upon his Knees.

L. H. St. Mr Attorney, are you ready to proceed?

Mr At. Gen. Yes, my Lord.

L. H. St. Then begin Sir.

Mr Serj. Wright. May it please your Lordships.

L. H. St. Pray, Mr Serjeant, raise your Voice as much as possible you can, that my Lords towards the upper end of the House may hear.

Mr Serj. Wright. May it please your Lordships, this noble Lord Edward Earl of Warwick and Holland, the Prisoner at the Bar, stands Indicted for the felonious Killing and Murther of one Richard Coote Esq; and the Indictment sets forth, That upon the 30th Day of October, in the tenth Year of His Majesty's Reign, at the Parish of St Martin in the Fields, in the County of Middlesex, the Prisoner at the Bar, the Earl of Warwick, together with Charles Lord Mohun Baron of Oakehampton, Richard French, Roger James, and George Dockwra, Gent. Feloniously, Voluntarily, and of their Malice afore-thought, did make an Assault upon the said Richard Coote, in the Indictment named, and the Indictment chargeth, that the Earl of Warwick, at the same Time and Place, with a Sword, Feloniously, Voluntarily, and of his Malice afore-thought, did give unto the said Richard Coote, in or upon the left Part of the Breast of him the said Richard Coote, near his Collar Bone, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said Wound the said Richard Coote then and there instantly died; and the Indictment further charges, that the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the Earl of Warwick, to commit the Felony and Murther aforesaid, were then and there aiding, assisting, comforting, and abetting; and so the Jurors charge that he the said Edward Earl of Warwick and Holland, Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the said Richard Coote Feloniously, Voluntarily, and of their Malice afore-thought, at the Parish aforesaid, in the County aforesaid, did Kill and Murther, against the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment this Noble Lord, the Prisoner at the Bar, Edward Earl of Warwick and Holland, has pleaded not Guilty, and for his Tryal hath put himself upon my noble Lords his Peers here present: We shall call our Evidence, and if we prove this Fact for the King, we do not doubt but your Lordships will give such Judgment for the same as shall be just.

Mr At. Gen. May it please your Lordships, I am of Council in this Cause for the King against this noble Lord Edward Earl of Warwick and Holland; The Prisoner at the Bar, who stands Indicted by the grand Jury of the County of Middlesex, has been arraigned, and is now to be tryed before your Lordships for the felonious Killing and Murthering of Mr Coote, in the Indictment named, the Evidence to make good this charge against this noble Lord, it comes to my turn to open to your Lordships.

My Lords, the Case as to the Fact, according to my Instructions, is this: Upon Saturday the 29th of October last, at Night, my Lord of Warwick, my Lord Mohun, Mr French, Mr Dockwra, and Mr Coote, the unfortunate Gentleman who was killed, met together at one Lockett's, who kept the Greyhound Tavern in the Strand, and there they stayed till it was very late; about twelve of the Clock at Night, or thereabouts, a Messenger was sent by the Company to fetch another Gentleman, Mr James; and Mr James coming to them, in what condition your Lordships will be told by the Wit-

Witnesses: About One of the Clock in the Morning, on Sunday the 30th of October, they all came down out of the Room where they had been so late, to the Bar of the House, and there, as the Witnesses will tell your Lordships, Swords were drawn, and Chairs were called for, and two Chairs which were nearest at Hand came, and two of the Company went into those Chairs; who they were, and what past at that Time, the Witnesses will tell your Lordships; Those that got into those Chairs came out again, and more Chairs were called for. But I must acquaint your Lordships, that my Lord *Mohun*, when the two Gentlemen that went into the Chairs ordered the Chairmen to take them up, and carry them away, spoke to them to stop and go no further, for there should be no quarrelling that Night, and that he would send for the Guards and secure them; and after this they came out of the Chairs again; It will appear there were Swords drawn amongst all of them, and some Wounds given: More Chairs being called for, and brought this noble Lord that is here at the Bar, my Lord of *Warwick*, my Lord *Mohun*, and the other four Gentlemen, went all into the Chairs, and gave the Chairmen Directions whither they should carry them, at leastwise the Foremost had Directions given them, and the rest were to follow them; it was a very dark Night, but at last they came all to *Leicester Square*, and they were set down a little on this Side the Rails of the Square, and when the Chairmen had set them down they went away; but immediately some of them heard my Lord of *Warwick* calling for a Chair again, who came towards the Rails, and there they found two of the Gentlemen that had been carried in some of the other Chairs holding up Mr *Coote* between them, and would have had the Chairmen carried him away to a Surgeon's, but they found he was dying, and so would not meddle with him; afterwards my Lord of *Warwick* and Mr *French* were carried by two of the Chairs to Mr *Anny's*, the Surgeon at the *Balneo in Long-acre*, where Mr *French* being wounded, was taken care of, particularly by the Recommendation of my Lord of *Warwick*, and the Master of the House was called up, it being very late. Mr *Coote's* Sword was brought to that Place, but by whom it was brought we cannot exactly say, while my Lord of *Warwick* and Capt. *French* were there, and my Lord of *Warwick* had given Orders for the Denying of himself, and forbid the opening of the Door. There came the other two Gentlemen, Mr *James* and Mr *Dockwra*, and upon their knocking at the Door they were let in by my Lords Order, after he had discovered who they were, looking through the Wicket. Mr *James* had his Sword drawn, but it was broken. My Lord of *Warwick's* Hand was slightly wounded, and his Sword bloody up to the Hilt when he came in, as will be proved by the Testimony of the Servants in the House. There was a Discourse between my Lord, Mr *James*, and Mr *Dockwra*, about going into the Country, but before they went the Swords were all called for to be brought to them, and upon enquiry there was no blood found upon Mr *French's* Sword, but a great deal upon my Lord of *Warwick's*, of which great notice was taken at that Time. Mr *Coote*, who was killed, had received one Wound in the left Side of his Breast, half an Inch wide, and five deep, near the Collar Bone; he had likewise another Wound upon the left Side of his Body; both which your Lordships will hear, in the Judgment of the Surgeon, were mortal Wounds,

and the Evidence will declare the Nature of them.

My Lords, the Evidence does chiefly consist of, and depend on Circumstances, the Fact being done in the Night, and none but the Parties concerned being present at it, we shall lay the Evidence before your Lordships as it is for your Judgment; and call what Witnesses we have on behalf of the King, against this noble Peer the Prisoner at the Bar, and take up your Lordships Time no further in opening; and we shall begin with *Samuel Cawthorne*; he is a Drawer at the Tavern where those Lords and Gentlemen were together, and he'll give you an Account of the Time they came there, how long they staid, what happened in the House during there being there, and what Time they went away.

L. H. St. Give him his Oath. (Which the Clerk did.)

Mr Att. Gen. My Lords, I doubt the Witness is so far off, that it will be difficult for him to hear the Questions that we are to ask him, unless we could have him nearer to us.

L. H. St. Mr Attorney, My Lords seem to be of Opinion, that it will be more for your advantage and theirs, that the Witnesses stand at the Distance they do, which will oblige you to raise your Voice so loud, that they may hear the Witnesses and you too.

Mr Att. Gen. Is your Name *Samuel Cawthorne*.

Cawthorne. Yes my Lord.

Mr Att. Gen. Where do you live?

Cawthorne. With Mr *Lockett* at *Charing-cross*.

Mr Att. Gen. Did you live with him at the *Greyhound Tavern* in the *Strand* the latter end of October last?

Cawthorne. Yes I did.

Mr Att. Gen. Well, pray will you acquaint my Lords with the Time when my Lord of *Warwick*, my Lord *Mohun* and Mr *Coote* were at that House, how long they staid, what happen'd while they were there, and when they went away.

Cawthorne. It was Saturday Night the 29th of October last.

Mr Att. Gen. Pray tell my Lords the whole of your Knowledge in the Matter.

Cawthorne. There came my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coote*. Capt. *French*, and Capt. *Dockwra*, the 29th of October last, in the Evening to my Master's House at the *Greyhound Tavern* in the *Strand*.

Mr Att. Gen. How long were they there, and what Time of Night came they in?

Cawthorne. About Eight a Clock at Night, my Lord *Warwick*, my Lord *Mohun*, Capt. *French*, and Capt. *Coote*, came in.

Mr Att. Gen. What Day do you say it was?

Cawthorne. Saturday the nine and twentieth Day of October last.

Mr Att. Gen. How long did they continue there?

Cawthorne. It was between one and Two the next Morning before they went away.

Mr Att. Gen. Was any Body sent for to come to them there?

Cawthorne. Yes, Mr *James*.

Mr Att. Gen. What Time was that?

Cawthorne. About Twelve of the Clock.

Mr Att. Gen. Did he stay with them till they went away?

Cawthorne. Yes.

Mr Att. Gen. What did you observe past in the Company while they were there?

Cawthorne. I did not observe any Thing of quarrel, nor so much as an angry Word amongst them, till they came down to the Bar and were going away

away; when they came down to the Bar they order'd me to call them Chairs, or Coaches, and there were no Coaches to be had, and so I went for Chairs, and two Chairs came, for the Porter that went to call the Coaches was a great while before he came back, and as I said, I going for Chairs, there came two, but that they said was not enough, so more Chairs were called for, and at length there were more Chairs gotten; in the first three Chairs, my Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote* went away in; and my Lord *Warwick* and my Lord *Mohun* bid the Chairmen carry them home.

Mr Att. Gen. Were there then any other Chairs at the Door?

Cawthorne. There were two more Chairs at the Door, and another was called for.

Mr Att. Gen. Did you hear any Directions given where they should carry them?

Cawthorne. My Lord *Warwick*, and my Lord *Mohun* bid them carry them home.

Mr Att. Gen. Did you hear my Lord *Warwick* or my Lord *Mohun* particularly, and which, say whither they would be carried.

Cawthorne. I did hear my Lord *Mohun* say Capt. *Coote* should go and lye with him, or he would go and lye with Capt. *Coote* that Night, for there should be no quarrelling.

Mr Att. Gen. Did they upon that go away?

Cawthorne. Mr *French* and Mr *Coote* were in Chairs before my Lord *Mohun* or my Lord *Warwick*, or any of the rest.

Mr Att. Gen. What then happen'd upon their going into the Chairs?

Cawthorne. My Lord *Mohun* came out to them and swore there should be no Quarrel that Night, but he would send for the Guards and secure them.

Mr Att. Gen. What happen'd then?

Cawthorne. Upon that, both of them came out of their Chairs and came into the House, and there they came to the Bar, three of them in the Passage by the Bar, and three of them behind that Passage.

Mr Att. Gen. Pray will you tell what did really pass throughout the whole Transaction, what was done after they came in again into the House.

Cawthorne. After that I was bid to call for six Chairs, if I could get no Coaches, and so I did, and when I had brought what Chairs I could get, and returned to the Bar, I heard the Swords clash; when the Swords were drawn, I cannot say, nor by whom, it might be, by all the six for ought I know, because I was in the Street to call the Chairs, and when I came back to the House, I was in hopes all had been quieted, for their Swords were putting up: And when they went away in the Chairs, I did hope they went away friendly.

Mr Att. Gen. Pray how did they go away, who went together?

Cawthorne. My Lord of *Warwick*, my Lord *Mohun*, and Capt. *Coote* went in the first three Chairs, them three together, and bid the Chairmen go home, the sixth Chair was not then come.

Mr Att. Gen. When that Chair came pray what Directions were given to it.

Cawthorne. I did not hear them give the Chairmen any Directions at all.

Mr Att. Gen. Do you know any Thing more that was done after this Time?

Cawthorne. No my Lord, not after they went away, after I return'd with the Chairs, it was in two Minutes Time that they went away.

Mr Att. Gen. My Lords, I suppose he knows no more of the Matter.

L. H. St. Will you then ask him no more Questions, Mr Attorney?

Mr Att. Gen. No, my Lords, unless this noble Lord shall ask him any Questions, upon which we shall have Occasion to examine him.

L. H. St. My Lord, has your Lordship any Questions to ask this Witness, for now is your Time, the King's Council having done examining him.

E. of War. I desire to ask him whether I did not bid the Chairmen go home?

L. H. St. If your Lordship please to propose your Question to me, I will require an answer to it from the Witness, and it will be the better heard by my Lords.

Earl of Warwick. My Lord, I desire to know of this Man, whether when I went away in the Chair from his Master's House, I did not bid the Chairmen go home.

L. H. St. Witness: You hear my Lord's Question, What say you to it?

Cawthorne. Yes: My Lord of *Warwick* did bid the Chairmen go home.

E. of Warwick. My Lord, I have another Question to ask him, Whether he knows of any Quarrel there was between me and Mr *Coote* at that Time, or any other Time, because we both used to frequent that House.

Cawthorne. No, my Lords, I never heard any angry Words between my Lord *Warwick* and Mr *Coote* in my Life.

[Then the Lords towards the upper end of the House complaining that they did not hear his Grace, the Lord high Steward was pleased to repeat the Question thus;]

L. H. St. When my Lord of *Warwick* bid the Chairmen go home, or at any other Time, did you observe that there had been any Quarrel between his Lordship and Mr *Coote*?

E. of Warwick. My Lord, I desire he may be asked, since we both used that House, Whether that Night when I went away, or before or after, I had any Quarrel with Mr *Coote*?

L. H. St. The Question my Lord desires you that are the Witness to answer, is, Whether you did hear any Quarrelling or angry Words to pass between my Lord *Warwick* and Mr *Coote* that Night before or after they came down, or when they went away, or at any other Time?

Cawthorne. No, my Lord, I never heard any angry Words pass between them then, nor ever at any Time before in all my Life, but I always looked upon them to be very good Friends.

E. of Warwick. I desire he may be asked, Whether Mr *Coote* did not come to that House in my Company, and whether he did not frequently come to that House?

Cawthorne. Yes, they used to be there every Day almost, and they came that Night together in Company.

E. of Warwick. I desire he may be asked, Whether I have not been frequently in his Company there?

Cawthorne. Yes, I say, very frequently, every Day almost, sometimes twice a Day.

L. H. St. Would your Lordship ask him any other Question?

E. of Warwick. My Lord, I desire he may be asked

asked this Question, Whether he knows of any particular Kindness between Mr Coote and me?

L. H. St. Do you know of any particular Kindness between my Lord Warwick and Mr Coote the Gentleman that was killed?

Cawthorne. Yes, my Lord, there was always a great Kindness between them as I observed, it ever was so, and I never heard any angry Words pass between them, but they were very good Friends constantly; I waited upon them generally when they were at my Master's House, which was every Day almost.

E. of Warwick. I desire to know of this Witness, Whether he does not remember, or can name some particular Kindnesses that passed between Mr Coote and me?

L. H. St. Can you specify any particular Instances of Kindness that passed between my Lord Warwick and Mr Coote?

Cawthorne. Yes, my Lord of Warwick used generally to pay the Reckoning for Mr Coote, and he did so at this Time.

E. of Warwick. My Lord, I desire he may be asked, between whom he apprehended the Quarrel to be at this Time.

L. H. St. You say, Friend, there were Swords drawn, and a Quarrelling at the Bar; Can you tell between whom the Quarrel was?

Cawthorne. My Lord Warwick, my Lord Mohun, and Capt. Coote, were all on one Side, and the other three were on the other Side.

E. of Warwick. Who were the two Persons that it was apprehended the Quarrel was between, I desire he may be asked.

L. H. St. You say, there were three on the one Side, and three on the other, pray between whom did you apprehend the Quarrel to be?

Cawthorne. I believe the Quarrel was between Mr Coote, and Mr French.

E. of Warwick. My Lord, I desire to know of this Witness, what Words he heard Mr Coote say, after he and Mr French returned into the House and came out of the Chairs..

L. H. St. What do you say to the Question my Lord proposes?

Cawthorne. I heard Mr Coote say, He would laugh when he pleased, and he would frown when he pleased, God damn him.

E. of Warwick. My Lord, I desire to know who he thinks those Words were addressed to.

L. H. St. To whom did Mr Coote speak these Words?

Cawthorne. Whether he spoke them particularly to Mr French, or to the other two Gentlemen who were on the other Side of the Bar, I cannot directly tell.

E. of Warwick. I desire to know of him, Whether Mr Coote was not one of the three that was on the other Side of the Bar?

Cawthorne. Yes, my Lord of Warwick, my Lord Mohun, and Capt. Coote, were of the outside of the Bar.

E. of Warwick. Was Capt. Coote with me in the beginning of the Night at that House?

Cawthorne. Yes, he came at the beginning of the Night with my Lord of Warwick.

E. of Peterb. My Lords, I desire to ask this Witness one Question?

L. H. St. I think it is proper, my Lords, in Point of Method, to let both Sides have done, before any Questions be asked by any of my noble Lords.

E. of Peterb. I did apprehend my Lord of Warwick had done.

L. H. St. No, my Lord, not as yet? pray, my Lord Warwick, what other Questions has your Lordship to ask of this Witness?

E. of Warwick. My Lord, I desire he may be asked particularly this Question, Whether he perceived any Quarrel particularly between me and Capt. Coote when we went out of the House?

L. H. St. You hear the Question, Did you perceive any Quarrel between my Lord Warwick and Mr Coote before they went out of the House?

Cawthorne. No, I did not, nor ever saw any Quarrel between them in my Life.

E. of Warwick. I desire to know who paid the Reckoning that Night?

Cawthorne. The Reckoning was called for before I came in to take it; and tho' I think my Lord of Warwick paid for Mr Coote, yet I cannot so directly tell, because it was collected before I came into the Room to receive it.

L. H. St. My Lord, have you any Thing more to ask this Witness?

E. of Warwick. No, my Lord, at present that I think of.

L. H. St. My Lord Peterborough, your Lordship desired to ask a Question, will you please to propose it now.

E. of Peterb. My Lord, this Witness seems to take notice of two Sides, who were on the one Side, and who were on the other, and that Mr Coote and my Lord of Warwick were on one Side; I desire to know one Thing of him, what reason he had to apprehend that they two were of a Side?

L. H. St. Friend, you hear that noble Lord's Question; you seem to say, there were three and three of a Side, What reason had you to apprehend, that my Lord Warwick and Mr Coote were of one Side? You must explain to my Lords how you come to make that Judgment, what reason you had to think so.

Cawthorne. They three, my Lord Mohun, my Lord Warwick, and Mr Coote, were on the one Side of the Bar; and Capt. James, Capt. French, and Capt. Dockwra were on the other Side of the Bar.

L. H. St. So you said before; but the Question which my noble Lord desires to be satisfied in is this, How you come to speak as if there was a Quarrel between three and three? What reason had you to think, that three were on one Side, and three on the other?

Cawthorne. Their Swords were all drawn, and they stood three on one Side of the Bar, and three on the other.

E. of Rochester. My Lords, I desire to ask this Witness one Question; I think he told your Lordship at first, That he did not perceive any angry Words among them; afterwards he comes to talk of Swords drawn amongst them all, three on the outside, and three on the inside of the Bar; I desire to know what was the Occasion of those Swords being drawn on the one Side or the other?

Cawthorne. Whatsoever Quarrel there was, was amongst themselves above Stairs, and I know no angry Words that passed between them when they came down to the Bar.

L. H. St. See what you say? How consistent one Part of it is with another! You said at first, you did not hear of any angry Words that passed between them, and yet you say, all their Swords were drawn, and three were on the one Side and three

three on the other : And when you were examined upon the Motion of that noble Lord, what you meant by three on the one Side, and three on the other, you said, my Lord *Mohun*, my Lord *Warwick*, and Mr *Coote*, were on the one Side, Mr *James*, Mr *French*, and Mr *Dockwra*, were on the other Side : How could there be two Sides, unless there was a Quarrel ?

Cawthorne. I said, I did not hear any angry Words pass between them before they came to the Bar, or while they were above Stairs, but there were three on the one Side of the Bar, and three on the other.

L. H. St. But you have not given a satisfactory Answer to that Question which the noble Lord, my Lord *Peterborough*, asked you, What reason you had to apprehend, that the noble Lord the Prisoner at the Bar and Capt. *Coote* were of a Side ?

Cawthorne. My Lord *Mohun* came to the Chair side when Capt. *Coote* and Capt. *French* were got into the two first Chairs, and told Capt. *Coote*, that there should be no Quarrel that Night, but that they three, my Lord *Warwick*, my Lord *Mohun*, and he, should go home together ; and I took them three to be of a Side, because they were on the outside of the Bar together, and when they all went away, their three Chairs went away first all three together.

L. H. St. Is that all the Reason you can give why you say, they were three and three of a Side ?

Cawthorne. Yes, my Lord, I did apprehend it so.

Mr Att. Gen. If my noble Lords have done with their Questions, I desire to ask this Witness another Question ; My Lords, I think this Person says, That there was a Quarrel at the Bar of the House, and Swords drawn, and as he apprehended, three were on the one Side, and three on the other ; but if I take him right, I do not see that he has given your Lordships any Manner of Satisfaction, what reason he had to apprehend there were three and three of a Side, or, which will be very Material in this Case, if your Lordships can get to the Knowledge of it, which three were on the one Side, and which three were on the other, or indeed whether there were three and three of a Side, as your Lordships will have reason by and by to enquire a little further into that Matter : My Lords, I desire he may be asked this plain Question, What Words or other Passages he did perceive, that made him apprehend there was a Quarrel between them, and they were three and three of a Side ?

Cawthorne. I apprehended it from the Words that Mr *Coote* said, That he would laugh when he pleased, and frown when he pleased.

Mr Att. Gen. Pray, my Lord, I desire he may be asked, Who those Words were spoke to, and who they were applied to ?

Cawthorne. They were spoke to Mr *James*, Mr *French*, and Mr *Dockwra*, who were within of the Bar.

Mr Att. Gen. Did he apply those Words to all those particular Persons ?

Cawthorne. Yes, as I thought, for they three were within the Bar, my Lord *Warwick*, my Lord *Mohun*, and Mr *Coote*, were without the Bar.

Mr Att. Gen. Pray my Lord, I desire he may be asked this Question, Was that before the Swords were drawn, or afterwards ?

Cawthorne. It was before.

Mr Att. Gen. Then I desire he may be asked, Whether the Swords were drawn upon those Words ?

Cawthorne. No, my Lord, the Time of drawing the Swords was when I went out to call Chairs and Coaches ; and I know not who drew the Swords first, or when they were drawn, but when I came back I found them all drawn, and I heard them Clashing.

Mr Att. Gen. Upon the Oath you have taken, Was those Words that you speak of Mr *Coote*'s, That he would laugh when he pleased, and frown when he pleased, before the Swords were drawn, or after the Swords were drawn ?

Cawthorne. Before the Swords were drawn ; for I did not see the Swords drawn till I came back.

L. H. St. Does either Side desire to ask this Witness any Questions ; if not, then you may withdraw, and you may proceed, Mr Attorney, to examine some other Witness.

Lord Wharton. My Lord, there was a Question asked at the Bar about the Hindring of the Quarrel, and my Lord *Mohun*'s desire to part them, and make them Friends ; I desire the Witness, before he goes away, may be asked what he knows of that Matter.

L. H. St. It has been observed by my Lord that you said, when they came down to the Bar, and the Quarrel happened, some Body would have prevented it ; pray repeat that Matter again, Did you observe any of the Company were disposed to take up the Quarrel, and make them Friends, and who they were ?

Cawthorne. My Lord *Mohun* and my Lord *Warwick* said they would send for a File of Musqueteers, and my Lord *Mohun* did all he could to quiet and pacify them till the Quarrel was over ; and my Lord *Mohun* particularly had his Finger prick'd with endeavouring to cross their Swords, and keeping them from fighting, which was all he got by it.

L. H. St. Do you know that of your own Knowledge ?

Cawthorne. His Hand was bloody, and he said so at the Bar ; but I was just coming in again when I heard him say so ; but I cannot say that I saw him hurt, for I was without the House at the Time when that was done.

Lord Godolphin. My Lords, I desire to ask this Witness one Question : I observe he has told my Lords, there was not an angry Word pass'd between them before they came down to the Bar ; I would fain ask him this Question, Whether he was in the Room all the Time till they did come down to the Bar ?

Cawthorne. I received the Reckoning just before they came down to the Bar.

Lord Godolphin. And I desire he may be asked, How long he stay'd in the Room when he received the Reckoning ?

Cawthorne. It was about two or three Minutes that I stay'd in the Room, and not longer.

Earl of Warwick. My Lord, this Witness that has been examined, told you, That when we first came down to the Bar there were two Chairs call'd for ; and when they came, Mr *Coote* and the other Gentleman Mr *French*, went into the Chairs, and afterwards they came out again, and Mr *Coote* said some Words ; I desire the Witness may be asked again, when it was Mr *Coote* spoke those Words ; whether it was before or after the Time that he came out of the Chair, for I take it to be very material.

Cawthorne.

Cawthorne. It was after Mr Coote came out of the Chair, for the Chairmen heard the Words as I verily believe.

Mr Att. Gen. My Lord, I desire he may be ask'd, Was there any Reply made to those Words by any of those Persons he says he apprehends were on the other Side?

Cawthorne. No, not one Word that I know of.

Earl of Warwick. My Lord, I must beg the Favour to have the Question asked again of him, Whether I did not at that Time endeavour to prevent any Quarrelling, and did not say I would call for the Guard if they did?

Cawthorne. Yes: My Lord of Warwick did say so, and so did my Lord Mohun, and so I think did Mr James.

L. H. St. How came you not to say so when you were asked that Question particularly before? Then you said my Lord Mohun endeavoured to prevent the Quarrelling, and make them Friends.

Cawthorne. Yes, my Lord Warwick did so, and so did Mr James.

L. H. St. I cannot tell whether any Body else desires to ask him any Questions.

Mr Att. Gen. My Lord, he speaks of what this noble Lord, my Lord of Warwick said; but he does not tell you the particular Expressions, nor the Time when my Lord said them.

L. H. St. You say, my Lord, the Prisoner at the Bar, endeavoured to pacify the Quarrel between them; but you do not tell my Lords who the Quarrel was between, nor when the Endeavour was made by my Lord Warwick to pacify it.

Cawthorne. My Lord of Warwick did say he would have the Guards sent for.

L. H. St. What Time was that, before or after my Lord Mohun said so?

Cawthorne. Truly, my Lord, I do not know but that it was at the same Time.

L. H. St. Was it when the Swords were drawn, or before?

Cawthorne. They spoke it both before and after the Swords were drawn, as I remember, for the Swords were not drawn while I was in the House, till I came back.

L. H. St. Were the Swords drawn when my Lord Warwick spoke of sending for the Guards?

Cawthorne. Surely, my Lord, it was before the Swords were drawn, when I was sent for the Chairs.

L. H. St. You said there was no angry Words or Quarrel between them.

Cawthorne. Not above Stairs, my Lord: But I apprehended when they came down to the Bar there were three on one Side, and three on the Other.

Mr Att. Gen. Pray, my Lord, let him be asked this Question, Was it after they were three on the one Side, and three on the Other that my Lord Mohun and my Lord Warwick spoke those Words?

Cawthorne. I apprehend the Words were spoke by Mr. Coote, That he would Laugh when he pleased, and Frown when he pleased, before the Swords were drawn.

L. H. St. But that which my Lords desire to know is, What the Time was when my Lord Warwick and my Lord Mohun declared their Desire to part them and make them Friends: Whether before or after the Swords drawn?

Cawthorne. Before and after; for I was absent when the Swords were drawn.

Earl Rivers. He says, That after my Lord Mohun and my Lord Warwick threatned to send for the Musqueteers, They promised to be quiet: I desire to know who he means by They.

Cawthorne. Mr James call'd to me and said, I need not go and call for the Guards, for the Quarrel was over. There is one Thing more that I forgot, my Lord: After my Lord Mohun and my Lord Warwick were gone away in their Chairs, and Mr Coote, I heard Mr Dockwra say to Captain James and Captain French, they did not care a Farthing for them, they would fight them at any Time.

L. H. St. Who were together then?

Cawthorne. Captain James, Mr French, and Mr Dockwra, after my Lord Mohun and my Lord Warwick, were gone with Captain Coote.

L. H. St. Then Mr French was with them, when Mr Dockwra said so?

Cawthorne. Yes, my Lord.

Lord Wharton. If I apprehend him aright, as to what he says now, my Lord of Warwick, my Lord Mohun, and Captain Coote were gone away at that Time.

Cawthorne. Yes, they were gone away in the three first Chairs, which my Lord Mohun bid go home.

Lord Wharton. Who does he say spoke those Words?

L. H. St. You hear my noble Lord's Question, Who spoke those Words? Repeat them again.

Cawthorne. When my Lord Warwick, my Lord Mohun, and Captain Coote were gone, I heard Mr Dockwra say to Mr French and Mr James, we don't care a Farthing for them, we will fight them at any Time.

Mr Att. Gen. I desire to know whether this Witness testified any Thing of this Matter, when he was examined before the Coroner?

Cawthorne. No, I forgot those Words when I was examined before the Coroner.

Mr Att. Gen. How soon after your Examination did you recollect your self as to what you now speak?

Cawthorne. The next Day after.

Mr Att. Gen. I pray my Lords that he may be asked, Whether he did in general give the same Evidence before the Coroner that he does now?

Cawthorne. Yes, as to all but only those Words of Mr Dockwra's declaring he did not care a Farthing for them, they would fight them at any Time.

Mr Att. Gen. My Lord, I beg he may be asked how long it was after the Fact was done, that he was examined before the Coroner.

Cawthorne. It was the next Day in the Afternoon.

Mr Att. Gen. Then I have this Question further to ask, if your Lordships please, Was he at the Tryal of Mr Dockwra, Mr James, and Mr French?

Cawthorne. Yes, I was.

Mr Att. Gen. Did he then give any Evidence of those Words of Mr Dockwra's, after when my Lord Warwick, my Lord Mohun, and Captain Coote were gone?

Cawthorne. No, I did not.

Mr Att. Gen. My Lord, I have one Question to ask him then more, How he came not to swear this Matter at that Tryal.

Cawthorne. It was out of my Mind at that Time, and I had like to have forgot it now.

Mr Att. Gen. My Lord, we have done with this Witness: Is it your Lordships pleasure that we go on to call our other Witnesses?

Lords, Ay, Ay.

Mr Att. Gen. Then our next Witnesses, my Lords, will be the Chairmen that carried my Lord *Mohun*, my Lord of *Warwick*, and Captain *Coot*: We shall begin with *Thomas Browne* and *John Gibson*, one of them carried *Mr Coot*, the other my Lord of *Warwick*.

[*Thomas Browne was Sworn.*]

L. H. St. What Question do you ask this Witness *Mr Attorney*.

Mr Att. Gen. That he would acquaint your Lordships, whether he carried *Mr Richard Coot*, the Person that was slain, upon the 29th or 30th of *October*, from the *Greyhound Tavern* in the *Strand*, and to what Place he carried him?

L. H. St. You hear the Question; pray speak so loud that my Lords may all hear what you say.

Browne. My Lords, I was between the Hours of One and Two in the Morning, on *Sunday* the 30th of *October* last, with my Fellow and our Chair, at the *Butcher's-Head Tavern* at *Charing-cross*, and I heard some People at *Lockets* at the *Greyhound* in the *Strand*, calling Coach, Coach, a pretty while; but there were no Coaches in the Street, nor that came to them; when they could not get Coaches then they called out for Chairs, and we coming to the Door with our Chair, there were four other Chairs there, and six Gentlemen stood in the Passage, and then it was said, there was not Chairs enough, and there wanted one more, and they stood Discouring, and the first Man came into my Chair who was Captain *Coot*, and my Lord of *Warwick* he got into another; when the Door of the Chair was shut up, we asked them whether we should go, but my Lord *Mohun* came and bid open the Chair again, and we did so, and he returned into the House, and there was some Discourse between them standing at the Bar in the Entry. *Mr Coot* came out again and came into my Chair, and my Lord *Mohun* and my Lord of *Warwick* went into two others; *Mr Coot* bid me carry him into *Leicester-Fields*, and to make all the haste I could; my Lord of *Warwick* and my Lord *Mohun* being in the next Chairs, asked him, *Whither are you a going*, and called out twice, and he said, *To Leicester-Fields*; *Pray do not*, says my Lord of *Warwick*, *but come along with us, and let it alone till to-morrow*; but he bid us go on, and as we were turning up *St. Martin's-Lane* by the *Cross-Keys Tavern*, my Lord *Mohun*, and my Lord *Warwick* called out to us to stop, and their Chairs came up to the Back-Door of the *Cross-Keys Tavern*, and there all the three Chairs were set on a-brest in *St. Martin's-Lane*, and while they were talking together there came by three Chairs of the other Side of the Way, and *Mr Coot* bid us take up and make all the haste we could before them into *Leicester-Fields*, so taking up the Chair again *Mr Coot* bid us make haste, and if we could go no faster he swore Damn him, he would run his Sword in one of our Bodies: There were two Chairs before me, and my Lord *Mohun* and my Lord *Warwick* followed in two Chairs after me; and when we came to the Corner of *Leicester-Fields* at *Green-street* end, all the three Chairs were set down a-brest again, and *Mr Coot* put his Hand in his Pocket, and took out half a Guinea to pay and said he had no Silver, and my Lord of *Warwick* spoke to my Lord *Mohun*, who took out three

Shillings out of his Pocket, who said there was for my Lord *Warwick*, Captain *Coot*, and himself; and when they were gone out I took my Box and my Pipe, and filled my Pipe, and took the *Lanthorn* and lighted it, and by that Time I had lighted my Pipe, I heard a calling out Chair, Chair, again, towards the upper End of the Square, so I took my Chair, and there was one of the Chairs that was not gone, and so we came up to the upper End of the Fields, and they called to us to bring the Chairs over the Rails; we told them we did not know how to do that, for we should not be able to get them back again; at last we did get over the Rails, and made up close to the Place where we heard the Noise, for we could see nothing, it being a very dark Night, and when we came up close to them, by our *Lanthorn* there were two Gentlemen holding up *Mr Coot* under their Arms, and crying out, *My Dear Coot, my Dear Coot*!

Mr Att. Gen. Pray who were those two Gentlemen?

Browne. I did not know them, one was in Red Cloaths, and the other had Gold Lace, and they would have had me have taken *Mr Coot* into my Chair; but seeing him bloody, and not able to help himself, I said I would not spoil my Chair, and so would not meddle with him, but they said they would make me any Satisfaction for my Chair, and desired me to take him in, but he gave himself a spring from them, and we found he was too heavy for us to lift over the Rails, and all we could do could not make him sit in the Chair, but the Chair was broken with endeavouring to place him there; and they said, if we would carry him to a Surgeon's, they would give us a hundred Pound Security; but we finding it impossible the Watch was called for, but no Body would come near, for they said it was out of their Ward, and so they would not come anigh me; and I stayed about half an Hour with my Chair broken, and afterwards I was laid hold upon, both I and my Partner, and we were kept till next Night Eleven a Clock; and that is all the Satisfaction that I have had for my Chair and every Thing.

Mr Att. Gen. Pray, my Lord, I desire he may recollect himself; for we do apprehend it is very Material who it was that desired to take *Mr Coot* into the Chair.

Browne. I cannot tell who they were, it was so very dark I could only see their Cloaths.

Mr Att. Gen. Did you see the Earl of *Warwick* there?

Browne. No, Sir, he was not there, one of them I tell you had Officers Cloaths on, Red lined with Blue, and the other had Gold Lace on; there was no Body there that held him up but them two.

M. of Norm. He says he saw two Persons holding up *Mr Coot*; it would be very well to have that Matter very well settled who those two Persons were, I desire to know how he is sure my Lord of *Warwick* was not one of them two?

Browne. I know my Lord of *Warwick* very well, and I am sure he was neither of the Two.

D. of Leeds. I would know what Light he had to discern it so well by, that he can be sure my Lord of *Warwick* was not there; for he says, it was a very dark Night, and yet he describes the particular Persons that held *Mr Coot* up.

Browne. Yes, my Lord, I am sure my Lord of *Warwick* was none of them.

Duke of Leeds. How could you distinguish in so dark a Night the Colours of People's Cloaths?

Browne.

Browne. With the Candle that I had lighted in my Lanthorn.

Duke of Leeds. He could not know any of the Persons unless he held a Lanthorn to their Faces, or knew them very well before.

Lord High Steward. My Lord *Warwick*, will your Lordship ask this Witness any Questions?

Earl of Warwick. My Lord, I desire he may be asked, Whether I did not bid him stop at *St. Martins-Lane End*, and do all that I could to hinder Mr *Coote* from going any further, but to go home?

Browne. The Earl of *Warwick*, and my Lord *Mohun*, as they turned up the Lane, asked Mr. *Coote*, Whither he was going? and when he said to *Leicester-fields*, they desired him to let it alone till to Morrow; and my Lord *Mohun* said he should go home with him; but the other bid us go on, and said he would not go to his Lodgings, but that they would make an End of it that Night; Still they called to him again; dear *Coote* let's speak a Word with you, and as the Chairs came to the Back-Door of the *Cross-keys Tavern*, there they stood all of a Brest, and they both of them spoke to him, and stood a pretty while there; and in the mean Time three Chairs passed by on the other Side, he Commanded us to take up, and carry him away to *Leicester-fields* immediately; and overtake the other Chairs, or he would run one of us into the Body.

Lord High Steward. Would your Lordship ask him any more Questions?

Earl of Warwick. No, my Lord.

Mr Attorney General. My Lord, I observe, he says they discoursed some Time together while they stopped in *St. Martins-lane*; I desire that he may be asked, whether he can tell what that Discourse was?

Browne. I could not well hear, they whispered together, but I could hear my Lord *Mohun*, and my Lord of *Warwick*, desire Captain *Coote* to go home, and let the Business alone till another Time.

Mr Att. Gen. I desire he may explain himself, what that Business was that they would have put off till to Morrow?

Browne. I know not what it was, I heard of no Anger betwixt them, but they were as good Friends, for any Thing I know to the contrary, as ever they were in their Lives, or as ever I see any Men.

L. Jefferys. He says there were Two went into Chairs at the Door of the House, and afterwards went out again, and went into the House, and there was Discourse at the Bar of the House, I would desire to know what that was?

Browne. I did not hear the Discourse that was in the House, I was at the Door of the House.

Mr Att. Gen. Our next Witness is *William Crippes*. (who was sworn.)

Lord High Steward. What do you ask this Man, Mr Attorney?

Mr Attor. General. Pray will you give my Lords here an Account who you carried to *Leicester-fields* the 29th or 30th of *October*, and what happened in your Knowledge at that time?

Crippes. Captain *Coote* was the first Man that went into the Chair when we came to the *Grey-bound Tavern*, afterwards he came out again, and when we took him up the second Time he was the first Man that set out, and he bid us carry him to *Leicester-fields*, and when he came to the Corner of *St. Martins-lane*, we turned up that way; and my Lord of *Warwick*, and my Lord *Mohun*, called to us, being in Chairs behind, to know whither we were going, and desired to speak with

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Captain *Coote*, and he said he was going to *Leicester-fields*; and when they asked what to do? he said to end the Business; they desired him to put it off till to Morrow; and while they were discoursing about it in *St. Martins-lane* there passed by other three Chairs, which when Captain *Coote* saw, he bid us take up and overtake them, and go faster, or he would run one of us into the Body: So we went on, and at the lower end of *Leicester-fields* we set him down; and the other Two Gentlemen, my Lord *Warwick*, and my Lord *Mohun*, were there set down, and went lovingly together, for any Thing that I saw, up the Pavement of the Square, towards the upper end; and in a little Time we heard a Noise of Calling for Chairs towards the upper End, and when we came there with the Chair, we were bid to lift over the Chair within the Rails, and when we said it was hard to be done, they insisted upon it, and we did come in, and when we came there we saw Two Gentlemen holding up Captain *Coote*, and would have had us taken him into the Chair; we saw there was a great deal of Blood, but I never heard how it came, and they would have had us carried him to a *French Surgeon's*, and proffered any Money.

Mr Att. Gen. My Lord, I desire to know, who they were that desired him to be carried to the Surgeon?

L. H. St. You hear the Question, What say you?

Crippes. I cannot tell, my Lord, one of them had something of Lace upon him, but it was so dark that I could hardly see my Hand, and therefore I cannot tell who they were; and when there was an Objection made, that the Chairs would be spoiled, they said we need not question our Chair, they would give us 100 *l.* Security to answer any Damages, if we would but carry him; so we endeavoured to put him into the Chair, but could not; and so we called out to the Watch, to have had some help, but they said it was none of their Ward, and so they would not come to us; so the Gentlemen went away, and we left them, and went and called a Chirurgeon, who when he came said, he was a dead Man, and we were secured till the next Day.

Mr Att. Gen. Pray, my Lord, I desire he may be asked, Were there not other Chairs in that Place at that time?

Crippes. There was one in the Field besides, and no more that I could see, they all went away but us two.

Mr Att. Gen. What distance of Time was there between their setting down in *Leicester-fields*, and their calling the Chairs again?

Crippes. Not a quarter of an Hour.

Mr Att. Gen. What became of the three Chairs that passed by you in *St. Martins-lane*?

Crippes. They got before us, but what became of them afterwards I cannot tell.

Mr Att. Gen. Did they come from the same Place, the Tavern in the Strand that you were at?

Crippes. Yes, I believe they did, my Lord, for Captain *Coote* bid us follow them, and threatened us if we did not make greater haste.

Mr Att. Gen. Do you know my Lord of *Warwick*?

Crippes. Yes, he had whitish Cloaths on, and none but he had such Cloaths on as those were.

Lord High Steward. Will your Lordship ask this Witness any Questions?

Earl of Warwick. My Lord, I desire he may be asked, whether I did not bid him stop? And,

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Whether I did not say, they should not go to quarrel that Night?

Crippes. Yes, both he and my Lord *Mohun* would not have had Captain *Coote* gone any where, but home to his Lodgings.

Mr Att. Gen. My Lord, I desire to know of him, directly and down-right, Whether my Lord of *Warwick* was not one of them that held him when he was within the Rails in the Fields?

Crippes. No, he was not, he was neither of them, for the one of them was too big for him, and the other was too little for my Lord *Mohun*?

Mr Att. Gen. Now we shall call the Chairman that carried the Earl of *Warwick* into *Leicester-fields*. *James Crattle.* (He was sworn.)

Mr Att. Gen. Will you tell my Lords what you know of any Person that you carried the 29th or 30th of *October* last from the *Greyhound Tavern* in the *Strand*, and who it was, and whither you carried him?

Crattle. I was going along *Charing-Cross*, between One and Two in the Morning the 30th of *October* last, and I heard a Chair called for at *Lockets* at the *Dog Tavern*, and thither I and my Partner went, and we took up the Gentleman, and carried him to *Leicester-fields*.

Mr Att. Gen. Who was that Gentleman?

Crattle. It was my Lord of *Warwick*.

Mr Att. Gen. What time of Night do you say it was?

Crattle. It was about One or Two in the Morning.

Mr Att. Gen. What Day of the Week was it?

Crattle. It was *Saturday Night* and *Sunday Morning*.

Mr Att. Gen. Whither did you carry him?

Crattle. Into *Green-street*, towards the lower end of *Leicester-Square*.

Mr Att. Gen. What Chairs were there more there?

Crattle. There was one that Captain *Coote* was in, and another that my Lord *Mohun* was in, and we went away all together.

Mr Att. Gen. Were there no other Chairs?

Crattle. I did not know who went in the other Chairs; but there were three other Chairs that passed by us at *St Martins-lane*, and we followed after them to *Leicester-fields*.

Mr Att. Gen. Pray what became of you after you had set down your Fare?

Crattle. We were discharged and paid, the other three went up towards my Lord of *Leicester's*, but we were coming away, and in a little Time we heard the Noise of calling Chairs, Chairs, again, and there were Two Chairs did come up, *Thomas Browne's* and ours; my Lord of *Warwick* called our Chair, and we took him into it, and he bid us carry him to the *Bagnio* in *Long-acre*, and when we came there we knocked at the Door, and his Hand was bloody, and he asked us if we had any Handkerchief to bind up his Hand.

Mr Att. Gen. Was there any other Chairs at the Door of the *Bagnio*, at the same time when you came there?

Crattle. Yes, there was another Chair there at the Door at the same Time, and we set down both together.

Mr Att. Gen. Pray whence came that Chair?

Crattle. Indeed I do not know.

Mr Att. Gen. Who were the Chairmen that carried that Chair?

Crattle. Indeed my Lord *Mohun*, and my Lord *Warwick*, were the only Persons that I knew of all the Company.

Mr Att. Gen. What sort of Gentleman was the other that went out of the other Chair into the House?

Crattle. He was a pretty tall Man; when he was in we went away; I only can say I saw my Lord of *Warwick* go into the House.

Mr Att. Gen. Did you take any notice of any Sword that my Lord of *Warwick* had in his Hand at that Time?

Crattle. No, I cannot say I did take any Notice of any Sword, only that there was a Handkerchief desired.

Mr Att. Gen. Pray, Did you hear no Noise at all in the Field, till you heard Chairs called for again?

Crattle. No, I cannot say I heard any Noise in the Field.

Mr Att. Gen. Did you apprehend there was any Fighting?

Crattle. No, I knew nothing at all of it, but upon the calling of Chairs again, and my Lord *Warwick* coming along, we took him in, and he bid us go to the *Bagnio*, and thither we went.

Mr Att. Gen. My Lord, we have done with this Witnesses.

Lord High Steward. My Lord *Warwick*, will you ask this Witness any Questions?

Earl of Warwick. No, my Lord.

Mr Att. Gen. Then, my Lord, our next Witness is *John Gibson*, he was another of those Chairmen that carried my Lord of *Warwick* to the *Bagnio* afterwards. Pray will you give my Lords an Account what you know, who you carried the 29th and 30th of *October* last, and whither you carried them? (who was sworn.)

Gibson. My Lord, I was at *Charing-Cross* with my Partner the 29th of *October* last, at Night, and about One or Two a Clock in the Morning Chairs were called for to the *Greyhound Tavern* in the *Strand*, and when we came there, my Lord of *Warwick*, my Lord *Mohun*, and Mr *Coote*, got into the three first Chairs, and we got my Lord *Warwick* into our Chair, and when we had him there we were bid to go towards *Leicester-fields*, as I apprehended, for thither the Chairs that went first was to go, and indeed my Lord *Mohun*, and my Lord *Warwick*, did call to stop at the end of *St Martins-lane*, and asked Mr *Coote* whither he was going? and he said he was going to make an End of the Business, and they said it should not be to Night, but presently after three other Chairs coming along, and passing before us, the Chair that Captain *Coote* was in, was bid to go on, and we were ordered to follow, which was done accordingly; Just at the Turning of *Green-street* we set down our three Chairs, and, I think, just about the Turning of *Green-street* End we stayed till there came another Chair again, and we and the other Chair upon my Lord *Warwick's* coming into us, went away from thence, and carried him to the *Bagnio* in *Long-acre*.

Mr Att. Gen. You talk of another Chair, pray, Whose Chair was that?

Gibson. There was another Chair that was got there just before us, but indeed I do not know whose it was, nor indeed can I say who it was that was in it, but this I am sure we went to the same place, and we met and lit just at the same Time, and my Lord of *Warwick* asked for a Handkerchief to bind about his Hand, which was bloody, which was given him.

Mr Att. Gen. Did you not know who was in the other Chair at that time?

Gibson.

Gibson. No, indeed, I did not know, I will assure you.

Mr Att. Gen. Pray, did you not know where that other Chair took the other Gentleman up?

Gibson. No, indeed, Sir, I did not.

Mr Att. Gen. Pray, What Time of the Night was it?

Gibson. It was between One and Two of the Clock in the Morning.

Mr Att. Gen. You talk of his Hand being hurt, and that he called for a Handkerchief, Did you see his Hand bleed? and, pray, in what Nature was his Wound?

Gibson. My Lord, all I can say is, there was Blood, and he wanted a Handkerchief, and had one, for he said his Hand was hurt, but in truth I did not take any notice what that hurt was, I did not see it, if my Partner took notice of it, so, but else I can say nothing to it, but the Handkerchief was afterwards asked again, and could not be had.

Lord High Steward. Would my Lord of Warwick ask this Witnesses any Questions?

Earl of Warwick. No, my Lord.

Mr Att. Gen. Then, my Lord, our next Witnesses are *Robert Applegate*, and *Peter Catro*, who will give your Lordship an Account who they carried at this Time.

Lord High Steward. Whom do you call first?

Mr Att. Gen. *Robert Applegate.* (who was sworn.)

Lord High Steward. What Questions do you ask him, Mr Attorney?

Mr Att. General. I desire that he would acquaint your Lordship, what he knows of what passed at the *Greyhound Tavern* in the Strand the 29th of *October* last, whom he carried, and whither he carried them?

Applegate. My Lord, about One or Two a Clock in the Morning, a Sunday Morning, the 29th or 30th of *October* last, I was going home with my Partner and my Chair, and I heard them calling at the *Greyhound Tavern* in the Strand, *Mr Locker's*, for Coaches and Chairs, there was no Coach to be had that could be heard of, but coming up to the Door, they said they wanted six Chairs, and when we were there at the Door, there came out first my Lord *Warwick*, *Captain Coote*, and my Lord *Mohun*, *Captain Coote* got into the first Chair, and what Directions he gave them I cannot tell; my Lord of *Warwick* got into the next, and into ours, which was the Third, my Lord *Mohun* came in, and bid us take him up and carry him towards *Westminster*, and he ordered us to follow the Chairs before; just as they turned at *St Martins-lane*, my Lord *Mohun* called out, and desired to stop, and at the *Cross-Keys Tavern* Back-door all the three Chairs came up together, and then my Lord of *Warwick*, and *Captain Coote*, and my Lord *Mohun* talked together, and I could hear my Lord *Mohun* and my Lord of *Warwick* desire *Captain Coote* to defer it, and put it by till another Day; what it was, indeed I cannot tell: But while they were talking there, Three Chairs more came up on the other side of the Way, and *Captain Coote* would needs go forward, and my Lord *Mohun* and my Lord of *Warwick* went with him, and so they were all set down at the lower end of *Leicester-fields* at *Green-street* end. But in truth I did not see where the other Three Chairs set down those they carried.

Mr Att. Gen. What then happened afterwards, Can you tell?

Applegate. I cannot tell whether I had lighted my Pipe, or just lighting it, when I heard Chairs called again, upon which we run up with our Chair towards the upper end of the Fields, and there I did see my Lord of *Warwick* within the Rails, who bid us put over our Chair into the Fields, but we told him if we did, we could not get it over again, and so we went with our Chair to the corner of the Fields, and when we came there, there came out *Captain French*, who bid us open our Chair, and let him in, for he did believe he was a dead Man; and upon that we did take him in, and he bid us carry him with all the speed we could to the *Bagnio* in *Long-acre*, and my Lord of *Warwick* got into another Chair behind, so we went to *Long-acre*, and when we came to the Door of the *Bagnio*, and *Captain French* came out of the Chair, he was so weak that he fell down upon his Knees; and when he came out, I asked who should pay me, and desired to be discharged, and the Earl of *Warwick* said, *Damn ye, call for your Money to Morrow*; so they both went in at the *Bagnio* Door together.

Mr Att. Gen. Pray who called for the Chair first, *Captain French*, or my Lord of *Warwick* in the Fields.

Applegate. I cannot tell, but when I brought up my Chair, I first saw my Lord of *Warwick*, and he would have had me lifted the Chair over the Rails, and I told him we could not get it over again, and so went up to the upper end of the Fields.

Mr Att. Gen. If you first spoke with my Lord of *Warwick*, why did you not carry my Lord of *Warwick*?

Applegate. Indeed I cannot tell, but I suppose it was because he did not come so soon out of the Fields as *Captain French*, or did not come the same Way.

Mr Att. Gen. Pray do you remember any Thing that happened just at their carrying *Capt. French* away?

Applegate. Before he went into the Chair he stopped, and would have pulled off his Cloaths, but we would not let him.

Mr Att. Gen. Did you see any Sword *Capt. French* had?

Applegate. I did see no Sword that I can say directly was a Sword, but *Captain French* had something in his Hand, but what it was I cannot tell.

Mr Att. Gen. What was it that he said to you, when he first went into the Chair?

Applegate. He desired to be carrid to the *Bagnio*, for he said he believed he was a dead Man.

Mr Att. Gen. Pray, Friend, recollect your self, if you heard him say any Thing at all when he first went into the Chair at the *Greyhound Tavern*?

Applegate. I did not hear him mention any Thing at all.

Mr Att. Gen. Pray what did you hear my Lord of *Warwick* say at that time?

Applegate. Truly I cannot say I heard him mention any Thing at all neither, but I did hear my Lord *Mohun* say, when he could not prevail in *St Martins-lane* with *Captain Coote* to go home, that if they did go he would go and see it.

Mr Att. Gen. If they did go, who did he mean by They?

Applegate. My Lord *Warwick* and *Captain Coote* that were in the other Chairs, there was no Body else to speak to.

Mr *Att. Gen.* Was there any talk of Fighting or quarrelling?

Applegate. No indeed; I do not know of any difference there was between them.

Lord High Steward. My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

Earl of Warwick. My Lord, I desire he may be asked; Whether I did not endeavour to put off the going into *Leicester-fields*, and to have all Things let alone till to Morrow.

Applegate. My Lord, I cannot say any Thing of that, but I did hear my Lord *Mohun* beg heartily of Captain *Coote* to go home, and let the Business alone till another time; and indeed I think I never heard a Man beg more hearty for an Alms at a Door, than he did, that they might not go into the Fields then, but I cannot say that I heard any Thing that my Lord of *Warwick* said about it.

L. H. Stew. Will your Lordship ask him any other Questions?

Earl of Warwick. No my Lord.

Lord High Steward. Did my Lord *Warwick* express any Inclination to go on.

Applegate. Indeed I know not any Thing one Way nor other.

L. Jefferys. My Lords, if I am not mistaken he did say, that he did not see any Thing of Inclination in my Lord of *Warwick* to go on; but I desire if your Lordships please that he may be asked this Question, Whether he did see any Thing in my Lord of *Warwick* that shewed any Inclination to the contrary.

Applegate. All that I can say is, I heard my Lord *Mohun* say, Pray let's go home and lie all together, and let us put off this Business to another time; but indeed I do not remember that my Lord of *Warwick* said one Word of going any way backward or forward.

Mr *Att. Gen.* Pray, who did my Lord *Mohun* speak these Words to?

Applegate. My Lord *Mohun* spoke them to my Lord of *Warwick* and Captain *Coote* both.

Lord High Steward. Mr Attorney who is your next Witness?

Mr *Att. Gen.* *Peter Catro.* (who was sworn.)

L. H. Stew. What do you ask him, Sir?

Mr *Att. Gen.* He was the other Chair-man that carried my Lord *Mohun*, Pray will you give my Lords an Account what you know passed at the Time when you carried my Lord *Mohun* to *Leicester-fields*?

Catro. I and my Fellow carried my Lord *Mohun* from the *Greyhound Tavern* in the *Strand*, till we came to the Turning up of *St Martins-lane*, where my Lord *Mohun* desired that our Three Chairs might stop, and that they might go down to *Westminster*, and that my Lord *Warwick* and Capt. *Coote* would go thither, and he would wait upon them to their Lodging; Captain *Coote* made Answer again something, but what I cannot tell, and his Chair went on, and my Lord *Mohun* did say, if they went forward he would follow them, and see what would come of it.

Mr *Att. Gen.* What did you see happen while you were in *St Martins-lane*?

Catro. There were other three Chairs that went by while we stood at the *Cross-Keys Tavern* Door, and Captain *Coote's* Chair going forward, we followed and went to the end of *Leicester-fields* at *Green-street* end, and there all three went out of their Chairs and walked up the paved Stones of the Square; my Lord of *Warwick* asked my Lord *Mohun* if he had any Silver, and three Shillings were given for the three Chairs, and they went

from us, and bid us go about our Business, and in a little while after we heard a Noise from the upper end of the Fields calling Chairs again.

Mr *Att. Gen.* Did you observe any Thing of Quarrel or Difference between them, or any clashing of Swords.

Catro. Indeed I heard nothing of any Quarrel, for we were at the lower end of the Square, at *Green-street* end, and when we heard them call for Chairs again, we went up towards the upper end of the Fields, and when we came there, we heard one bid us bring up the Chair over the Rails.

Mr *Att. Gen.* Who was that?

Catro. Indeed my Lord I cannot tell, for I was behind the Chair, and could not see who it was, but we saying that we could not get it over again if we did; we went up to the upper end of the Fields, and there was Captain *French*, I think it was, for I did not perfectly see him, being at the hind-part of the Chair, and we went on to the *Bagnio* in *Long-acre*; and I did see my Lord *Warwick* come out of his Chair at the *Bagnio* Door, for there they were set down.

Mr *Att. Gen.* You say you saw my Lord of *Warwick* at the *Bagnio* Door; Did you see any Sword as my Lord of *Warwick* had, or Captain *French*?

Catro. No, I did not see any Sword at all of either of them.

Mr *Att. Gen.* What do you know of Captain *French* his declaring he was wounded.

Catro. I think it was either when he went into the Chair, or in *Newport-street* end he called out to have the Chair opened, for says he I think I am a dead Man, and would have pulled off his Cloaths; and when we were at the *Bagnio* Door we tarried a pretty while till they got them up to let them in, and asking if we should wait, my Lord of *Warwick* bid us come to that House to Morrow Morning for our Money, and they went in together into the House, but I never heard any one Word of Quarrel or Dissatisfaction passed between them.

Mr *Att. Gen.* This Witness speaks to the same Purpose as the other did, and I think we need not trouble your Lordship any further as to that.

Lord High Steward. Would my Lord *Warwick* ask him any Questions?

Earl of Warwick. No, my Lord.

Mr *Att. Gen.* Then our next Witness is one *John Palmer.* (who was sworn.)

Mr *Att. Gen.* Pray will you give my Lords an Account who it was you did carry in your Chair the 29th or 30th of *October* last, and whither you carried him?

Palmer. About one a Clock in the Morning, the 30th of *October*, we were called to the *Greyhound Tavern* in the *Strand* to Mr *Locket's*, and there we took up a Gentleman, one Captain *French*.

Mr *Att. Gen.* Whither did you carry him?

Palmer. He bid us go to *Leicester-fields*.

Mr *Att. Gen.* What did he particularly say to you?

Palmer. There were three other Chairs that were just gone before from the same Door, and he bid us get before all those Chairs, and just as we came to *St Martins-lane* end, we saw there were three other Chairs set down before us over-against the *Cross-Keys Tavern* Back-Door.

Mr *Att. Gen.* Well, what did you do then?

Palmer. So we went before according as we were bid unto *Leicester-fields*, and at the upper end of the Fields by *Leicester-house* we opened the Door

Door, and Captain *French* came out, and he gave us a Shilling, and we went away about our Business.

Mr *Att. Gen.* Were there any more Chairs there that went with you?

Palmer. There were two more Chairs that set down two other Gentlemen by *Leicester-house*, and we came away when we were paid; that is all I know.

Mr *Att. Gen.* Did you see any other Chairs besides your three when you came down again, or any other Gentlemen?

Palmer. We did see some Gentlemen walking up about the middle of the Square when we came down, but we made what haste we could away home, it being late, and Sunday Morning.

Mr *Att. Gen.* Did you observe any fighting when you were in the Field?

Palmer. I did not hear or discern any fighting while I was there.

Mr *Att. Gen.* Did you hear of any Quarrel, or any Thing between any of them, and whom, before?

Palmer. No, I did not know of any Quarrel, or hear of any Thing at all I do assure you.

Mr *Att. Gen.* All that he says then, my Lord is, That he carried Captain *French* to the upper end of *Leicester-fields*, and there he left him.

L. H. St. Would my Lord *Warwick* ask this Witness any Questions?

Earl of Warwick. I desire he may be asked, whether he knows who were in the Chairs that were in *St. Martins-lane* when they passed by?

L. H. St. You hear the Question, What say you to it?

Palmer. There were three Chairs, but who they were that were in them I cannot tell directly, but as they said when they set them down at *Leicester-fields* they were my Lord *Warwick*, my Lord *Mohun*, and Mr *Coote*.

Mr *Att. Gen.* Who was it that said so?

Palmer. Some of the other Chairmen when I came by.

L. H. St. Mr Attorney, who is your next Witness?

Mr *Att. Gen.* We shall call next the Chairmen that carried Mr *Dockwra* and Mr *James*: Call *Jackson* the Chairman. (who was sworn.)

Mr *Att. Gen.* This Man carried Captain *James*: Pray acquaint my Lords, Who you did take up at *Lockett's* in the Strand on the 29th or 30th of October last, and whither you carried him?

Jackson. I carried Captain *James* from *Lockett's* in the Strand into *Leicester-fields*.

Mr *Att. Gen.* How many Chairs were you that went?

Jackson. There were two more that went when I went, there were six in all that took up Gentlemen there, and we were the last but one.

Mr *Att. Gen.* Can you tell who were in the other there first Chairs?

Jackson. I do not know who were in the other Chairs, but I heard my Lord *Mohun* at the Door of the House desire, That the Business might be deferred till to Morrow Morning: There were six Gentlemen at the Door, but truly who they all were I cannot tell.

Mr *Att. Gen.* Who did my Lord *Mohun* speak that to?

Jackson. Indeed I do not know who he spoke it to.

Mr *Att. Gen.* What Answer was made to my Lord *Mohun*?

Jackson. Truly there was no Answer that I heard, but we all went away soon after that, and we were bid to go to *Leicester-fields* to follow the other Chairs, and when we came to the other end of *Leicester-fields*, we set down Captain *James* by the *Standard Tavern*, and he gave us a Shilling, and bid us go our Ways; so we went our Way, and I heard nothing afterwards, but came away down the Fields, and there were three Chairs that stood at the Bottom of the Fields, and we asked them, What they stayed there for? And they said, To fill a Pipe of Tobacco: And presently after we heard call Chairs again; but it was late, and it was Sunday Morning, and my Partner said, Let us go away home and we did so, we went directly home.

Mr *Att. Gen.* Did you carry no Body back?

Jackson. No, we carried no Body back.

Mr *Att. Gen.* My Lord, we have done with this Witness, our next Witness is one *Richard Edwards*, and he was one of the Chairmen that carried Mr *Dockwra*. (He was sworn.)

Mr *Att. Gen.* Pray will you acquaint my Lords, Whether you carried any Body from *Lockett's* the 29th of October, and who it was, and whither you carried him?

Edwards. I do not know who I carried, but they were calling Coaches at the *Greyhound Tavern* in the Strand, and no Coaches coming, they called for Chairs, and so our Chair was brought up.

Mr *Att. Gen.* When you came there, who did you see there?

Edwards. Indeed I did not know my Lord of *Warwick*, nor my Lord *Mohun*, nor any of them.

Mr *Att. Gen.* Well, What do you know? Tell my Lords what happened.

Edwards. When we were there, there went two into two Chairs, and my Lord *Mohun* said, or another Gentleman, I cannot tell which, that the Chairs should not go away, that they would kill any Man that should go away, and they went out of the Chairs, and went into the House again.

Mr *Att. Gen.* And what happened after they went into the House again.

Edwards. After they went out of the Chairs into the House again, as I was told, my Lord of *Warwick*, my Lord *Mohun*, and Mr *Coote*, went into three Chairs, and went away from the Door, and there were three Chairs of us that went last.

Mr *Att. Gen.* Whither did you go with your Chair?

Edwards. We went to the *Standard Tavern* at the end of *Leicester-fields*, and when we came to the Tavern Door, we asked him if we should knock at the Door, he said no, but he gave us a Shilling, and bid us go about our Business, and so we did, for we went sheer away to *Charing-Cross*.

Mr *Att. Gen.* Pray can you tell who were in the other Chairs?

Edwards. Truly I cannot tell any Man that was in our three Chairs, for I was the hind-Chairman, and did not know any of them.

Mr *Att. Gen.* My Lord, I desire to know what he means by hind-Chairman.

Edwards. My Lord, Ours was the last Chair that went to *Leicester-fields*, and I was behind the Chair, and never could see any of them, it being so very dark after they took the Chairs, till we came to *Charing-Cross*, at *St Martins-lane*, and then I could not see who the particular Persons were that were in the Chairs; nor indeed, whose the Chairs were that carried them.

Mr *Att.*

Mr *Att. Gen.* What Hour was it?

Edwards. It was very late, between one and two in the Morning, it was past one before we were called out.

Mr *Att. Gen.* You say you went to the upper end of *Leicester fields*, with two other Chairs; Pray did you see any other Chairs afterwards, and where?

Edwards. We saw three Chairs at the lower end of the Square, as we came down by *Green-street* end, and we asked them, What they stay'd there for, and they said, to light a Pipe of Tobacco.

Mr *Att. Gen.* Pray, Who had been carried in those Chairs, Can you tell?

Edwards. I did not see them set down any Body, and I cannot tell who they carried; and as for the Person that we carried, I did not so much as see him to know him, nor know who he was, but we went away as soon as ever we were paid.

Mr *Att. Gen.* I have one Question more to ask you; you say, That my Lord of *Warwick* at the Tavern Door bid you stay, and that none should go away, and swore he would run any Man through that should go away.

Edwards. It was my Lord *Mobun*; and then two that had gone into the Chairs went into the House again.

Mr *Att. Gen.* Did not you say, that there was some talk of going to *Westminster*?

Edwards. My Lord *Mobun* did talk of going to *Westminster* when they went into the Chairs the Second time, and I think I heard Mr *Coote* say he would make an end of it then; and he would kill any Man that would not go forwards to *Leicester-fields*.

L. H. St. My Lord *Warwick*, will you ask this Witness any more Questions?

Earl of *Warwick.* No, my Lord.

L. H. St. Mr Attorney, have you any more Evidence to call?

Mr *Att. Gen.* My Lord, the next Piece of Evidence that we shall apply our selves to, will be to what happened at the *Bagnio* in *Long-acre*, after my Lord *Warwick* and Captain *French* came there: And the Witness that we shall call is *Pomfret*, and he is a Servant at the *Bagnio* in *Long-acre*, and he will acquaint your Lordships who came thither the 30th of *October* last, and what happened there.

L. H. St. What is his Name?

Mr *Att. Gen.* Henry *Pomfret*.

L. H. St. Is he sworn?

Mr *Att. Gen.* Yes, my Lord.

L. H. St. What is it that you examine him about? What Questions do you ask him Mr Attorney?

Mr *Att. Gen.* Who came to his Master's House; and at what Time they came.

Pomfret. My Lord, on *Sunday* the 30th of *October* last, between Two and Three in the Morning, there came to my Master's Door the Earl of *Warwick*, and knocked at the Door, and there was Captain *French* with him; and when they were let in, my Lord of *Warwick* told me that Captain *French* was wounded, and he himself had a Wound, and he desired that my Master might be called up for to dress the Wounds; especially, because Captain *French* was very much wounded, which accordingly was done in about a quarter of an Hour after they were brought in.

Mr *Att. Gen.* Did he desire to be concealed when he was come in?

L. H. St. Of whom do you speak, Mr Attorney.

Mr *Att. Gen.* My Lord of *Warwick*.

Pomfret. He did desire, that if any Body asked for him, it should be said he was not there.

Mr *Att. Gen.* Pray in what Condition did my Lord of *Warwick* seem to be in at that time.

Pomfret. He seemed to be very much concerned at that time, and his Right Hand, in which he had his Sword, and which was drawn, was very much bloody.

Mr *Att. Gen.* Was the Sword Bloody that he had in his Hand?

Pomfret. The Blade was Bloody; but whether it was all over Bloody I cannot tell; there was besides some Blood upon the Shell, it was very near all over bloody, as I remember.

Mr *Att. Gen.* Pray, Friend, Consider what you swore at the Coroner's Inquest about the Blood upon the Sword.

Pomfret. Indeed I cannot say it was bloody all along the Blade; but there was Blood upon the Shell, and there was Blood upon the Inside, it was so to the best of my remembrance.

Mr *Att. Gen.* What Condition was Mr *French's* Sword in?

Pomfret. He had a drawn Sword in his Hand, but I did not perceive it had any Blood upon it: it was a large Blade.

Mr *Att. Gen.* How do you know what sort of Sword Mr *French's* was, and in what Condition it was?

Pomfret. He desired me to take notice of it next Morning, and I did so, and there was no Blood upon it.

Mr *Att. Gen.* How came you to be desired to take Notice of what passed there about the Swords?

Pomfret. My Lord, there was three of them the next Day, and one it was said was Mr *Coote's*, and another of them was my Lord of *Warwick's*, which I do believe was bloody from the Point upwards, very near, but I cannot directly say but that was afterwards.

Mr *Att. Gen.* Who brought in that Sword that you say was Mr *Coote's*?

Pomfret. To the best of my Remembrance Captain *Dockwra* brought it in, it was almost half an Hour after my Lord *Warwick* and Captain *French* came into the House, when they came thither.

Mr *Att. Gen.* They, Who do you mean?

Pomfret. Captain *James* and he.

Mr *Att. Gen.* Were they let in presently?

Pomfret. No, My Lord of *Warwick* had desired that they might be private there; but when they knocked at the Door, my Lord of *Warwick* desired to know who they were; and when it was understood that they were Mr *James* and Mr *Dockwra*, they were let in by my Lord's Order.

Mr *Att. Gen.* Pray, which of all the Four brought in any Sword in a Scabbard?

Pomfret. It was Captain *Dockwra*.

Mr *Att. Gen.* Pray, did they appear to be all of a Party?

Pomfret. They were glad to see one another; and they talked a pretty while together, but indeed I cannot say I heard what they talked.

Mr *Att. Gen.* Pray, do you remember my Lord of *Warwick's* Sword, and what there was upon it?

Pomfret. It was a Steel Sword Water-gilt, and as near as I can remember there was Blood upon it for the most part from the Point upward.

Mr Att. Gen. And what did appear upon Mr French's Sword?

Pomfret. There was Water and Dirt, but there was no Blood at all.

M. Att. Gen. How long did they stay there?

Pomfret. They all continued about half an Hour, and then went away, all but Mr French, who staid there?

Mr Att. Gen. What then became of the others?

Pomfret. Mr James, and Mr Dockwra, and my Lord of Warwick, went away, and my Lord of Warwick desired particularly, that we would all take care of Mr French, for he was his particular Friend, and Mr French continued there till Sunday about One of the Clock.

Mr Att. Gen. Was there any Discourse at that Time about Mr Coote?

Pomfret. Not that I heard of, one Word.

Mr Att. Gen. Was there any notice taken of any Quarrel that happened between any Body, and who?

Pomfret. No, indeed, I did not hear them take notice of any Quarrel at all between any Body.

Mr Att. Gen. You say Mr French when he came into your House was wounded, and there was care particularly taken of him because he was wounded.

Pomfret. Yes, my Lord of Warwick desired to take care of him.

Mr Att. Gen. Then pray, was there no Discourse how he came to be wounded?

Pomfret. Indeed I do not know how he came to be wounded; nor did I hear one Word of Discourse about it, indeed I cannot say any Thing who wounded him.

Mr Att. Gen. Pray will you recollect your self, and tell my Lords what Sort of Handle had my Lord of Warwick's Sword when you saw it.

Pomfret. It had a Steele Handle.

Mr Att. Gen. Pray, can you tell whether the Shell was open or close?

Pomfret. I cannot tell justly; I saw it, and that was all.

Mr Att. Gen. If I apprehend you, you say my Lord had a Wound in his Hand.

Pomfret. Yes, my Lord, he had so.

Mr Att. Gen. Pray, in what Hand was it that he was wounded?

Pomfret. To the best of my remembrance it was in his right Hand.

Mr Att. Gen. Pray did there appear much Blood there?

Pomfret. Yes, my Lord, indeed there did.

Mr Serj. Wright. You talk of Mr James and Mr Dockwra's Swords, pray in what Condition were they?

Pomfret. Mr Dockwra's Sword was by his Side, and not drawn.

Mr Serj. Wright. What did you observe of Captain James's Sword?

Pomfret. His Sword was naked, and he had lost his Scabbard; but how that came I cannot tell, and there was dirt on one Side of the Sword, and he said he had left his Scabbard behind him.

Mr Att. Gen. Was there any Blood upon his Sword?

Pomfret. No, there was no Blood that I did see upon it.

Mr Att. Gen. Pray did you see any Blood upon Mr Dockwra's Sword?

Pomfret. No, indeed, I did not see Mr Dockwra's Sword, it was in the Scabbard by his Side.

D. of Leeds. My Lords, There has been notice here taken of several Swords that this Witness saw, and he takes so far notice of my Lord of Warwick's Sword, that he tells you what Sort of Hilt it had, and how it was Bloody from the Point to the Hilt; I desire he would give you an Account of the Length and Breadth of the other Men's Swords, Mr French, Mr James, and Mr Dockwra.

L. H. St. You said just now, that you took notice of my Lord of Warwick's Sword, that it was bloody from the Point to the Hilt, what Sort of Sword was it?

Pomfret. It was a pretty broad Sword.

L. H. St. Did you take notice of the other Swords, what Breadth or Length they were of?

Pomfret. No, my Lord, I did not.

Mr Att. Gen. Which was that Sword that was Dirty as you say?

Pomfret. That was Captain French's

Mr Att. Gen. Was that a broad Sword or not?

Pomfret. No, it was not.

Mr Att. Gen. Pray was it over Night or next Morning that you saw the Swords?

Pomfret. It was in the Morning about three a Clock.

Mr Att. Gen. What Time did my Lord of Warwick, and Mr James, and Mr Dockwra go away?

Pomfret. My Lord of Warwick and they were gone several Hours before Mr French; and to the best of my remembrance Mr James broke his Sword upon the Floor after he came in.

Mr Att. Gen. Pray, what Swords were there in all that you saw there?

Pomfret. There was Captain French's, Captain James's, my Lord of Warwick's, and one Mr Coote's, as Mr French said when it was brought in.

L. H. St. Have you done with this Witness, Mr Attorney?

Mr Att. Gen. Yes, my Lord, we have.

L. H. St. My Lord Warwick, Will you ask him any Questions?

Earl of Warwick. No, my Lord.

L. H. St. Then, Mr Attorney, call your next Witnesses.

Mr Att. Gen. Our next Witness is Thomas Goodall, who is a Servant at the Bagnio in Long-acre, as well as this Man that was last. (He was Sworn)

L. H. St. What Questions do you ask him, Mr Attorney?

Mr Att. Gen. My Lord, I desire he would acquaint your Lordships, What Time it was my Lord of Warwick and Capt. French, came to his Master's House?

Goodall. It was between One and Two of the Clock in the Morning.

Mr Att. Gen. My Lord, I desire he would acquaint your Lordships what he saw and knows, that passed at that Time?

Goodall. All that I can say is, That I did see my Lord of Warwick's Sword bloody, and it was naked in his Hand, and I did see a Wound on his Hand: Indeed I did not see him when he first came in, for he had been there a pretty While before I saw him.

Mr Att. Gen. Pray, in what Condition was my Lord when you saw him?

Goodall. He had his Sword in one Hand, and it was bloody at the Blade, and at the Hilt; but whether it was bloody all over, indeed I did not

take notice of it, and so cannot give an Account.

Mr Att. Gen. Pray, What Sort of Sword was it?

Goodall. Indeed I cannot give an Account what Sort of Sword it was, but it was either Steel or Silver gilt, as I remember, but I did take notice that there was Blood upon the Hilt, that is, upon the Shell.

Mr Att. Gen. Was it an open Shell, or a close One?

Goodall. I think it was a close One.

Mr Att. Gen. Pray, Did my Lord of *Warwick* give any Order to be denied in the House, or for any Concealment there?

Goodall. Indeed I did not hear of any Orders given for Concealing of any Body there, but my Lord walked up and down very much Concerned.

Mr Att. Gen. Did not *Mr French* come in with him?

Goodall. I do believe he might: But I cannot say I saw him when he came in.

Mr Att. Gen. Can you tell when *Mr James* and *Mr Dockwra* came in? How long was that after my Lord of *Warwick* was there, and *Mr French*?

Goodall. To the best of my Remembrance and Knowledge, it was half an Hour after my Lord of *Warwick* and *Mr French* came, that *Mr James* and *Mr Dockwra* came: I am sure it was so before I saw them in the House; but indeed I cannot say directly when they came in, or when they went out.

Mr Att. Gen. Pray, Which Hand of my Lord of *Warwick* was it that was hurt, the Right or the Left?

Goodall. Indeed, I cannot positively say; but I think it was the Right Hand.

Mr Att. Gen. You talk of my Lord of *Warwick's* Sword, Did you take any notice of *Mr French's* Sword?

Goodall. No, indeed, I was busie about the Affairs of the House; I did see my Lord of *Warwick's* Sword, but that was by Chance, and it was bloody at the Hilt, and upon the Blade; but whether it were all over bloody, indeed I cannot tell.

Mr Att. Gen. I desire to ask him, Whether he can tell who brought in *Mr Coote's* Sword thither?

Goodall. Indeed I cannot.

L. H. St. Mr Attorney General, Have you any more Questions to ask him?

Mr Att. Gen. No, my Lord, not I.

L. H. St. My Lord *Warwick*, Will you ask him any Questions?

Earl of Warwick. No, my Lord.

L. H. St. Mr Attorney, Who is your next Witness?

Mr Att. Gen. My Lord, our next Witness is *Mrs A. Goodall*, this Man's Wife, (*Who was sworn*)

L. H. St. What Questions do you ask this Gentlewoman?

Mr Att. Gen. I desire that she would acquaint your Lordships, Whether she was at the *Bagnio* in *Long-acre* when my Lord of *Warwick* and *Captain French* came in?

A. Goodall. I was there when my Lord of *Warwick* came in.

Mr Att. Gen. Was *Captain French* with him?

A. Goodall. Yes, *Captain French* was with him.

Mr Att. Gen. About what a Clock was it that they came there?

A. Goodall. It was about Two a Clock, as near as I can remember.

Mr Att. Gen. In what Condition were they when they came in, pray?

A. Goodall. *Mr French* was very much wounded.

Mr Att. Gen. Pray, How was my Lord of *Warwick*?

A. Goodall. My Lord had his Sword in his Hand, and it was very bloody, both at the Hilt, and upon the Blade.

Mr Att. Gen. Did you observe any Wound that my Lord had?

A. Goodall. I think, to the best of my Remembrance, my Lord had his Hand wrapped up in a Handkerchief, which was bloody; but I was busy up and down in the House, and I cannot so well tell what Hand it was; I was indeed up and down there while they were there.

Mr Att. Gen. Do you know of any Orders that were given by my Lord of *Warwick* to be concealed while he was there?

A. Goodall. He did desire the Door might not be opened to any Body that asked for him, and that it might not be said that he was there; and when the other Two Gentlemen came to the Door, he went to the Door himself, and when he saw who they were, he ordered them to be let in.

Mr Att. Gen. What was the Occasion of his going to the Door himself?

A. Goodall. There was a Knocking at the Door, and he had a Mind to know who it was, and when it did appear it was *Mr James* and *Mr Dockwra*, he himself ordered them to be let in.

Mr Att. Gen. How came the Door to be open to them?

A. Goodall. Indeed I think he opened it himself.

Mr Att. Gen. How long was that after he and *Capt. French* came in?

A. Goodall. It was about half an Hour.

Mr Att. Gen. When they first came in, What Posture were they in? Had they any Swords in their Hands?

A. Goodall. I did not positively take notice, Whether they had any Swords in their Hands, nor What they had when they came in.

Mr Att. Gen. What became of them afterwards?

A. Goodall. My Lord of *Warwick*, *Mr James*, and *Mr Dockwra*, went away within a little While, and my Lord of *Warwick* ordered particular Care to be taken of *Mr French*, as his Friend, and he was put to Bed after his Wounds were dressed; but I cannot tell what afterwards became of my Lord *Warwick*, and the other Gentlemen.

Mr Att. Gen. I think you were saying, that my Lord of *Warwick* was Wounded in the Hand, Which Hand was it?

A. Goodall. I cannot positively say, Whether it was the Right or the Left.

L. H. St. Will you who are of the King's Council, ask this Witness any further Questions?

Mr Att. Gen. No, my Lord, we shall ask her no other Questions.

Earl of Warwick. No, my Lord, nor I.

Mr Att. Gen. Then our next Witness is *Henry Amy*, who is a Surgeon, and lives at the *Bagnio* in *Long-acre*, and he will give your Lordship an Account what passed within his Knowledge at this Time

Time within his House, and who came thither Wounded; and what particular Care was ordered to be taken of Mr *French*, and by whom.

(*Mr. Amy was Sworn.*)

Mr *Att. Gen.* I desire you will give an Account to my Lords what happened at your House early in the Morning, the 30th of *October* last?

Amy. The 30th of *October* last, about Two of the Clock, I was knock'd up out of my Bed to attend two Gentlemen, my Lord *Warwick* and Captain *French*, who came then into my House.

Mr *Att. Gen.* In what Condition were they?

Amy. They were both Wounded; Mr *French* very much, and my Lord of *Warwick* in his Hand.

Mr *Att. Gen.* Did you see any Swords?

Amy. Yes; they had both Swords in their Hands, and my Lord of *Warwick's* Sword was very bloody.

Mr *Att. Gen.* Well, Sir, when they came into your House, What Directions was given by my Lord *Warwick*?

Amy. He gave Directions, if any Body should ask for him, they should say he was not there.

Mr *Att. Gen.* Did any Body come and ask for him?

Amy. While we were taking Care of Mr *French*, and Dressing his Wound, there were some Persons came and knocked at the Door, and my Lord of *Warwick* did Order, that no Body should be let in; but he himself went to the Door, and when he found that it was Mr *Dockwra* and Mr *James*; my Lord *Warwick* ordered, that they should be let in.

Mr *Att. Gen.* Pray, Tell my Lords what followed after that?

Amy. After we had Dressed Mr *French* —

Mr *Att. Gen.* By the Way, was there any particular Directions, and by whom, to take Care of Mr *French*?

Amy. Yes, my Lord *Warwick* desired me to take Care of him, as his Particular Friend.

Mr *Att. Gen.* Well then, after you had Dressed Mr *French's* Wound, What happened?

Amy. I Dressed my Lord *Warwick's* Wound.

Mr *Att. Gen.* Pray, Whereabouts was my Lord of *Warwick's* Wound?

Amy. It was near the first Joynt of his Forefinger.

Mr *Att. Gen.* Pray, How long did they stay there?

Amy. After Mr *Dockwra* and Mr *James* came in, and my Lord's Hand was Dressed, they stayed a little While, and they Three went away?

Mr *Att. Gen.* What was said when they went away?

Amy. My Lord of *Warwick* desired to have great Care taken of Mr *French*; and they said, Now let us go away, and they went away.

Mr *Att. Gen.* Pray, What Time did they stay in your House?

Amy. When they went away, I think it was about half an Hour after they first came in.

Mr *Att. Gen.* Did you take notice of no Sword but my Lord of *Warwick's*?

Amy. No, not then.

Mr *Att. Gen.* Did you afterwards?

Amy. Afterwards, in the Morning, Mr *French* called for his Sword, and I looked upon it.

Mr *Att. Gen.* Pray, in what Condition was his Sword; Was it bloody?

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Amy. It was without Blood, only a little Dirty.

Mr *Att. Gen.* Pray, Did you observe that they talked of any Quarrel that had been between Captain *French* and my Lord, when they came in?

Amy. No.

Mr *Att. Gen.* Did you ask them any Questions about it, the one or the other of them?

Amy. No, I did not.

Mr *Att. Gen.* Did you hear them say, how they came by their Wounds?

Amy. No, I did not.

Mr *Att. Gen.* Did you hear them talk of any Body being killed, particularly Mr *Coots*?

Amy. I did not know of any Body being killed till next Day.

Mr *Att. Gen.* Did you take any notice of *James's* and *Dockwra's* Swords?

Amy. Truly I took no notice of any Swords; but my Lord *Warwick's*; while my Lord *Warwick* was there in the House, but the next Morning Mr *French* gave me his Sword, and there was another Sword there, which Mr *French* told me was Capt. *Coots's* Sword.

Mr *Att. Gen.* When was that: How long after my Lord of *Warwick*, and *James*, and *Dockwra* were gone away.

Amy. It was some Hours after.

Mr *Att. Gen.* When did you hear of Mr *Coots's* being killed?

Amy. About Nine a Clock next Morning I heard of Mr *Coots's* being killed.

Mr *Att. Gen.* Whom did you hear it from?

Amy. From *Pomfret* my Servant.

Mr *Att. Gen.* Did you hear no Discourse between my Lord of *Warwick*, Capt. *French*, Mr *James* and Mr *Dockwra* about it?

Amy. No, I did not.

Mr *Att. Gen.* Did they not talk how those Wounds came they had, nor did not you ask who gave them?

Amy. No, I did ask no Question of either of them: And in half an Hour after they came in, my Lord of *Warwick* and the other Two Gentlemen went away.

Mr *Att. Gen.* When they left *French* there, What Orders were left about him?

Amy. Only to take care of him, my Lord of *Warwick* desired that.

Mr *Att. Gen.* What Reason did my Lord give for that?

Amy. I heard nothing of Reason, only that he was his particular Friend.

Mr *Att. Gen.* Did you hear them talk any Thing whither they would go, when they went away.

Amy. I did hear some talk about going into the Country.

Mr *Att. Gen.* Do you know whither they went, when they went away from your House?

Amy. No, indeed I did not.

Mr *Att. Gen.* My Lord, we have done with him.

L. H. St. My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

Earl of *Warwick.* I desire to have him asked Whether I was not Wounded in the Hand.

Amy. His Hand was very bloody, the Handkerchief that was about it was wet with the Blood.

Earl of *Warwick.* I desire to ask him when it was that he saw Capt. *French's* Sword?

Amy. It was not before the Morning ; it was about Nine a Clock, as I remember.

M. of Norm. Before this Witness goes away, I desire he may be asked one Question, Whether he can tell the Size of Mr *French's* Sword.

L. H. St. Here is a noble Lord that desires to know if you can tell about Capt. *French's* Sword, what Sort of Sword it was ?

Amy. As to the Blade, it was a middle-siz'd Sword.

Marq. of Norm. Was it a broad Blade or no ?

Amy. No, my Lord, it was not a broad Blade.

L. H. St. Mr Attorney, Who is your next Witness ?

Mr Att. Gen. Capt. *Loftus Duckingfield.* (who was Sworn.)

Mr Att. Gen. This Gentleman will acquaint your Lordships what Discourse past between these Gentlemen the next Day ; pray Sir, acquaint my Lords what you heard about Mr *Coote's* Death, and when, and where.

Capt. Duck. Early in the Morning I was told of this Accident.

Mr Att. Gen. By whom ?

Capt. Duck. One of the Company, I cannot tell who, I think they were all together then, my Lord of *Warwick*, Captain *James*, Captain *Dockwra*, and no Body else.

Mr Att. Gen. What was their Discourse ?

Capt. Duck. They said they believed Captain *Coote* was killed.

Mr Att. Gen. Did they tell you by whom ?

Capt. Duck. By Mr *French*, every Body did say he was his Adversary.

Mr Att. Gen. What Account was given of the Action ?

Capt. Duck. They said it was done in the Dark, and Capt. *French* was his Adversary.

Mr Att. Gen. Was there any notice taken of any Duel ?

Capt. Duck. Yes there was, between those two, and the other Persons on both Sides ; and it was said my Lord of *Warwick* was Friend to Mr *Coote* and my Lord *Mohun*.

Mr Att. Gen. Who were on the other Side ?

Capt. Duck. Mr *Dockwra* and Mr *James*.

Mr Att. Gen. Was there any Discourse who actually fought ?

Capt. Duck. It was said, that Captain *French* fought with Captain *Coote*, as they believed, and Mr *James* with my Lord of *Warwick*.

Mr Att. Gen. Did you see my Lord of *Warwick's* Sword ?

Capt. Duck. Some Time of the Day I did, but I cannot tell whether it was in the Morning, or no.

Mr Att. Gen. In what Condition was it, Was it bloody, or not ?

Capt. Duck. It was a steel Sword.

Mr Att. Gen. How long did they stay with you ?

Capt. Duck. About half an Hour.

Mr Att. Gen. Did they come publicly ?

Capt. Duck. We went away in a hackney Coach together.

Mr Att. Gen. Pray what Discourse was there about consulting to go into the Country together ?

Capt. Duck. That might be discoursed, but by whom I cannot tell.

Mr Att. Gen. Did my Lord of *Warwick* talk of going into the Country ?

Capt. Duck. Whether the Company talked of it, or my Lord of *Warwick* in particular, and the rest assented to it, I cannot well tell.

Mr Att. Gen. Whither did they go ?

Capt. Duck. I cannot directly tell.

Mr Att. Gen. What Time of the Day was it ?

Capt. Duck. It was about Six of the Clock.

Mr Att. Gen. Cannot you tell whither they went ?

Capt. Duck. Capt. *James*, and Capt. *Dockwra* went to the Ship and Castle in *Cornhill* about Five a Clock or Six, as near as I can remember.

Mr Att. Gen. Can you tell what Time my Lord of *Warwick* went away ?

Capt. Duck. No, I cannot tell what Time he went away, not directly.

Mr Att. Gen. Can you tell of any Agreement amongst them, whither they were to go ?

Capt. Duck. No, I cannot.

Mr Att. Gen. What Discourse or Concern did you observe past between them, concerning Captain *Coote* ?

Capt. Duck. My Lord of *Warwick* shewed a great deal of Concern for his Friend Mr *Coote*.

Mr Att. Gen. Had you any Notice of Mr *Coote's* Death amongst you ?

Capt. Duck. We had notice before we went away, but I cannot tell whether it was before my Lord of *Warwick* was gone.

Mr Att. Gen. Was it after the Discourse of going into the Country, or before ?

Capt. Duck. Indeed, I cannot directly say when it was.

Mr Att. Gen. Pray what Reason was there for their going into the Country before he was dead ?

Capt. Duck. They believed he was dead.

Mr Att. Gen. Cannot you tell the Reason why they would go into the Country ?

Capt. Duck. No, indeed, I cannot tell the Reason.

Mr Att. Gen. Did you observe my Lord of *Warwick's* Sword ? Was there any Blood upon it ?

Capt. Duck. I cannot say his Sword was bloody at the Point ; the whole Blade and Shell was bloody, to the best of my remembrance.

Mr Att. Gen. What Sort of Sword was it ?

Capt. Duck. It was a pretty broad Blade, a hollow Blade, and a hollow open Shell.

Mr Att. Gen. Was there any Discourse concerning Capt. *French* ?

Capt. Duck. Yes, they thought he was very ill Wounded.

Mr Att. Gen. Was there any, and what Discourse who should give my Lord of *Warwick* his Wound ?

Capt. Duck. It was said, they believed Capt. *James* gave my Lord his Wound.

Mr Att. Gen. Pray, Was there any Blood upon Mr *James's* Sword, or was he Wounded ?

Capt. Duck. I saw no Wound upon Capt. *James*, that I know of.

L. H. St. Do you believe that my Lord *Warwick's* Sword was bloodied with the Hurt of his own Hand, or any otherwise ?

Capt. Duck. I cannot tell ; it was a Cut-shell, and the Outside bloody as well as the In.

L. H. St. My Lord *Warwick*, Will your Lordship ask this Witness any Questions ?

Earl of Warwick. No, my Lord.

L. H. St. Mr Attorney, if you have any other Witnesses, pray call them.

Another Witness was produced, that belonged to the Ship and Castle in Cornhill.

Mr Att. Gen. This Man will give you an Account what past at his House at that time, and between whom; Pray will you tell my Lords who was at your House the 30th of October last, and what past there then.

Witness. My Lord of Warwick, Capt. James, and Captain Dockwra, and when my Lord of Warwick came in, I thought my Lord was in a very great Concern, and called for Pen, Ink and Paper, and I feared there was some Quarrel in hand, but they said no, the Quarrel was over, and says, my Lord of Warwick, I am afraid poor Coote is killed.

Mr Att. Gen. Did you observe any Desire to be private?

Witness. No indeed, I cannot tell that.

Mr Att. Gen. How long did they continue there?

Witness. About six a Clock my Lord of Warwick and Capt. James, and Capt. Dockwra, and Captain Duckinfield went away.

Mr Att. Gen. Can you tell who went with my Lord Warwick?

Witness. No indeed, I cannot tell who went with my Lord Warwick; there came in a Gentleman in Black, whom I knew to be my Lord of Warwick's Steward, and he came and spoke some Words to my Lord of Warwick, about a quarter of an Hour after they came in, and then they went away, for after that I did not hear any farther Discourse.

Mr Att. Gen. What became of the rest of the Company?

Witness. They went away; I do not know what became of them, nor whither they went; some of them went in and out of one Room into another several times, two or three times, and came out again.

Mr Att. Gen. My Lord we have done with this Witness.

L. H. St. My Lord Warwick, Will you ask him any Questions?

E. of Warw. No, my Lord.

L. H. St. Mr Attorney, who is your next Witness?

Mr Att. Gen. Mr Salmon the Chirurgion, who by the Coroner's Order searched the Wound. (*Who was sworn.*)

Mr Att. Gen. Pray, Sir, was you ordered by the Coroner to view the Body of Mr Coote?

Salm. Yes, I was ordered by the Coroner to inspect the Body of Capt. Coote, and to give the Jury an Account of the Nature of the Wounds.

Mr Att. Gen. Pray upon the view of the Body, what Wounds had he?

Salm. There was two Wounds; one on the Breast near the Collar-bone running downwards very deep.

Mr Att. Gen. Pray what Part of the Breast was it, and how deep was it?

Salm. It was on the left part of the Breast near the Collar-bone and it penetrated four or five Inches.

Mr Att. Gen. Can you guess at what sort of Sword it was that made the Wound?

Salm. No indeed, Sir, I cannot.

Mr Att. Gen. Was it a broad Sword, or a little Sword?

Salm. The Orifice was about the length of half an Inch, and about the Depth of five Inches.

Mr Att. Gen. Was that made with a broad Sword, or with a narrow Sword?

Salm. Indeed I cannot tell.

Mr Att. Gen. You say he had another Wound; where was that?

Salm. That was on his left Side too, near unto the short Ribs, under the last Rib, which was about the length of an Inch, and of the depth of six Inches, and it run through the Diaphragma.

Mr Att. Gen. Did you take one of those Wounds, or both of them to be mortal?

Salm. I did look upon either of them to be mortal, and to be the Occasion of his Death.

Mr Att. Gen. Can you tell whether they were both made with one and the same Sword?

Salm. Indeed I cannot tell that, whether they were made with one Sword, or two.

Mr Att. Gen. Cannot you tell how they appeared to be? I suppose you probed them.

Salm. Yes, I probed them both; one was quite through the Diaphragma.

Mr Att. Gen. What Time was it that you viewed the Body by the Order of the Coroner?

Salm. I saw the Body at Seven a Clock on Sunday Night.

Mr Att. Gen. If my Lord of Warwick desire to ask him any Questions, he may.

E. of Warw. My Lord, I desire to ask him, whether any of the Wounds were large enough to be made by a Sword run up to the Hilt?

Salm. No, my Lord, sure that they were not.

E. of Warw. My Lord, I desire to know of him, whether both these Wounds were given before or behind?

Salm. I can only tell you the length and depth by following of the Probe; the one was downwards, and the other upwards.

Mr Att. Gen. Do you suppose both those Wounds were given when the Person was standing backward or forward?

Salm. 'Tis impossible to tell how they were given, because of the Variety of the Postures of the Body in the divers Capacities thereby of receiving the Wounds?

Mr Att. Gen. Pray can you tell whether they were given by one and the same Sword or no?

Salm. Indeed I cannot tell.

Mr Att. Gen. Do you know any Thing to the contrary?

Salm. I cannot say any Thing for it, or against it.

E. of Kingston. My Lords, this Witness, if I apprehend him right, says, the Wound on his Side was a large Wound.

Salm. Yes, a very large Wound, of the Length of about three quarters of an Inch at the Orifice, and five or six Inches deep.

E. of Kingston. I desire he may tell whether that Wound could be given by any other than a broad Sword.

Salm. I cannot tell that.

E. of Rochester. Indeed, my Lords, I would have him asked this Question again; I know not whether he can answer it or no; but I cannot but think it is proper to have some Account of this Matter. In all Enquiries before the Coroner, there is a Judgment to be made of the Nature of the Wound, in order to form the Indictments, and that the Jury may know with what sort of Weapon it was made; and it is his Profession, as a Chirurgion, to know such Matters.

L. H. St. Mr Salmon, you hear what is required of you by my noble Lords, and the Observation which

which is made. You are the Chirurgeon sent for by the Coroner, on purpose to inspect this Body; and when you did so, it was incumbent upon you to consider and give Information, as well with what sort of Instrument the Wound was given, as the length and depth of the Wound, that the Jury might consider upon, all the Circumstances of the Occasion, and Manner of the Party's Death: And my Lords would know whether by the Orifices of the Wounds when you inspected them, you can make a Judgment if they were made by several Swords, or the same Sword.

Salm. I cannot say that I saw any difference between the Orifices, as to the Nature of the Instrument they were given with, nor whether they were made by one and the same Sword or no, only the one Orifice was bigger than the other; that of the Side was bigger than that at the Collar-bone.

L. H. St. Then so far we have light (if I apprehend you rightly) the Orifice of the upper Wound was not near so wide as that of the lower; but it seems to be much in one of your Profession not to be able to judge whether the Wounds were given with the same sort of Sword, when there was such a difference in the Orifice.

Salm. That below was a deeper Wound; and there was a considerable difference between the Largeness of one and the other.

Lord Audley. My Lords, I desire he may tell your Lordships how far backward the Wound in the Side lay.

Salm. It was directly on the left Side, immediately under the two last Ribs, and past through the Diaphragma.

M. of Normanby. Pray, my Lords, let him point with his Finger whereabouts it was.

L. H. St. My Lords would have you show them with your Finger whereabouts it was. (*which he did.*)

E. of Warm. It is a very material Question for me that he should answer, whether he did believe that one and the same Sword might not give both Wounds?

Salm. I cannot say any Thing of it one Way or other; but one Wound went much further than the other, because it was in a fleshy Part; and in such a Case, the further the Sword goes in, it makes the Wound larger.

Mr Att. Gen. Then our next Witness is *Stephen Turner*, who was *Mr Coote's* Man, and he will give you an Account what Sword his Master had, and where he found it.

[*He was Sworn, a Sword was shewn him.*]

Turner. This was my Master's Sword, *Mr Coote's*, and I never saw it after he went out in the Morning, till I saw it in the Hands of the Constable, and afterwards before the Coroner.

Mr Att. Gen. What Time did you hear of your Master's Death?

Turner. It was about Nine a Clock next Morning that I heard he was dead.

Mr Att. Gen. Where was your Master's Body?

Turner. It was in *St. Martin's Lane*.

Earl of Tanckerville. I would desire he might be asked one Question, Whether his Master used his Left-hand or his Right?

Turner. I do believe he was a right-handed Man. I did never see him Fence. It was on the Sunday Morning that I went to the Round-house, where I found my Master dead,

Earl of Warwick. I desire he may be asked, Whether he has not observed a particular Kindness and Friendship between his Master and me?

Turner. Yes, my Lord: I have several Times waited upon my Master, when my Lord and he was together, and they were always very civil and kind one to another; and I never heard one Word of any Unkindness between them.

Earl of Warwick. Whether he knows of any Quarrel that was between us?

Turner. No, I never did.

Earl of Warwick. I desire he may be asked, Whether he did not use to lie at my Lodgings sometimes?

L. H. St. You hear my Lord's Question; What say you, Did your Master use to lie at my Lord of *Warwick's* Lodgings at any Time?

Turner. Yes; very often.

Mr Att. Gen. Pray call *Pomsfret* again, and let him see the Sword.

[*Then he came in, and two Swords were shewn him.*]

Mr Att. Gen. I desire he may acquaint your Lordships what he knows of those two Swords.

Pomsfret. These two Swords were brought in by some of the Company that came to my Master's House, and when they were shewn to Captain *French* in the Morning, he owned this to be his, and the other to be *Mr Coote's*; and he desired that Notice might be taken that his Sword was Dirty, but not Bloody, and there was some Blood upon the other.

Mr Att. Gen. Who brought in *Mr Coote's* Sword?

Pomsfret. Indeed I cannot tell.

Mr Att. Gen. Then our last Piece of Evidence, my Lord, will be that of *Mr White* the Coroner.

(*Who was Sworn.*)

L. H. St. What do you ask him, *Mr Attorney*?

Mr Att. Gen. From whom had he these Swords?

(*The Swords were shewn him.*)

White. May it please your Grace, these Swords were delivered to me by the Constable.

Mr Att. Gen. My Lord, I desire he may be asked, Whether, upon his View of the Body, he looked upon the Wounds? and, Whether he did apprehend they were given by one and the same Sword.

White. May it please your Grace, when I had sworn my Inquest, I sent for the Chirurgeon that was here before, and gave him order to probe the Wounds, that the Jury might know the Nature of them, in order to the Drawing up the Inquisition, and I did expressly ask him, Whether he found any such Distinction between them, that they were given by one and the same Weapon, or different Weapons? He said, as he says now, That he could not tell, Whether the Wounds were given by two Swords, or by one; but he did apprehend there was a great Difference between them, and so did I; but generally the Orifice of a Wound does close up when the Body is cold: One of the Wounds were nearer the Left-side than the Other; to the best of my remembrance, it was almost behind him.

Mr Att.

Mr *Att. Gen.* We have done with our Evidence, until we hear what my Lord of *Warwick* says to it.

L. H. St. My Lord *Warwick*, will you ask this Witness any Questions?

Earl of Warwick. No, my Lord.

L. H. St. Make Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj at Arms. O yes, O yes, O yes, His Grace, my Lord High Steward of *England*, does strictly charge and command all Manner of Persons here present, to keep Silence, upon Pain of Imprisonment.

L. H. St. My Lord of *Warwick*, the King's Council have made an End of giving Evidence for the King; now is the proper Time for you to enter upon your Defence.

E. of Warwick. May it please your Grace, and you my noble Lords, my Peers.

I stand here before your Lordships accused of the Murther of Mr *Coote*, of which I am so innocent, that I came and voluntarily surrendred my self so soon as I heard your Lordships might be at leisure to try me; and had sooner done it, but that the King was not then here, nor your Lordships Sitting, and had no mind to undergo a long Confinement; and now I think I might well submit it to your Lordships Judgment, even on the Evidence has been offered against me, whether there hath been any Thing proved of Malice propense, or my being any Actor therein, so as to adjudge me guilty. And I think I may with humble Submission to your Lordships say, that my Innocence appeareth even from several of the Witnesses who have been examined against me, which I will not trouble your Lordships to repeat, but submit to your Memory and Observation.

But my Lords, the Safety of my Life does not so much concern me in this Case, as the Vindication of my Honour and Reputation, from the false Reflections to which the Prosecutor has endeavoured to expose me, and I shall therefore beg your Lordships Patience to give a fair and full account of this Matter; in which the Duty I owe to your Lordships, and to Justice in general, and the right I owe to my own Cause in particular, do so oblige me, that I will not in the least prevaricate, neither will I conceal or deny any Thing that is true.

My Lords, I must confess I was there when this unfortunate Accident happened, which must be a great Misfortune in any Case, but was more so to me in this, because Mr *Coote* was my particular Friend, and I did all I could to hinder it, as your Lordships may observe by the whole Proceedings.

It was on the *Saturday Night* when my Lord *Mohun* and I, and several other Gentlemen met at *Locker's* where the same Company used often to meet, and in some time after several of us had been there, Mr *Coote* came unexpectedly, and for some Time he and we were very friendly, and in good Humour, as we used to be with each other: But then there happened some reflecting Expressions from Mr *Coote* to Mr *French*, who thereupon called for the Reckoning; and it being paid, we left the upper Room, and I proposed to send three Bottles of Wine to my own Lodging, and to carry him thither to prevent the Quarrel. But while the Company stop'd to call for a Glass of Ale at the Bar below, Mr *Coote* (whose unfortunate Humour was sometime to be quarrelsome)

did again provoke Mr *French* to such degree that they there drew their Swords, but we then prevented them of doing any Mischief; then Mr *Coote* still insisting to quarrel further with Mr *French*, my Lord *Mohun* and I proposed to send for the Guards to prevent them: But they had got Chairs to go towards *Leicester-fields*, and my Lord *Mohun* and I, as Friends to Mr *Coote*, and intending to prevent any hurt to him, did follow him in two other Chairs, and as he was going up *St Martins Lane* stop'd him, and I extreemly there pressed him to return and be Friends with Mr *French*, or at least defer it, for that the Night was very dark and wet; and while we were so perswading of him, Mr *French* in one Chair, and Mr *James* and Mr *Dockwra* in two other Chairs past by us, (which we guess'd to be them) on which Mr *Coote* made his Chairmen take him up again, and because the Chairmen would not follow Mr *French* faster, threatened to prick him behind, and when we were got to *Green-street*, and got out of our Chairs, Mr *Coote* offered half a Guinea to be changed to pay for all our three Chairs, but they not having Change, he desired Lord *Mohun* to pay the three Shillings, which he did. And in a few Minutes after, Mr *Coote* and Mr *French* engaged in the Fields, whither I went for the Assistance and in Defence of Mr *Coote*, and received a very ill Wound in my right Hand; and there this fatal Accident befel Mr *Coote* from Mr *French*, whom Mr *Coote* had dangerously wounded, and I must account it a great unhappiness to us all who were there: But so far was I from encouraging of it, that I will prove to your Lordships that I did my utmost endeavours to prevent it; so far from any Design upon him, that I exposed my own Life to save his; so far from proper Malice, that I will by many Witnesses of good Quality and Credit prove to your Lordships a constant good and uninterrupted Friendship, from the first of our Acquaintance to the Time of his Death; which will appear by many Instances of my frequent Company and Correspondence with him, often lending him Money, and paying his Reckonings, and about two Months before his Death lent him an hundred Guineas towards buying him an Ensign's Place in the Guards, and often and even two Nights before this, he lodged with me, and that very Night I paid his Reckoning.

And when I have proved these Things, and answered what has been said about the Sword, and what other Objections they have made, I doubt not but that I shall be acquitted to the entire Satisfaction of your Lordships, and all the World that hear it.

Before I go upon my Evidence, I will crave leave further to observe to your Lordships that at the *Old Bailey* when I was absent, Mr *French*, *James* and *Dockwra*, have been all tried on the same Indictment now before your Lordships, and it was then opened and attempted as now it is, to prove it upon me also; and by most of them the same Witnesses who have now appeared; and they were thereupon Convicted only of Manslaughter, which could not have been, if I had been guilty of Murther. And on that Trial it plainly appeared that Mr *French* was the Person with whom he quarrelled, and who killed him. And now I will call my Witnesses.

L. H. St. Will your Lordship please to go on to call your Witnesses, for the Proof of what you have said; that is the Method, and then you are to make such Observations as you please.

E. of War. My first Witness is Captain Edmund Keeting, who was with me at Locket's, but went away before Captain Coote or any of them came, and he will tell you I was with him a while.

Then Captain Keeting stood up.

L. H. St. Captain Keeting, you are not upon your Oath because the Law will not allow it. In Cases of this Nature the Witnesses for the Prisoner are not to be upon Oath, but you are to consider that you speak in God's presence, who does require the Truth should be testified in all Causes before Courts of Judicature, and their Lordships do expect that in what Evidence you give here, you should speak with the same regard to Truth as if you were upon Oath; you hear to what it is my Lord Warwick desires to have you examined, what say you to it?

Captain Keeting. My Lord, I will tell your Lordship all the Matter I know of it. I met with my Lord of Warwick that Evening at Tom's Coffee-House, and we continued there till about Eight at Night, I went away to see for a Gentleman that owed me Money, and afterwards I went to Locket's, and while I was there, the Drawer came up and told me my Lord of Warwick desired to speak with me, and when he came up into the Room, he said he was to meet with my Lord Mohun there and Captain Coote, and he asked me if I knew where Captain French and Capt. James were; I told him I dined with Capt. Coote at Shuttleworth's; and in a while after Capt. Coote came in, and about an Hour and an half I think, I continued there, and Capt. French came in; Captain Dockwra and we drank together for an Hour and an half, and they admired about 10 a Clock that my Lord Mohun was not come, and I payed my Reckoning not being very well, and away I went home, Mr James came in just before I went away, but there was no quarrelling, nor any Thing like before I went away.

E. of Warw. My Lord, I desire he may be asked, Whether we did not usually meet there as Friends, especially Capt. Coote and I?

Capt. Keeting. Captain Coote and my Lord of Warwick used to be almost every Day together at that Place.

E. of Warw. Pray did he ever know or observe any Difference or Quarrel between Captain Coote and me?

Capt. Keeting. No, my Lord, I never saw any Thing but the greatest Friendship between my Lord of Warwick and Captain Coote that could be, I was with them and saw them together almost every Day.

L. H. St. Have you any Thing farther to examine this Witness to?

E. of War. No, my Lord, I have no other Question to ask him.

L. H. St. Who is your next Witness, my Lord?

E. of War. My Lord, I suppose I shall not need to trouble you to examine the Chairmen over again; Your Lordships have heard what they can say, I desire Colonel Stanbope may be called.

Who it seems stood by the Chair of State, and it was some while before he could get round to come to the Place where the Witnesses were to stand.

L. H. St. While this Witness gets round, if your Lordship has any other Witness ready to stand up, pray let him be called.

E. of Warwick. To prove the Kindness between Captain Coote and me, I desire Colonel Blisset may be called.

Who stood up.

L. H. St. What is it your Lordship asks this Witness, or calls him to?

E. of Warw. To testify what he knows of any Kindness or Unkindness between Captain Coote and me; whether he has not been often in our Company?

L. H. St. Have you been often in Company with my Lord Warwick and Captain Coote?

Col. Blisset. Yes, my Lord, I was very well acquainted with both of them for a twelve Month past before this Accident, and I have often been in their Company, and I always observed that there was a great deal of Friendship and Kindness between them.

E. of Warwick. My Lord, I desire he may tell any particular Instance that he knows or can remember.

Col. Blisset. I remember when Captain Coote had his Commission in the Regiment of Guards, he was complaining of the Streightness of his Circumstances; he was to pay for his Commission 400 Guineas, and said he had but 300 for to pay for it, and my Lord of Warwick did then say to him, do not trouble your self about that; or let not that disturb you, for I'll take care you shall have 100 Guineas, and he said he would give Order to his Steward to pay him so much, and I was told afterwards that he did so.

E. of War. I desire he may tell if he knows of any other particular Instances of my Friendship to Mr Coote.

Col. Blisset. Once when he was arrested by his Taylor for 13 l. my Lord lent him five Guineas, and used very frequently to pay his Reckoning for him.

E. of Warw. I desire he may tell if he knows any Thing else; and whether he has not lain at my Lodgings, and particularly but some small time before this Accident happened.

Col. Blisset. About ten Days before this unhappy Accident happened, I was at my Lord of Warwick's Lodgings, and when I came there I found Captain Coote there a dressing himself; and I asked him how that came to pass, and he told me they had been up late together, and that he had sent home for his Men to dress himself there; upon which I did observe that they had been a rambling together over Night, and there was a very great familiarity between them.

E. of Warw. Did you observe any Quarrel between us?

Col. Blisset. No; None at all; I never knew of any Quarrel between my Lord of Warwick and Captain Coote, but I observed there was a particular Kindness between them, and a great deal of Friendship I know my Lord of Warwick shewed to him, in paying of Reckonings for him, and lending him Money when he wanted.

E. of War. My Lord, I desire he may be asked, whether he does not know that Captain Coote was straitned for Money.

Col. Blisset. I did hear Captain Coote say, That he had not received any Thing from his Father for

for thirteen Months, and his Father was angry with him, and would not send him any Supply, because he would not consent to cut off the Entail, and settle two or three hundred Pounds upon a Whore he had.

Mr Att. Gen. Pray, Sir, will you consider with your self, and though you are not upon your Oath, answer the Questions truly, for you are obliged to speak the Truth, though you are not Sworn, whenever you come to give your Testimony in a Court of Judicature: Pray acquaint my noble Lords here, Whether you did never hear my Lord *Warwick* complain of *Capt. Coote*?

Col. Blisset. No, I never did hear him complain of him.

Mr Att. Gen. Did you never hear the least Word of any Quarrel between them?

Col. Blisset. No, indeed, I did never hear of any Quarrel between them.

Mr Att. Gen. Did you never hear of any Unkindness at all?

Col. Blisset. No, indeed, my Lord, not I: I never so much as heard of the least Unkindness whatsoever.

L. H. St. Well then, my Lord, who do you call next?

Earl of Warwick. Now Colonel *Stanhope* is here, I desire he may be asked the same Question, Whether he does not know the particular Friendship that was between Captain *Coote* and me, and what Instances he can give of it?

L. H. St. You are to consider, Sir, though you are not upon your Oath, you are in a great Court, and under no less strict Obligation to testify the Truth and nothing but the Truth: You hear what my noble Lord asks you?

Col. Stanhope. My Lord, I have known my Lord *Warwick* and Captain *Coote* for about a Twelve-month, and I did perceive that they did always profess a great Kindness for one another.

Earl of Warwick. I desire to know of him, Whether he observed any particular Friendship between *Capt. Coote* and me, much about the Time of this Business.

Col. Stanhope. About eight or ten Days before this unhappy Accident, I went to wait upon my Lord of *Warwick* twice at his Lodgings: Once I found Captain *Coote* there, one of them was in Bed, and the other was dressing of himself; I thought they were very good Friends that were so familiar, and I had good Reason to think so, because of that Familiarity: Both the Times that I was there, when I found them together, was within eight Days before the Accident happened.

Earl of Warwick. The next Witness I shall call will be *Mr Disney*.

Mr Att. Gen. But before Colonel *Stanhope* goes, I desire to ask him this Question, Whether he did never hear or know of any Unkindness between my Lord of *Warwick* and *Capt. Coote*?

Col. Stanhope. No, indeed I did not, I always thought them to be very good Friends.

L. H. St. Will your Lordship go on to your next Witness?

Earl of Warwick. Yes, my Lord, there he is, *Mr Disney*; I desire he may be asked what he knows of any Expressions of Kindness and Friendship between me and *Capt. Coote*.

Mr Disney. About the Time that Captain *Coote* was to have his Commission in the Guards, my Lord of *Warwick* received a Letter from him, wherein he desired him to lend him the 100 Guineas, according to his Offer, for he had but 300

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by him, and he said his Father was unkind to him, and he could have no Money from him, and he would be honest to him and pay it again as soon as he could; my Lord sent for his Steward, and ordered him to provide 100 Guineas for Captain *Coote* while I was there; and all the Times that ever I saw them together, which was very frequently, there was the greatest Kindness between them that could be; and several Times I have seen my Lord of *Warwick* pay *Capt. Coote's* Reckoning for him, and lent him Money when he wanted Money.

Mr Att. Gen. I desire to ask you, Sir, this Question, though you are not upon Oath, yet you are obliged to speak the Truth in a Court of Justice as much as if you were upon Oath: Did you not know or hear any Thing of a Misunderstanding or Quarrel about the Time that this Business happened?

Mr Disney. No, indeed: I was with them together but the Day before, and frequently, and I heard nothing of any Unkindness between them in my Life, nor never knew of any Quarrel between them, or any Reason for it.

L. H. St. My Lord, Who is it you call next?

Earl of Warwick. Colonel *Whiteman*. (*Who stood up.*)

L. H. St. What do you call this Gentleman for?

Earl of Warwick. It is to the same Effect, to acquaint your Lordships with what he knows of the Conversation between Captain *Coote* and me.

Col. Whiteman. My Lord, I know my Lord of *Warwick* and Captain *Coote* were constant Companions together; they dined together almost every Day for half a Year's Time almost; and as to this Time, when this Business had happened, I went to my Lord of *Warwick*, being sent for by him, and found him at a private Lodging, where he expressed a great deal of Concern for the Death of his dear Friend *Mr Coote*, and he shewed me the Wound he had received in his Hand, and he desired he might be private, and he told me he believed People would make worse of it than it was, because he did not appear; but he did but intend to keep himself out of the Way till he could be Tried, and I took what Care I could to get him a Convenience to go to *France*.

Mr Att. Gen. Pray, What Reason did he give for his going away?

Col. Whiteman. The King being at that Time out of *England*, and so the Parliament not Sitting, he said he did not love Confinement, and had rather be in *France* till the Parliament should meet and he might have a fair Tryal, which he thought he should best have in this House.

Mr Att. Gen. But pray, Sir, consider, You are bound to tell Truth, and the whole Truth, in such a Case as this: Are you sure there was no Unkindness or Quarrel, between my Lord *Warwick* and Captain *Coote* about this Time?

Col. Whiteman. No, I never knew of any Quarrel or Unkindness between them in all my Life.

L. H. St. My Lord, Have you any more Witnesses?

Earl of Warwick. I have a great many Witnesses more to the same Purpose, but I think I need not trouble your Lordship with them; only I would call a Person that has been mentioned, that is my Steward.

L. H. St. What is his Name?

Earl of Warwick. Edmund *Raymund*. (*Who stood up.*)

L. H. St. What Questions do you ask him?

C c c

Earl

Earl of *Warwick*. I desire he may tell what he knows of any Friendship between Captain *Coot*e and me, and what particular Instances he can give of it

Raymond. My Lord, I know that my Lord sent for me, and said Captain *Coot*e had occasion for 100 Guineas to pay for a Commission in the Guards, which he had not Money to make up, and I know that they were constant Companions every Day, did eat together, and often did lie together, and I did provide the 100 Guineas for him; and I always did observe that there was a very great Friendship between them.

Earl of *Warwick*. My Lord, the next Witness I shall call will be Mr *French*, who, I hope, having been Tried and had his Clergy allowed him, will be a good Witness; I should be sorry to interpose any Thing that would be a Hindrance to your Lordships giving Judgment in this Cause presently; he is able to give your Lordships an Account of the whole Matter; and though, I hope, I have no need of calling him as a Witness, yet I humbly offer it to your Lordships.

L. H. St. What say the Council on the other Side?

Earl of *Warwick*. My Lord, I do not insist upon it; I think I have no need of it?

L. H. St. Your Lordship must judge for your self how far it is for your Advantage, to desire that this Matter should be debated.

E. of Warwick. I do not desire to take up your Lordship's Time, though I am very well advised, that he is a good Witness in Law.

E. of Roch. I apprehended it the Duty of the King's Council to make Objection against any Witness that should be produced by the Prisoner; I am loth to give your Lordships any unnecessary Trouble, yet I own, that I am not satisfied that a Witness should be offered and rejected, though the Objection be not made and argued, by my Lord, the Prisoner at the Bar: If a Witness be offered, and they think they have an Objection against him, if they do insist upon it, it will occasion a Debate, and then we must adjourn into the House of Lords.

L. H. St. It is not insisted upon by my Lord, as I apprehend. My Lord of *Warwick*, Have you any other Witness you would have called?

E. of Warm. I desire to ask Mrs. *Amy* a Question or two.

Then she stood up.

L. H. St. What does your Lordship ask her?

E. of Warm. What she remembers passed at her House about my Sword, or any Thing.

Mrs. *Amy*. My Lord, when I came into the Room where my Lord of *Warwick* and Captain *French* were, in our House, I stood by Capt. *French* while his Wounds was dressing, and I saw my Lord of *Warwick*'s Sword, and looked upon it, and the Hilt and all the Shell was full of Blood, and it ran down to the Bottom of the Sword Blade.

E. of Warm. I desire she may be asked, how soon that was after my coming in?

Mrs. *Amy*. It was a quarter of an Hour after my Lord came in.

E. of Warm. I desire she may speak what sort of Sword it was at the Hilt, whether it were open or close?

Mrs. *Amy*. Indeed, I cannot say; but the Hilt was full of Blood, the Shell of it, and it ran down to the Bottom of the Blade.

L. H. St. Has your Lordship done?

E. of Warm. My Lord, I would only take notice that the three Gentlemen that were on the other Side, were tried at the *Old-Bailey*, and found guilty only of Man-slaughter; but now I being on his Side, and not having any Malice to him, but always a great deal of Friendship, I submit it to your Lordships, whether I can be thought any ways guilty of his Death; and I humbly hope your Lordships will hear my Council, if you make any doubt of that.

L. H. St. What is it your Lordship would have Council heard to?

E. of War. To this Case, my Lord, Whether there being Six Persons, Three of a Side, one is killed, and I being engaged on the Side of him that was killed, the Three of the other Side have been Tried for the Death of that Man; whether I, who was of his Side be equally guilty with them, who were on the other Side, especially, I engaging particularly with another of the Three, that were of the other Side: That Question I desire my Council may argue, whether I be equally guilty with them that were on the other Side, and who, notwithstanding Death happened in the Case, yet were found guilty only of Man-slaughter.

L. Godolphin. My Lords, it has been moved by my noble Lord at the Bar, that his Council should be heard about Mr *French*'s being Witness, whether he should be a Witness or no; I think it would be much for the clearing of the Fact one Way or other, if the Evidence of that Witness could be heard; but whether he can be heard, or not, according to Law, is a Question that must be debated amongst your Lordships, after your Lordships have heard the Council on both Sides, and perhaps, the Opinion of the Judges upon their Arguments; and therefore I think we must adjourn, to consider whether this Matter shall be argued or no?

L. H. St. What say you to this Matter, Mr Attorney?

Mr *Att. Gen.* My Lords, I should agree with the Motion that is made, if there were any Thing insisted upon by the Prisoner at the Bar, that would bear a Question or Argument; but my Lord of *Warwick* himself has waved the Objection, and so I think there is no need for any Argument on our Side.

L. Godol. I would agree with the Motion that was made for adjourning, in order to debate, but I desire to be thus understood, if he thinks it for his Advantage, that this Witness should be heard for him, which he knows best, whether it be or be not; then I do suppose your Lordships will adjourn, to consider of it in your own House amongst your selves; it will not be proper to enter into the Debate here, nor there neither, till you know what Objection the Council for the King make against this Man's being an Evidence, and therefore we would know, it is fit to be known, whether my Lord's waving, or not insisting upon this Man's Testimony, be free and voluntary, and absolute, or whether it be only in respect to the trouble it may put the House to for the Debate.

L. H. St. My Lord *Warwick*, some of my noble Lords observe you have desired Mr *French* should be examined, and that your Council may be heard to that point, whether he be by Law a Witness, or not; several of my Lords think it reasonable, Council should be heard, Whether he be a Witness or not; or at least, that that Question should be

be considered amongst themselves, if insisted upon; therefore your Lordship is to declare, whether you do insist upon it, or desire to wave it.

E. of War. I wholly submit my self to your Lordships, but as I am advised by my Council, I hope he is a good Witness, and I desire my Council may be heard to that Point.

Mr Att. Gen. My Lords, in truth I acknowledge, according to the Method of Law, the Objection ought to come of our Side; for I think we have very good reason to oppose that Gentleman's being a Witness in this Case, even upon that Objection which my Lord has made himself upon the Consideration, that he has been found guilty of Man-slaughter, for the Death of this very Person. It is true, upon his Prayer, Clergy was allowed him, but the Burning of the Hand was respited, and he was not burnt in the Hand, and he is not pardoned; and how far he can be a Witness in this Case, is the Objection; If a Man Convicted of Felony, that is within Clergy, Prays his Clergy, and it is allowed him, but he is not burnt in the Hand, nor Pardoned, we apprehend he is no Witness; and that is the Objection we make against his Testimony to your Lordships.

L. H. St. My Lord *Warwick*, you hear what is said by way of Objection against this Man's being a Witness. What say you to it?

E. of Warw. For Matter of Law, my Lords, I am not capable of speaking to it, but I desire my Council may.

L. H. St. That which Mr Attorney proposes by way of Objection is Matter of Fact, and the Matter of Law does not arise till the Fact be settled, which must fall within your Lordship's own Knowledge, who produce him as a Witness, and therefore you must Answer to that Fact your self.

E. of Warw. I desire to know of your Lordships if a Man be convicted of Felony, that is within Clergy, and prays his Clergy, and it is allowed him, but the Burning of the Hand is respited, and there is a Warrant for his Pardon; whether he cannot be a good Witness: That his Clergy was allowed, and the burning of the Hand respited; I have the Record here to shew.

L. H. St. My Lords, my noble Lord at the Bar, insisting upon a Warrant for a Pardon, I must acquaint you with something that has happened during your Lordships sitting here this Day; since I came hither a Privy Seal was delivered to me, in order to pass a Pardon for the Burning in the Hand of Mr *French* for the Man-slaughter, for which he was convicted at the *Old Baily*; so far I can acquaint your Lordships as to Matter of Fact.

Earl of Warwick. My Lord, I am advised by my Council, that he is a good Witness without a Pardon, or without burning in the Hand.

L. H. St. What say you, Mr Attorney, to the Law? Now you understand what the Fact truly is.

Mr Att. Gen. Yes, my Lord; and I do apprehend, with Submission to your Lordships Judgment, That a Man convicted of Felony, tho' he prays his Clergy, and has it allow'd him, but is not burnt in the Hand, nor has any Pardon, can be no Witness.

L. H. St. That is the Case upon which you are to form your Objections: Here is a Man produced as a Witness, who has been convicted of Felony, within the Benefit of Clergy, has craved his Cler-

gy, has had it allowed, but has not been burnt in the Hand, nor pardoned.

Mr Att. Gen. Then my Lords, with humble Submission, upon the Matter of Fact so stated, I make this Objection, That he is no Witness in Point of Law: He has been Convicted, in one respect, for the very Offence for which the noble Lord, the Prisoner at the Bar, stands Indicted: Tho' not in the same Degree as the Indictment sets it forth, yet it is for the same Fact. Upon this Indictment Mr *French* was indicted at the Sessions at the *Old Baily*, and there he was found guilty of Man-slaughter, upon which, he pray'd the Benefit of his Clergy, which was allow'd him, but he was not burnt in the Hand: Thus stands the Case in Fact. Now, my Lords, the Allowance of Clergy of it self, does not discharge the Party from the Offence, so far as to set him *Rectus in Curia*, and make him in all respects a Person fit to have the Benefit and Privileges of a *Probus & Legalis Homo*, till he has pass'd through those Methods of setting himself right in the Eye of the Law, that the Law hath prescribed; and in order to set this Matter in its true Light before your Lordships, it will be necessary for me to open to your Lordships, as far as I can, the Nature of this Benefit of Clergy, and what Advantage did accrue to the Party, by having that Benefit allow'd him, and likewise what Benefit he had by the Act that Enacted the Burning in the Hand, which was the Statute of the 4th of *Hen. 7.* And by that Act the Burning in the Hand was to be of no more Effect, but only to shew that he had had his Clergy allowed him; that unless he were within Orders, he should have it no more than once. Before that Act of Parliament, a Person might have had the Benefit of Clergy several Times, but that Act limits it as to Time, that it shall be but once: And therefore, in order to the having of it known, whether a Man once had his Clergy allowed him, that did not produce his Orders, that Act provides there shall be a Mark set upon him at the Time of the Allowance of this Clergy, as a Token that it was allowed him, and he was never to have it allowed afterwards, but even at that Time he was to be delivered over to the Ordinary to make his Purgation; but since that Act, several Statutes have been made about this Matter. I shall mention one that relates to your Lordships, and that is the Statute of *Edward* the 6th, which indeed does Enact, That in Case where a Peer is convicted of Felony within the Benefit of Clergy, he shall be discharged without being burnt in the Hand, but then, and thus the Law stood till the Statute of 18 *Eliz. cap. 7.* by which 'tis Enacted, That after the Burning in the Hand the Prisoner shall not be delivered to the Ordinary, but he shall be discharged; by virtue of which Act, after burning in the Hand, the Prisoner hath made full Satisfaction to the Law, without that Sort of Purgation which was before requisite to be made, but till he be burnt in the Hand, or has his Pardon, he is not to be discharged; it may be he may be Bailed out by the Judge, in order to get a Pardon, but still he remains in *statu quo*, as to his being a Witness, or any Thing of that Nature; his Credit is gone till it be restored by the King's Pardon, or his undergoing the Punishment that the Law requires; and no Man would say, that where one lies under a Conviction of Felony undischarged by burning in the Hand, or Pardon, that he can be a Witness; he remains just as he was be-

fore, the Conviction remains upon him, which disabled him to be a Witness; and that we submit to your Lordships as the Case of this Person, Captain *French*.

Mr Sol. Gen. My Lords, if your Lordships please to spare me one Word of the same Side: Sure at common Law there would be no Difficulty at all, that a Person convicted of Felony within the Benefit of Clergy, unpardoned, and undischarged, could be no Witness; and since those several Statutes that have been mentioned by Mr. Attorney, unless there be an actual burning in the Hand, or a Pardon for that burning in the Hand; sure it cannot be pretended, that one convicted of Felony can be admitted as a Witness. If my Lord of *Warwick* does insist upon his Evidence as Matter of Right, we for the King do insist upon it, that there is no Right at all in the Case; for *French* must be taken to be one convicted of Felony, and not discharged without either burning in the Hand, or Pardon, and then we are sure it cannot be pretended in Law that he can be a Witness.

L. H. St. My Lords, the King's Council have stated their Objection, what is your Pleasure to have done in it?

Earl of Rivers. I suppose, my Lords, that it will be necessary to hear what Answer my Lord of *Warwick* gives to this Objection.

L. H. St. Is it your Lordships Pleasure then, that the Council assigned for my Lord *Warwick* be heard what they have to say to this Matter?

Lords. Ay, ay, ay.

[Then Sir Thomas Powys came to the Bar, and stood by the Earl of Warwick, and spoke thus.]

Sir T. Powis. May it please your Lordships, I am by the Order of this Honourable House, assigned of Council for this noble Lord at the Bar, in Point of Law; and, my Lords, as to the present Question that has been spoken to by the King's Council, I am a little surprized to hear it should be wondered at, that my Lord of *Warwick* should insist upon it, that this Gentleman should be examined for him as a Witness, because, with humble Submission to your Lordships, I think the Authorities of Law will make for the Opinion on the other Side. Mr Attorney General says true, the first Statute that was made for Burning in the Hand, was that in 4 *Hen. 7.* before that Time the Benefit of Clergy, even for Murther, was used to be allowed upon the Prayer of the Party, and he was thereupon delivered over to the Ordinary to make his Purgation, and that not only once, but *toties quoties*, let him demand it as often as he would, and as often as he offended it was allowed: This was thought such a Privilege as ought to be restrained; that Statute of the 4th of *Hen. 7.* takes notice that an ill Use was made of it, and therefore does Ordain, That it should be allow'd no more than once, unless to Persons within Orders: And as a Means to know, Whether it had been before allowed, or not, the Act does direct, That the Party convicted shall be Burnt in the Hand, that is all the Act does appoint, it does no otherwise alter the Case; it does not impose it upon the Party as a Punishment for the Offence, but only as a Mark of Distinction, that if ever he came again before the Court, and being Convicted of the like Offence, should Pray the Benefit of Clergy, then upon Inspection it might be known whether before he had been allowed his Clergy or not; and so stood the Law without

Alteration as to the Manner of Delivery of the Criminal over to the Ordinary to make his Purgation, with which the Temporal-Law, in the Manner of Doing thereof, did not intermeddle; and therein consisted, with respect to this Matter, the Benefit of Clergy. Afterwards, by the Statute of *Edward* the 6th, the Peers were exempted from the Burning in the Hand; and then comes the Act that we rely upon, which is, that of the 18th of *Eliz.* that takes notice of the former Act of the 4th of *Hen. 7.* which only ordered the Burning of the Hand for the Purposes aforesaid, but left the Party to be delivered over to the Ordinary to make his Purgation; which was found to be a Matter attended with many Abuses, and upon the Reformation thought fit to be abolished, and taken away, because it was only an outward Appearance and Shew of Purgation, and was often the Occasion of very great Perjuries, therefore it is taken totally away, and by this Act the Party shall have the Benefit of Clergy without making Purgation, as fully as if he had actually made it. But, say they, There is still left something that the Law requires, which is, That he should be first Burnt in the Hand, and if he be not Burnt in the Hand, or at least Pardoned, he is not in that Condition that the Law calls for in such a Case, to set him *Rectus in Curia*: If he be Burnt in the Hand, or Pardoned by the King, they agree on the other Side, that he may be a very good Witness. My Lords, that Act of Parliament of Queen *Eliz.* does empower the Court that Tries the Criminal, and before whom he is Convicted, not only to burn him in the Hand, pursuant to the Act of *Henry 7.* but also to detain him in Prison for a Year after; but yet I think that doth not signify any Thing one Way or other, to restore him, or not restore him to his Credit; for I think the Burning in the Hand, which is a Mark of Infamy, was never intended as a Means, any more than Imprisonment for a Year of restoring a Man to his Credit; it was only to shew he had his Clergy once, and should have it no more: The Allowance of Clergy by the Statute of *Eliz.* operates as a Pardon; only, saith the Statute, he shall not be delivered out of Prison before he is burnt in the Hand, according to the Statute of *Hen. 7.* No Body can say, that the Continuing in Prison for a Year, which the Court may order, though burnt in the Hand, would, as to restoring of Credit, have operated one Way or other: But that we insist upon is, That the Allowance of Clergy sets him right in Court, since Purgation is abolished, and is the same Thing as if he had undergone the ceremonial Parts of a formal Purgation. It is the Allowance of Clergy that makes the Alteration or Operation in this Case, by virtue of this last Act of the 18th of *Eliz.* for we take it, that he is to have the same Benefit of his Clergy as if he had been delivered to the Ordinary, and Purgation had been made; and now the Allowance of Clergy by this Act, gives the same Benefit to the Party, as Purgation would have done before the Act, and he is in the same State and Condition as he would have been in Case of a Purgation, or of a Pardon by the King. The Authorities are all with us. There is a Case that is very well known among the Men of the Law in the fourth Report of my Lord *Coke*, *Holcroft's* Case, who was Indicted and Convicted of Manslaughter, and he prayed the Benefit of his Clergy; the Judges thought fit to respite their Judgment therein, but his

his Prayer was enter'd upon Record; and then an Appeal being brought against him, it came to be a Question, How far he had had his Clergy? for by the Statute of the Third of *Hen. 7.* an Appeal will lie notwithstanding a Conviction, if the Party have not had his Clergy; and in this Case it was adjudged, That the Party having prayed his Clergy, he should have the same Benefit as if the Court had ordered every Thing to be actually executed, which ought thereupon to be done: And surely then it can be no Question, Whether a Man shall be a Witness or no, who has had his Clergy allowed. It is so entred upon Record, That the Book was administred to him, and that he read as a Clerk; for the Party has done as much as he can; prayed the Benefit of his Clergy, and had it allowed, and so it is entred upon Record. The Respiting of the Burning of the Hand till the King's Pardon be obtained, shall not sure put him in a worse Condition than he would have been, if he had actually been burnt in the Hand. My Lords, I have in my Hand a Book which is of very great Esteem, and that is, *The Reports of my Lord Chief Justice Hobbart*, wherein he declares his Opinion in this Point, and for whose Opinion every one of our Gown ever hath testified a very great Veneration and Respect; The Case is that of *Searle and Williams*, wherein my Lord *Hobbart* has spoken so fully to this Matter, that I think it ought to put an End to the Question: He says, the Statute of *Eliz.* appointing the Burning in the Hand without Purgation, does operate as a Statute-Pardon to all Intents and Purposes, and the Party having now the Benefit of his Clergy allowed, is in all Respects in the same Condition as if he had been acquitted: That is the Opinion that he holds throughout that Case: I need not trouble your Lordships with reading all the particular Words that he uses, but only those which relate to the Thing now in Question. Immediately before your Lordships he delivers his Opinion, *That whosoever speaks Words of Accusation, reflecting upon a Man for any Offence for which he was Indicted and Convicted, and had had his Clergy allowed, an Action lies as if he had been totally acquitted from it; 'tis not the Burning in the Hand, but the Allowance of Clergy, that sets him right in his Credit in the Eye of the Law, and he is thereby in the same Condition, in that Respect, that he would have been, if he never had had any Conviction upon him.* Towards the End of the Case, his very Words are these, *Though the Statute saith, after burning in the Hand, according to the Statute in that behalf made, he shall be discharged, and there is no burning in the Hand, that makes nothing; for though it be a Case where the Hand ought to be burnt, yet it is not so essential but a Man may have the Benefit of the Statute, though he be not burnt; the King may pardon the Burning, for the Burning, even in an Appeal, is no part of the Judgment, nor so much as in the Nature of Punishment, but rather a Mark to notify that he may have his Clergy but once;* These are his very Words in this Case; so that the Statute of Queen *Elizabeth* doth abolish Purgation, but gives the Party all the Benefit thereof, as if he had gone through it, and instead of delivering the Party to the Ordinary to make his Purgation, it says, he shall be delivered out of Prison; but lest it might seem to repeal the Statute of *Hen. 7.* as to burning in the Hand, it adds, *being burnt in the Hand, according to the Statute in that behalf provided:* By the Statute of *Hen. 7.* he was first to be burnt in the Hand, and then delivered to the

Ordinary to make his Purgation; but by the Statute of *Eliz.* he is first Pardoned his Crime by being allowed the Benefit of his Clergy, without making his Purgation, and afterwards to be burnt in the Hand before he be delivered out of Prison; so that the Burning in the Hand is only a Condition precedent to his getting out of Prison, not to his being restored to his Credit: The King may pardon the Burning in the Hand undoubtedly, and he has gone a great Way in this Case, for he hath given a Pardon as far as the Privy Seal, and that is sufficient to shew his gracious Intention of Pardoning it throughout; and if there be need, we hope it may pass yet forward. What we insist on, is not only the Opinion of my Lord Chief Justice *Hobbart*, but he is followed therein by the Opinion of a Man of very great Authority, one no less eminent than he in his Profession, and that is my Lord Chief Justice *Hale*, in a Book of his that is intituled, *His Pleas of the Crown*, which is but an Abridgement of what he intended upon that Subject under the Title of Clergy; when he comes to treat of the Consequences of the Allowance of Clergy, and what the several Effects of Clergy allow'd, shall be, he says it gives him a Capacity to purchase Goods, and retain the Profits of his Lands, and restores him to his Credit, according to the Case I have mentioned before in *Hobbart*, of *Searle and Williams*; for that Case is particularly in that Book mentioned and referred to: Therefore I hope your Lordships will make no difficulty of hearing this Witness; for we think the Having his Clergy allow'd him, is that which restores him to his Credit. If they have any other Objections against him, I hope we shall hear it from the King's Council: But if this be stood upon in Point of Law as an Objection, That though Clergy was allowed, he was not burnt in the Hand, nor pardoned; I would have observed to your Lordships, That my Lord High Steward has told you it is so far gone towards the Pardon, that the King has shewn his Intention to pardon by the Privy-Seal; and we hope your Lordships will not let this noble Lord at the Bar suffer any Prejudice, by the not Perfecting of the Pardon by actual Passing of the Great Seal.

L. H. St. Mr Attorney General, what say you to the Matters which have been urged?

Mr Att. Gen. My Lord, we have stated our Objection; we think there is nothing given as an Answer to it, and we submit it to your Lordship's Judgment.

Marq. of Halifax. My Lords, I desire that the Question that is to be decided before your Lordships, may be settled truly what it is.

L. H. St. If there be six in Company, and one of them is killed, the other five are afterwards indicted, and three are tried, and found guilty of Manslaughter, and upon their Prayers have their Clergy allowed, and the Burning in the Hand is respited, but not pardoned; Whether any of the three can be a Witness upon the Tryal of either the other Two.

Sir T. Powis. My Lords, with submission, though he were convicted of the Felony, yet upon Prayer of his Clergy, that being allowed him, That restores him to all the Capacities, we say, that he had before the Conviction, and particularly to his Credit; and for that we submit our selves to your Lordships Judgment.

Marq. of Halifax. I suppose your Lordships will have the Opinion of the Judges upon this Point, and

and that must be in the presence of the Prisoner.

L. H. St. It must certainly be in the presence of the Prisoner, if you ask the Judges Opinions.

Marq. of Halifax. But in these Cases, my Lords, it is usual to hear the King's Council to make a Reply: I desire to hear what they would say to what has been offered by the Council for the noble Lord the Prisoner at the Bar.

Mr Serj. Wright. My Lords, I did apprehend that the very stating of the Objection would have set this Matter in its true Light: For the first Place, it is agreed on all Hands, That this *Mr French*, that is desired to be a Witness, does stand convicted of Felony, and by the Law of *England*, while that Conviction remains upon him, till he be either purged or pardoned, he cannot be a Witness: By the Conviction his Credit is lost; and till he be restored to his first Condition, he stands not so clear in the Eye of the Law that he can be an Evidence. The Council for the Prisoner have objected, That if he either be pardoned, or Clergy allowed, he is put in the same Condition as if he had been acquitted.

My Lords, I must admit a Pardon restores to Credit; and I must likewise admit, That allowance of the Benefit of Clergy, and Burning in the Hand upon it, amounts in Law to a Pardon, or is equivalent to a Pardon in this Matter: But the Fact here is not so; for here is neither actual Pardon, nor any burning in the Hand: The Benefit of Clergy was prayed, and allowed; but that alone is not sufficient; there must be an actual burning in the Hand, or a Pardon of that burning in the Hand, otherwise it cannot be a Satisfaction in Law, such as should put him in the same Condition as if he were acquitted. Your Lordships have heard what was said by his Grace my Lord High Steward, That as to the burning in the Hand, The King has been pleased to proceed so far as to grant a privy Seal for the Pardon of the burning of the Hand: But your Lordships very well know, and it cannot be insisted on to the contrary, by the Council on the other Side, That it is no Pardon until it be past under the great Seal of *England*: So that here is no actual Pardon; nor is the bare Allowance of Clergy, without burning in the Hand, equivalent to a Pardon. My Lords, it must be agreed, That at the common Law, Persons that were convicted of Felony, were not restored to their Credit merely by allowing the Benefit of Clergy to them; there was something further to be done to regain Credit; the Party convicted, must undergo another Trial before the Ordinary, which was commonly called Purgation; when any Man was convicted of Felony, he was upon his Prayer of the Benefit of Clergy to have it allowed to him, and if he could read as a Clerk, his Life was saved. He was not discharged of the Felony, and therefore was delivered over to the Ordinary to be kept in Prison until he had, by a sort of Trial before the Ordinary, made his Innocence appear, and purged himself of the Fact charged upon him; and if he could not make his Purgation, he was to lie perpetually in Prison; and notwithstanding the Allowance of Clergy, and delivery over to the Ordinary, yet was not the Credit restored, nor his former Capacities; he was not a legal Witness until he had purged himself of the Crime: It was the clearing themselves of the Guilt, that restored such Persons to their Reputation and Credit, not the bare Allowance of Clergy: Some Criminals were delivered to the

Ordinary generally, those might make their Purgation; others were specially delivered, or delivered with a special Charge to the Ordinary, not to admit them to Purgation, *Absque purgatione facienda*: These latter could never be restored to Credit, except by the King's Pardon; for the Liberty of Purgation, which was the Means of regaining their Credit was taken from them; their Guilt occasioned their loss of Credit; taking away that Guilt doth consequentially restore Credit again; and this Benefit of Clergy was to be allowed as often as any Man had occasion for it.

Thus the Matter of Benefit of Clergy stood in common Law, in respect of Purgation and restoring of Credit, Till the Statute of 18 *Eliz. c. 7.* which was cited on the other Side by Sir *Thomas Powis*; by which Statute Purgation is absolutely taken away, and set aside: And the Party being burnt in the Hand, according to the Statute of 4. *H. 7.* is appointed by this Statute, 18 *Eliz.* to be discharged, and not to be delivered over to the Ordinary, as was before that Time used. The delivering over to the Ordinary was in order to Purgation, and that by the last Statute is quite taken away, and the Party is to have the same Benefit by the having the Benefit of his Clergy and burning in the Hand, as if he had made his Purgation; he shall be discharged: It is not his reading as a Clerk, and that pronounced by the Ordinary, that gives him the Benefit of a discharge, as if he had been purged of the Crime; but there must be the burning in the Hand, that is the very Terms of the Statute upon which he is to be discharged; that must actually be done before he can be put into the same Condition that he was in before the Conviction, and consequently make him capable of being a Witness. As for the Case of *Searle and Williams* that was cited by Sir *Thomas Powis*, that Case doth not oppose in this Matter; there it was not needful to burn the Person convicted; he was a Clerk in holy Orders, and by Law exempt from burning in the Hand: so it was not needful to burn him, the Statute of 18 *Eliz.* not requiring any Person to be burned in the Hand that were not so liable before then. The most that is said in that Case by the Chief Justice *Hobart* is, That in Case where the Hand ought to be burnt, it is not essential; but the Party may have the Benefit of the Statute, *i. e.* be discharged without burning, and the King may pardon the burning; and no doubt if the King pardons the burning, it is as good and effectual as if the Hand had been actually burnt. The King might pardon the whole, and consequently any Part; the Pardon of the Punishment supplies the Effect of it; no Question but a Pardon may supply the want of burning in the Hand. Chief Justice *Hales* in his Book of *Pleas of the Crown*, Fol. 240 which I have here, says expressly, That burning in the Hand is now, since the Statute, 18 *Eliz.* the Consequent upon the Allowance of Clergy, which hath this Effect: First, it enables the Judges to deliver him. Secondly, It restores him to former Capacities. Thirdly, It restores him to his Credit, and so it puts him in the same Condition as if he were acquitted. What is it that hath this Effect? The Allowance of Clergy, and burning in the Hand: There is not to be a Delivery of the Criminal till all be done which is required by Law: The Law requires that the Party be burnt in the Hand, or that the King do pardon the burning in the Hand before the Party be discharged; and, with humble submission, it was never yet pretended, that any Person could have the

full Advantage of the Benefit of Clergy, since the Statute of 4 H. 7. till he was burnt in the Hand, or the Burning in the Hand was pardoned. Now, my Lords, to apply this to the Case in Question, it is on all Hands admitted, That Mr French was convicted of Felony and Manslaughter, and is neither burnt in the Hand, nor pardoned; but he has prayed the Benefit of the Clergy, and has had the Book given to him, to try if he can read, and he certified he can read; this is all that is done. I think it cannot be pretended he ought to be discharged until he is burned in the Hand, or that Burning pardoned, as the Act requires; and if the Reading as a Clerk without burning in the Hand, or pardon of it, be not sufficient in Law to entitle him to be discharged, Why should it be sufficient to restore his Credit? the whole together Works the Discharge, and restores the Party. In the Case of *Burroughs* and *Holcroft* that has been cited, there a Man was convicted of Manslaughter, and prayed his Clergy; the Court did not allow his Clergy, but did advise upon it. This was held sufficient to bar an Appeal; for if Clergy had been allowed, it had clearly been a good Bar; and the Act of the Court in advising upon the Prayer, and not allowing Clergy where it ought to be, shall not prejudice the Party convicted, but he shall be in the same state as if the Clergy had been actually allowed: But that has no likeness to the Case now before your Lordships; for here it is not pretended that Mr French ever desired to be burnt in the Hand, but that was respited in favour to him, which was done with Intention, it seems, to get the King's Pardon for the burning of the Hand, which is not yet obtained, and consequently I take it he is not entitled to that Benefit which the Law would give him, if he was either pardoned or burned in the Hand; he is not fully discharged of the Conviction, and therefore I think he ought not to be admitted as a Witness.

L. H. St. What is the Resolution your Lordships please to take upon this Matter? Is it your Lordships pleasure to have the Opinion of my Lords the Judges, who are here present, upon this Point?

Lords. Ay, Ay, by all Means have the Judges Opinions.

L. C. J. Treby. Two Things have been mentioned at the Bar, which, I think, ought to be laid out of the Question.

1. The Consideration of a Peer, with respect to Burning in the Hand.

I suppose it is not (I am sure it ought not to be) insinuated, that, if any of your Lordships Degree should have the Misfortune to fall into the like Condition as the Gentleman now produced, *viz.* to be once convicted of a clergyable Felony, there could be any Doubt of receiving such Peer, as a Witness, without his having been burnt in the Hand. Certainly there could not; For the Statute of 1 E. 6. exempts the Peers from such Penalty, and virtually Repeals the Statute of 4 H. 7. as to so much. And the Statute of 18 Eliz. requires burning in the Hand only, according to the Statute in that behalf (before) Provided. And there being no Statute then, or now, in Force to subject Peers to such Brand; they are, in such Case, upon the Allowing the Benefit of the said Statute of E. 6. (which is as much as Clergy without reading or burning) freed from Discredit and other Penalties of the Felony, as much as Commons are by having Clergy formally allowed and being burnt.

2. Here hath been mention of a Pardon of the burning this Gentleman in the Hand; and, it seems, the Proceeding hath been so far as to pass the privy Seal. I do not question the King's pardoning of the Burning's being as effectual as the Party's undergoing it. But, I say, Here is no Pardon (though great Preparation for one). For, the Sign Manual, the Signet, the privy Seal, are but Warrants in such Cases, and countermandable. But, it is the great Seal that speaks the King's last and irrevocable Intent, and passeth the Pardon (or other like Thing) to be granted. And that hath not been obtained here.

Now the Question is cleared, I take it to be this; Whether this Commoner being convicted of Felony, and having his Clergy allowed, but being unburnt and unpardoned, shall be received and allowed to be a Witness.

I am of Opinion he ought not.

For (whatever Quality or Credit he might Personally be of,) he is, by being and remaining a Felon convicted, rendered Infamous in the Eye of the Law. Upon the Conviction, he lost, by the Intendment of Law, That Credit which is necessary to a Witness. And is not restored to it by the bare Allowing of Clergy: But, is in the State as a Felon convicted would have been, before Purgation, at common Law.

Clergy or (more properly called) Benefit of Clergy, is an antient Privilege, whereby a Clerk charged with Felony was dismissed from the temporal Judge, and delivered in Custody to his Ordinary, before whom he was to purge himself, if he could, of the Offence; and if he failed in his Purgation, he was to remain in the Ordinary's Prison.

I mean Generally. And I think it not proper to this Occasion, to Discourse of the special Cases wherein the Delivery to the Ordinary was *Abſque Purgatione*.

This Privilege took its Root originally from a Constitution of the Pope, exempting the Persons of the Clergy from the secular Jurisdiction. This the Canon-Law is full in. But, that Law was not thoroughly received here in *England*. And this Matter was Moulded, Ordered, and Altered by our common and Statute-Law.

For Instance. The Cannon-Law gives the Privilege only to Men in holy Orders: Our Law, in favour to Learning, and the Desire of the *English* Bishops, extended it to Lay-Clerks, as an old Statute calls them, *i. e.* any Lay-man, that, by reason of his Ability to read, was (other Circumstances concurring) in a Possibility of being made a Priest. On the other Side; That Law would not suffer the Clergy to be tryed before secular Judges: But, ours hath, for several hundred Years, subjected them to such Tryal.

But, the common Law was ever clear in this, That when a Man was convicted of Felony, though by the Allowing of Clergy, his Life, Land, and Blood were saved, yet, That Conviction laid him under divers Penalties and Forfeitures, some Absolute, others Limited and Determinable.

He forfeited all his Goods and Chattels, which he had at the Time of his Conviction, Absolutely; not to be restored by Purgation or Pardon.

He also forfeited and lost, 1. His Liberty, being to continue a Prisoner. 2. His Capacity of Purchasing more Goods or Chattels, and of Taking and Retaining the Issues and Profits of his Freehold Land to his own Use. 3. His Credit, so as

not to be a Witness, Juror, &c. Under these three Penalties he remained till his Purgation. But, by that, they were determined. As soon as he had made his Purgation, he was restored to his Liberty, Capacities, and Credit.

Purgation was the Convict's clearing himself of the Crime, by his own Oath, and the Oaths or Verdict of an Inquest of twelve Clerks (as Compurgators.) The Proceeding was before the Ordinary. And, for the Manner of it, old Books speak of their making Proclamation for Persons to come in against his Purgation, and of their enquiring into his Life, Conversation, and Fame, and of other Formalities. In all which, several Statutes say, there were great Abuses. But it is certain, that, upon his Acquittal, the Ordinary pronounced him Innocent, and absolved from Infamy. And thereupon he was discharged from the Imprisonment, Incapacities, and Discredit incident to the Felony.

The Statute 4 H. 7. brings in a new Thing, Appointing that every Person Convict of Felony, should be marked in the Hand by the Goaler in open Court, before he should be delivered to the Ordinary. And this, was partly that they might taste of Corporal Punishment; But, principally to notify that they had had their Clergy. For, the same Statute, taking notice that Men were emboldened to commit Murder, Rape, Robbery, and other Felonies, because they had the Benefit of Clergy *toties quoties*, ordains that no Person, who was once admitted to that Benefit, should ever have it again for a following Offence, unless he were within Orders and produced his Letters of his Orders, or a Certificate of them.

For this Act, *Perkin Warbeck* in his Declaration against H. 7. Brands him as an execrable Breaker of the Liberties and Franchises of holy Church.

Then comes the Statute 18 Eliz. C. 7. which, for so much as concerns this Question, I desire to read.

It is in these Words.

For the Avoiding of sundry Perjuries and other Abuses in and about the Purgation of Clerks convict, delivered to the Ordinaries, Be it enacted that every Person which shall be admitted and allowed to have the Benefit or Priviledge of his Clergy, shall not thereupon be delivered to the Ordinary as hath been accustomed, But after such Clergy allowed, and burning in the Hand according to the Statute in that behalf provided [meaning that of 4 H. 7.] shall forthwith be enlarged and delivered out of Prison by the Justices before whom such Clergy shall be granted, that Cause notwithstanding.

Then there follows a Proviso to this Effect.

Provided nevertheless, and be it enacted that the Justices before whom any such Allowance of Clergy shall be had, may for the further Correction of such Persons, detain and keep them in Prison for such convenient Time as the same Justices in their discretions shall think convenient, so as the same do not exceed one Year's Imprisonment.

This Statute refers to that of H. 7. and follows the Order of it, As that appointed that the Convict should be burnt before he should be delivered to the Ordinary to have the Benefit of Purgation, So this of 18 Eliz. Appoints that he shall be burnt before he shall be discharged by the Justices, and have the Benefit thereby intended (instead of Purgation.)

The Council for the noble Lord at the Bar say, that the Allowance of Clergy by vertue of this Act, freeth this Man, and makes him *Rectus in Curia*, as if he had made his Purgation; and that by this Statute he is first pardoned his Crime, by being allowed the Benefit of Clergy, without making his Purgation; and afterwards to be burnt in the Hand before he be delivered out of Prison, and so the Burning is a Condition precedent to his getting out of Prison, not to his being restored to his Credit.

But I am to seek for any Ground for this Notion in this Statute. It doth not require Clergy to be allowed, nor give any new Vertue or Operation to it, when allowed. It supposeth such a Thing to be by Vertue of the common Law: But there it leaves it, if there be nothing more done. It is one Clause consisting of two Parts; 1. *Negative*; He that is allowed his Clergy, shall not be delivered to the Ordinary. 2. *Affirmative*; But after that, and burning in the Hand shall be delivered by the Justices.

Now, If it had stopped at the first Part, it had been so far from pardoning or restoring any Clerk Convict, that it had put all into the same Condition that those were, who were without Purgation, *viz.* to be perpetually imprisoned, and infamous. Indeed, it had not been reasonable to take away such a Priviledge from the Subjects, without some Recompence; and therefore it did not stop there: But proceeds to the 2d Part, and Provides that those who before were delivered to, and by the Ordinary, shall now be delivered by the Justices. But withal, it declares when, and upon what Terms, *viz.* After Clergy Allowed, and burning in the Hand. And this is a Satisfaction to be given to the Law, before they shall have the Benefit of it.

I agree if this Convict had made that Satisfaction to the Law, he might have been a Witness; for, in that Case, he would have been freed from his Discredit by Vertue of the last Words of the said Clause. 'Tis true, the Words are only [*shall forthwith be enlarged and delivered out of Prison by the Justices,*] which literally Import nothing but restoring his Liberty. But under this prime Instance, are implied and intended all other particulars which a Convict might be discharged of by means of Purgation. It was never the Intent of the Statute meerly to set him at large, and leave him a Fleon convict. But when it is said delivered, 'tis meant delivered Free, freed from all incident further Penalties, as he might have been if delivered upon Purgation. This is a reasonable Construction: to a Man that observes the Opposition in the Words, the Sense will appear to be as if the Law-makers had said, that instead of being discharged a *Culpa et Poena* by the Ordinary, upon a tedious Proceeding to Purgation, he shall now be so discharged by the Justices, forthwith.

And this also is necessary to vindicate the Justice of this Law; for, since it takes from him the means he had of regaining his Credit, it is but just it should restore it to him by this Way.

'Tis Objected, that it may as well be said that he shall not be restored to Credit till he have suffered Imprisonment, not exceeding a Year, as that he shall not be restored till burnt. But that receives an easie Answer; for, if it were so, it would not avail this Person. But, I take it to be otherwise. A Convict is discharged from Imprisonment and all other Penalties incident to the Conviction, forthwith upon his burning in the Hand.

But

But if there be a Commitment made by Virtue of the Proviso, it is a collateral and a new Thing, and the Party is not then in Prison by Virtue of his Conviction, but by a fresh express Order of the Judges, made upon the heinousness of the Circumstances appearing on the Evidence. They may, and generally do, forbear to commit at all. And when they do, it may be for a Month or two, at their Discretion. The Proviso calls it a further Correction.

As to the Manner in which this Statute works this full Discharge, it hath been disputed whether it be by supply of Purgation, or rather by a kind of Statute-Pardon. But, I think, that by Force of the Statute the Party is purged and freed of the Felony, and all Penalties incident to it in nature of a Pardon.

In what Manner soever the Statute works it, 'tis manifest that it doth it not but upon a Condition precedent, *viz.* After Clergy allowed, and burning in the Hand. Now, this Person hath his Clergy allowed, but is not burnt in the Hand, (nor has any Pardon for it.) And therefore is not yet Intitled to the Benefit of this Statute. My Lord's Council say he is, because he hath his Clergy allowed. But, that is claiming the Advantage upon the Performing of one Part of a joint Condition, which ought not to be had but upon performing both. They might as well have pretended to it before the Performance of either; The Statute says, after both Clergy and Burning. They say also, that this Burning is no Part of the Judgment, as hath been held in the Case of an Appeal. Be it so. But, I say, 'tis a Part of the Condition in this Statute.

There is no Case in our Books against this Opinion. (But, on the contrary, there are Authorities for it.)

Holcroft's Case is in no sort applicable to this Case; as was truly observed by the King's Serjeant.

The Opinion of my Lord Chief Justice *Hobart* in *Searl and Williams Case*, rightly considered confirms this. I have borrowed the Book from the Gent. at the Bar, and read it. He saith expressly that where a Convict is liable to be burnt in the Hand, he is not discharged and restored without it; because the Statute says after burning. But from thenceforth the Statute frees him from all further Punishment. But, he saith, that where he is not liable to burning, he shall have the same Benefit immediately upon the Allowance of Clergy only. So it was in the Case before him; which was that of a Clerk in Orders: For, *Searl* was a Clergyman, Parson of *Heydon German* in Essex, and convicted of Manslaughter. So it is, he says, in Case where the King pardons the burning. And the last Words in the Case, clearly shew his meaning, *viz.* where the Statute says, after burning, It imports where burning ought to be, &c.

To me the Law is evident. A Peer shall have this Benefit, without either Clergy or Burning. A Clerk in Orders, upon Clergy alone without Burning. A Lay-Clerk, not without both.

As I remember, there hath been but one Authority more mentioned, and that is of my L. C. J. *Hale*, in his *Summary of the Pleas of the Crown*; I have got hither that Book also. To my Understanding, he plainly declares the same Opinion, and cites the before-mentioned Case of *Searl* for Proof of it. His Words (so far as they relate to this Matter) are these,

What the Effect of Clergy allowed?

Vol. IV.

In ancient Time the Consequent was Delivery to the Ordinary, either to make Purgation, or absque Purgatione, as the Case required.

But by Stat. 18 Eliz. c. 7. Now only burnt in the Hand, which hath these Effects,

1. *It enables the Judges to deliver him out of Prison.*

2. *It gives him a Capacity to purchase Goods, and retain the Profits of his Lands.* Foxley's Case, 5 Report.

3. *It restores him to his Credit.* Hob. Seales Case.

The Word [which] used here (whatever else it do, or do not refer to) doth certainly refer to the next Antecedent, that is, Burning in the Hand; and the two Books which this most learned Judge cites, are full Authorities that 'tis this Burning which enables the Court to Deliver him, and that That Delivering which is then due to him is, by good Construction, in lieu of a Pardon, which restores him to his said Capacity and Credit.

To conclude: This Condition Precedent, upon which the Restitution of this Person's Credit depends, is not performed (by his undergoing the said Punishment) nor discharged (by the King's pardoning it;) and therefore he is not a legal Witness.

Earl of *Rocheſter*. If the rest of my Lords the Judges be of the same Opinion; so: and I hope you will not oblige them to deliver their Opinions at large to take up your Lordship's Time with Arguments of any Length, for the Matter has been, I think, sufficiently debated.

Lord Chief Baron. My Lords, I am of the same Opinion.

Mr Justice *Nevill*. And so am I.

L. H. St. My Lord *Warwick*, Have you any Thing more to say to this Question?

Earl of *Warwick*. No, my Lord.

L. H. St. Then what is your Lordship's Pleasure? Is this Man to be admitted a Witness, or not?

Lords. No, no; we think, by Law, he can't be a Witness.

L. H. St. My Lord *Warwick*, my Lords are of Opinion, That this Person cannot be admitted as a Witness for you.

Earl of *Warwick*. My Lords, I submit to your Lordships Judgment in the Matter.

Earl of *Nottingham*. My Lords, I am very glad your Lordships have had this Matter debated by the Council, that so it might be settled: All my Lords the Judges that are here, it seems, are of Opinion, that this Man can be no Witness, and therefore his Testimony must be rejected. But there is another Proposal that I have to make to your Lordships, of a Point that I think ought to be considered of: My noble Lord at the Bar did suppose that he had proved before your Lordships, that he went into the Field to fight on the Side of the Party that was killed, but not on the other Side; and indeed, that he went not to fight, but to prevent a Quarrel, and thereupon he did start a Question, Whether it should not be a Presumption in Point of Fact and Law, that he, being on the Side of the Party that was killed, should not be reputed innocent of his Death? Now, I confess, upon the Starting of this Objection, I doubted of it, Whether if any one were present at the Killing of a Man, where several People were engaged in fighting, on what Side soever such a Per-

son were, either on the Side of the Party that was killed, or on the other Side, yet whatsoever Crime it was in those that killed him, it was the same Crime in those that were present at the Action? My Lord of *Warwick* did desire, that his Council might be heard upon that Point; if there be any Question with your Lordships in that Case, and my Lord desires his Council may be heard to that Matter, it may occasion a Matter of Debate, which cannot be in this place openly, but must be between your Lordships among your selves: Indeed, I think it reasonable, that Council should be heard upon the Case.

L. H. St. My Lords, I think you are not arrived at that Question yet; you are not to take for granted any Part of the Fact, but are to debate among your selves, after the Proof is over, what that Proof does amount to.

Earl of Rochester. Indeed, my Lords, I hope you will not suppose any Thing, and so take it for granted, that may occasion any Debate, because that is not to be done here in this Place, but we must adjourn to another Place for it: The bare putting of a Case by a Prisoner at the Bar, does not make that to be the Case truly in Point of Fact; for as far as I heard and understood the noble Lord's Proposal at the Bar, what he desired to have his Council heard to, was, That he being One of Six that went into the Field, but going with a Design to part them, and not with any Intention to promote the Quarrel, could not be in equal Degree of Guilt with those that were on the other Side, who killed the Party: But now, my Lords, I take it, it is far from being granted on the other Side, that That is the State of the Fact; nay, my Lord himself owns that he was in the Field, and that he was engaged in the Combat with Mr *James*; and then the Question must be that is to be debated, Whether a Party that is concerned in a Quarrel where a Person is killed, is in equal Degree guilty with those that were on the other Side against the Person that was killed? And then the Question would be far different from what it would be otherwise, and as his Lordship did propose it; and if there be a Doubt in Matter of Fact, That ought to be settled here in this Place, that afterwards it may be considered in another.

Earl of Nottingham. My Lords, I cannot but agree with that noble Lord, That the Matter of Fact ought to be settled, and then if any Debate arises thereupon, your Lordships are to return to your own House, and there to debate what is your Judgment upon that Matter of Fact: But whatsoever Motion is made by the noble Lord at the Bar, wherein he desires to have his Council heard, that I suppose may be considered here; and this Point having been started by my noble Lord at the Bar, as a Point of Law, and not of Fact, I desire to remind him of it, to know whether he does insist upon it; if he does not move to have the Matter argued, then there is an End.

L. H. St. My Lords, I do not think you will hear Council upon a Matter of Fact, and therefore it is not ripe (till the Fact be settled) for you to hear Council.

Earl of Warwick. My Lords, I humbly pray, That you will hear my Council as to that Point.

L. H. St. My Lord, this is a Matter of Fact undetermin'd, and not a Matter of Law: What Opinion their Lordships will be of, when they have considered the Proofs as to the Fact, is one Step; when that is over, it will be the proper Time, if

any Doubt be remaining with their Lordships, in Point of Law, to hear Council, but upon bare Matter of Fact Council is not to be allowed.

Earl of Rochester. My Lords, if there be any Debate among the Lords, Whether it be a Matter of Fact, or a Matter of Law, we must go up to our own House; but upon any Point of Law, where Council is to be heard, it must be in this Place in the Presence of the Prisoner, and afterwards your Lordships will debate it among your selves.

Earl of Nottingham. I hope, my Lords, the Council would not state the Case otherwise than as it is really in Point of Fact; nor can this noble Lord hope, that any Thing will make an Impression upon my Lords, but what from the Fact rightly stated, but what is supported from the Evidence; and that which my Lord proposes, is to have his Council heard to a Matter of Law, which your Lordships will be Judges of after you have heard it, whether there be any Weight in that which he supposes to be his Case, That a Person assisting in a Combat on the Side of him that is killed, is in equal Degree of Guilt with them that are on the other Side; That possibly, if the Fact be agreed, may be a Point fit to hear Council to, before your Lordships go to Debate it among your selves.

Duke of Devonshire. If I am not mistaken, my Lord of *Warwick* owns his being one of them that fought, for he has offered Witnesses to prove, That he received a Wound in his Hand by fighting: If my Lord of *Warwick* thinks, that there is a Difference between his being on Mr *Coote's* Side, and theirs that were on the other Side, and would have his Council heard, how far it will difference his Guilt, and the Nature of the Crime, from what it was with them on the other Side, I cannot think that can be to any great Purpose to have that argued; but if your Lordships please, you may hear his Council what they have to say to that Matter; but otherwise I cannot think, but that his Lordship will acknowledge that the Matter of Fact, that he was engaged in the Quarrel.

Earl of Peterborough. My Lords, I desire, if this be a Point, that my Lord's Council should be heard to, that it should be stated as a Point of Law, and then your Lordships will consider of it.

L. H. St. As well as I could apprehend it, as it was offered by my Lord *Warwick*, this was what he desired to have his Council heard to: Tho' the Persons engaged in the Quarrel on the opposite Party to Mr *Coote* have been tried, and found guilty of Manslaughter, yet he is not in equal Degree of Guilt with them, he being engaged on Mr *Coote's* Side, and therefore his Lordship's Case differs from theirs who fought against Mr *Coote*. This Point he would have argued by his Council before your Lordships, as a Matter of Law founded upon the Fact; now the Fact of the Case must arise from the Evidence as it has been given, which has not yet been debated or settled by your Lordships, and till that be agreed to be the Case, no Question of Law does properly arise.

Duke of Leeds. My Lords, if possible, I would put this Matter into its true Method, for indeed I think we have been all this While out of the Way. The noble Lord at the Bar has desired to have his Council heard, this House has allow'd him Council in Matters of Law, I would desire that the Council would state the Case so to your Lordships, that it may appear to be a Case fit to be argued, that so

so it may receive your Lordships Judgment thereupon. My Lord's own bare proposing of such a Thing, will not be enough to encline your Lordships to be of Opinion, perhaps, one Way or other; but I would pray your Lordships, That you would direct the Council that are assign'd for my noble Lord at the Bar, to propose that to your Lordships as a Point of Law that he ought to insist upon; I think it is apparent to every Body, that no Point of Law can arise but upon Matter of Fact, which is agreed to be proved in any Case; now the Proofs of the Fact we have heard; now, that which I would propose to your Lordship is, That instead of hearing his Council to argue in Point of Fact, what is not yet agreed upon to be the Fact, they should state such a Point of Law as they would argue upon; and then whether you would think it a Point of Law, or not a Point of Law, we must go into another Place, where it may be debated, whether it be such a Point of Law as that Council should be heard to it.

Earl of *Peterborough*. My Lords, I hope you will forgive me for interposing in this Matter, but that which I have to say to it is this: I am far from giving any Opinion as yet, as to the Matter of Fact, whether my Lord of *Warwick* was Mr *Coot*'s Friend or his Enemy; I know it is not a proper Place for that Matter to be debated in, but my noble Lord at the Bar desires to have his Council heard, upon that Point, as if the Fact was agreed: Truly, till the Fact be agreed, I question whether we can give any Judgment or Opinion one Way or other: If I observ'd aright, the Evidence for the King aimed at somewhat else: I shall not say what my Opinion now is, till we come to debate it among our selves; but here is a Desire of having Council heard, but there is no Question of Law stated, but it depends upon a Matter of Fact, which is not yet determined by your Lordships, before whom the Consideration of both Fact and Law doth lie, Whether a Person that is engaged on the Side of the Party that's kill'd in a Quarrel, where several Persons on both Sides are concerned, be as much guilty as those that are concerned on the other Side.

Marq. of *Norm*. My Lords, I do suppose that you may hear the Council to state the Question, without your determining any Thing upon it, as to your Opinion one Way or other; for your hearing of Council, is only in order to prepare your Lordships for the Debate among your selves, if there remains any Doubt with you. It seems my noble Lord at the Bar has proposed that his Council should be heard: If the Council will state the Point to be argued upon, your Lordships may here consider, Whether it be such a One as it is fit to hear Council to, then, no doubt, you will hear Council to it. This, I suppose, you will hear from them, or otherwise your Lordships will not think fit to give your selves the Trouble to go and debate that which is no settled Question to be debated of.

Earl of *Rochester*. My Lords, I am afraid, of Necessity, you must adjourn to your own House, for I find my Lords are here arguing one with another; some are of Opinion, That the Council should state the Question, that they should be heard upon; others of my Lords are of Opinion, That it is only a Matter of Fact, not a Matter of Law, upon which Council should be heard; then it must be debated between your Lordships, which is not proper for to do here, therefore I would humbly

move your Lordships, that you would adjourn to your own House.

Earl of *Peterborough*. I suppose your Lordships will be pleased to enquire of the Council, Whether they do insist upon this Point, or no.

L. H. St. My Lord *Warwick*, if your Lordship insist that your Council should be heard upon the Point which you have offer'd, it seems there is such a Difference of Opinion among my Lords, that for the Debating of what shall be done in the Case, my Lords must adjourn; but if you do not insist upon it, they will go in the ordinary Method, to consider of the Evidence that has been given, after it is sum'd up on both Sides; for if you have no more Evidence to offer, you are to make your Observations upon the Evidence that has been given.

Earl of *Warwick*. I submit it, upon the whole Matter to your Lordships, Whether my Council can be heard, or not, to that Point; how far, I being of Mr *Coot*'s Side, can be guilty of his Death.

L. H. St. That is a Matter of Fact which is not yet determin'd, and therefore the Question which you suppose to arise upon it, is not yet ripe to be resolved. If you have no other Witnesses to produce, that which remains, for I think I may properly acquaint you with the Methods of Proceeding, is, That you are now on your Part to sum up the Evidence that has been given, which is your own Work, as not being allow'd Council as to Matter of Fact; you are at liberty to make such Observations as you may think for your Advantage upon the Evidence, and so to close your Defence.

Earl of *Warwick*. My Lord, I submit it upon the whole Matter to your Lordships.

L. H. St. Mr Attorney General, my Lord of *Warwick* submits the Matter, as it has been prov'd, to their Lordships, without any summing up of the Evidence; you who are of the King's Council, if you think fit, will sum up the Evidence on yours, in Order to their Lordships Consideration of it: This you know is the Time for doing it. Make Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, My Lord High Steward of *England*, his Grace does straitly charge and command all manner of Persons here present, to keep silence, upon pain of Imprisonment.

L. H. St. Gentlemen, you that are of the King's Council, now is your Time to sum up the Evidence for the King.

Then Mr Solicitor began to sum up the Evidence, but his Voice was so low, that he could not be heard by the Lords that sat at the upper end of the House.

D. of *Leeds*. My Lords, I think it of so great Importance to have a true State of the Fact and Evidence laid before us, and that we may hear what the King's Council do say at the summing up of the Evidence, that if my Lords be of my Opinion, we shall be very defective to know what Judgment we give when we come to give Judgment, unless we are thoroughly apprized of the Matter of Fact and the Proofs: I confess I am going to move, that which is a Thing, according to the Orders of the House, much without the Rules of the House,

That the Council should be heard in any other Place but where they are, at the Bar of the House; This is contrary indeed, I acknowledge, to the Orders of the House, and so my Motion is irregular; but yet, in order to our Satisfaction, that we may be enabled to hear what the King's Council do say to us, especially in summing up the Evidence, I cannot but offer this to your Lordships; for we can no more hear the Council here, than if we were quite out of the House: Whether therefore your Lordships will please to Order, that any Person that has a stronger Voice should sum up the Evidence: Or whether you will dispence with the Orders of the House so far, as that Mr Solicitor may come to the Clerk's Table, or some other Place within the House, that he may be heard by all, I must submit it to your Lordships. It would be a great Satisfaction for us to hear him, in order to our Judgment; but I acknowledge in this I do make an irregular Motion, as to the Orders that are usually observed by your Lordships: But I know not how to help it, in regard without hearing, it is impossible for us to form our Judgment.

E. of Roch. My Lords, I have a very great Respect for every Motion that That noble Lord who spoke last does make, and I am of his Opinion, That it will mightily tend to the Satisfaction of my Lords who are to give their Judgment in this Case, to hear both the Evidence and the Council, and what observations are made on both Sides; and that it is a great Disadvantage that the Council should have so low a Voice, that all my Lords should not be able to hear him; but yet I hope that may be remedied some other Way than what is proposed by that noble Lord; for if what he desires were done, it will be obvious that in Point of Precedent many Inconveniencies will occur upon breaking the Orders of the House, to comply with a Motion which is acknowledged by the noble Lord himself, to be irregular; for it would be impossible to hear any Body, if it be permitted to make such a great Noise without; and it is that which renders the Difficulty of hearing the greater. If that were quieted, your Lordships might hear this Gentleman as well as those of the other Council: Or if this Gentleman's Voice will not so well reach your Hearing, then there are other Gentlemen of the King's Council that have stronger Voices; and if any of them would sum up the Evidence, I believe it would be better heard and consequently better apprehended by your Lordships, for I had rather any Expedient should be found out to comply with the Orders of the House, and preserve them, than that any irregular Thing should be done for the breaking the Orders of the House, upon any Account whatsoever.

L. H. St. Make another Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes; My Lord High Steward of England his Grace does straitly Charge and Command all manner of Persons here present to keep Silence, upon pain of Imprisonment.

E. of Bridgewater. Truly, my Lords, The Noise about the Court is so great, that we who sit much nearer to the Bar, than the noble Lord who made the Motion for the removal of the Council into another Place, cannot hear Mr Solicitor what he says, and therefore I think some of the Guard should be sent out to clear all the Passages about the Court, that there may be no Noise, for

it is the Noise of the People without, that makes it so difficult to hear the King's Council.

L. H. St. Let some of the Guard without take care that there be not that Noise made; and whosoever does make a Noise, let him be taken into Custody.

Then another Proclamation was made for Silence; upon which there was a greater Quietness in the Hall.

L. H. St. Mr Solicitor, There is hopes now since there is not so great Noise as there was, that you may be heard by my Lords: You must use the best Endeavours you can, that you may be heard.

E. of Roch. If that Gentleman cannot speak out so well that he can be heard, those of the King's Council that have better Voices, must sum up the Evidence.

Mr Sol. Gen. My Lord, I speak as loud as I can.

E. of Roch. There are others of the King's Council, pray let them do it then; Mr Attorney, he being nearer and within the Bar.

L. H. St. I know not whether Mr Attorney be prepared for the summing up of the Evidence, because he examined the Witnesses, and the King's Council usually allot to themselves the particular Parts, which they intend to take.

E. of Roch. Then let Mr Solicitor go on.

Mr Sol. Gen. I would shortly observe to your Lordships, what Evidence hath been given to you on behalf of the King in this Case, against that noble Lord the Prisoner at the Bar for the Offence for which he stands indicted. The first Witness that was produced was the Drawer at the *Greyhound Tavern* in the *Strand*, where this Quarrel, that was the Occasion of the Death of this Person that was slain, happen'd; and he tells you that That Night there was at his Master's House my Lord of *Warwick*, my Lord *Mohun*, Captain *French*, Captain *Coote* the Person that was kill'd, and Mr *Dockwra*, and after they had been there some Time that other Person that was the Sixth concerned in the Scuffle, Mr *James*, was sent for, and he came in when it was pretty late; there they continued till One or Two a Clock, and then they came down to the Bar; and Orders was given for to call Coaches, but it being so late, and Sunday Morning, they could not find Coaches, and then there was Orders for the getting of Chairs; when some Chairs were brought, Mr *Coote* and Mr *French* went into two of the Chairs, but my Lord *Mohun* interposed, and said there should be nothing done that Night, and that if they went away he would call for a File of Musqueteers from the Guard, and secure them, and thereupon they came out of the Chairs, and went into the House, and there was the Noise of Swords clashing heard at the Bar; Captain *Coote* said he would laugh when he pleas'd, and frown when he pleas'd, and they parted; Three were on one Side, and three on the other of the Bar, my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coote*, were on one Side; Captain *French*, Captain *James*, and Mr *Dockwra*, were on the other Side: Indeed he says my Lord *Mohun* and my Lord *Warwick* did what they could to pacifie them, and threatned to send for the Guards, but away they went. The next Witness was *Thomas Browne*, and he was the Chairman that carried Mr *Coote*, and he says, that there was an Endeavour by my Lord of *Warwick*, and my Lord *Mohun*, to put off the Business at that Time, and that they did what

what they could to have put it off, and that even after they were in their Chairs, when they were turned up *St. Martins-lane*, there they stopt at the Back Door of the *Cross-Keys Tavern*, and that while they stood there with their three Chairs, three other Chairs came by, and then Captain *Coote* bid them put up, and follow after those Chairs as fast as they could to *Leicester-fields*.

The next Witness is *William Crippes*, who was the other Chairman that carried Captain *Coote*, and he gives your Lordships much the same Account that *Browne* gave before, and his Evidence was just to the same purpose, That my Lord of *Warwick* and my Lord *Mohun* endeavoured to pacifie the Matter, and that there should be an end of the Business for that Night, and let it alone till another Time, and that my Lord *Mohun* threatn'd to send for the Guards, and secure them, and would have had them gone home, that is, Mr *Coote* either with him to his Lodging, or he would go to Mr *Coote's*, but he could not prevail: Then my Lord *Mohun* said, If he would go on, his Lordship would go and see an end of the Business.

The next Witness was one *Crattle*, who was one of the Chairmen that carried my Lord of *Warwick*, and he says, That my Lord *Mohun* and my Lord of *Warwick* did endeavour what they could to put off the Matter till the next Morning, but that they could not prevail; That afterwards, when he carried my Lord from *Leicester-fields* to the *Bagnio*, my Lord borrowed a Handkerchief of him to wrap his Hand in, for he said he was wounded, but by whom that Wound was given does not appear, nor how he came by that Wound any otherwise then as his Lordship himself says, that it was given him by Mr *James*.

The next was the other Chairman that carried my Lord of *Warwick*, which was *John Gibson*, and his Testimony need not be repeated, because it did not differ from the others. The next Witness was *Robert Applegate*, who was the Chairman that carried my Lord *Mohun*, and he says, that there was an Endeavour used by my Lord upon his setting down in *St Martins lane*, to quiet Captain *Coote*, and prevent any Quarrel at that Time, but he says, when they would go on, my Lord *Mohun* said he would go and see the End of it, and thereupon they went on towards *Leicester-fields* to the end of *Green-street*, which is at the lower end of the Square.

The next Witness was *Palmer*, who was one of the Chairmen that carried Mr *French* to the *Bagnio* in *Long-acre*, and he tells your Lordships what happen'd upon his carrying of him thither, how immediately after his coming there my Lord of *Warwick* came thither, and they knock'd at the Door the same Time, and that Captain *French* was very much wounded, and they went into the House together, and that *French* would have had them pull off his Cloaths to see his Wounds, for he believed he was a dead Man.

The next Witness was the Chairman which carried Mr *James*, and he only tells your Lordships, That he carried a Gentleman into *Leicester-fields*, that my Lord *Mohun* endeavoured to put off the Business for that Night, but who the Person was that he carried, he cannot so well tell, nor give an Account of; but when he had set him down at the further end of the Square, there he left him, and he knows no further.

Then there was the Surgeon at the *Bagnio* in *Long-acre*, who gives your Lordships an Account, That about Two of the Clock in the Morning on

the Sunday, my Lord of *Warwick* and Captain *French* came in there, Captain *French* was wounded in the Body, and my Lord *Warwick* was wounded in the Hand, and my Lord *Warwick* did take extraordinary Care of Captain *French*, and would not have the Door open'd to any Body, nor his Lordship known to be there; That afterwards Captain *James* and Mr *Dockwra* came to the Door, and my Lord came to the Door himself, and when he saw who they were, he ordered them to be let in, and that there was a Discourse about going into the Country, and that there was a Fear that *Coote* was kill'd. This is the Effect of the Testimony both of the Surgeon and his Servants; and it is to be observed, That when Captain *French* came in, his Sword was not bloody, but my Lord of *Warwick's* Sword was bloody almost all over, and that was taken notice of the next Day, and there are several Witnesses both Men and Women of that House that give your Lordships an Account much to the same purpose; Then there was Captain *Duckingsfield*, who says, that my Lord *Warwick* came to his Lodgings, and they went in a Coach together to the Tavern in *Cornhill*, and then there was a Discourse of going into the Country, and my Lord said, that he was afraid his Friend Mr *Coote* was kill'd, but they had no absolute News of his being kill'd at that Time, for it should seem my Lord of *Warwick* forsook the Field as soon as the fatal Stroke was given, which by whom it was given, is left to your Lordship's Consideration: Indeed it is pretended by my Lord, that the Wound that he had in his Hand was given him by Mr *James*, but nothing of that is made apparent to your Lordships upon the Proofs.

Then we came to give your Lordships an Account of the Nature of the Wounds that Mr *Coote* had in his Body, and for that we produced both the Surgeon that did probe the Wounds by the Order of the Coroner, and the Coroner himself; Indeed we could not get a positive Answer from either the Surgeon or the Coroner, whether the Wounds were given by one and the same Sword, or by different Swords, but then your Lordships have the Testimony of Mr *Turner*, who was Captain *Coote's* Servant, and who knows his Master's Sword, and it hath been shewn to him, and he says that is his Master's Sword that he went out with, and it can be easily Judg'd whether he could give himself those Wounds by that Sword.

And your Lordships have likewise had brought before you another Sword, which was left at the *Bagnio* in *Long-acre*, that was Captain *French's* that had no blood at all upon it, but my Lord of *Warwick's*, it seems by all the Evidence, had a great deal of Blood upon it.

Then came the Witnesses for the Prisoner at the Bar, this noble Lord, my Lord *Warwick*, and the Sum of the Testimonies that they have given is of a great deal of Kindness between my Lord *Warwick* and Captain *Coote*; That my Lord lent him a hundred Guineas to purchase his Commission in the Guards, and he had but three of four hundred Guineas which was necessary to make the Purchase, and there are several of them that do testify, that they always look't upon Captain *Coote* and my Lord of *Warwick* to be very good Friends, and that there never was any Quarrel between them; and that is the Sum of what the Evidence on that Side did testify. And this, my Lords, I take to be the Sum of the Evidence that has been given on either Side, and when I have laid it thus before your Lordships, I must submit it to your Lordships Judgment what

Opinion you will be of upon the whole Matter; only there is this one Observation that I would make to your Lordships upon this Evidence, That there is not one Witness that has given you an Account satisfactory by whose Hand these Wounds were given to Mr *Coote*; and therefore, tho' it is apparent my Lord of *Warwick* was in the Place, where the mortal Wound was given, yet by whose Hand it was given is not yet known; until that can be known every Person that was there must remain under the Imputation of the same Guilt, as having a Hand, and contributing to his Death; it is certain, and cannot be denied, that this noble Lord, my Lord at the Bar, was in the Field, wherein there was actual Fighting; for he does not deny it himself, but says, that he was engaged particularly with Captain *James*, when Captain *Coote* was engaged with Captain *French*, between whom, as it is alledged, the Quarrel was; but that is no Way in Point of Fact made appear to your Lordships, and there being such Suspensions and Circumstances of the Blood upon my Lord of *Warwick's* Sword, and the great Concern that he was in when he came to the *Bagnio*, and desiring to be concealed, and that no Body should know that he was there, and the Care he took of Mr *French*, who is the pretended Person that did the Fact, is that which is to be submitted to your Lordships; and it is to be observed, that Mr *French's* Sword was not bloody, but only dirty, but my Lord of *Warwick's* Sword was very bloody from the Hilt to the Point, and he was in a great Consternation when he came into the House.

There is likewise a Circumstance which your Lordships will please to observe, that even Mr *Coote's* Sword was brought into the House by some of the Company that were there, and whatsoever this noble Lord pretends of his Friendship to Mr *Coote*, yet, it seems by his Care that he took of Captain *French*, he had as much Friendship for him.

There is another Circumstance that has been testified, which it will be fit for your Lordships to take into Consideration, and make some Observation of; That is the Nature of the Wound: It seems he had two Wounds, one on the left Side of the Breast, near the Collar Bone, and that was downward, and yet his Man, that was here produced as a Witness, does testify, that he was one that used his right Hand, and then it is a Wonder that he should receive such a sort of a Wound in that Part; and the other Wound was on the left Side too, but it was upward, and how that could be given to one that was a Right-handed Man, is certainly a very great Wonder; and the Wounds being both given upon the same Side, it cannot but be concluded, that they were given by one and the same Sword.

Another Circumstance which relates to my Lord of *Warwick* is, that when he came into the *Bagnio* after the Fact was over, he would have himself denied to be there, and went to the Door when *James* and *Dockwra* came in, and his declaring his desire of going into the Country; These we say, are Circumstances that do induce a Doubt, That my Lord of *Warwick* had a Concern upon him of great Guilt of having a Hand in this Man's Death: It is indeed pretended by my Lord of *Warwick*, That Mr *Coote* was a Person that my Lord of *Warwick* had a Kindness for, but it is plain by the Evidence, that he left him dead in the Field, and did not take any Care of him, but took a great deal of Care of Captain *French*, who, it is pretended,

was the Person that fought with *Coote*, when he came to the *Bagnio*, and there is nothing of Kindness at this Time pretended, nor any Thing of a Defence to this Matter offer'd by my Lord of *Warwick*, but only what the Chairmen say, that he endeavoured to put it off to another Time. These, my Lords, are all the Observations that I shall make upon the Evidence in this Case; How far this Evidence, upon Consideration, will weigh with your Lordships, I must submit it to you. If my Lord of *Warwick* did do the Fact, as these Circumstances, we think, may incline your Lordships to believe he did, it will surely be Murder; but how far the Evidence comes up to the Proof of that, we must humbly submit to your Lordships, who are the Judges of it; and we leave it entirely to your Consideration upon what you have heard.

L. H. St. Then it seems you have done on all Sides.

Council. Yes, my Lords.

Lords. Then Adjourn, Adjourn.

L. H. St. Is it your Lordship's pleasure to Adjourn into the House of Lords?

Lords. Ay, Ay.

L. H. St. This House is adjourned into the House of Lords.

Then the Lords went back to their own House in the same Order they came into the Court, in Westminster-hall, and debated the Matter among themselves, what Judgment to give upon the Evidence that had been heard, and in about Two Hours Time they returned again into the Court, erected upon a Scaffold in Westminster-hall; and after they were seated in their Places, the Lord High Steward being seated in his Chair before the Throne, spoke to the Lords thus;

L. H. St. Will your Lordships proceed to give your Judgment?

Lords. Ay, Ay,

L. H. St. Your Lordships will give me leave, as I ask your Lordships your several Opinions, to take so much time as to write down the Opinion of every Lord.

Lords. Ay, Ay.

Then the Lord High Steward asked this Question of every one of the Lords there present, beginning with the Puisne Baron, which was the Lord Bernard.

L. H. St. My Lord *Bernard*, Is *Edward Earl of Warwick* Guilty of the Felony and Murder whereof he stands indicted, or not guilty?

The Lord Bernard stood up in his Place uncovered, and laying his Right Hand upon his Breast, pronounced his Judgment thus,

L. Bernard. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

The same Question was asked severally of all the Lords, who in the same Form delivered their Opinions, as followeth,

L. Haversham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Herbert of Cherbury. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Weston. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Ashburn-

L. Ashburham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Cholmley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Jefferys. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Godolphin. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Guilford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Oseltone. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Osborne. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Craven. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Cornwallis. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Granville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Berkly. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Laxington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Rockingham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lucas. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Culpeper. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Vaughan. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Byron. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Jermyn. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Leigh. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Raby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Howard of Escrick. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lovelace. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Hunsdon. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. North and Gray. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Wharton. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Eure. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Willoughby of Parham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Dudley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Ferners. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Willoughby of Eresby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Audley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Abergavenny. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. H. Steward. My Lord Viscount Lonsdale, Is Edward Earl of Warwick Guilty, &c.

L. Viscount Lonsdale. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Viscount Longville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Viscount Townsend. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. H. Er. The Earl of Grantham, Is Edward Earl of Warwick guilty, &c.

E. of Grantham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Albemarle. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Tankerville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Warrington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Scarborough. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Torrington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Marlborough. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Mountague. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Portland. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Rochester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Nottingham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Yarmouth. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Radnor. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Macclesfield. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Feversham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Burlington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Calisle. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Bath. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Anglesey. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Essex. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Scarsdale. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Thanet. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Chesterfield. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Carnarvan. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Kingston. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Winchelsea. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Stamford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Peterborough. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. Rivers. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Manchester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Denbigh. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Leicester. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Bridgwater. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of

E. of Dorset and Middlesex. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Suffolk. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Huntington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Darby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Kent. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

E. of Oxford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Lord great Chamberlain, is *Edward Earl of Warwick* guilty, &c.

E. of Lindsey. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Lord Marquess of *Normanby*, is *Edward Earl of Warwick* guilty, &c.

Lord Marquess of Normanby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Marquess of Hallifax. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Lord Duke of *Newcastle*, is *Edward Earl of Warwick* guilty, &c.

D. of Newcastle. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Scomberg. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of St. Albans. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Northumberland. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Ormond. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Southampton. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Richmond. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Somerset. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

D. of Devonshire. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Lord President, is *Edward Earl of Warwick* guilty, &c.

D. of Leeds. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

Lord High Steward. My Judgment is, That my Lord of *Warwick* is not guilty of the Murder, but is guilty of Manslaughter, upon my Honour.

Then the Lord High Steward reckoned up the Number of the Peers that were then present, and the Opinions that were given, and afterwards acquainted their Lordships with the Resolutions that they came to, in this manner.

L. H. St. My Lords, your Lordships are Ninety Three in Number here present, and you have all acquitted my Lord of *Warwick* of the Murder whereof he stands indicted, but you are of Opinion that he is guilty of Manslaughter; Is it your Pleasure, that he should be called to the Bar, and acquainted with your Lordship's Judgment?

Lords. Ay, Ay.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes; Chief Governour of the *Tower of London*, bring forth the Body of your Prisoner, *Edward Earl of Warwick* forthwith, upon Pain and Peril will fall thereon.

Then the Earl of Warwick was brought to the Bar.

L. H. St. My Lord of *Warwick*, your Lordship has been Arraigned upon an Indictment for the Killing *Mr Cote*, you have pleaded Not-guilty, and put your self upon your Tryal by your Peers here present; my Lords have heard the Evidence given both against you and for you, and have considered of it, and are come to a Resolution, and their Judgment is, That your Lordship is not guilty of the Murder whereof you stand indicted, but that you are guilty of Manslaughter; What has your Lordship to say, why Judgment of Death should not be pronounced against you according to the Law?

E. of Warw. My Lords, I desire that the Benefit of my Peerage may be allowed me, according to the Statute of *Edward the Sixth*.

L. H. St. My Lord, your Lordship has demanded the Benefit of your Peerage upon the Statute of *Edward the Sixth*, and you must have it by Law; but I am directed by their Lordships to acquaint you, That you cannot have the Benefit of that Statute twice, therefore I am likewise directed by their Lordships to say, That they hope you will take a more than ordinary Care of your Behaviour for the future, that so you may never hereafter fall into such unfortunate Circumstances as you have been now under; my Lords hope this will be so sensible a Warning, that nothing of this kind will ever happen to you again; your Lordship is now to be discharged.

L. H. St. Is it your Lordship's Pleasure to adjourn to the House of Lords?

Lords. Ay, Ay.

L. H. St. This House is adjourned to the House of Lords.

Then the Lords went in Procession, in the same Order that they came into the Court.

The TRYAL of CHARLES Lord MOHUN.

Die Mercurii 29 Martii, 1699.

ABOUT One of the Clock, the Lords came, in the same Order as the Day before to the Tryal of the Earl of Warwick, into the Court erected in Westminster-hall.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, My Lord High Steward, his Grace, does strictly Charge and Command all manner of Persons here present, to keep Silence upon Pain of Imprisonment.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Persons who are obliged to give their Attendance here this Day, before his Grace, my Lord High Steward of England, let them give their Attendance forthwith.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, His Grace my Lord High Steward of England does straitly Charge and Command all manner of Persons here present to be uncovered.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, Chief Governour of the Tower of London, bring forth the Body of your Prisoner Charles Lord Mohun forthwith, upon Pain and Peril will fall thereon.

Then my Lord Mohun was brought to the Bar.

L. High Steward. My Lord Mohun, your Lordship is now brought upon your Tryal for the Murder of Mr Coote, for which you stand indicted by the Grand Jury for the County of Middlesex. The King, who knows that Justice is one of the Pillars which supports a Throne, will have a strict Account taken of the Blood of any of his Subjects, without Respect to the Quality of the Slain, or of the Person who stands Charged with his Death. There is not one of the Noble Peers here present, who are to be your Tryers, but does heartily wish your Lordship Innocent; But, on the other side, if you should appear to be guilty upon the Evidence, you ought not to hope that any Consideration of Relation, Friendship, or Pity, will prevail against Justice. And therefore since in your present Condition every Thing that is valuable in this World is at stake, it will be highly necessary for your Lordship to recollect your self, and to have your best Thoughts about you. Facts of this Nature are frequently attended with such unhappy Circumstances, that a noble Person may be justly covered with Shame to have Faults and Weaknesses exposed to such an Assembly as this, although he be not Conscious to himself of the Guilt of Blood :

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But your Lordship ought not to be so far discomposed with any Thoughts of this Kind, as to neglect your Defence against this heavy Accusation of Murder. In order to this, it is necessary for your Lordship to hear with Temper what will be said against you, and by no means to interrupt the Council or Witnesses. I will take care to give your Lordship notice when the proper Time comes for you to make your Observations upon the Evidence, to examine your Witnesses, and to say what you think proper for your own Defence; And when my Lords have heard, and fully and maturely considered the whole Matter, their Lordships will give such a Judgment as the Law and Justice require.

L. H. Sr. Read the Indictment to my Lord.

*C*lerk of the **C**harles Lord Mohun, your Lordship stands Indicted in the County of Middlesex, by the Name of Charles Lord Mohun of Oakehampton in the County of Devon, late of the Parish of St. Martins in the Fields, in the County of Middlesex, together with Edward Earl of Warwick and Holland, late of the same Parish and County, Richard French, late of the same Parish and County, Gent. Roger James, late of the same Parish and County, Gent. and George Dockwra, late of the same Parish and County, Gent. not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil the 30th Day of October, in the Tenth Year of the Reign of our Sovereign Lord that now is, William the Third, by the Grace of God of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. with Force and Arms, &c. at the Parish aforesaid, in the County of Middlesex aforesaid, in and upon one Richard Coote Esq; in the Peace of God, and of our said Sovereign Lord the King, that now is, then and there being Feloniously, Wilfully, and of your Malice aforethought, did make an Assault, and that the aforesaid Edward Earl of Warwick and Holland, with a certain Sword made of Iron and Steel of the Value of five Shillings, which he the said Edward Earl of Warwick and Holland, in his right Hand then and there had and held drawn, the aforesaid Richard Coote in and upon the left Part of the Breast of him the said Richard Coote, near the Collar Bone of him the said Richard Coote, then and there Feloniously, Voluntarily, and of his Malice aforethought, did Strike, Scab, and Thrust in, giving to the said Richard Coote, then and there with the Sword drawn aforesaid, in and upon the left Part of the Breast of him the said Richard Coote, near the Collar Bone of him the said Richard Coote, one Mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said

E &c

Mor-

Mortal Wound be the aforesaid Richard Coote then and there instantly died: And that you the said Lord Mohun, together with the said Richard French, Roger James, and George Dockwra, then and there Feloniously, Wilfully, and of your Malice afore-thought, were present, aiding, abetting, comforting, assisting, and maintaining the said Edward Earl of Warwick and Holland, the said Richard Coote, in Manner and Form aforesaid, Feloniously, Wilfully, and of his Malice afore-thought, to Kill and Murder, and so the said Edward Earl of Warwick and Holland, and you the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the aforesaid Richard Coote, in Manner and Form aforesaid, Feloniously, Wilfully, and of your Malice afore-thought, did Kill and Murder, against the Peace of our Sovereign Lord the King, that now is, His Crown and Dignity. How say you, Charles Lord Mohun, are you guilty of this Felony and Murder, whereof you stand indicted, or not guilty.

Lord Mohun. Not guilty.

Cl. of the Crown. Culprit, How will you be tried?

Lord Mohun. By God and my Peers.

Cl. of the Crown. God send your Lordship good Deliverance.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Persons that will give Evidence on behalf of our Sovereign Lord the King, against *Charles Lord Mohun*, the Prisoner at the Bar, let them come forth and give their Evidence, for now he stands at the Bar for his Deliverance.

Lord Mohun. My Lords, I desire I may have the Benefit of Pen, Ink, and Paper.

L. H. St. Your Lordships are pleased to permit my Lord Mohun to have Pen, Ink, and Paper?

Lords. Ay, Ay.

[*Pen, Ink, and Paper were carried to my Lord, by one of the Clerks of the House.*]

Mr Cowper. May it please your Lordships, my Lord Mohun, the Prisoner at the Bar, stands Indicted by the Grand Jury of the County of *Middlesex* before Commissioners of Oyer and Terminer in that County; and the Indictment sets forth, That *Edward Earl of Warwick and Holland*, *Charles Lord Mohun*, *Baron Mohun of Oakehampton* in the County of *Devon*, *Richard French*, *Roger James*, and *George Dockwra*, the 30th of *October*, in the tenth Year of his Majesty's Reign, with Force and Arms, at the Parish of *St. Martin in the Fields*, in the County of *Middlesex*, upon one *Richard Coote Esq;* Feloniously, Wilfully, and of their Malice afore-thought, did make an Assault, and that the said *Edward Earl of Warwick and Holland*, with a drawn Sword then in his right Hand, the said *Richard Coote*, upon the left Part of his Breast near the Collar-Bone, did Strike, Stab, and Thrust, giving him thereby a Mortal Wound of the Breadth of half an Inch, and the Depth of five Inches, of which Wound he instantly died; that my Lord Mohun, Mr French, Mr James, and Mr Dockwra, Feloniously, Wilfully, and of their Malice afore-thought, were present, aiding, and abetting my Lord of *Warwick and Holland*, the said *Richard Coote*, in manner aforesaid, to Kill and Murder; and then concludes, so that the Earl of *Warwick and Holland*, the said Lord Mohun, *Richard French*, *Roger James*, and *George Dockwra*,

the said *Richard Coote*, in Manner and Form aforesaid, Feloniously, Wilfully, and of their Malice afore-thought, did Kill and Murder, against the Peace of the King, his Crown and Dignity. To this Indictment my Lord Mohun has pleaded not guilty, and for his Tryal has put himself upon God and your Lordships, his Peers. We shall call our Witnesses, and produce what Evidence we have to give to prove my Lord Mohun guilty, and so submit it to you.

Mr Att. Gen. My Lords, This Noble Lord, my Lord Mohun, the Prisoner at the Bar, stands indicted for the Death of Mr Coote, one of the King's Subjects, as your Lordships have heard in the Case that was before you Yesterday, to which Indictment he hath pleaded not guilty, and for his Tryal has put himself upon my Lords who are his Peers; I shall very shortly open the Substance of the Evidence that we shall offer for the King against my Lord, the Prisoner at the Bar; we shall produce Evidence to prove, That at the Time laid in the Indictment, the 29th of *October* at Night, and the next Morning, which was *Sunday*, my Lord, the Prisoner at the Bar, and my Lord of *Warwick*, (who has been found guilty of Manslaughter upon this Indictment before your Lordships) and those other Persons that are named in the Indictment, *Captain French*, *Captain James*, and *Mr Dockwra*, and the Gentleman that was killed, happened to be at the *Grey-hound Tavern* in the *Strand*, which was then kept by *Mr Lockett*, and continued there a great Part of the Night, indeed till the next Morning, about One or Two of the Clock in the Morning; there was my Lord of *Warwick*, my Lord Mohun, *Captain French*, *Captain Coote*, and *Mr Dockwra*, but very late in the Night the other Gentleman, *Mr James*, was sent for; A Messenger was sent particularly to have him come to them; There they continued drinking till about one or two of the Clock in the Morning, then Coaches were sent for; then the Drawer of the House will acquaint your Lordships, that he went for them, and could not get any at that time, being a very dark Night; and when there could be no Coaches had, then there were Chairs called for, and the Drawer went to call Chairs; and, as we shall make it appear to your Lordships, when the Drawer came back, there did appear to be a Quarrel among them, for their was clashing of Swords, and they seem'd to be divided into Two Parties; on the one Side were my Lord of *Warwick*, my Lord Mohun, the Prisoner at the Bar, and Mr Coote; On the other Side were *Captain French*, *Captain James*, and *Mr Dockwra*; and first there were two Chairs came to the Door, into which Mr French, and Mr Coote went, and when they were in the Chairs my Lord Mohun came out, and said he would kill any of the Chairmen that went away, and so they put up again, and the Gentlemen came out, and came into the House, but afterwards Mr Coote went into the first Chair, and my Lord of *Warwick* into the next, and my Lord Mohun into the Third, and then they went away; and the other three Gentlemen went into the other three Chairs, and followed them. Your Lordships will hear whither they were all carried; When they came to the end of *St. Martin's-lane* in the *Strand*, my Lord Mohun would indeed have endeavoured to have perswaded Mr Coote in particular to have gone home for that Night, and let the Business alone till another time, but Mr Coote would go on; and while the three Chairs that carried my Lord

Lord of *Warwick*, my Lord *Mohun*, and Mr *Coot*e to St. *Martin's-lane* End, which were the three first Chairs that went away from *Lockett's*, the other three Chairs that went after them overtook them, and then by Mr *Coot*e's Command, the Chairmen that carried him went forward towards *Leicester-fields*, and then this Noble Lord, my Lord *Mohun*, did say, If you do go on, I will go and see the End of it, and ordered the Chairmen that carried him to go after those Chairs in which my Lord of *Warwick* and Mr *Coot*e went, and accordingly they did go till they came to the hither End of the Square in *Leicester-fields* near *Green-street* End, where my Lord *Mohun* got out of his Chair, paid for all the three Chairs three Shillings. But we shall not be able to give to your Lordships an Account particularly as to my Lord *Mohun*, what he did afterwards, but we shall call our Witnesses to prove what we have opened, and when our Witnesses are heard, we shall leave the Matter to your Lordships Judgment.

Samuel Cawthorne, which was the Drawer at the Tavern at Lockett's, was Sworn, and gave his Evidence to the same Effect that he did the Day before.

Mr *Att. Gen.* Pray, Will you acquaint my Lords who were at your House the 29th and 30th of *October* last, *Saturday* Night and *Sunday* Morning?

Cawthorne. There were my Lord of *Warwick*, my Lord *Mohun*, Capt. *Coot*e, Capt. *French*, Mr *Dockwra*, and Mr *James*.

Mr *Att. Gen.* How long did they continue there?

Cawthorne. Till between one and two of the Clock in the Morning.

Mr *Att. Gen.* Pray, Will you acquaint my Lords what happened at your Master's House at that Time; you remember what Evidence you gave yesterday; tell the whole Matter again, because it relates to another Noble Lord that is now at the Bar.

Cawthorne. The Reckoning was called for about that Time, and I went up and took the Reckoning, and all the Gentlemen came down to the Bar, and Coaches were sent for; I went for them, but no Coaches could be had; Then Chairs were sent for, and I called for Chairs, and there came two Chairs to the Door, and into those Two Chairs went Captain *Coot*e, and Captain *French*, and my Lord *Mohun* and my Lord of *Warwick* endeavoured to quiet them, and to put off the Business till another Day, and thereupon they came out of the Chairs, and came into the House again; My Lord *Mohun* did desire there might be no Quarrel, and would have Mr *Coot*e go home with him to his Lodgings at *Westminster*, or he would go with Mr *Coot*e, and said there should be no Quarrel that Night: There were then three of them of one Side of the Bar, and three of the other Side, and their Swords were all drawn: My Lord of *Warwick*, my Lord *Mohun*, and Mr *Coot*e, were of one Side, and Capt. *French*, Capt. *James*, and Mr *Dockwra*, were of the other Side: I was without the House when the Swords were first drawn, but I heard my Lord *Mohun* say, I have got a cut Finger by endeavouring to part them, and at first when the Chairs came on, my Lord *Mohun* said, if they did quarrel, he would send to the Guards for a File of Musqueteers, and se-

cure them, so that he did what he could to prevent any Quarrel at all; and when he had received the Wound in his Hand, I helped him to a Napkin to wrap his Hand in upon the bleeding of it; Then my Lord of *Warwick*, my Lord *Mohun*, and Captain *Coot*e, went away in three Chairs, and my Lord *Mohun* gave Order to go down to *Westminster*; and there were three Chairs called for by the other three Persons, two did come, and Captain *French* and Captain *James* went into them, and the 6th not being come, they stayed till it did come, and then they three went away too; the Chairs were all ordered to go home with them; My Lord of *Warwick*, and my Lord *Mohun* gave Order to their Chairs to keep close with Mr *Coot*e; and the other three Chairs immediately followed.

Mr *Att. Gen.* Pray, Will you consider, and recollect with your self, Was Mr *James* there at first?

Cawthorne. No, I was sent for him about ten a Clock at Night, and there he continued with them till they went all away in the Six Chairs, and he was almost fuddled when he came in.

Mr *Att. Gen.* When *James* came in, was his Sword drawn?

Cawthorne. His Sword was in the Scabbard, but the Scabbard was broken, and he took and broke his Sword stamping upon it.

Mr *Att. Gen.* Pray, can you tell, you being up and down in the Room, what was the Occasion of the Quarrel?

Cawthorne. Indeed I can't tell, but some Words past when they were below Stairs by the Bar from Captain *French*, That he would laugh when he pleased, and frown when he pleased; and Mr *Dockwra* did say, that they would fight them whenever they pleased when they went away; but I did not observe that there was any Quarrel between them while they were above, nor any Swords drawn till after I came from calling the Chairs.

Mr *Att. Gen.* Were all the Swords drawn at once?

Cawthorne. They were all drawn when I came in from calling for the Coaches and the Chairs, and three were within the Bar, and three were without; They were putting up their Swords when I came in again; Indeed I do not know any Thing of the Quarrel.

L. H. St. My Lord *Mohun*, Will you ask this Witness any Questions?

L. Mohun. Indeed I think I need not ask him any Question, but yet, if your Lordships please, I would ask him this, Whether directly or indirectly I was any ways concerned in the Quarrel? Or, Whether I did not endeavour all that ever I could to quiet them.

Cawthorne. Yes, indeed, my Lord *Mohun* did endeavour all that ever he could to prevent any Quarrel at that Time.

L. Mohun. Did I say any Thing tending to the promoting of a Quarrel or Fighting among them?

Cawthorne. No, my Lord *Mohun* did not promote any Thing of the Quarrel between them, but he did say two or three times that he would send for the Guards to secure them, and keep them from fighting, both at the Door of the House, and at the Bar, and ask'd for a Napkin to wrap up his Hand in for the Wound which he said he got in endeavouring to quiet and part them, and prevent their fighting.

L. Mohun. That is all that I would ask him, whether I did not endeavour all that I could to prevent any Quarrelling or Fighting at that Time.

Cawthorne. Yes, indeed, my Lord did so.

L. H. St. He has said so already, my Lord, and therefore there does not need any further Examination of him to that Point: If both Sides have done with this Witness, let him go down. (*Which he did.*)

L. H. St. Then Mr Attorney, Who is your next Witness?

Mr Att. Gen. Our next Witness is *Tho. Browne*, who was one of the Chairmen that carried Mr Coote into *Leicester-fields*.

Then he was sworn.

L. H. St. What is the Question you would ask him, Mr Attorney?

Mr Att. Gen. My Lords, I desire he may be ask'd and examin'd, and acquaint your Lordships, who it was that he carried from *Lockett's* the 29th of October last to *Leicester-fields*, and what time it was of the Night?

Browne. I carried Mr Coote in my Chair.

Mr Att. Gen. Whither were you directed to carry him?

Browne. To *Leicester-fields*.

Mr Att. Gen. What Time of Night was it?

Browne. It was three Quarters past One, as near as I could guess.

Mr Att. Gen. Pray, What other Chairs were there that went along with you?

Browne. There were Two other Chairs.

Mr Att. Gen. Who were in those Chairs, pray?

Browne. There were my Lord of *Warwick* in one, and my Lord *Mohun* in the other.

Mr Att. Gen. Did you three go away from *Lockett's* together?

Browne. Yes, we did, and when we were bid to take up, we went to the end of *St. Martin's-lane*, and turning up at the End of *St. Martin's-lane*, there my Lord of *Warwick* and my Lord *Mohun* called out to Capt. Coote to stay, and to turn down to go to *Westminster*, but Mr Coote would turn up the Lane, and my Lord of *Warwick* and my Lord *Mohun* made a stop at the Back Door of the *Cross-Keys* Tavern, and both of them perswaded Mr Coote to put it off till the next Morning, but he would not, he said he would make an End of it that Night.

Mr Att. Gen. Pray, recollect your self, Did they name among them what their Business was that they would make an end of?

Browne. No, they did not.

Mr Att. Gen. Who was it that stop'd at *St. Martin's-lane* End?

Browne. When we were turning up at *St. Martin's-lane* End, my Lord of *Warwick* and my Lord *Mohun* call'd out to stop, and ask'd Mr Coote whither he was going, and when he said to *Leicester-fields*, my Lord *Mohun* called out to us to set down, which we did, at the Back Door of the *Cross-Keys* Tavern; They did both of them, my Lord *Warwick*, and my Lord *Mohun*, perswade Mr Coote to go home to *Westminster*, and not to end the Business that Night, but he would go on, and while we were there, there went three other Chairs up *St. Martin's-lane* on the other Side of the Way; then Mr Coote, who was in our Chair, bid us take up, and follow those Chairs into the Fields, and swore damn him he would run his

Sword into one of us, if we did not make haste, and overtake those other Chairs, and go before them; I think his Words were, *Damn me, I'll run my Sword in your Breech, if you don't make haste, and get before that other Chair.*

Mr Att. Gen. You say then, they went all away together up to *Leicester-fields*?

Browne. Yes, they did so.

L. Mohun. I desire he may be ask'd, whether I did not desire him to go home with me to my Lodging at *Westminster*.

Browne. Yes, you did, and beg'd of him as if it had been for an Alms, That he would put it off for that Night; but when the other Chairs past by us at *Charing-Cross* in *St. Martin's-lane*, he would have the Chair taken up, and us to make what haste we could to get before them thither, or else he swore damn him he would run his Sword into one of us, if we did not make haste to get to *Leicester-fields* before the other Chairs that went up the other Side of the Way.

Mr Att. Gen. When the other Chairs were past by, and you went away to *Leicester-fields*, pray tell my Lords what happened then?

Browne. We went away to *Leicester-fields*, and when we came to *Green-street* End, and were entring upon the Square upon the Broad Stones, Mr Coote call'd out to us, and bid us to set him down, and so did the other two Chairs, and when he put his Hand in his Pocket to discharge us, my Lord of *Warwick* put his Hand in his Pocket to pay the three Chairs, and Mr Coote offered half a Guinea to discharge the Chairs, and my Lord *Mohun* did produce 3 s. and with it discharged all the three Chairs, and they all three walked away together forward upon the broad Stones on the right Hand side of the Way; It was so dark a Night, I could not see half a dozen Yards from me; It was the darkest Night, I think, that ever I saw in all my Life, and therefore I cannot tell what became of them after they went out of the Chairs.

Mr Att. Gen. Pray, did you see my Lord *Mohun* afterwards?

Browne. No, I did never see my Lord *Mohun* afterwards till now here at the Bar.

Mr Att. Gen. You say it was so dark, that you could not see three Yards from you, pray, what did happen afterwards when you were in the Field?

Browne. A little while after we had set down these Gentlemen, I fill'd my Pipe out of my Box, and before I could light it, I heard a Calling of Chairs, Chairs, and I went up towards the End of the Square, where the Noise was, and when I came there, they would have had me lift the Chair over the Rails, and I told them, if I did I could not lift it over again: but they would needs have me lift it over, and I did so, and by the Light of the Lanthorn I saw Capt. *French* and Captain *James* holding up Captain Coote, and they did desire me to take him into our Chair, but he was in such a Condition that I could not get him into the Chair; I was before It could well light my Pipe the Chairs were called.

Mr Att. Gen. Who did call, can you tell?

Browne. No, indeed I cannot tell who did call Chairs, but it was a Voice from the upper end of the Fields, and we lifted our Chair over the Rails into the Fields, and there were two Gentlemen holding up another Man; I have heard it said it was Captain *French* and Captain *James*, and they cried out, Dear Coote, Dear Coote, and would

would have had him gotten into the Chair, but we could not; and my Lord of *Warwick* did then say, if any Damage did come to the Chair, tho' it were 100 l. we should be satisfied for the Damage; but we were not able to get him into the Chair, and so there we left him.

Mr *Att. Gen.* You say you see two Gentlemen holding up Mr *Coote*, and 'twas a very dark Night, how could you tell who those Gentlemen were?

Browne. I could not see any Thing of them till we came up with the Candle close to them.

Mr *Att. Gen.* And what did they say when you came up close to the Chair?

Browne. They offered me a 100 l. Satisfaction for any Damage to my Chair; but they could not get him in, for he was at that time dead, I believe, for we went to hale him up, and to get him into the Chair, but we could not do it.

Mr *Att. Gen.* Can you tell who the two Persons were that held him up?

Browne. No, but by the Description of the Persons they had such Cloaths on, as that they must be Captain *French* and Captain *James*, but indeed I cannot swear directly who they were that were there, nor who they were that called for Chairs at the upper End of the Field; but when our Chair was lifted over again over the Rails, and we came to the Corner to see who should be taken in, there came one to us who bid us carry him to the *Bagnio* in *Long-acre*, and thither we did go accordingly.

Mr *Att. Gen.* Pray can you tell who the Persons were that held up the Gentleman they would have to be got into the Chair?

Browne. No, indeed, I cannot.

Mr *Att. Gen.* Pray can you describe 'em so as to know them, whether my Lord of *Warwick*, and my Lord *Mohun* were those two Gentlemen?

Browne. My Lord of *Warwick* and my Lord *Mohun* were not there I'm sure, for I know them very well; I was acquainted with them before; and when I came up to these Gentlemen with the Candle, there was one of them was bigger than my Lord of *Warwick*, or my Lord *Mohun*; and the Elder of them had other sort of Cloaths than either of them had on at that time, as we could see when we came up close with the Candle to them.

Mr *Att. Gen.* Were there any Lights of the Lamps, that are usually in the Streets at that time, about the Square?

Browne. Yes, there were those Lights; but it was a very dark Night, and we could not see two Yards before us, that I am sure of, and there was no Body else that I saw at that time at the upper end of the Field, but those two Gentlemen, holding up of Captain *Coote*, whom we had brought up before to the Square, and left him with the Earl of *Warwick* and my Lord *Mohun*, at the Bottom of the Square; but whether they all went, indeed I can't tell: We call'd Watch, but they said it was not within their Ward, and therefore they would not come. When we saw how ill Mr *Coote* was upon our coming up, and that we could not get him into the Chair, we went away, lifted our Chair over the Rails again, and carried a Gentleman to the *Bagnio* in *Long-acre*.

Lord *Mohun.* I have a Question to ask this Witness, and that is, how far the Place is whither he carried the Chair, that is, from *Green-street* End, to the Place whither the Chairs were cal-

led for again, at the upper End of the Pails, where he found the two Gentlemen holding up Mr *Coote*, and endeavouring to get him up into the Chair?

Browne. I believe it is about fifty Yards, as near as I can guess.

Lord *Mohun.* I desire to know, whether he means fifty Yards from the upper End to the lower End of *Leicester-fields*?

Browne. Yes, I believe, my Lord, it is, and better.

Lord *Mohun.* I desire to ask him, whether *Green-street* be not at the very lower End of the Square?

Browne. Yes, my Lord, the lower End of the Square, coming out of *St. Martins-lane* into *Green-street*.

Mr *Att. Gen.* But did you see three other Chairs in that Place?

Browne. Yes, while I was filling my Pipe out of my Box, three other Chairs did come by, and went away; but within a little while after the filling of my Pipe, or rather before I could well fill it, or light it, we heard calling for Chairs again towards the upper End of the Fields, and we carried up our Chair thither, and there we found, as I have told you, two Gentlemen holding up Mr *Coote*, and crying out, *My dear Coote, my dear Coote*.

Mr *Att. Gen.* Can you tell who it was that called for the Chairs the second Time, when you were in the Fields?

Browne. No, indeed, I cannot; but they would have us bring our Chair over the Rails, and we did lift it over; and when we came up to them, I saw only two Gentlemen, whom I did not know who they were particularly, till we came up close to 'em that we could see their Cloaths, by the Light of the Candle in our Lanthorn; and they would have had us put Mr *Coote* into our Chair, and he being very much wounded; they would have had us carry him away; we told them it would spoil our Chair, and we could not besides lift him over the Rails again; they promised we should have any Satisfaction for Damage to our Chair, even to the value of a Hundred Pounds; we went to heave him up to put him into the Chair, and did all we could to have got him into the Chair, but we could not; so we lifted the Chair over the Rails again; and when we came to the Corner of the Rails, at the Way that goes to *Long-acre*, there we took up a Gentleman whom we carry'd to the *Bagnio* in *Long-acre*; we called out to the Watch, but they said it was not within their Ward, and they would not come.

Mr *Att. Gen.* Can you tell who were the Persons that were at the upper End of the Fields?

Browne. No, indeed, I cannot tell who they were.

Mr *Att. Gen.* Was my Lord *Mohun* and my Lord *Warwick* the two?

Browne. No, my Lord *Mohun* was not there, nor my Lord *Warwick*; I know them so well, that it could not be them; one of the Gentlemen was bigger than my Lord of *Warwick*, and the other of them had other Cloaths than my Lord *Mohun*.

Mr *Att. Gen.* Was that the Way they walked up, when they came out of the Chairs, that led to that End of the Fields where you found Mr *Coote* wounded?

Browne.

Browne. Yes, it was.

Mr Att. Gen. My Lords, this is but the Repetition of the Evidence that he gave to your Lordships Yesterday.

L. H. St. If you have done with this Witness, my Lord *Mohun* may ask him any Questions.

Lord Mohun. I desire to have him ask'd, how far is the Place where he carried the Chair at first into *Leicester-fields*, from the Place where they put over the Chair within the Rails, and would have taken in *Mr Coote*?

Browne. It is about fifty Yards, as near as I can guess.

Lord Mohun. I desire to know of him, whether the Place where we were set down, that came in the first three Chairs, from *Lockett's* into *Leicester-fields*, to the Place where he found *Mr Coote* supported by the two Gentlemen, be not from one End of the Fields to the other?

Browne. The Place where we set down *Captain Coote*, is at the lower End of *Green-street*, and the Place where we found him wounded, was at the upper End by *Leicester-house*.

L. H. St. I think it is understood, that *Green-street*, which comes out of *St. Martin's-lane*, is at one End of *Leicester-square*, and *Leicester-house* is at the other End.

Mr Att. Gen. Pray where was it that you saw the two Gentlemen hold up *Captain Coote*, and cry out, *My dear Coote, my dear Coote*?

Browne. It was on one Side of the Cross-way, that leads out of the Fields towards *Newport-street*, and by *Leicester-house*.

Mr Att. Gen. But you say, three Chairs did go up towards the upper End of the Fields?

Browne. Yes, they did so; but our three Chairs that came away first from the *Greyhound Tavern*, set down at *Green-street* End, and the three Gentlemen that came in our Chairs went up the Pails to them; but whither they went I can't tell, but soon after we heard calling for Chairs again, and so we went up, where we found the two Gentlemen holding up *Captain Coote*, and saying, *My dear Coote, my dear Coote*.

Mr Att. Gen. But when you were called the second time, that is, into the Fields, where was the Place you say that you found them in?

Browne. It was within the Rails, one Side of the Cross-way towards *Leicester-house*.

Lord Mohun. Pray was that the direct Way that I went from the Place that I was set down, that is the lower End of *Green-street*, to the Place that they afterwards went to, which was the *Bagnio* in *Long-acre*.

Browne. When *Captain Coote*, and my Lord *Mohun* were set down, and walked away upon the paved Stones of the Square, to the Place where I found the two Gentlemen holding up *Capt. Coote*, was the quite contrary Way from the End of *Green-street* to the *Standard Tavern*.

L. H. St. Who is your next Witness, *Mr. Attorney*?

Mr Att. Gen. The next Witness that we call, is *Robert Applegate*.

Who was Sworn.

L. H. St. What do you ask this Witness?

Mr Att. Gen. My Lords, this is the Chairman that carried my Lord *Mohun* to *Leicester-fields* from *Lockett's*; he will give your Lordships an Account when he carry'd him, who he carry'd, and what happened afterwards, which is all but to the same

Purpose with the Evidence that he gave Yesterday. But pray, who was that whom you carried on the Thirtieth of *October* last to *Leicester-fields*?

Applegate. I carried my Lord *Mohun* from *Lockett's*, at the *Greyhound Tavern* in the *Strand* to *Leicester-fields*.

Mr Att. Gen. Pray, How many Chairs were there of you that went away together?

Applegate. There were Three of us that went away together, one carry'd my Lord *Warwick*, we my Lord *Mohun*, and the third carry'd *Captain Coote*, which was the first Chair that went away.

Mr Att. Gen. Whither did you go?

Applegate. We went to the Corner of *St. Martin's Lane*.

Mr Att. Gen. Who do you say were in the other two Chairs?

Applegate. My Lord of *Warwick*, and my Lord *Mohun*.

Mr Att. Gen. When they came out first, What Orders or Directions were given?

Applegate. My Lord *Mohun* said, That he and my Lord of *Warwick*, and *Captain Coote*, would go all three together down to *Westminster*, and there they would all lie together, or be together that Night.

Mr Att. Gen. What Answer was given to what my Lord *Mohun* said?

Applegate. Indeed I do not remember any Answer that was given at all; but after that my Lord *Mohun* went into the Chair, and ordered us to follow down the other two Chairs towards *Westminster*, and we put up the Chair and came away; and when we came to *St. Martin's Lane* End, the Chair that carried *Capt. Coote* turn'd up the Lane, and we being ordered to follow the other Chairs, went up the Lane too; but my Lord *Mohun* perceiving that they were not going down to *Westminster*, call'd out to stop, just when we were entered into *St. Martin's Lane*, over-against the Back-door of the *Cross-Keys Tavern*, and made the other Chairs to stand, and all the three Chairs were set a-breast before that Place, and my Lord *Mohun* ask'd *Capt. Coote* whither he was going? and he answer'd, to *Leicester-fields*: He beg'd of him, as one would beg for an Alms, that he would not go that Night, for the Business could not be done that Night, and it was better to put it off till the next Morning.

Mr Att. Gen. Did they name what the Business was, that was to be done?

Applegate. No; but my Lord *Mohun* did say, 'twas impossible to be done that Night.

Mr Att. Gen. Well, and what happened afterwards, while you were in that Place?

Applegate. While we were there, three other Chairs pass'd by us, on the other Side of the Way, and going forward up the Street, *Captain Coote* order'd their Chairs to follow, and so we did to *Green-street* End, and there we set 'em down.

Mr Att. Gen. Pray can you remember what was said by my Lord *Mohun* at the Time when the other Chairs pass'd by?

Applegate. He was then desiring and begging of *Capt. Coote* to go home to *Westminster*, telling him that it could not be done that Night, but it must be defer'd till the next Morning; but *Captain Coote* said he would not delay it till the next Morning, but he would go to *Leicester-fields* that Night, and all three Chairs were ordered to go forward, and we did go on forward to *Leicester-fields*; my Lord *Mohun*, indeed, did beg and desire as heartily as, I say, a Man for an Alms, that they would let it alone

alone for that Night ; but Captain *Coote* would not, and ordered his Chair to go forwards.

Mr *Att. Gen.* You say, my Lord *Mohun* beg'd as heartily as if it were for an Alms to defer it for that Night ?

Applegate. Yes, he did do so ; so that I do really think that he was not concerned in the Matter.

Mr *Att. Gen.* If he were so earnest to defer and put off the Business, how came you to carry him thither that Night ? What Expressions did he use, particularly in *St. Martin's Lane*, after the other Chairs were pass'd by ?

Applegate. He said, If you must go, I'll go with you and see it ; and he bid us take up and follow the other Chairs wherein Capt. *Coote* and my Lord *Warwick* were ; and we did go.

Mr *Att. Gen.* And where did you set my Lord *Mohun* down ?

Applegate. At the hither End of *Leicester Square*, at the Corner of *Green-street*, the lower Corner of the paved Stones, going up to *Leicester House*.

Mr *Att. Gen.* What became of the three Gentlemen that you set down at the End of *Green-street* ?

Applegate. They went all three together up the Stone-pavement, towards the upper End of the Square, towards the *Standard Tavern*, I think.

Mr *Att. Gen.* Did they go together, or did they go asunder ?

Applegate. They went together, I think ; I did not see them part one from another.

Mr *Att. Gen.* Pray did you see my Lord *Mohun* afterwards ?

Applegate. No, I did not.

Mr *Att. Gen.* What became of you afterwards ?

Applegate. I stay'd a little at the lower End of the Square to take a Pipe of Tobacco, and when I had filled my Pipe, I heard calling Chairs, Chairs again, at the upper End of the Square ; and when we brought up our Chair to the upper End of the Fields, the first Man that I did see was my Lord of *Warwick*, who would have had us put over our Chair within the Rails ; but we told him we could not get it over again if any one was put in it : but if they would come out into the Square, there we were ready to carry 'em any where ; and when we came to the upper End of the Square, there was Captain *French*, and we took him into the Chair, and he bid us carry him to the *Bagnio* in *Long-acre* ; and at *Newport-street* End he would have had us stop and pull off his Cloaths, for he believed he was a dead Man.

Mr *Att. Gen.* Pray, Who did you see there at the upper End of *Leicester-fields* ?

Applegate. No Body, indeed, but my Lord of *Warwick* and Mr *French*.

Mr *Att. Gen.* No Body but them two.

Applegate. No ; no Body but them two.

Mr *Att. Gen.* Where do you say that was, that the Calling for Chairs was, and where you brought your Chair ?

Applegate. It was just at the upper End of *Leicester-fields*, by *Leicester-house*, and by the *Standard-Tavern*.

Mr *Att. Gen.* Who was it that you there took up ?

Applegate. It was Captain *French*.

Mr *Att. Gen.* Whither then did you carry him ?

Applegate. We were order'd to go to the *Bagnio* in *Long-acre* ; and thither we, and another Chair that carried my Lord *Warwick*, did go ; and when we came there, we did knock a good while before

we could get any Body up ; and when they were let in, we came away, and were bid to call for our Fare the next Morning.

Mr *Att. Gen.* Pray where was it that you took up Captain *French* ?

Applegate. It was at the upper end of all *Leicester-fields*.

Mr *Att. Gen.* And you went away with him, did you ?

Applegate. Yes, as soon as ever we took him up ; it was as soon as ever we could, at the outside of the Rails. I was the first Chair that, upon the calling for Chairs after they came thither, was by the *Standard-Tavern* ; and from thence we went into *Long-acre*.

Mr *Att. Gen.* Whereabout is the *Standard-Tavern* ?

Applegate. It is at the further end of the Fields by *Leicester-house* ; it is by *Cramburne-lane*, which is the Street that leads into *Newport-street*, and so into *St Martins-lane* ; and then we were to go to the *Bagnio* in the *Long-acre*.

L. H. St. My Lord *Mohun* will you ask this Witness any Questions ?

Lord *Mohun.* Yes, my Lord, I have a Question or two to ask him ; I desire to ask him, Whether, when we were going along, and the Chair, in which Captain *Coote*, was turn'd up *St Martins-lane*, I did not call out to have him stop, and know whither they were going ?

Applegate. Yes, my Lord, you did.

Lord *Mohun.* Pray whither did I bid you go, when you first took me up at *Locket's* ?

Applegate. My Lord *Mohun* bid me follow those Chairs, but go down to *Westminster*, for he said they all three would go together, and lie together that Night.

Lord *Mohun.* My Lords, I desire this Man may be ask'd, whether there were not several Ways of going out of the Fields, besides those of *Green-street* and the *Standard-Tavern* ?

Applegate. Yes, my Lord, no doubt there are.

Lord *Mohun.* Then I'll leave it to your Lordships to make the Observation ; for there is no Evidence that I was ever seen in the Field after I alighted out of the Chair at *Green-street* end ; and I hope your Lordships do observe, That he has told you, I was as earnest in begging Captain *Coote* to defer going to *Leicester-fields* till the next Morning, and begg'd as heartily of him for it, as any Beggar would do for an Alms.

L. H. St. My Lord, their Lordships, no doubt, have made that Observation ; for he did say so.

Lord *Mohun.* My Lords, I have no more to ask him.

L. H. St. Mr Attorney, Who is your next Witness ?

Mr *Att. Gen.* Our next Witness is *Peter Ketto*, who likewise was a Chairman that carried my Lord *Mohun* into the Place where the Fact was done.

Peter Ketto was Sworn.

Mr *Att. Gen.* Pray will you acquaint my Lords who you carried upon the Thirtieth of *October* last, from the *Greyhound Tavern* to *Leicester-fields* ?

Ketto. Upon the Thirtieth of *October* last, in the Morning (which was *Sunday*) very early, we were call'd to the Door of the *Greyhound-Tavern*, and when we came there, there were several other Chairs there, for there was no Coach, it seems, to be had.

Mr *Att.*

Mr Att. Gen. And who was in your Chair?

Ketro. My Lord Mohun; and there were two other Chairs that went away together, wherein were Captain Coote and my Lord of Warwick.

Mr Att. Gen. And whither did you go from thence?

Ketro. We went along the Strand, and when we came to the end of St Martins-lane, the Chair that Capt. Coote was in, we supposed by his Order, turn'd up the Lane; for my Lord Mohun had given us Order to go down to Westminster; and then when we came there, to the end of St. Martins-lane, he call'd out to stop, and to have the other Chairs stopt, and they stood still at the Back-door of the Cross-Keys Tavern, which is at the end of St Martins-lane, and all the three Chairs did make a stand at that Place, and my Lord of Warwick, and my Lord Mohun, and Captain Coote talk'd together; and my Lord Mohun did desire Captain Coote to go down to Westminster, and to put off the Business for that Night, for nothing of Business could be done; then my Lord of Warwick did say, if they did go on he would go on with them; but my Lord Mohun did endeavour to persuade 'em to go down to Westminster to Lodge, for nothing could be done that Night; but when the other three Chairs pass'd by, on the other Side of the Way, and Captain Coote would needs go forwards to Leicester-fields, my Lord Mohun did bid us take up and follow them; and he said, if they would go, he would go and see what came of it; so we took up, and followed the other Chairs, and went up the Lane, and into Green-street, to the lower end of Green-street, next the Square, and there our three Chairs set down my Lord of Warwick, my Lord Mohun, and Captain Coote, and were discharged.

Mr Att. Gen. And what became of them after?

Ketro. There they went up upon the broad Stones, up towards the upper end of the Fields.

Mr Att. Gen. Did they go all together, or did they part?

Ketro. They went together, for any Thing I know; I saw no parting, and indeed it was so dark a Night, that I cannot tell what became of 'em after they went out of the Chairs: It was one of the darkest Nights that ever I saw.

Mr Att. Gen. Well then, pray what happened after that?

Ketro. I went to light my Pipe of Tobacco, and before we could light a Pipe of Tobacco, there was calling at the upper end of the Square for Chairs again, and so up we went with our Chair to the upper end of the Fields; and when we came there, some Body call'd out to have us lift our Chair over within the Rails, but we told 'em, if we did so, we could not get it over again, if any Body were put into it; and so we were bid to go to the end of the Rails, in Order to the getting out from that Place, and getting in of any Body that was to go into the Chair; and when we came to the end of the Rails, we took up Captain French, and he bid us carry him to the Bagnio in the Long-acre, and we did so, and at Newport-street end he would have had us have pull'd off his Cloaths, for, he said, he believ'd he was a Dying Man; but we carry'd him on to the Bagnio in Long-acre, and there came after us my Lord of Warwick in another Chair; and there we set 'em down.

Mr Att. Gen. I have a Question to ask you, Friend, Did you not see my Lord Mohun after you set him down at Green-street end.

Ketro. No, indeed, not I; I did not, after he went out of the Chair.

Mr Att. Gen. Can you tell whither he went after he went out of the Chair?

Ketro. No, I can't tell whither he went; they all three went up the pav'd Stones together, but whither they went I can't tell.

Mr Att. Gen. Did you hear of any other Chair that was at that end of the Fields at that Time?

Ketro. There was another Chair at that Time, at the upper end of the Fields.

Mr Att. Gen. Did you hear 'em desire to take Mr Coote into that Chair?

Ketro. No, I did not.

Mr Att. Gen. Nor do you know any Thing of their putting Mr Coote in a Chair?

Ketro. No, indeed not I; what they did as to the other Chair, that was before, they can best tell, for I can't.

L. H. St. Who is your next Witness, Mr Attorney?

Mr Att. Gen. Richard Edwards.

L. H. St. What do you call him to?

Mr Att. Gen. Because we would not trouble your Lordships with the Repetition of every one of the Witnesses that were here Yesterday; this is the Man that carry'd Mr Dockwra into the Field.

Edwards was Sworn.

L. H. St. Mr Attorney, What do you ask this Witness?

Mr Att. Gen. Pray do you acquaint my noble Lords here, who you carried in your Chair to Leicester-fields?

Edwards. Indeed, I can't tell; there were three Chairs that took up three Persons at the Greyhound Tavern in the Strand, after three other Chairs were gone away, and every one had a Gentleman in 'em: I, for my Part, did not know who was in our Chair; but when we shut up the Chair we were bid to go to the Standard Tavern in Leicester-fields, and thither we did go, and there we set down the Gentleman that was in our Chair, and away we went; and as we went up St. Martin's Lane, we pass'd by the Three other Chairs that turn'd up before, at the Back-door of the Cross-Keys Tavern.

Mr Att. Gen. Did you see the other three Chairs in Leicester-fields afterwards?

Edwards. No, indeed I did not; but went up to the Standard Tavern, and set down the Gentleman that was in our Chair, and there we left him, and went away.

Mr Att. Gen. Pray, Can you tell who it was that you carried?

Edwards. Indeed, I cannot very well tell; but I believe it was Captain James, or Mr Dockwra.

Mr Att. Gen. When you came to the Standard Tavern, pray, What happen'd? What pass'd there?

Edwards. To the best of my Knowledge, I took hold of the Knockers of the Door, and knock'd at the Door, and the Gentleman came out, and was set down there; and he gave me a Shilling; and away I went with my Chair.

Mr Att. Gen. When you set him down at the Standard Tavern, pray, What did he say?

Edwards. He gave me a Shilling, and bid me go about my Business; and so we went away.

Mr Att. Gen. Was you there when you heard 'em call Chairs back?

Edwards. No, we went away as soon as we had set 'em down at the Standard Tavern.

Mr Att.

Mr *Att. Gen.* Did you observe which Way they went after you set him down?

Edwards. No, indeed I did not; I never minded which Way they went, after we set him down.

Mr *Att. Gen.* Which Way did you go?

Edwards. We went away down towards *Charing-cross*.

Mr *Att. Gen.* Did you see any other Chairs in the Square when you went down?

Edwards. Yes, there were other Chairs at the other End of the Square.

Mr *Att. Gen.* Did you see any Gentlemen as you came down, walking up towards the *Standard Tavern*, upon the pav'd Stones?

Edwards. No, indeed, my Lords, not that I remember; but I did see the other three Chairs as I pass'd by at *Green-street End*; who were in 'em, or what was become of them that were in 'em, that I can't tell.

Mr *Att. Gen.* What did they say to you any of 'em at that Time?

Edwards. They ask'd us if we were going away, and we told them yes; we were discharg'd.

Mr *Att. Gen.* But pray, Did you not meet any of the other Gentlemen upon the pav'd Stones?

Edwards. No, indeed, I did not see, to the best of my Remembrance, any other Gentlemen upon the paved Stones.

Mr *Att. Gen.* What did the other Chairmen say to you?

Edwards. They ask'd if we were coming away; and we left 'em behind us.

L. H. St. Has my Lord *Mohun* any Questions to ask him?

Lord Mohun. No, I have not.

L. H. St. Mr Attorney, who is your next Witnesses?

Mr *Att. Gen.* *Jackson*, who was the Chairman that carry'd Capt. *James*. (He was Sworn.)

Mr *Att. Gen.* Pray, Will you acquaint my Lords who you carry'd from *Locket's* to *Leicester-fields*?

Jackson. Captain *James*: There were six Chairs in all: I do not know who went in the other Chairs, but in the three Chairs that went together, when we went, there was Captain *Dockwra*, Captain *French*, and Captain *James*.

Mr *Att. Gen.* And where did you set him down?

Jackson. At the *Standard Tavern* in the Square of *Leicester-fields*.

Mr *Att. Gen.* What became of him after you set him down?

Jackson. We knock'd twice at the Tavern Door, and then he gave us a Shilling; and we went away presently, and went down on the left Hand upon the pav'd Stones, towards *Green-street End*.

Mr *Att. Gen.* Did you meet any Persons coming up upon the paved Stones?

Jackson. Yes, my Lord; I did.

Mr *Att. Gen.* Can you tell who those Persons were?

Jackson. Indeed, I cannot tell.

Mr *Att. Gen.* How many were they in number?

Jackson. They were two or three; but it was so dark, that I cannot tell how many they were.

Mr *Att. Gen.* Which Way were they walking?

Jackson. They were going up towards the middle Street.

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Mr *Att. Gen.* How far was that from the *Standard Tavern*?

Jackson. It might be about sixty Yards from the *Standard Tavern*.

Mr *Att. Gen.* You say there were three Chairs standing at the End of *Green-street* when you came by?

Jackson. Yes, there were so.

Mr *Att. Gen.* Had you no Discourse with them?

Jackson. No, indeed, I had not.

Mr *Att. Gen.* Did you not ask them why they stay'd there?

Jackson. No, indeed, I did not; we pass'd by and went home.

Mr *Att. Gen.* You know my Lord *Mohun*, don't you?

Jackson. Yes, I do, very well.

Mr *Att. Gen.* Was not my Lord *Mohun* in that Company?

Jackson. He was when the six Chairs were call'd to *Lockets*; but I did not hear any Discourse, that I can remember, that pass'd among 'em, nor do I know, or did hear, what became of my Lord *Mohun* afterwards.

Mr *Att. Gen.* Were those the other three Chairs that went away from *Locket's* first, that you saw at *Green-street End*?

Jackson. Indeed, my Lords, I believe so; I cannot swear that they were those three Chairs; when we had set down Captain *James*, we did not look back any Way at all, but went away home, it being so late and so dark.

L. H. St. My Lord *Mohun*, will you ask this Witness any Questions?

Lord Mohun. No, my Lord.

Mr *Att. Gen.* Then, my Lord, we shall call *William Salmon* who was the Surgeon that did search the Wound by the Coroner's Command, when he took the Inquisition upon the View of the Body.

Who was Sworn.

Mr *Att. Gen.* Pray, Did you view the Body of Mr *Coote* after he was Dead?

Salmon. Yes, I did view his Body by the Command of the Coroner at the Watch-house where it lay in *St. Martin's Lane*.

Mr *Att. Gen.* Pray then will you acquaint my Lords what Wounds you found upon the Body?

Salmon. There was one upon the left Part of the Breast, near the Collar-bone, which, upon probing, I found to be half an Inch in Breadth, and four or five Inches deep downward; the other was a Wound that was in his left Side, just under the short Ribs, and that was upward; and upon probing of it, I found it was about the Breadth of an Inch at the Orifice, and about the depth of five or six Inches, and pierced through the Diaphragma.

Mr *Att. Gen.* Pray, Did you observe any Difference in the Wounds, or in the Orifice of them?

Salmon. That below was a large Wound, larger than the other.

Mr *Att. Gen.* Were the Wounds, do you think, given with two Swords, or with one and the same Sword?

Salmon. Indeed, I can't tell.

Mr *Att. Gen.* Did you look upon either, and which of them to be Mortal?

Salmon. I look'd upon both to be Mortal.

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L. H.

L. H. St. If you have done with him, Mr Attorney, will my Lord *Mohun* ask him any Questions?

Lord Mohun. No, I shall ask him no Questions, for I think I need not, I was never prov'd to be in the Company, in the Place where the Fighting was.

Mr Att. Gen. We have done with calling of Witnesses, till we hear what my Lord *Mohun* says to it.

L. H. St. My Lord *Mohun*, This is the Time (the King's Evidence being finished) for you to call your Witnesses, and make your Defence.

Lord Mohun. My Lords, I shall not call many Witnesses, for I think there is nothing that fixes any Thing of Guilt, as to Capt. *Coote's* Death, as to me; but I shall call one Witness that was here (as I understand) Yesterday, but not examined; and that is a Person that saw me afterwards, and knows that I had a Wound in my Finger laid open, and that Wound was received at *Locket's*, by endeavouring to part 'em when they were quarrelling there at that Time.

The Witness stood up.

L. H. St. Tho' you are not upon your Oath, yet you are as much obliged, in Justice and Conscience, to speak the exact Truth, as if you was upon your Oath, therefore have a Care what Testimony you give.

Witness. Yes, my Lord.

L. H. St. What is the Question you would have this Witness ask'd?

Lord Mohun. What he knows of my being Wounded about this Time, and what I declared concerning that Wound, how I received it?

L. H. St. I will not refuse to ask the Question, but I must acquaint your Lordship that it signifies nothing in Point of Evidence at Law, what you your self did declare after the Fact was over. It is Material what you did to prevent this Mischief before it happened, but not what you said or declared after the Thing was done. You hear my Lord's Question, What say you to it?

Witness. I was at my Lord *Mohun's* several Days after this Business happened, at the Lodging where he lay, and where I saw him; he had a Hurt in his Hand, and it was laid open, it was in the Finger, and that he said was all he got by endeavouring to part People from fighting.

Mr Att. Gen. Pray, Sir, when was this?

Witness. It was several Days after the Death of Mr *Coote*.

L. H. St. I told your Lordship before, that in Point of Law, such Evidence would signify nothing; because your declaring any Matter, after the Thing was done, in relation to the Fact, could not be admitted as legal Evidence; if any of my Lords be of another Opinion, I suppose they will declare it?

Lord Mohun. My Lords, I submit it to your Lordships; I only desire he may be ask'd, Whether he saw my Hand or no, and how it was?

Witness. I saw my Lord's Finger, and it had been laid open some Time before; and he said, he had received that Wound by endeavouring to part Captain *French* and Captain *Coote*: That's all I know of the Matter.

Mr Att. Gen. But, pray, When was That that he declared so? How long after the Death of *Coote*?

Witness. It was several Days after That.

L. H. St. You hear, in Point of Law, That can be no Evidence at all: If you have no other Witnesses to call, your Lordship would do well to sum up your Evidence, and make what Observations you think fit upon the Evidence has been given for the King?

Lord Mohun. My Lords, I hope I shall make my Defence, against this Accusation, with all the Modesty and Submission to your Lordships, that becomes me: I am very much ashamed to be brought before your Lordships upon any such Account as this again, after having been once before your Lordships upon such an Account before. I may very well say, I am not guilty at all of having any Hand in Mr *Coote's* Death; and I can assure your Lordships, I will avoid all Occasions of giving you any Trouble of this Nature for the future: I do not doubt but to acquit my self of all Guilt, in relation to this Matter; and, indeed, with Submission to your Lordships, there has been no Evidence given, relating to me, that does infer any Guilt upon me, to prove that I was at the Place where this Fact was done; therefore I shall only make some few little Remarks upon what has been said, and leave it all to your Lordships Consideration.

The King's Council first have call'd the Drawer of the House, and he has satisfied, that I did so far endeavour to part 'em, that I threaten'd to send for the Guards and secure 'em, if they would not go home; and when they went into the Chairs, I went into my Chair, on purpose to follow 'em down to *Westminster*, whither I would have had them gone; the Prick that I got in my Finger, of itself speaks, that I endeavour'd to part 'em, and so the Drawer he has told you; I am sure it was the Occasion of a great deal of Pain to me, it being forc'd to be afterwards laid open, The Chairman that carry'd Mr *Coote*, swears, That I, at the Door of the Tavern in *St. Martin's Lane*, did make 'em stand, and when I came up to 'em, I beg'd, as for an Alms, that they would go home; and I ask'd *Coote* whither he was going, which proves that I was not conscious of any Design of going to fight at that Time: Your Lordships are likewise told, That when we came to *Green-street End*, I was set down upon the pav'd Stones. I was so, indeed, and I went up about five or six Yards, but that is all that's prov'd; but I did take the quite contrary Way to the Place where Mr *Coote* was wounded. Then there was another Chairman, one *Applegate*, and truly what Use they make of him, I cannot imagine, as an Evidence against me; for he says, I was very earnest in *St. Martin's Lane* to hinder any Quarrel, and indeed at the Tavern-Door, at *Locket's*, I was so at first; and when we came to *St. Martin's Lane End*, he says, that I order'd 'em to make them stop, and ask *Coote* whither he was going, and he saying he was going to *Leicester-fields*, I endeavour'd all I could to persuade him to the contrary, and did entreat him that he would go no farther, but go down to *Westminster* to his Lodging, or lodge with me; but Mr *Coote* would not give me Time, at that Time the other Chairs coming by, to give him further Reasons, but would go away: And then it is objected, that I should say, That if they would go, I would go and see: That was, my Lords, I would go on till I could have a further Opportunity to prevent any Fighting among them: And the Witness *Ketro* says, my Lord of *Warwick* did bid the Chair to follow the other Chair in which Captain *Coote* was. My De-

sign

sign was for *Westminster*, to go to my Lodgings, and when we came to the End of the Square, if I did go up the whole Stones, it was directly the contrary Way to the Place where it is prov'd this Fact happen'd. For the next Witness, *Edwards*, he says he saw no Body walking upon the pav'd Stones; and truly, I did go the direct Way into *Newport-street*: And for my not appearing before, it was for avoiding Confinement; and I must submit the whole Matter to your Lordships, how far any Guilt is fix'd upon me, not being prov'd to be in the Field at the Time when they fought, or seen to be in the Company when they came up and found Mr *Cooté* wounded, and dying, or dead. It is a plain Case I could have no Hand at all in his Death; and so I think I need give no further Trouble to your Lordships, for I believe your Lordships cannot but be satisfied, that, as I have pleaded I am not guilty of killing this Gentleman: Nay, it is impossible that I should go into the Field to be a Second, when my own right Hand was wounded, for I was not able to hold my Sword in my Sword-Hand, because of that Wound. I submit the Matter intirely to your Lordships, from whom I am sure to meet with every Thing that will be suitable to Honour and Justice.

L. H. St. The King's Council are now to sum up the Evidence for the King.

Mr Solicitor General began to sum up the Evidence for the King, but his Voice was so low, and the Noise in the Hall so great, that he could not be heard, and therefore the Lord High Steward moved the House that he might stand by the Prisoner at the Bar, which was something nearer than the Place where the King's Council stood, as was done the Day before; and it was order'd accordingly.

L. H. St. Mr Solicitor, Pray raise your Voice as much as you can, that all my noble Lords may hear you.

Several of the Lords did move, That one that had a better Voice might sum it up, and particularly Mr *Comper*; but it being usually the Part of the Solicitor General, and he only having prepar'd himself, he was ordered to go on; but for the better Hearing of him, several of the Lords towards the upper End of the House, removed from their Seats down, as they did the Day before, to sit upon the Wooll packs.

Mr Sol. Gen. My Lords, I am of Council for the King against this noble Lord, my Lord *Mohun*, the Prisoner at the Bar, who has been upon his Tryal this Day, and it comes to my Turn to sum up the Evidence that has been given against him, which is but a Repetition of what your Lordships, no doubt of it, have taken exact Notice of; but I must shortly sum up the Chief of the Particulars thereof, and make a few Remarks what of that Evidence sticks particularly upon my Lord *Mohun*. The first Witness was the Drawer of the House, at the *Greyhound* in the Strand, who gives you an Account who were at his Master's House the Nine and twentieth of *October* last, and particularly, that my Lord *Mohun* was there in the same Company wherein this Gentleman was, that was unfortunately killed, and that he continued in that Company till very late that Night, or rather, very early the next Morning; when, after the Reckoning was paid, they came

all down to the Bar and call'd for Coaches; and he tells you, that he was sent out, and he tells you what he was sent for, he was sent for Coaches, and so cannot give any Account what pass'd while he was gone; but when upon calling for Coaches none could be had, there was Order for Chairs to be call'd, and Chairs were brought to the Door; and when he came in again he heard the Clashing of Swords, and there were Three on the one Side of the Bar, and Three of 'em on the Other: Indeed he does say, he did not see when the Swords were drawn, but at that Time they were putting up their Swords, my Lord *Mohun* was in the Company, upon which I would observe to your Lordships, that there had been some Fighting; for the Witness says, upon my Lord's Question, that my Lord call'd for a Napkin to put his Hand in, for his Finger was cut; and he said, This is all that I have got by endeavouring to part them; so that it shews there was a Quarrel, and my Lord *Mohun* was in it: When the Chairs were brought to the Door, they went into them, there went Mr *Cooté* into One, into the Second my Lord of *Warwick*, and into the Third my Lord *Mohun*, so that still my Lord *Mohun* was in the Company, and they went away together; and tho' it is pretended by my Lord, That he did all he could to prevent the Quarrel, yet he gave Directions to the Chairmen that carry'd him to follow the other Chairs, and your Lordships perceive what the Business was that they went about, and the other three Chairs followed after presently, so that they all went away together; nay, my Lord himself does not disown his being in the Company till they came into *Leicester-fields*. Next I would observe what fell from *Brown*, who carry'd the very Gentleman that was kill'd, Mr *Cooté*, that my Lord *Mohun* was in One of the three First Chairs, and that they all went together, till that my Lord *Mohun* call'd out to stop, upon the Turning up into *St. Martin's Lane*; and tho' they stop'd in *St. Martin's Lane*, and my Lord *Mohun* did intreat them to let it alone at that Time, yet it was only to let it alone till the Morning; and when the other three Chairs pass'd by on the other Side of the Way, and *Cooté* would have them go on; my Lord *Mohun* said, If they would go on, he would go with them and see it. *Applegate*, the Chairman, that carry'd my Lord *Mohun*, says the same: And so it is plain my Lord *Mohun* did go on with an Intention to make one in the Affray; for *Applegate* says, That when my Lord *Mohun* could not prevail upon his persuasions, and when *Cooté* went away after the other three Chairs were pass'd by, my Lord *Mohun* said, If you do go, I must go and see it; and they did go all together: And the Chairman says, he set my Lord *Mohun* down at the End of *Green-street*, at the lower End of the Fields, where the other two Chairs set down Captain *Cooté* and my Lord of *Warwick*, and that they all three walk'd up together towards the *Standard Tavern*; still all this proves my Lord did go there, and that he himself did say he would go and see it: And it is plain that my Lord *Mohun* did go as far as *Leicester-fields*, and it is only his Declaration concerning himself, without any Proof, that he went away, and did not go into the Fields, to the Place where the Fact was done; and we think it is sufficient Proof that he was one of them that were concerned, because we do prove, that he was all along in the Company till the very Time that they came into the Place where the Thing was done. Then there is the Chairman that carry'd Mr *James*,

and he tells your Lordships, That the three First Chairs that went up *St. Martin's Lane*, went to the *Standard Tavern*, and there they knock'd at the Door, and paid the Chairmen, and went out of their Chair; and so says the other Chairmen that carry'd Capt. *Dockwra* and Capt. *French*; and they say also, That when they came down the paved Stones again, they heard Chairs call'd for, but they did not interpose at all in the Matter, but the other two Chairs it seems did, for they went up to the upper end of the Square, where there were two Persons holding up Mr *Coot*e, and after they put the Chair over the Rails, in order to have him carried away in a Chair, but they could not get him into the Chair. I would likewise observe from the Evidence of the Surgeon, who gives you an Account of what nature the Wounds were, one was in the Breast, near the Collar-bone, on the left Side, the other was under the Short-ribs, on the left Side too, which could not be given him by the Person that he was fighting with, he being a right-hand Man, as was prov'd by his Servant: My Lord *Mohun* has call'd but one Witness, which is only about a little Circumstance of his being wounded in the Hand, and having the Wound laid open, but that was two Days after this Fact was done; my Lord *Mohun* could not but know that the Matters he was to answer, related to a Time before. It must be agreed to me, that they all three, my Lord of *Warwick*, my Lord *Mohun*, and Mr *Coot*e, went all away together, that they were carried to *Leicester-fields*, that they were set down together, and walk'd up together upon the stone Pavement, when the others were gone towards the upper end of the Fields; so that in all probability, they all went together into the Place where the Fight was, and were all concern'd; and if so, my Lord *Mohun* must be equally guilty with the rest, my Lord *Mohun* knowing what Business it was they were going about. It must be left to your Lordships, whether he shall not be presumed to be there when the Fact was done, especially his saying, when he could not prevail in *St Martins-lane*, to put the Matter off till another Time, that if they did go on, he would go and see it; so that putting these two Circumstances together, his going in one of the Chairs with my Lord *Warwick* and *Coot*e, and what he said after when the Chairs stop'd in *St Martins-lane*, we think are Circumstances to induce your Lordships to believe, that he was present at the Time of the Fact committed, or very near the Place; and if that be so, how far he is guilty must be submitted to your Lordships consideration; and this is all that I shall trouble your Lordships with, without repeating the particular Evidence, which your Lordships, I am sure, very well remember.

Lord *Mohun*. My Lords, I desire I may say one Word in answer to what Mr Solicitor has observ'd; I think your Lordships have had no Evidence given you where Mr *Coot*e was kill'd, but only the Chairman that was desir'd to bring over his Chair within the Rails, says it was towards *Panton-street*, which is quite contrary to the Place where I was set down at *Green-street* end; I must then be at a very great Distance from the Place where the Fact was done.

L. H. St. If all have done on both Sides, then your Lordships have nothing left but to consider of the Evidence which has been given, which I suppose you will do among your selves;

Lords. Ay, Adjourn, Adjourn.

L. H. St. Is it your pleasure, my Lords, to Adjourn into the House of Lords?

Lords. Ay, Ay.

L. H. St. This House is Adjourn'd into the House of Lords.

[And the Lords went back in the same Order to the House of Lords, and there they stay'd for about two Hours Time, debateing the Matter among themselves, and afterwards returned again into the Court in Westminster-hall, and were seated all in their Places as they were before, and the Lord High Steward was seated in the Chair before the Throne.]

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, My Lord High Steward of England, his Grace, does straitly charge and command all manner of Persons here present to be uncovered, and keep Silence, upon pain of Imprisonment.

L. H. St. Is it your Lordships pleasure to go on now to give your Judgment?

Lords. Ay, Ay.

L. H. St. Then I must pray your Lordships, to give me Time to write down your Opinions distinctly, that I may be able to acquaint you with certainty of the Numbers.

Lords. Ay, Ay.

Then the Lord High Steward stood up, and put the Question to every Lord, beginning with the Youngest Baron, to know what his Judgment was, and the Lord to whom he call'd, stood up in his Place uncovered, and laying his Right Hand upon his Breast, delivered his Judgment in the Manner following.

L. H. St. My Lord Bernard, Is Charles Lord *Mohun* Guilty of the Felony and Murder whereof he stands indicted, or not Guilty?

Lord Bernard. Not guilty, upon my Honour.

The same Question was asked severally of all the Lords, who in the same Form delivered their Opinions, as followeth,

L. Herbert. Not guilty, upon my Honour.

L. Weston. Not guilty, upon my Honour.

L. Ashburnham. Not guilty, upon my Honour.

L. Chalmondly. Not guilty, upon my Honour.

L. Jefferys. Not guilty, upon my Honour.

L. Godolphin. Not guilty, upon my Honour.

L. Guilford. Not guilty, upon my Honour.

L. Oselstone. Not guilty, upon my Honour.

L. Osborne. Not guilty, upon my Honour.

L. Craven. Not guilty, upon my Honour.

L. Cornwallis. Not guilty, upon my Honour.

L. Granville. Not guilty, upon my Honour.

L. Berkley. Not guilty, upon my Honour.

L. Lexington. Not guilty, upon my Honour.

L. Rockingham. Not guilty, upon my Honour.

L. Lucas. Not guilty, upon my Honour.

L. Culpeper. Not guilty, upon my Honour.

L. Byron. Not guilty, upon my Honour.

L. Jernyn. Not guilty, upon my Honour.

L. Leigh. Not guilty, upon my Honour.

L. Raby. Not guilty, upon my Honour.

L. Howard. Not guilty, upon my Honour.

L. Lovelace. Not guilty, upon my Honour.

L. Hunsdon. Not guilty, upon my Honour.
L. Wharton. Not guilty, upon my Honour.
L. Eure. Not guilty, upon my Honour.
L. Dudley. Not guilty, upon my Honour.
L. Fitzwalter. Not guilty, upon my Honour.
L. W.roughby. Not guilty, upon my Honour.
L. Audley. Not guilty, upon my Honour.
L. Abergavenny. Not guilty, upon my Honour.

L. H. Steward. My Lord Viscount *Lonsdale*, Is *Charles Lord Mohun* Guilty, &c.

L. Viscount Lonsdale. Not guilty, upon my Honour.

L. Viscount Townsend. Not guilty, upon my Honour.

L. H. St. The Earl of *Grantham*, Is *Charles Lord Mohun* guilty, &c.

E. of Grantham. Not guilty, upon my Honour.
E. of Albemarle. Not guilty, upon my Honour.
E. of Tankerville. Not guilty, upon my Honour.
E. of Warrington. Not guilty, upon my Honour.

E. of Scarborough. Not guilty, upon my Honour.

E. of Mountague. Not guilty, upon my Honour.

E. of Portland. Not guilty, upon my Honour.
E. of Rochester. Not guilty, upon my Honour.
E. of Nottingham. Not guilty, upon my Honour.

E. of Tarmouth. Not guilty, upon my Honour.
E. of Radnor. Not guilty, upon my Honour.

E. of Macclesfield. Not guilty, upon my Honour.

E. of Faversham. Not guilty, upon my Honour.
E. of Burlington. Not guilty, upon my Honour.

E. of Carlisle. Not guilty, upon my Honour.
E. of Bath. Not guilty, upon my Honour.

E. of Anglesey. Not guilty, upon my Honour.
E. of Essex. Not guilty, upon my Honour.

E. of Scarsdale. Not guilty, upon my Honour.
E. of Thanet. Not guilty, upon my Honour.

E. of Chesterfield. Not guilty, upon my Honour.
E. of Carnarvan. Not guilty, upon my Honour.

E. of Kingston. Not guilty, upon my Honour.
E. of Winchelsea. Not guilty, upon my Honour.

E. of Stamford. Not guilty, upon my Honour.
E. of Peterborough. Not guilty, upon my Honour.

E. of Rivers. Not guilty upon my Honour.

E. of Manchester. Not guilty, upon my Honour.
E. of Denbigh. Not guilty, upon my Honour.

E. of Leicester. Not guilty, upon my Honour.
E. of Bridgwater. Not guilty, upon my Honour.

E. of Dorset. Not guilty, upon my Honour.
E. of Suffolk. Not guilty, upon my Honour.

E. of Huntington. Not guilty, upon my Honour.
E. of Darby. Not guilty, upon my Honour.

E. of Kent. Not guilty, upon my Honour.

Lord High Steward. My Lord great Chamberlain, Is *Charles Lord Mohun* guilty, &c.

Lord Chamberlain. Not guilty, upon my Honour.

Lord High Steward. My Lord Marquess of *Normanby*, Is *Charles Lord Mohun* guilty, &c.

Lord Marquess of Normanby. Not guilty, upon my Honour.

L. Marquess of Hallifax. Not guilty, upon my Honour.

Lord High Steward. My Lord Duke of *Newcastle*, Is *Charles Lord Mohun* guilty, &c.

D. of Newcastle. Not guilty, upon my Honour.

D. of Scomberg. Not guilty, upon my Honour.

D. of St. Albans. Not guilty, upon my Honour.

D. of Northumberland. Not guilty, upon my Honour.

D. of Ormond. Not guilty, upon my Honour.

D. of Southampton. Not guilty, upon my Honour.

D. of Richmond. Not guilty, upon my Honour.

D. of Somerset. Not guilty, upon my Honour.

L. H. St. My Lord Steward, Is *Charles Lord Mohun* guilty, &c.

Lord Steward. Not guilty upon my Honour.

Lord High Steward. My Lord President, Is *Charles Lord Mohun* guilty, &c.

Lord President. Not guilty, upon my Honour.

Then the *Lord High Steward of England*, standing up uncovered, putting his right Hand upon his Breast, said, My Lord *Mohun* is not guilty, upon my Honour.

Then the *Lord High Steward* seated himself again in the Chair, to take the Number of the Peers who had given their Judgment.

L. H. St. My Lords, Eighty Seven of your Lordships are present, and you are all unanimously of Opinion, That my Lord *Mohun* is not guilty of the Felony and Murder whereof he stands Indicted.

Lords. Ay, Ay.

L. H. St. Let the Prisoner be call'd to the Bar.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, my Lord High Steward of *England*, his Grace, does straitly charge and command all Manner of Persons here present, to keep Silence, upon Pain of Imprisonment.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes; Chief Governour of the *Tower of London*, bring forth the Body of your Prisoner, *Charles Lord Mohun*, whom you have committed to you, in order to be brought hither this Day, upon Pain and Peril will fall thereon.

Then he was brought forth to the Bar, and the Lord High Steward address'd himself to him in this Manner.

L. H. St. My Lord *Mohun*, you have been Indicted for the Murther of Mr *Richard Coote*, upon which Indictment your Lordship has been Arraigned, and upon your Arraignment has pleaded Not-guilty, and for your Tryal, you have put your self upon your Peers, my Lords here present;

sent; and they have heard the Evidence, and have considered of it, and delivered their Judgment upon the whole Matter; and I am to acquaint your Lordship, they are all unanimously of Opinion, That your Lordship is not guilty of the Felony and Murther whereof you stand Indicted; and therefore your Lordship is discharged from your Imprisonment, paying your Fees.

Then the Lord Mohun made his Reverence to the Lords, and express'd himself thus.

Lord Mohun. My Lords, I do not know which way to express my great Thankfulness and Acknowledgment of your Lordships great Honour and Justice to me; but I crave leave to assure your Lordships, That I will endeavour to make it the Business of the future Part of my Life, so to behave my self in my Conversation in the World, as to avoid all Things that may bring me under any such Circumstances, as may expose me to the giving your Lordships any Trouble of this Nature for the future: And then making his Reverences to the Lords, he went away from the Bar.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes, All manner of Persons here present, are commanded to keep Silence, by my Lord High Steward of England, his Grace upon Pain of Imprisonment.

L. H. Steward. My Lords, The Tryal being at an End, there is nothing remains to be done here, but the determining the Commission.

Lords. Ay, Ay.

L. H. St. Sir Samuel Astry, let Proclamation be made in order to the dissolving the Commission of High Stewardship.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, My Lord High Steward of England, his Grace does straitly charge and command all manner of Persons here present, and that have here attended, to depart hence in the Peace of God, and of our Sovereign Lord the King, for his Grace, my Lord High Steward of England, intends now to dissolve his Commission.

And then the White Staff being delivered to his Grace, the Lord High Steward, he stood up, and holding it in both his Hands, broke it in two; and then leaving the Chair, came down to the Wool-pack, and said, is it your Lordship's Pleasure to adjourn to the House of Lords?

Lords. Ay, Ay.

L. H. St. This House is adjourned to the House of Lords.

And so they went back in the same Order that they came into the Court, and all the Assembly broke up.



The TRYAL of Spencer Cowper, Esq; &c.



Die Mercurii 16 Julii, 1699.

Proclamation was made for all Persons concerned to attend.

Cl. of Arr. **Y**OU good Men that are empannelled to enquire, &c. Answer to your Names, and save your Fines.

Then Ellis Stephens, William Rogers and John Marson being upon Bail, Proclamation was made for them to attend, which they accordingly did, and Mr Cowper was brought into Court by the Under-Sheriff.

Cl. of Arr. Spencer Cowper hold up thy Hand. *(which he did.)* John Marson hold up thy Hand. *(which he did.)* Ellis Stevens hold up thy Hand. *(which he did.)* William Rogers hold up thy Hand. *(which he did.)*

Cl. of Arr. **Y**OU stand indicted by the Names of Spencer Cowper, late of the Parish of St. John's, in the Town of Hertford, in the County of Hertford, Esq; John Marson, late of the Parish aforesaid, in the County aforesaid, Gent. Ellis Stevens, late of the Parish aforesaid, in the County aforesaid, Gent. and William Rogers, late of the Pa-

rish aforesaid, in the County aforesaid, Gent. For that you not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the thirteenth Day of March, in the Eleventh Year of the Reign of his present Majesty, by Force and Arms, &c. at the Parish aforesaid, in the County aforesaid, in and upon one Sarah Stout Spinster, in the Peace of God and our Sovereign Lord the King, then and there being violently, feloniously, voluntarily, and of your Malice afore-thought, did make an Assault; and that you the aforesaid Spencer Cowper, John Marson, Ellis Stevens, and William Rogers, a certain Rope of no Value, about the Neck of the said Sarah then and there feloniously, voluntarily, and of your Malice afore-thought, did put, place, fix and bind, and the Neck and Throat of the said Sarah, then and there with the Hands of you the said Spencer Cowper, John Marson, Ellis Stevens, and William Rogers, feloniously, voluntarily, and of your Malice afore-thought, did hold, squeeze, and gripe: And that you the said Spencer Cowper, John Marson, Ellis Stevens, and William Rogers, with the aforesaid Rope, by you the said Spencer Cowper, John Marson,

son, Ellis Stevens and William Rogers, then as aforesaid about the Neck of the aforesaid Sarah Stout, put, placed, fixed, bound, and by the squeezing and griping of the Neck and Throat of the said Sarah with the Hands of you the said Spencer Cowper, John Marson, Ellis Stevens and William Rogers as aforesaid, the said Sarah Stout then and there, by Force and Arms, &c. feloniously, voluntarily, and of your Malice afore-thought, did choke and strangle; by reason of which choking and strangling of her the said Sarah Stout, by you the aforesaid Spencer Cowper, John Marson, Ellis Stevens and William Rogers, with the said Rope about the Neck of the said Sarah Stout as aforesaid, placed, fixed and bound, and by the squeezing and griping of the Neck and Throat of the said Sarah with the Hands of you the said Spencer Cowper, John Marson, Ellis Stevens and William Rogers, as aforesaid, the said Sarah then and there instantly died: And so you the said Spencer Cowper, John Marson, Ellis Stevens and William Rogers, the said Sarah Stout, on the thirteenth Day of March, in the Year aforesaid, in the Parish aforesaid, in the County aforesaid, in Manner and Form aforesaid, feloniously, voluntarily, and of your Malice afore-thought, did kill and murder; and the said Sarah Stout, as aforesaid, by you the said Spencer Cowper, John Marson, Ellis Stevens and William Rogers, feloniously, voluntarily, and out of your Malice afore-thought, choked and strangled, into a certain River there, being called the Priory River, then secretly and maliciously did put and cast, to conceal and hide the said Sarah Stout so murdered, against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c. How sayest thou Spencer Cowper, art thou guilty of the Felony and Murder whereof thou standest Indicted, or not guilty?

Mr Cowper. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Mr Cowper. By God and my Country.

Cl. of Arr. God send you a good Deliverance.

Then the other Three pleaded not guilty, and put themselves upon their Country in manner aforesaid.

Then Proclamation was made for Information.

Cl. of Arr. You the Prisoners at the Bar, These Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths: Therefore if you will challenge them, or any of them, your Time to speak is as they come to the Book to be sworn, before they be sworn.

Then the Pannel was called over.

Cl. of Arr. Do you design to join in your Challenges, or to Challenge separately?

Mr Cowper. If we should Challenge separately, there must be so many separate Tryals, and therefore to prevent the Trouble of the Court, I am willing there should be but one Challenge for all.

Cl. of Arr. Gentlemen, do you all agree to that?

Prisoners. Yes, yes.

Then after some Challenges, as well on the Part of the King as of the Prisoners, there not being a full Jury of the Principal Pannel:

Mr Cowper. If your Lordship please, the Pannel is now gone through, I desire they may shew some legal Cause for their Challenges.

Mr Jones. I conceive we that are retained for the King are not bound to shew any Cause, or the Cause is sufficient if we say they are not good for the King, and that is allowed to be a good Cause of Challenge, for what other Cause can we shew in this Case. You are not to shew your Cause, you Challenge peremptorily, so in this Case the King does.

Mr Cowper. My Lord, I stand at the Bar with some Disadvantage, to encounter a Gentleman that hath no Concernment; but however, I do take it for Law, that there must be a Cause shewed, and that Cause must be a legal one, and what that Cause is they must certainly make out. I do think it ought to appear that there is some Relation, or some notorious Affection or Friendship, or something of that Sort, or otherwise it is not a legal Cause of Challenge; and if there seem to be any Difficulty in this Particular, I hope your Lordship will assign me Council to argue it with the King's Council.

Mr Baron Hatsell. Mr Cowper, you are not under such Disadvantage as Men usually are that stand where you now do. You have been educated in the Study of the Law, and understand it very well. I have several Times seen how you have managed your Clients Causes to their Advantage. As for this Matter of Challenge, Mr Jones, I think you should shew your Cause of Challenge, tho' the Law allows the Prisoner Liberty to challenge twenty peremptorily.

Mr Jones. I don't know, in all my Practice of this Nature, that it was ever put upon the King to shew Cause, and I believe some of the King's Council will say they have not known it done.

Mr Cowper. In my Lord Chief Justice Hale's Pleas of the Crown, p. 259. it is expressly so, and in the Statute of 33 E. 1. 'tis said the King shall not Challenge without Cause, and that must be legal.

Cl. of Arr. Call Daniel Clarke.

Mr Baron Hatsell. Mr Jones, if you can say any Juryman hath said any Thing concerning this Cause, and given his Verdict by way of Discourse, or shew'd his Affection one way or other, that would be good Cause of Challenge.

Mr Jones. My Lord, then we should keep you here while to morrow Morning.

Mr Baron Hatsell. If there hath been any great Friendship between any Jury-man and the Party, it will look ill if he be insisted upon.

Mr Cowper. My Lord, I don't insist upon it, but I profess I know of no Friendship, only that Mr Clarke in Elections hath taken our Interest in Town; I know I have a just Cause, and I am ready to be tryed before your Lordship and any fair Jury of the County; therefore I do not insist upon it.

Then the Jury sworn was as followeth:

Evan. Loyd, Esq;	} Jur.	Thomas Parrot,
William Watson,		Sam. Wallingham,
John Prior,		Francis Cole,
John Harrow,		Rich. Crouch,
George Holgate,		John Cock,
John Stracey.		Rich. Dickinson.

Mr Cowper. My Lord, I humbly move that I may have Pen, Ink and Paper.

Me

Mr Baron *Hatsell*. Ay, by all means.

Cl. of Arr. Hold up your Hand. (*which he did.*) And so of the rest. You of the Jury look upon the Prisoners, and hearken to their Charge. They stand indicted by the Names of, &c. (*Prout in the Indictment mutatis mutandis*)

Jury. My Lord, we desire we may have Pen, Ink and Paper.

Cl. of the Assize. There are three of the Jury desire Pen, Ink and Paper.

Mr Baron *Hatsell*. Let as many have it as will.

Mr *Jones*. May it please your Lordship, and you Gentlemen that are sworn, I am of Council for the King in this Cause, and it is upon an Indictment by which the Gentlemen at the Bar stand accused for one of the foulest and most wicked Crimes almost that any Age can remember; I believe in your County you never knew a Fact of this Nature; For here is a young Gentlewoman of this County murdered and strangled in the Night time. The Thing was done in the Dark, therefore the Evidence cannot be so plain as otherwise might be.

After she was strangled and murdered, she was carried down into a River to stifle the Fact, and to make it supposed she had murdered her self; so that it was indeed, if it prove otherwise, a double Murder, a Murder accompanied with all the Circumstances of Wickedness and Villany that I remember in all my Practice, or ever read of.

This Fact, as it was committed in the Night time, so it was carried very secret, and it is very well we have had so much Light as we have to give so much Satisfaction: For we have here in a manner two Tryals, one to acquit the Party that is dead, and to satisfy the World, and vindicate her Reputation that she did not murder herself, but was murdered by other Hands. For my Part, I shall never as Council in the Case of Blood aggravate; I will not improve or enlarge the Evidence at all, it shall be only my Business to set the Fact as it is, and to give the Evidence, and state it as it stands here in my Instructions.

My Lord, for that Purpose, to lead to the Fact, it will be necessary to inform you, that upon *Monday* the 13th of *March*, the first Day of the last Assizes here, Mr *Cowper*, one of the Gentlemen at the Bar, came to this Town, and lighted at Mr *Barefoot's* house, and staid there some time, I suppose to dry himself, the Weather being dirty, but sent his Horse to Mrs *Stout's*, the Mother of this Gentlewoman. Some time after he came thither himself, and dined there, and staid till four in the Afternoon; and at four when he went away, he told them he would come and lodge there that Night, and sup.

According to his Word he came there, and had the Supper he desired, after Supper Mrs *Stout* the young Gentlewoman and he sat together till near 11 a Clock. At 11 a Clock there was Orders given to warm his Bed; openly to warm his Bed in his hearing. The Maid of the House, Gentlemen, upon this went up Stairs to warm his Bed, expecting the Gentleman would have come up and followed her before she had done, but it seems while she was warming the Bed she heard the Door clap together, and the Nature of that Door is such, that it makes a great Noise at the clapping of it to, that any Body in the House may be sensible of any One's going out. The Maid upon this was concerned, and wondered at the Meaning of it, he promising to lie there that

Night; she came down, but there was neither Mr *Cowper* nor Mrs *Stout*, so that we suppose, and for all that we can find and learn, they must go out together. After their going out, the Maid and Mother came into the Room, and the young Gentlewoman not returning nor Mr *Cowper*, they sat up all Night in the House, expecting what time the young Gentlewoman would return. The next Morning after they had sat up all Night, the first News of this Lady was, that she lay floating and swimming in Water by the Mill-damm. Upon that there was several Persons call'd; for it was a surprize how this should come to pass. There she lay floating with her Petticoats and Apron, but her Night-rail and Morning-gown were off, and one of them not found till some time after; and the Maid will give you an Account how it came to be found.

This made a great Noise in the Country; for it was very extraordinary, it happening that from the time the Maid left Mr *Cowper* and this young Gentlewoman together, she was not seen or heard of till next Morning, when she was found in this Condition, with her Eyes broad open, floating upon the Water.

When her Body came to be viewed it was very much wondered at: For in the first Place it is contrary to Nature, that any Persons that drown themselves, should float upon the Water. We have sufficient Evidence that it is a Thing that never was, if Persons come alive into the Water then they sink, if dead then they swim, that made some to more curious look into this Matter. At first it was thought that such an Accident might happen, though they could not imagine any Cause for this Woman to do so, who had so great Prosperity, had so good an Estate, and had no Occasion to do an Action upon her self so wicked, and so barbarous, nor cannot learn what Reason she had to induce her to such a Thing. Upon view of the Body it did appear there had been violence used to the Woman, there was a Crease round her Neck, she was bruised about her Ear, so that it did seem as if she had been strangled either by Hands or a Rope.

Gentlemen, upon the Examination of this Matter, it was wondered how this Matter came about, it was dark and blind. The Coroner at that time, nor these People had no Evidence given, but the ordinary Evidence, and it pass'd in a Day. We must call our Witnesses to this Fact, that of necessity you must conclude she was strangled, and did not drown her self; if we give you as strong a Proof as can be upon the Nature of the Fact that she was strangled, then the second Matter under your Enquiry will be, to know who, or what Persons should be the Men that did the Fact. I told you before, it was, as all wicked Actions are, a Matter of Darkness, and done in secret, to be kept as much from the Knowledge of Men as was possible.

Truly Gentlemen, as to the Persons at the Bar, the Evidence of the Fact will be very short, and will be to this Purpose.

Mr *Cowper* was the last Man unfortunately in her Company, I could wish he had not been so with all my Heart, 'tis a very unfortunate Thing, that his Name should upon this Occasion be brought upon the Stage; but then my Lord, it was a strange Thing; here happens to be three Gentlemen, Mr *Marson*, Mr *Rogers*, and Mr *Stevens*, as to these Three Men, my Lord, I don't hear of any Business they had here, unless it was to do

do this Matter, to serve some Interest or Friend, that sent them upon this Message, for my Lord, they came to Town, (and in Things of this Nature, 'tis well we have this Evidence, but if we had not been streightned in time it would have brought out more; these Things come out slowly) these Persons, Mr *Stevens*, Mr *Rogers*, and Mr *Marson* came to Town here on the 13th of *March* last, the Assize Day: My Lord, when they came to Town, they came to an House, and took Lodgings at one *Gurreys*, they took a Bed for Two, and went out of their Lodging, having taken a Room with a large Bed in it, and afterwards they went to the *Glove* and *Dolphin*, and then about Eight a Clock one *Marson* came to them there; in what Company they came, your Lordship and the Jury will know by and by; they staid there, my Lord, at the *Glove* from Eight a Clock to Eleven, as they say. At Eleven these three Gentlemen came all in to their Lodging together to this *Gurrey's*; my Lord, when they came in, it was very observable amongst them, unless there had been a sort of Fate in it: *First*, That they should happen to be in the Condition they were in; And *secondly*, fall upon the Discourse they did at that time; for my Lord, they called for Fire, and the Fire was made them, and while the People of the House were going about, they observed and heard these Gentlemen talk of Mrs *Sarah Stout*, that happened to be their Discourse; one said to the other, *Marson*, she was an old Sweet-heart of yours: Ay, saith he, but she cast me off, but I reckon by this Time a Friend of mine has done her Business: Another piece of Discourse was, I believe a Friend of mine is even with her by this time. They had a Bundle of Linnen with them, but what it was is not known, and one takes the Bundle and throws it upon the Bed, well, saith he, her Business is done, Mrs *Sarah Stout's* courting Days are over, and they sent for Wine, my Lord; so after they had drank of the Wine they talk'd of it, and one pulled out a great deal of Money, saith one to another, what Money have you spent to Day? Saith the other thou hast had 40 or 50 *l.* for thy Share: Saith the other, I will spend all the Money I have, for Joy the Business is done:

My Lord, this Discourse happened to be amongst them, which made People of the House consider and bethink themselves, when the next Day they heard of this Mrs *Stout's* being found in the Water, this made them recollect and call to mind all these Discourses:

My Lord, after these Gentlemen had staid there all Night, next Morning truly it was observed (and I suppose some Account will be given of it) that Mr *Cowper* and they did meet together, and had several Discourses, and that very Day went out of Town, and I think as soon as they came to *Hoddesdon*, made it all their Discourse and Business to talk of Mrs *Stout*.

My Lord, we will call our Witnesses, and prove all these Facts that I have opened to your Lordship, and then I hope they will be put to give you some Account how all these Matters came about.

Call Sarah Walker. (who was sworn.)

Mr *Jones*. Mrs *Walker* pray give an Account to my Lord and the Jury, of Mr *Cowper's* coming to your House the 13th of *March*, and what was

done from his coming there at Night to his going out.

Sarah Walker. May it please you, my Lord, On Friday before the last Assizes, Mr *Cowper's* Wife sent a Letter to Mistress *Stout*, that she might expect Mr *Cowper* at the Assize time, and therefore we expected Mr *Cowper* at that time, and accordingly provided; and as he came in with the Judges, she ask'd him if he would alight, he said no, by reason I come in later than usual, I will go into the Town and show my self, but he would send his Horse presently; she ask'd him, how long it would be before he would come, because they would stay for him; he said, he could not tell, but he would send her Word, and she thought he had forgot, and sent me down to know, whether he would please to come: he said, he had Business, and he could not come just then, but he came in less than a quarter of an Hour after, and dined there, and he went away at four a Clock, and then my Mistress ask'd him, if he would lie there, and he answered yes, and he came at Night about nine a Clock, and he sat talking about half an Hour, and then call'd for Pen, Ink and Paper, for that, as he said, he was to write to his Wife, which was brought him, and he wrote a Letter, and then my Mistress went and ask'd him, what he would have for Supper, he said Milk, by reason he had made a good Dinner; and I got him his Supper and he eat it, after she called me in again, and they were talking together, and then she bid me make a Fire in his Chamber, and when I had done so, I came and told him of it, and he looked at me, and made me no Answer; then she bid me warm the Bed, which accordingly I went up to do as the Clock struck 11, and in about a quarter of an Hour, I heard the Door shut, and I thought he was gone to carry the Letter, and staid about a quarter of an Hour longer, and came down, and he was gone and she, and Mrs *Stout* the Mother, ask'd me the Reason why he went out when I was warming his Bed, and she ask'd me for my Mistress, and I told her, I left her with Mr *Cowper*, and I never saw her after that, nor did Mr *Cowper* return to the House.

Mr *Jones*. How long did you sit up?

Walker. All Night.

Mr *Jones*. What time next Morning did you see her?

Walker. About 7 a Clock.

Mr *Jones*. In the Water; or out?

Walker. Out of the Water.

Mr *Cowper*. Pray will you recollect a little, and be very particular as to the Time when I went out at Night.

Walker. Sir, it was a quarter after Eleven by our Clock, the difference between the Town Clock and ours was half an Hour.

Mr *Cowper*. But you say by your Clock it was a quarter after Eleven.

Walker. Yes, Sir.

Mr *Cowper*. Pray what Account did you give as to the Time to the Coroner's Inquest?

Walker. I said then it was Eleven, or a quarter after Eleven, when I heard the Door shut.

Mr *Cowper*. Pray was Mistress *Stout* present with the Coroner's Inquest when you gave that Account?

Walker. Yes, she was.

Mr *Cowper*. Pray what Account did you give as to the Time before my Lord Chief Justice Holt?

Walker. I gave the Account that it was Eleven, or a quarter of an Hour after.

Mr Cowper. In her Depositions there is half an Hour's difference, for then she said it was half an Hour after 10.

Mr Baron Hatsell. Which Clock was earliest, yours or the Town Clock?

Walker. Ours was half an Hour faster than theirs.

Mr Cowper. How came you to know this?

Walker. By reason that Dinner was drest at the Cook's, and it was ordered to be ready by Two a Clock, and it was ready at Two a Clock by the Town Clock, and half an Hour after Two by ours.

Mr Cowper. When you came down and mis'd your Mistress, did you enquire after her all that Night?

Walker. No, Sir, I did not go out of the Doors; I thought you were with her, and so I thought she would come to no harm.

Mr Cowper. Here is a whole Night she gives no Account of. Pray Mistress, why did not you go after her?

Walker. My Mistress would not let me.

Mr Cowper. Why would she not let you?

Walker. I said I would see for her: No, saith she, by reason if you go and see for her, and do not find her, it will make an alarm over the Town, and there may be no occasion.

Mr Cowper. Did your Mistress use to stay out all Night?

Walker. No never.

Mr Cowper. Have not you said so?

Walker. I never said so in my Life.

Mr Cowper. Pray Mrs Walker did you never take notice that your Mistress was under Melancholy?

Walker. I don't say but she was melancholy; she was ill for some time, and I imputed it to her illness, and I know no other Cause.

Mr Cowper. Have you not often told People that your Mistress was a melancholy Person, upon your Oath?

Walker. I have said she hath been ill, and that made her melancholy.

Mr Cowper. I will ask you this Question, pray did you ever purchase any Poison, more or less, within these twelve Months?

Walker. Yes, Sir, I did so, and can tell what it was for.

Mr Cowper. By whose Order?

Walker. By my own Order.

Mr Cowper. Did you buy Poison but once, upon your Oath?

Walker. I believe I might buy twice.

Mr Cowper. Where?

Walker. Of Mr Ludman.

Mr Cowper. Both times there?

Walker. Yes.

Mr Cowper. Of him?

Walker. No, of the young Man.

Mr Cowper. Did you ever buy any Poison at Luton?

Walker. No.

Mr Cowper. Did you ever buy any by your Mistress's Order, or of one Mrs Crooke, upon your Oath?

Walker. No, I never did.

Mr Cowper. Pray at what time was it that you bought this Poison you speak of?

Walker. I can't remember.

Mr Cowper. Pray recollect your self.

Walker. It was within this half Year to be sure.

Mr Cowper. What was the Name of the Poison you ask'd for?

Walker. I ask'd for white Mercury.

Mr Cowper. She saith, I pass'd by her Mistress's House, and went directly to Mr Barefoot's, pray did not you come to Mr Barefoot's after me?

Walker. Yes, Sir.

Mr Cowper. Pray did you give the same Account before the Coroner, when this Matter was enquir'd into, that you have now done?

Walker. Yes, I did as near as I can tell.

Mr Cowper. Did you give this Account in Substance?

Walker. Yes, I did.

Mr Baron Hatsell. Mr Cowper, I suppose you don't mean in relation to the Poison.

Mr Cowper. My Lord I mean in relation to so much of the Evidence which she now gives, and particularly respects me. For what End or Purpose did you buy it?

Walker. I bought it to Poison a Dog.

Mr Cowper. Why should you poison the Dog?

Walker. It was a Dog that used to haunt our House that did us a great deal of Mischief, but that did not do, so I bought it a second time.

Mr Cowper. Who gave it to the Dog?

Walker. 'Twas another Maid did give it the Dog.

Mr Cowper. Why did you then swear it was given the Dog.

Walker. Sir I saw it given.

Mr Cowper. Did your Mistress know of it?

Walker. Yes she did know of it afterwards.

Mr Cowper. How did you give it?

Walker. In warm Milk.

Mr Cowper. How did the Milk look?

Walker. It did not look discolour'd in the least.

Mr Baron Hatsell. You said just now your Mistress was ill, and that made her melancholy, what Illness was it?

Walker. My Lord, she had a great pain in her Head.

Mr Baron Hatsell. How long had she been troubled with it?

Walker. Ever since last May was twelve Months was the beginning of it.

Mr Jones. Did you ever find her in the least inclined to do her self a Mischief?

Walker. No, I never did.

Mr Cowper. You bought Poison twice, did you give all the Poison you bought to the Dog?

Walker. Yes.

Mr Cowper. The first and the last?

Walker. Yes the whole.

Mr Cowper. How much did you buy?

Walker. I am not certain how much I bought.

Mr Cowper. Pray what Mischief did it do the Dog?

Walker. I cannot tell, he may be alive till now for ought I know.

Mr Cowper. What Mischief did the Dog do?

Walker. A great deal, he threw down several Things and broke them.

Mr Jones. Did Mr Cowper, upon your Oath, hear Mistress Stout give you Order to make his Fire and warm his Bed?

Walker. He knows best, whether he heard it or no; but he sat by her when she spake it.

Mr Jones. Did she speak it so as he might hear?

Walker. Yes she did, for he was nearer than I.

Mr Jones. And did not he contradict it?

Walker.

Walker. Not in the least.

Mr Jones. Was it the old or young Woman, that gave you the Order?

Walker. The young Woman.

Mr Cowper. Pray, Did the Dog lap it, or did you pour it down his Throat, upon your Oath?

Walker. No, he lapt it, upon my Oath.

Mr Jones. Did Mr Cowper send for his Horse from your House the next Day?

Walker. I can't say that; I was not in the Way.

Mr Jones. Did he come to your House afterwards?

Walker. No, I am sure he did not.

Mr Jones. Was the Horse in your Stable when it was sent for?

Walker. Yes, Sir.

Mr Jones. And he did not come to your House again, before he went out of Town?

Walker. No, Sir.

Mr Jones. Do you know which Way he went out of Town?

Walker. No, Sir.

Mr Baron Hatsell. Did Mr Cowper use to lodge at your House at the Assizes?

Walker. No, my Lord, not since I came there; the Sessions before, he did.

Mr Cowper. Where did you come to invite me to Dinner?

Walker. At Mr Barefoot's.

Mr Cowper. Then you knew I was to lodge there?

Mr Baron Hatsell. Who wrote the Letter on Friday, that Mr Cowper would lodge there?

Walker. I know not who wrote it, his Wife sent it.

Mr Jones. Did he tell you he would lodge there that Night before he went away?

Walker. When he went from Dinner he said so.

Mr Jones. Call James Berry, (who was Sworn.) Now, my Lord, we will give Evidence of the Manner, how she was found. Mr Berry, Do you remember when Mrs. Stout was found by your Mill?

Berry. No, indeed, I do not know just what Day it was.

Mr Jones. When you found her, do you remember how, in what Manner she was found?

Berry. Yes; I went out in the Morning to shoot a Flush of Water by six a-Clock, and I saw something a floating in the Water, so I went out to see what it was, and I saw part of her Cloaths.

Mr Jones. Did you see her Face?

Berry. No, not then.

Mr Jones. Was her Face under Water, or above?

Berry. No Part of her Body was above Water, only some Part of her Cloaths.

Mr Jones. How many Foot deep might the Water be?

Berry. Five Foot deep.

Mr Jones. And how much was she under Water, do you conceive?

Berry. She might be under Water about five or six Inches.

Mr Jones. Then her whole Body was not under Water, was it?

Berry. Yes.

Mr Jones. Was her Face under Water?

Berry. Yes.

Mr Baron Hatsell. Did she lie upon her Face, or her Back?

Berry. She lay upon her Side.

Mr Jones. When she was taken out, Were her Eyes open or shut?

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Berry. Her Eyes were open.

Mr Jones. Was she swell'd with Water?

Berry. I did not perceive her swell'd: I was amaz'd at it, and did not so much mind it as I should.

Mr Jones. But you remember her Eyes were staring open?

Berry. Yes.

Mr Jones. Did you see any Marks or Bruises about her?

Berry. No.

Mr Cowper. Did you see her Legs?

Berry. No, I did not.

Mr Cowper. They were not above Water?

Berry. No.

Mr Cowper. Could you see them under Water?

Berry. I did not so much mind it.

Mr Cowper. Did she lie straight or double, driven together by the Stream?

Berry. I did not observe.

Mr Cowper. Did you not observe Weeds and Trumpery under her?

Berry. There was no Weeds at that Time thereabouts?

Mr Jones. Was the Water clear?

Berry. No, it was thick Water.

Mr Jones. Was there any Thing under her, in the Water, to prevent her sinking?

Berry. No, I do not know there was; she lay on her right Side, and her right Arm was driven between the Stakes, which are within a Foot of one another.

Mr Jones. Did any Thing hinder her from sinking?

Berry. Not that I saw.

Mr Jones. Did you help to take her out from the Stakes?

Berry. No.

Mr Jones. Call John Venables.

Mr Cowper. Mr Berry, if I understand you right, you say her right Arm was driven between the Stakes, and her Head between the Stakes; could you perceive her right Arm, and where was her Left-arm?

Berry. Within a small Matter upon the Water.

Mr Bar. Hatsell. Did you see her Head and Arm between the Stakes?

Berry. Yes; her Arm by one Stake, and her Head by another.

Mr Jones. Did the Arm hang down, or how?

Berry. I did not mind so much as I might have done.

Then John Venables was Sworn.

Mr Jones. Did you see Mrs. Stout, when she was taken out of the Water, and as she lay in it?

Venables. Yes.

Mr Jones. Give an Account how you found her.

Venables. She was floating upon the Water.

Mr Jones. How? Was all her Body, or what Part in the Water?

Venables. She lay upon her right Side, and this Arm upon the Water, rather above the Water, her Ruffles were above the Water.

Mr Jones. Did you help to take her out?

Venables. No, Sir.

Mr Jones. Were her Eyes open then?

Venables. Her Eyes were open when I saw her, but I did not see her when she was taken out.

Mr Jones. Did any Thing hinder her from sinking?

Venables. I saw nothing to hinder her if she would have sunk.

Mr Jones. Call *Leonard Dell*, (who was Sworn.) Did you see this *Mrs Stout* in the Water?

Dell. Yes.

Mr Jones. Pray tell us in what Posture she was found.

Dell. I saw her floating in the River; I saw her Face and her Cloaths.

Mr Jones. Were her Cloaths all above the Water?

Dell. Her Stays and her Coat that she had next her.

Mr Jones. Were these plainly above the Water?

Dell. Some Part of them.

Mr Jones. Did you see her Face, was that above the Water?

Dell. No, Sir, it was between the Piles; she lay on her right Side, and her Head was between the Stakes, and her right Arm.

Mr Jones. Did you help to take her out of the Water?

Dell. Yes.

Mr Jones. Did any Thing hinder her from sinking?

Dell. Neither Stakes nor any Thing there.

Mr Jones. Did her Arms or Neck stick to the Stakes?

Dell. Not to my thinking.

Mr Jones. Was the Water clear, or weedy.

Dell. It was very clear.

Mr Jones. How many Foot deep was it?

Dell. I know not, but it might be five Foot deep.

Mr Jones. Did you help to take her out of the Water?

Dell. Yes, Sir, and we took her and carried her into the Meadow just by, and laid her on the Bank.

Mr Jones. Did you observe her Face, Neck, or Arms, to be bruised?

Dell. I saw no Bruise at all.

Mr Cowper. How did you know but her right Arm did reach to the Ground, since you did not see it?

Dell. We could see her Arm lie in this Manner between the Piles, the right Arm was downwards, for she lay on one Side.

Jury-man. Did you see any Arm above in the Water?

Dell. No.

Mr Baron Hatsell. You should propose your Questions to the Court.

Juryman. My Lord, I desire to know where was her left Arm.

Mr Baron Hatsell. Where was her left Arm?

Dell. I can't tell how it did lie; I did not observe it.

Mr Baron Hatsell. When you took her out of the Water, did you observe her Body swell'd?

Dell. We carry'd her into the Meadow, and laid her on the Bank-side, and there she lay about an Hour, and then was order'd to be carry'd into the Miller's.

Mr Baron Hatsell. Did you observe that any Water was in her Body?

Dell. None at all that I could see; but there was some small Matter of Froth came from her Mouth and Nostrils.

Jury-man. My Lord, I desire to know whether her Stays were laced?

Dell. Yes, she was laced.

Mr Cowper. If I take you right, you say she was strait-laced?

Dell. Her Stays were laced.

Mr Cowper. And you say there was Froth and Foam came out of her Mouth and Nostrils?

Dell. Yes, Sir.

Mr Jones. Pray, What Quantity?

Dell. I could hold it all in the Palm of my Hand.

Mr Cowper. How was she taken out of the Water?

Dell. My Lord, we stood upon the Bridge, I and another Man, where she lay, and he laid hold of her, and took her out.

Mr Jones. And did you not perceive she was hung?

Dell. No, my Lord.

Mr Cowper. Pray, Where was she laid when she was taken out?

Dell. In the Place call'd the *Hoppers* just by.

Mr Cowper. How long did she lie there?

Dell. About an Hour.

Mr Cowper. Did you stay there all that Time?

Dell. Yes.

Mr Cowper. And did the Froth continue to issue from her Mouth and Nostrils?

Mr Baron Hatsell. He told you, *Mr Cowper*, he could hold it all on the Palm of his Hand.

Mr Jones. Call *John Ulse*, (who was Sworn.) *John Ulse*, Did you see *Mrs Stout* when she was taken out of the Water?

Ulse. Yes.

Mr Jones. Give an Account of the Condition she was in.

Ulse. She lay on one Side; I help'd to take her out.

Mr Jones. Did she hang or stick by any Thing?

Ulse. There was nothing at all to hold her up; she lay between a Couple of Stakes, but the Stakes could not hold her up.

Mr Jones. Did you see her after she was taken out?

Ulse. Yes.

Mr Jones. Did any Water come out of her?

Ulse. Nothing at all, only a little Froth came out of her Nostrils.

Mr Jones. Call *Katharine Dew*, (who was Sworn.) Did you see *Mrs. Stout* taken out of the River?

Dew. Yes.

Mr Jones. Did you see her in the River before?

Dew. Yes, Sir.

Mr Jones. How did she lie in the River?

Dew. She lay Side-way with her Eyes open, and her Teeth clenched in her Head, with Water flowing a little from her Face, some Part of Her and her Petticoats were above Water.

Mr Jones. Did nothing hold her from sinking?

Dew. Her right Arm lay against the Stake.

Mr Jones. Did you see her after she was taken out of the River?

Dew. Yes, Sir.

Mr Jones. Was she swell'd?

Dew. I did not perceive she was swell'd at all.

Mr Jones. Did you handle her?

Dew. No, I touch'd nothing but her Petticoat.

Mr Jones. Did you observe her Legs were in the Water?

Dew. No, I did not.

Mr Cowper. Did you see where her right Arm was?

Dew. I could not see her right Arm, the Water flow'd over it.

Mr Cowper. Did you see her after this Time?

Dew. No Sir, I saw her taken out, but not afterward.

Mr Bar.

Mr Bar. *Hatsell*. Did you see her after she lay on the Ground?

Dew. Yes my Lord.

Mr Bar. *Hatsell*. How was she then?

Dew. She purged at the Nose and one of her Eyes, I did not take particular Notice after she was out, the Notice I took was when she was in the Water.

Mr Bar. *Hatsell*. What did you see at her Eye?

Dew. Froth, my Lord.

Mr *Jones*. Did you see her after she was stripp'd naked?

Dew. No my Lord.

Mr *Jones*. Was it a settled Frothing, or a Purging?

Dew. A purging Froth.

Mr Bar. *Hatsell*. Did any Body wipe it off?

Dew. No, my Lord, I did not see any Body do it.

Mr Bar. *Hatsell*. Then there was no new Froth came?

Dew. No, my Lord, I saw her froth at the Nose and one of the Eyes, as soon as she was taken out, but I did not stay long.

Mr *Cowper*. Was she in her Stays?

Dew. Yes Sir.

Mr *Cowper*. Was she not laced?

Dew. Yes she was lac'd before and behind.

Mr *Jones*. Call *Thomas Dew*. (Who was Sworn.) Did you see this Mrs *Stout* in the Water; Pray give my Lord and the Jury an Account what Posture she was in.

Dew. I saw her lying in the Water floating, above the Water I will not say, but the Water ran some small Matter over her, her right Arm was within the Stake; and her left Arm without, she lay just upon her Side, and I saw her when she was first taken up, and her Shoes and Stockings were as clean as when they were put on, no Mud nor Dirt upon them, and I saw her Shoes and her Stockings, as high as her knee almost, but I saw no Dirt.

Mr *Jones*. Do you believe that she had been sunk to the Bottom?

Dew. She did not look as if she had, nor I see no Water come from her.

Mr *Jones*. Did you observe, that she was swelled at all?

Dew. No, nor swell'd that I perceive a bit, there was a little Froth that came out of her Nose, and about her (I can't say from her Eye) in that it was a small Quantity.

Mr *Jones*. Call Mr *Edward Blackno*. (Who was Sworn.) Did you see Mrs *Stout*, when she lay in the Water?

Blackno. Yes I did see her lye in the Water floating, I was so near, that I saw the Miller's Man lift her up by one of her Arms out of the Water.

Mr *Jones*. Was the Arm bent or straight?

Blackno. It hung in this Manner (showing the Court how with his own Arm.)

Mr Bar. *Hatsell*. The other Witnesses said, she lay on her right Side:

Blackno. Yes she lay on her right Side, and her Arm in this Manner.

Mr Bar. *Hatsell*. Did you observe her to be swelled?

Blackno. I did not see her taken out.

Mr Bar. *Hatsell*. Did you observe any Thing to hinder her from Sinking?

Blackno. No I did not, nothing but the Water.

Mr *Cowper*. I think Sir, if I heard you right, you say, that this taking by the Arm and stirring her,

was before she was taken out of the Water, then I would know after she was stirred was she let go again, was you by at the taking of her up?

Blackno. No I was not.

Mr Bar. *Hatsell*. He told you she was floating when he saw her, and that nothing hindered her from sinking.

Then William Edmunds and William Page were Sworn.

Mr *Jones*. Edmunds did you see Mrs *Stout*, when she was in the Water?

Edmunds. Yes Sir.

Mr *Jones*. Give an Account what posture she was in?

Edmunds. She lay against the Stake, her Head lay against the Stake in the River, we were coming up in a Barge, and called to a Miller to draw the Water, but he said he could not, for then she would swim through, and then we came on, and see her lye in the Water.

Mr *Jones*. Did any Thing hinder her from sinking?

Edmunds. Not that I see.

Mr *Jones*. Did no part of her Legs or Arms stick? Did you see her taken out?

Edmunds. No, I did not, I was gone, I did not know whether they would take her out or no.

Mr *Jones*. Page, did you see Mrs *Stout* upon the Water?

Page. Yes Sir.

Mr *Jones*. Tell us how she lay.

Page. She lay floating in the Water on her right Side, with her Head between the Stakes.

Mr *Jones*. Did her Arms or Cloaths, or any Thing stick?

Page. Not that I saw.

Mr *Jones*. Did any Thing hinder her from sinking?

Page. I saw nothing.

Mr *Cowper*. Did you see her Legs or Knees?

Page. No I could not, they were not out of the Water.

Mr *Jones*. Swear Mrs *Anne Ulfe* (Which was done) Did you see Mrs *Stout* in the Water?

Ulfe. Yes I help'd to pull her out, she lay on one Side in the Water floating, and the Water came over her Face.

Mr *Jones*. Did she stick by any Thing?

Ulfe. One of her Arms was about the Post.

Mr *Jones*. How?

Ulfe. It got through the Grate.

Mr *Jones*. But it did not hang.

Ulfe. No.

Mr *Jones*. Did you take her out?

Ulfe. Yes Sir.

Mr *Jones*. Did you mind her Cloaths?

Ulfe. Yes I turn'd up her Petticoat in the Water.

Mr *Jones*. Had she Gloves on?

Ulfe. No Sir.

Mr *Jones*. How were her Shoes and Stockings?

Ulfe. They were not muddy, her Stockings were rowl'd down, she had no Garters on.

Mr *Cowper*. You say, one Arm lay through the Stakes, where lay the other?

Ulfe. The other was down in the Water.

William How was Sworn.

Mr *Jones*. Did you see Mrs *Stout* in the Water?

How.

How. Yes, Sir, I see her lye upon the Water; she lay afloat, she might lye three or four Inches deep in the Water.

Mr Jones. Did any of her Cloaths lye above the Water?

How. Some part of her Coats lay above the Water.

Mr Jones. Did any Thing hinder her from sinking?

How. I saw nothing; I saw them take her out, and did not perceive she hung any Way; she lay with one Arm, and her Head in the Grate, but I did not perceive she hung.

John Meager was Sworn.

Mr Jones. Well, do you give an Account of what you know of Mrs Stout being in the Water?

Meager. I see Mrs Sarah Stout floating in the Water, her right Arm in the Grate, and her left Arm with the Stream.

Mr Jones. Did she hang or stick by any Thing?

Meager. No, neither hang nor stick, she floated.

Mr Cowper. Did you see some Body go through the Blue-coat Building about eleven a Clock?

Meager. No Sir, I was a Bed before Nine.

Mr Jones. Now, my Lord, we will give an Account how she was when she was stript, and they came to view the Body. Call *John Dimsdale, junior.* (Who was Sworn.)

Dimsdale. My Lord, I was sent for at Night on Tuesday the last Assizes—

Mr Cowper. My Lord, if your Lordship pleases, I have some Physicians of Note and Eminency that are come down from London, I desire they may be call'd into Court to hear what these Surgeons say.

Mr Bar. Hatfell. Ay, by all means.

Mr Cowper. My Lord, there is Dr Sloane, Dr Garth, Dr Morley, Dr Gilstrap, Dr Harriot, Dr Wollaston, Dr Crell. Mr William Cowper, Mr Bartlett, and Mr Camlin.

Who respectively appear'd in Court.

Mr Jones. Give an Account how you found Mrs Stout.

Mr Bar. Hatfell. You are a Physician, I suppose, Sir?

Dimsdale. A Surgeon, my Lord. When I was sent for to Mrs Stout's, I was sent for two or three Times before I would go; for I was unwilling after I heard Mrs Stout was drown'd; for I thought with my self, what need could there be of me when the Person was Dead; but she still sent; and then I went with Mr Camlin, and found a little Swelling on the Side of her Neck, and she was black on both Sides, and more particularly on the left Side, and between her Breasts up towards the Collar-bone, that was all I saw at that Time; only a little Mark upon one of her Arms, and I think upon her left Arm.

Mr Jones. How were her Ears?

Dimsdale. There was a Settling of Blood on both Sides the Neck, that was all I saw at that Time.

Mr Jones. How do you think she came by it?

Dimsdale. Truly I only gave an Account just as I say now to the Gentlemen at that Time, I saw no more of it at that Time, but about six Weeks after the Body was opened by Dr Phillips—

Mr Cowper. My Lord, he is going to another Piece of Evidence, and I would ask him—

Mr Jones. Let us have done first; how was her Ears?

Dimsdale. There was a blackness on both Ears, a Settling of Blood.

Mr Jones. Call Sarah Kimpson.

Mr Bar. Hatfell. Mr Cowper, now you may ask him any Thing, they have done with him.

Mr Cowper. I would ask him whether he was not employed to view these particular Spots he mentions at the Coroner's Inquest.

Dimsdale. I was desired to look upon the Face and Arms, and Breast, because they said there was a Settling of Blood there.

Mr Cowper. When you return'd to the Coroner's Inquest, What did you certify as your Opinion?

Dimsdale. I did certify there was a Settling of Blood, but how it came I could not tell.

Mr Cowper. I ask you, Sir, Did not you say it was no more than a common Stagnation usual in dead Bodies?

Dimsdale. I do not remember a Word of it.

Mr Cowper. Sir, I would ask you; You say the Spot was about the Collar-bone; Was it above or below?

Dimsdale. From the Collar-bone downwards.

Mr Cowper. Had she any Circle about her Neck?

Dimsdale. No; not upon my Oath.

Mr Jones. Swear Sarah Kimpson. Did you observe this Mrs Sarah Stout, when she was strip'd, how her Body was?

Kimpson. Yes.

Mr Jones. Pray give an Account of it.

Kimpson. She had a great Settlement of Blood behind her Ear, as much as my Hand will cover, and more; and she had a Settlement of Blood under her Collar-bone.

Mr Jones. Did you see nothing about her Neck?

Kimpson. Nothing round her Neck; on the Side of her Neck there was a Mark.

Mr Jones. Was there any other Part bruised?

Kimpson. Only her left Wrist, and her Body was very flat and lank.

Mr Cowper. Pray, What Day was it that you saw her?

Kimpson. It was the Day she was found.

Mr Cowper. Was she not laced?

Kimpson. She was laced.

Mr Cowper. Did you help to strip her?

Kimpson. Yes, Sir.

Mr Jones. Did her Body seem to be swell'd, or was there any Water come from her?

Kimpson. I did not observe the least Drop of Water that appeared any Way.

Mr Jones. Do you know what did Purge from her?

Kimpson. Nothing that I saw.

Mr Jones. Had not you a Child drowned there lately?

Kimpson. Yes, about ten Weeks ago.

Mr Jones. And you found her?

Kimpson. She was drowned at Night, and we found her next Morning.

Mr Jones. Where did you find her, at the Top or at the Bottom of the Water?

Kimpson. At the Bottom.

Mr Jones. How was she?

Kimpson. She was swell'd as much as she could hold.

Mr Jones. Were her Eyes shut or open?

Kimpson. Her Eyes were shut, and the Child was laced as tight as the Coat could be.

Mr Jones. Was the Child opened?

Kimpson. Yes.

Mr Jones.

Mr Jones. And what was in the Body of the Child?

Kimpson. T was very full of Water.

Mr Jones. Call Sarah Peppercorn.

Mr Cowper. You say you view'd the Child; Had it any Settlement of Blood?

Kimpson. I saw none.

Mr Cowper. And you view'd the Body?

Kimpson. Yes.

Then Sarah Peppercorn was Sworn.

Mr Jones. Did you see the Body of Mrs. Sarah Stout, after it was stript and laid out?

Peppercorn. I did, Sir.

Mr Jones. In what Condition did you find her?

Peppercorn. I did not see her till she was brought home to her Mother's, and there was a Rumour in the Town that she was with Child, and I was sent for to give an Account whether she was or not, and I found she was not; and I help'd to pull off her Cloaths, and she was very clear as any I ever knew, only had a black Place on the Side of her Head, and in another Place about her Ear; but how it came I know not,

Mr Jones. Did you observe how her Body was?

Peppercorn. Her Body was very well as any Woman's could be.

Mr Jones. Did you observe any Water, or any such Thing from her?

Peppercorn. No.

Mr Jones. Was there any purging at her Mouth or Nostrils?

Peppercorn. A little Froth, as any Body might have.

Mr Cowper. At what Hour did you see her?

Peppercorn. I believe it might be Nine or Ten a-Clock.

Mr Baron Hatsell. In the Morning?

Peppercorn. Yes, Sir; but I can't give a just Account of the Time.

Mr Baron Hatsell. What was you sent for?

Peppercorn. To know if she was with Child; for it was reported she had drowned her self because she was with Child, and so her Mother desired me to come to give an Account that it was not so, and I found that it was not so.

Mr Baron Hatsell. You are a Midwife, are you not?

Peppercorn. Yes, my Lord.

Then Elizabeth Husler was Sworn.

Mr Jones. Had you the View of the Body of Mrs. Sarah Stout, the Day you heard she was drowned?

Husler. She was not drowned, my Lord; I went thither and helped to pull off her Cloaths.

Mr Jones. In what Condition was her Body?

Husler. Her Body was very lank and thin, and no Water appeared to be in it.

Mr Jones. Was there any Water about her Mouth and Nose?

Husler. Not when I saw her.

Mr Jones. Did you mind her about her Neck and Head?

Husler. Yes, Yes, there was a Settling of Blood at the Top of the Collar-bone, just here, and there was a Settling of Blood upon both her Ears, most about her left Ear.

Mr Jones. Swear Ann Pilkington, (which was done) Did you see the Body of Mrs Stout, after she was drowned?

Pilkington. Yes, Sir.

Mr Jones. Pray, In what Condition was she when she was stript?

Pilkington. I was in the House when she was brought in dead; and old Mrs Stout desired me to help to lay her out, and taking a View of her, I did not at all perceive her Body to be swelled.

Mr Jones. Was there any Water came out upon the moving of it?

Pilkington. No, I did not perceive any; and by a further View, I saw a Redness on the left Side of her Head, and her Ear was black, and there was a little Mark upon her Breast on the left Side.

Mr Jones. What Colour was it of?

Pilkington. It seem'd reddish and blackish: As to Colour it was like a Settling of Blood: I can't tell how to make it out very well.

Mr Cowper. Had she any Circle round about her Neck?

Pilkington. No, not that I see.

Mr Cowper. Pray, Did not you make some Deposition to that Purpose, that you know of?

Pilkington. Sir, I never did, and dare not do it.

Mr Cowper. It was read against me in the King's Bench, and I will prove it; was not Mr Mead with you at the Time of your Examination?

Pilkington. Yes.

Mr Cowper. Did not he put in some Words, and what were they?

Pilkington. Not that I know of.

Mr Cowper. But you never swore so, upon your Oath?

Pilkington. No, I don't believe I did; if I did, it was ignorantly.

Mr Jones. Here is her Examination, it is cross her Neck.

Mr Cowper. Was Mr Young of Hertford, the Constable, present, when you were examined?

Pilkington. Yes, he was so. The next Day Mrs Stout sent for me again to put on her Daughter's Shrowd, and I was one that helped to draw the Sheet away, and there was not one Drop of Water come from her; and I laid a Cloth under her Chin, when I help'd her into the Coffin, but I did not see the least Moisture come from her.

Mr Cowper. What Day was it, that you put her into the Coffin?

Pilkington. The next Day after she was dead.

Mr Cowper. Do you know nothing of her being convey'd into the Barn?

Pilkington. I hap'ned to be in the Barn, Mrs Stout desired me to go with her, and she was brought up in an indecent Manner, and I put a Sheet about her. I was in Mrs Stout's House before her Daughter was brought thither.

Mr Jones. Call Doctor Coatsworth, Doctor Nailer, Doctor Woodhouse, Doctor Bide.

Mr Coatsworth was Sworn.

Mr Jones. Pray, Doctor, had you a View of the Body of Mrs Stout?

Coatsworth. Yes, I had, Sir: I am a Surgeon.

Mr Jones. Pray give an Account of it, and what your Opinion was how she came by her Death.

Coatsworth. My Lord, in April last I was sent for by Dr Philips, to come to Hertford to see the Body of Mrs Stout opened, who had been six Weeks buried, and he told me, That there was a Suspicion she was murdered, and that her Relations were willing to have her taken up and opened. I came

came down, I think on the 27th of *April*, and lay at Mrs *Stout*'s House that Night, and by her Discourse, I understood she wanted to be satisfied, whether her Daughter was with Child. I told her it was my Opinion we should find the Parts contained in the *Abdomen* so rotten, that it would be impossible to discover the *Uterus* from the other Parts; however, if she would have her opened, I could not discover whether she was with Child, unless the Infant was become Bony. Her Face and Neck, to her Shoulders, appeared black and so much corrupted, that we were unwilling to proceed any further: But, however, her Mother would have it done, and so we did open her; and as soon as she was opened, we perceived the Stomach and Guts were as full of Wind, as if they had been blown with a Pair of Bellows; we put her Guts aside, and came to the *Uterus*, and Doctor *Philips* shewed it us in his Hand, and afterwards cut it out and laid it on the Table, and opened it, and we saw into the Cavity of it, and if there had been any Thing there as minute as a Hair, we might have seen it, but it was perfectly free and empty; and after That, he put the Intestines into their Places; and we bid him open the Stomach, and it was opened with an Incision-Knife, and it sunk flat, and let out Wind, but no Water; afterwards we opened the Breast and Lobes of the Lungs, and there was no Water: Then we look'd on each Side, and took up the Lobes of the Lungs too, to see if there was no Water in the *Diaphragm*, and there was none, but all dry. Then I remember, I said, this Woman could not be drowned, for if she had taken in Water, the Water must have rotted all the Guts: That was the Construction I made of it then; but for any Marks about her Head and Neck, it was impossible for us to discover it, because they were so rotten.

Mr *Comper*. You say, this Inspection was made about six Weeks after she was dead.

Coatsworth. It was made on the 28th of *April*.

Mr *Comper*. She was drowned on the 13th of *March*.

Mr *Jones*. Did you make an Incision into those Parts of the Neck and Head.

Coatsworth. No: I told Mrs *Stout* and her Son, If you imagine the Skull to be injur'd, I will open the Head, for if the Scalp be never so rotten, yet if the Skull has suffered any Impression I shall discover it; they said, They did not suspect a broken Skull in the Case, and so we did not examine it.

Mr *Jones*. But all the other Parts were found?

Coatsworth. Yes, found to a Miracle; for I did not imagine we could find them so.

Mr *Jones*. Call *John Dimsdale*.

Mr *Comper*. My Lord, I would know, and I desire to be heard to this Point: I think where the Coroner's Inquest have view'd the Body, and the Relations have been heard, and the Body buried, that it is not to be stir'd afterwards for any private Inspection of Parties, that intend to make themselves Prosecutors; but if it is to be taken up, it is to be done by some legal Authority; for if it should be otherwise, any Gentleman may be easily trepan'd: For instance, If they should have thought fit, after the Coroner's View, to have broken the Skull into a hundred Pieces. This was a private View altogether among themselves. Certainly, if they intended to have prosecuted me, or any other Gentleman upon this Evidence, they ought to have given us notice, that we might

have had some Surgeons among them, to superintend their Proceedings. My Lord, with Submission, this ought not to be given in Evidence.

Mr Baron *Hatsell*. Mr *Comper*, I think you are not in earnest; there is no Colour for this Objection: If they did take up the Body without notice, Why should not that be Evidence; unless you think they had a design to forswear themselves.

Mr *Comper*. Had you a *Melius Inquirendum*, or any lawful Warrant for making this Inspection?

Coatsworth. No, there was not.

Mr Baron *Hatsell*. Suppose they did an ill Thing in taking up the Body without some Order, tho' I don't know any more Ill in taking up that Body than any other; but, however, Is that any Reason why we should not hear this Evidence?

Coatsworth. Mr *Camblin*, Sir *William Comper*'s Surgeon, was there by.

Mr *Jones*. Call Mr *Dimsdale Senior*, (who was Sworn.) Had you a View of the Body after it was taken up?

Dimsdale. Yes.

Mr *Jones*. Pray give your Opinion of it.

Dimsdale. On the 28th of *April*, as I remember, I was sent for down by Mrs *Stout*, to view the Body of her Daughter. Her Daughter was just taken out of the Ground but not opened; they had just touch'd the Body, but not opened the Skin when I came there —

Mr Baron *Hatsell*. Are you a Surgeon?

Dimsdale. Yes, my Lord. Finding her Head so much mortified, down to her Neck, we thought all the Parts were seized, and had a Consultation, Whether we should open her or not; but Mrs *Stout* was very much enraged, because a great Scandal had been raised, That her Daughter was with Child; and she said, She would have her opened to clear her Reputation: With that we opened her, and found her Body as sound as any Flesh could be; no Manner of Putrifaction in her Lungs or any other Part, but she was very full of Wind. We search'd the Stomach and the Thorax, and found not one Drop of Water about it; I was more curious than the rest, and turn'd away her Legs, to see if the Coffin was soil'd, and the Coffin and Shroud were not wet. Her *Uterus* was taken out, and I saw no Manner of Sign of Conception. After this we had a Consultation to consider, Whether she was drowned or not drowned; and we were all of Opinion, That she was not drowned; only Mr *Camblin* desired he might be excused from giving his Opinion; Whether she was drowned or not; but all the rest of us did give our Opinions, That she was not drowned.

Mr *Jones*. Give your Reasons, why you believ'd she was not drowned.

Dimsdale. My Reason was this: Because we found no Water in her; her Intestines were not putrified; for if there had been Water in her, that would have caused a Fermentation, and that would have rotted the Lungs and Guts.

Mr Baron *Hatsell*. Could you tell, so many Weeks after, Whether she was drowned or no?

Dimsdale. Yes, my Lord, for this Reason: For if she had been drowned, there had been some Sign of Water; and if there had been a Pint of Water, it would have rotted her Lights and her Guts; and that is done in a Week's Time by Fermentation.

Mr Cowper. Sir, I desire to know, Whether, according to Reason and your Skill, after six Weeks Time, it's possible, there should be Water in the Thorax.

Dimsdale. I do believe there may be some; for it can't come out after the Body is dead, but by Putrifaction; and there was no Putrifaction, but it was firm and sound.

Mr Baron Hatsell. What Parts would have been putrified by the Water?

Dimsdale. The Lungs and Bowels.

Mr Baron Hatsell. And they were firm?

Dimsdale. They were: And if there had been Water, they would have been putrified.

Mr Jones. Call John Dimsdale, Junior.

Juryman. Was her Navel started?

Dimsdale, Sen. No: I never saw such a Body in my Life.

Mr Cowper. Did you ever see a Body that was drowned, opened six Weeks after?

Dimsdale, Sen. No, never. If a Body be drowned a Fortnight, the Bowels will be so rotten, there will be no coming near it; and I took particular Notice, and I did not see one Drop of Water.

Mr Baron Hatsell. Was the Coffin close?

Dimsdale, Sen. Yes; it was close and dry as any Board whatsoever; and all the Parts sound, but the Head and Neck, and left Arm.

Mr Jones. What do you think could be the Reason of that?

Dimsdale, Sen. The left Arm was rottener than the other; the Neck was rotten before.

Mr Jones. What did you take to be the Cause of it?

Dimsdale, Sen. I can't judge of that.

Call John Dimsdale, Junior, who was Sworn.

Dimsdale, Jun. My Lord, the Body was opened before I came to see it, and they were drawing up an Affidavit, that there was no Water in the Body, and they desired me to sign it; but I desired first to look into the Body, and I did look into it, and turn'd the Intestines aside, and there was no Water in it; but the Head from the Neck was very much putrified.

Mr Jones. Do you believe she was drowned?

Dimsdale, Jun. No, I believe not.

Mr Jones. Did you open the Child that was drowned? What Difference was there between the Body of that Child and this?

Dimsdale Jun. The Child was extremely swell'd in the Belly and Stomach, and had abundance of Water in it.

Mr Jones. Was the Child lac'd that you opened?

Dimsdale Jun. It was laid upon the Table before I came.

Mr Cowper. How long was it before the Child was opened?

Dimsdale Jun. It was drowned in the Afternoon, and opened the next Morning.

Mr Cowper. You said, Sir, you was ask'd to sign the Affidavit before you saw the Body, and you were honest, and would see the Body first, pray who ask't you?

Dimsdale Jun. All of them did.

Mr Cowper. Who in particular, if you please name them?

Dimsdale Jun. Mr Coatsworth, Mr Phillips, Mr Camlin, &c: they asked me to set my Hand to it, because they thought I had seen it before.

Then Dr Dimsdale was Sworn.

Mr Jones. Mr Robert Dimsdale was you at the opening of this Body?

Dr Dimsdale. I came after it was opened, my Brother and I came together.

Mr Jones. What Profession are you of, a Physician?

Dr Dimsdale. Yes, when the Body was taken up, they desired us to be there, to inspect the Body, but before we came it happened they had opened the Body, and were setting their Hands to a Paper, a Sort of Affidavit, and when I came in, they would have had us set our Hands, but we would not, till we had look'd upon the Body, and went and laid it open again, and we did not find the least Drop of Water neither in the Thorax nor Abdomen.

Mr Cowper. Is it possible there should be Water in the Thorax, according to your Skill?

Dr Dimsdale. Yes, we did think there would have been, if she had been drown'd.

Mr Bar. Hatsell. Could you expect to find it, so long as six Weeks after?

Dr Dimsdale. We should have expected that or a Putrifaction, but we found no Putrifaction, neither in the Bowels nor Intestines, but only upon her Head and Shoulders, and one Arm.

Mr Cowper. Pray by what Passage does the Water go into the Thorax?

Dr Dimsdale. 'Twill be very difficult for me to describe the Manner here; but we should have found some in the Stomach and Intestines.

Mr Cowper. Pray, Sir, How should it go into the Thorax?

Dr Dimsdale. By the Lymphaduct, if carried by any Means.

Mr Cowper. When the Party is dead, Can any Water pass into any Part of the Body?

Dr Dimsdale. We opened the Abdomen of the Child that was drowned, and found in the several Cavities abundance of Water.

Mr Jones. When a Person is dead, Can they receive any Water after?

Dr Dimsdale. No: For all the Parts are clos'd and contracted.

Mr Cowper. Pray, If a dead Body be put into the Water, Will not the Water come into the Windpipe?

Dr Dimsdale. I question whether it will or no.

Mr Jones. Was her Mouth shut?

Dr Dimsdale. She was putrified about the Head and Shoulders and one Arm, that I saw was putrified; it was the left Arm, as I take it.

Mr Jones. What is your Opinion, as to her Death?

Dr Dimsdale. I believe, if she had been drown'd, there would have been a Putrifaction of the Abdomen first; and it was her extrem Parts, her Arm, her Head, and her Breast, that was putrified, but her Bowels seem'd firm and sound.

Mr Jones. Then you don't think her Death was by drowning?

Dr Dimsdale. No.

Mr Cowper. Pray, Did not you give some Certificate or Paper, declaring the Death of this Gentlewoman, before you saw the Body at all?

Dr Dimsdale. No, I did not.

Mr Cowper. Sir, I would ask you, Was not you angry that Mr Camlin would not join with you in Opinion?

Dr Dimsdale. No.

Mr Cowper. Did not you tell him, that you were a graduate Physician, and was angry he would not join with you?

Dr Dimsdale. Suppose I did.

Mr Baron Hatfell. But did you do so or no?

Dr Dimsdale. Yes, my Lord, we had some Words about it.

Mr Jones. Swear Dr Coatsworth, (which was done.) Now, my Lord, we call these Gentlemen that are Doctors of Skill, to know their Opinion of them that are found floating, without Water in them, how they come by their Death.

Dr Coatsworth. I have not seen many drowned Bodies to make Observation upon, but it is my Opinion, That every Body that is drowned, is suffocated by Water passing down the Wind-pipe into the Lungs upon Respiration; and at the same Time, the Water pressing upon the Gullet, there will be a Necessity of swallowing a great Part of it into the Stomach: I have been in danger of being drowned my self, and I was forced to swallow a great Quantity of Water. If a Person was drowned and taken out immediately, as soon as the Suffocation was effected, I should not wonder, if there were but little Water in the Stomach and Guts; but if it lay in the Water several Hours, it must be very strange if the Belly should not be full of Water; but I will not say, it is impossible it should be otherwise.

Mr Cowper. I desire to know, Whether this Gentleman attempted to drown himself, or was in danger of being drowned by Accident.

Dr Coatsworth. It was by Accident: I was passing up the Ship Side, and took hold of a loose Rope instead of the Entering-Rope, which failing me, I fell into the Water.

Mr Cowper. But you struggled to save your self from drowning?

Dr Coatsworth. I did so: I have seen several Persons that have been drowned, and they have lain several Days, until by a Fermentation, they have been rais'd; but I never made my Observations of any Persons that have been drowned above six Hours.

Mr Jones. Did you ever hear of any Persons, that, as soon as they were drowned, had swam above Water.

Dr Coatsworth. I have not known such a Case.

Mr Cowper. Did you ever know, Sir, a Body that was otherwise killed, to float upon the Water?

Dr Coatsworth. I never made any Observation of That.

Mr Baron Hatfell. Dr Browne has a learned Discourse, in his *Vulgar Errors*, upon this Subject, concerning the Floating of dead Bodies; I don't understand it my self, but he hath a whole Chapter about it.

Then Dr Nailor was Sworn.

Mr Jones. We ask you the same Question that Doctor Coatsworth was asked, What is your Opinion of dead Bodies? If a Body be drowned, will it have Water in it or not?

Dr Nailor. My Lord, I am of Opinion, That it will have a Quantity if it be drowned; but if there be no Water in the Body, I believe that the Person was dead before it was put into the Water.

Mr Cowper. I would ask the Doctor one Question, my Lord, Whether he was not a constant Voter against the Interest of our Family in this Corporation?

Dr Nailor. I never did come to give a Vote, but Sir William Cowper, or his Son, oppos'd me, and said, I had no Right to Vote.

Mr Cowper. I would have ask'd the same Question of the Dimsdales, if I had remembered it; they are of another Party, as this Gentleman is.

Mr Baron Hatfell. It is not at all material, as they are Witnesses.

Then call Doctor Babington, (who was Sworn.)

Mr Jones. Pray, What is your Opinion of this Matter?

Mr Babington. I am of Opinion that all Bodies that go into the Water alive, and are drowned, have Water in them, and sink as soon as they are drowned, and don't rise so soon as this Gentlewoman did.

Mr Cowper. Pray what is your Profession, Sir?

Mr Babington. I am a Chirurgion.

Mr Cowper. Because Mr Jones called you Doctor.

Mr Baron Hatfell. Did you ever see any drowned Bodies?

Mr Babington. Yes, my Lord, I once had a Gentlewoman a Patient that was half an Hour under Water, and she lived several Hours after, and in all that time she discharged a great Quantity of Water; I never heard of any that went alive into the Water, and were drowned, that floated so soon as this Gentlewoman did, I have heard so from Physicians.

Mr Baron Hatfell. I have heard so too, and that they are forced to tye a Bullet to dead Bodies thrown into the Sea that they might not rise again.

Mr Cowper. The Reason of that is, that they should not rise again, not that they will not sink without it; but I would ask Mr Babington whether the Gentlewoman he speaks of went into the Water voluntarily, or fell in by Accident.

Mr Babington. By Accident, but I believe that don't alter the Case.

Mr Jones. Swear Dr Burnet, (which was done.)

Dr Burnet. You hear what is the Matter in Question, what is your Opinion of it?

Dr Burnet. My Lord, I think that if any Person fall into the Water by Accident, or throws himself in, the Body will receive Water as long as it is alive, and there are Endeavours for Respiration, and after these Endeavours are over, there is no Water will come in, for all the Parts are clos'd; so consequently there must be Water in all probability found in her.

Mr Jones. What, do they swim or sink?

Dr Burnet. They sink, I never saw a Person drowned taken up without Water in my Life, but I have seen several full of Water.

Mr Cowper. I think you say when the Faculty of Respiration ceases, no Water comes in.

Dr Burnet. Yes, that is my Opinion.

Mr Cowper. But the Water does pass into them while there are Endeavours for Respiration.

Dr Burnet. Yes, that is my Opinion.

Then Dr Woodhouse was Sworn.

Mr Jones. Doctor, What is your Opinion of this Matter?

Dr Woodhouse. My Opinion is, that no Person is suffocated by Water, but he must have a great deal of Water within him, a great deal of Water in the Stomach, and some in the Luugs.

Mr

Mr Cowper. Pray, Sir, did you ever open any of these Bodies?

Dr Woodhouse. Yes, I have opened a Child my self that had a great Quantity of Water in it.

Mr Cowper. Did you find any Quantity of Water in the Throat?

Dr Woodhouse. There was some, but a little, but a great deal in the Stomach.

Mr Cowper. Pray which Way can it pass into the Thorax?

Dr Woodhouse. While the Person is struggling for Respiration, there may be a Relaxion of, and the Person must suck in Water as well as Air, and some Water may get into the Windpipe, and so enter into the Lungs.

Mr Cowper. Is there a Passage from the Lungs to the Thorax?

Dr Woodhouse. The Thorax is the Vessel where in the Lungs lie, the Lungs in the Thorax, the Breast is the Cavity where the Lungs lie, the Windpipe is the Conveyance to the Lungs, and a Person in Respiration takes down some Water there, but no doubt the greater Quantity will be in the Stomach.

Mr Bar. Hatsell. Pray let me ask you a Question, Some of the Witnesses said, that if a Person be drowned and lies Dead a great while, the Inwards will be putrified, what is your Opinion of it?

Dr Woodhouse. No doubt, my Lord, where Water gets into the Stomach, or wherever it is, it will putrifie very soon.

Mr Jones. Call Edward Clement. (who was Sworn) Are not you a Seaman?

E. Clement. Yes, Sir.

Mr Jones. How long have you been so?

E. Clement. Man I have writ my self but six Years, but I have used the Sea nine or ten Years.

Mr Jones. Have you known of any Men that have been kill'd, and thrown into the Sea, or who have fallen in and been drowned; pray tell us the difference as to their swimming and sinking.

E. Clement. In the Year 89, or 90, in Beachy Fight, I saw several thrown over-board, during the Engagement, but one particularly I took notice of, that was my Friend, and kill'd by my Side, I saw him swim for a considerable Distance from the Ship, and a Ship coming under our Stern caus'd me to loose sight of him, but I saw several dead Bodies floating at the same Time; likewise in another Engagement, where a Man had both his Leggs shot off, and died instantly, they threw over his Leggs, though they sunk, I saw his Body float. Likewise I have seen several Men who have died natural Deaths at Sea, they have when they have been Dead had a considerable Weight of Ballast and Shot made fast to them, and so were thrown over-board; because we hold it for a general Rule that all Men Swim if they be Dead before they come into the Water, and on the contrary I have seen Men when they have been drowned, that they have sunk as soon as the Breath was out of their Bodies, and I could see no more of them. For Instance, a Man fell out of the *Cornwall*, and sunk down to rights, and seven Days afterwards we weighed Anchor, and he was brought up grasping his Arm about the Cable, and we have observed in several Cases, that where Men fall over-board, as soon as their Breath is out of their Bodies they sink downright, and on the contrary where a dead Body is thrown over-board without Weight it will Swim.

Mr Jones. You have been in a Fight, how do Bodies float after a Battle?

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E. Clement. Men float with their Heads just down, and the Small of their Back and Buttocks upwards, I have seen a great Number of them, some hundreds in Beachy-head Fight, when we Engag'd the French, I was in the old *Cambridge* at that Time, I saw several (what Number I will not be positive, but they were a great Number, I can't guess to a Score) that did really Swim, and I could see them float for a considerable Distance.

Mr Jones. Have you seen a Shipwreck?

E. Clement. Yes; the Coronation in September 1691. I was then belonging to the *Dutchess*, under the Command of Captain Clement, we look'd out and see them taking down their Masts, we saw the Men walking up and down on the right Side, and the Ship sunk down, and they swam up and down like a shoal of Fish one after another, and I see them hover one upon another, and see them drop away by Scores at a Time, and there was an Account of about nineteen that sav'd themselves, some by Boats, and others by Swimming; but there were no more sav'd out of the Ship's Complement, which was between five and six Hundred, and the rest I saw sink downright, some twenty at a Time. There was a Fisherman brought our Captain Word, that in laying in of his Nets he drew up some Men close under the Rocks that were drowned belonging to the *Coronation*, we generally throw in Bags of Ballast with them.

Mr Jones. I suppose all Men that are drowned you sink them with Weights.

E. Clement. Formerly Shot was allowed for that purpose, there us'd to be threescore Weight of Iron, but now 'tis a Bag of Ballast that is made fast to them.

Mr Jones. Then you take it for a certain Rule that those that are drowned sink, but those that are thrown over-board do not?

E. Clement. Yes, otherwise why should the Government be at that vast Charge to allow threescore or fourscore Weight of Iron to sink every Man, but only that their Swimming about should not be a Discouragement to others.

Then Richard Gin was Sworn.

Mr Jones. You hear the Question, pray what do you say to it?

R. Gin. I was at Sea a great while, and all the Men that I see turn'd over-board had a great Weight at their Heels to sink them.

Mr Jones. Then will they Swim otherwise?

R. Gin. So they say.

Mr Jones. Are you a Seaman?

R. Gin. I went against my will in two Fights.

Mr Jones. Then Gentlemen of the Jury, I hope we have given you Satisfaction that Mrs Stout did not drown her self, but was carried into the Water after she was killed. That was the first Question, for if it be true that all dead Bodies when they are put into the Water do Swim, and the Bodies that go alive into the Water and are drowned do sink: This is sufficient Evidence that she came by her Death not by Drowning, but some other Way. Now, my Lord, as to the second Matter, and that is to give such Evidence as we have against these Gentlemen at the Bar, Mr Cowper, it appears, was the last Man that any one can give an Account of was in her Company. What became of her afterwards, or where they went no Body can tell; but the other Witnesses have given you Evidence that he was the last Man that was with her. I shall only give this further Evidence as to Mr Cowper, That

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not.

notwithstanding all the Civility and Kindnesses that pass'd between him and this Family, when the Bruit and Noise of this Fact was spread abroad, Mr *Cowper* did not come no consider and consult with old Mrs *Stout* what was to be done; but he took no manner of Notice of it, and the next Day he rode out of Town, without further taking Notice of it.

Call George Aldridge, and John Archer.

John Archer was Sworn.

Mr *Jones*. Do you know any Thing of Mr *Cowper*'s going out of Town after this Business of Mrs *Stout*'s being drowned?

J. *Archer*. Yes, I did see him go out of Town afterwards.

Mr *Jones*. Which Way did he go?

J. *Archer*. He went the Back-way from the *Glove*, I suppose he came that Way.

Mr *Cowper*. What Day was it I went? Is it not the Way that I us'd to go when I go the Circuit into *Essex*.

J. *Archer*. Yes, I believe so.

Mr *Cowper*. I Lodg'd at Mr *Barefoot*'s, and he has a Back-door to the *Glove*, where my Horse was, and I went the direct Way into *Essex*, and it was Wednesday Morning: What Day was it you see me go?

J. *Archer*. It was on the Wednesday Morning.

Mr *Cowper*. That was the very Day I went into *Essex*.

Then George Aldridge was Sworn.

Mr *Jones*. When did Mr *Cowper* go out of Town the last Assizes?

G. *Aldridge*. On Wednesday.

Mr *Jones*. Which Way did he go?

G. *Aldridge*. He went the Way to *Chelmsford*.

Mr *Jones*. Did you not fetch his Horse from *Stout*'s?

G. *Aldridge*. Yes, Sir.

Mr *Jones*. How often did you go for it?

G. *Aldridge*. Three Times.

Mr *Jones*. When?

G. *Aldridge*. On Tuesday Night I sent once, and went twice my self, the first Time there was no Body at home to deliver the Horse, so I went to Mr *Stout*'s, and ask'd him about the Horse, and he said he could not deliver him till the Maid went home, and then I went about eleven of the Clock and had the Horse.

Mr Bar. *Hatsell*. Was it eleven at Night?

G. *Aldridge*. Yes, my Lord.

Mr *Cowper*. When I sent you to fetch my Horse; what Directions did I give you?

G. *Aldridge*. You gave me Directions to fetch your Horse, because you said you should have occasion to go out next Morning betimes with the Judge.

Mr *Cowper*. The Reason I sent for my Horse, was this, when I heard she had drowned her self, I think it concern'd me in Prudence to send a common Hostler for him, for fear the Lord of the Mannor should seize all that was there as forfeited.

Mr Bar. *Hatsell*. There was no danger of that, for she was found *non compos mentis*.

Mr *Cowper*. No, my Lord, I sent before the Verdict.

Mr *Jones*. It seems you did not think fit to go and take Horse there your self, though you put your Horse there.

Now, my Lord, we will go on and give the other Evidence that we opened concerning these three other Gentlemen that came to Town, two of them took Lodgings at *Gurrey*'s at five in the Afternoon, but did not come in till between eleven and twelve, and then they brought another in with them, and though he had been in Town five or six Hours his Feet were wet and his Shoes, and his Head was of a reeky Sweat, he had been at some hard Labour I believe, and not drinking himself into such a Sweat.

Call John Gurrey, Martha Gurrey, and Eliz. Gurrey.

John Gurrey was Sworn.

Mr *Jones*. Do you know any of the Gentlemen at the Bar?

J. *Gurrey*. Yes.

Mr *Jones*. Name who you know?

J. *Gurrey*. There is Mr *Stevens*, Mr *Rogers*, and Mr *Marson*.

Mr *Jones*. Pray do you remember when they took Lodgings at your House?

J. *Gurrey*. The last Assizes, when they first came there was only Mr *Stevens* and Mr *Rogers*.

Mr *Jones*. At what Time did they take it?

J. *Gurrey*. I was at Church and can't tell that, they hir'd the Lodging of my Wife.

Mr *Jones*. What can you say more?

J. *Gurrey*. I was in at Night when they came, there came three of them at eleven at Night, whereof Mr *Marson* was the third Person, and he said he was destitute of a Lodging, and he ask'd for a spare Bed, my Wife told them she had one, but had let it, whereupon Mr *Stevens* and Mr *Rogers* said he should Lodge with them, so they went up all together, and they call'd for a Fire to be kindled, and ask'd for the Landlord, which was I, and they ask'd me to fetch a Bottle of Wine, and I told them I would fetch a Quart, which I did, and then they ask'd me to sit down and drink with them, which I did, and then they ask'd me if one Mrs *Sarah Stout* did not live in Town, and whether she was a Fortune, I said yes, then they said they did not know how to come to the Sight of her, and I said I would show them her to morrow Morning, not questioning but I might see her some Time as she was coming down the Street; so they said they would go to see her. Mr *Rogers* and Mr *Stevens* charg'd Mr *Marson* with being her old Sweat-heart, faith Mr *Marson*, she hath thrown me off, but a Friend of mine will be even with her by this Time.

Mr Bar. *Hatsell*. What a Clock was it then?

J. *Gurrey*. I reckon eleven of the Clock when they came in.

Mr Bar. *Hatsell*. Did you observe in what Condition Mr *Marson* was in?

J. *Gurrey*. I did not observe, only that he was hot and put by his Wig, I see his Head was wet, and he said he was just come from *London*, and that made him in such a Heat.

Mr *Jones*. Had he Shoes or Boots on?

J. *Gurrey*. I did not observe that.

Mr *Jones*. What did they do the next Day?

J. *Gurrey*. The next Morning I heard this Party was in the Water, I sat up all Night, and was fain to wait till my Daughter came down to look after the Shop, and then I went to see her, and she was remov'd into the Barn, and they were wiping her Face, closing her Eyes, and putting up her Jaws; and

and as I came back these Persons were walking, and I met Mr *Marson* and Mr *Stevens*, and told them the News; said I, This Person is come to a sad Accident: Say they, So we hear; but nevertheless we will be as good as our Word, and go and see her: I went with them and overtook Mr *Rogers*, and *Marson* said we are a going to see Mrs *Stout*: O, Landlord, said *Rogers*, you may take up that Rogue (pointing at Mr *Marson*) for what he said last Night; but I did not think, they speaking so jocularly, that there was any Suspicion of their being concerned in the Murder. A second Time I went, the Barn door was lock'd; I knock'd, and they open'd it and let us in, and they uncover'd her Face to let me see her, and I touch'd her; and looking about for them they were gone, and I can't say they see her or touch'd her: Then Mr *Marson* and they were consulting how to send a great Coat to London, and I directed them to a Coachman at the *Bell-Inn*, but I did not hear he went to enquire after the Coachman: Then they went to your Lordship's Chamber, and I went home; and about Eleven of the Clock I saw Mr *Marson* and Mr *Stevens* coming down with Mr *Spencer Cowper*.

Mr *Marson*. I did not go out that Night after I came in.

Mr *Jones*. No: We agree That. Did you see Mr *Cowper* and these Gentlemen together?

J. *Gurrey*. Only at Eleven of the Clock on Tuesday Noon, Mr *Cowper*, Mr *Marson*, Mr *Stevens*, were coming down to the Market-place.

Mr *Jones*. Did not they take their Leave of you when they went away from you that Forenoon?

J. *Gurrey*. No: Only in the Morning they told me they would send me Word at Noon, if they intended to lodge there.

Mr *Marson*. I desire to know of Mr *Gurrey*, if his Sister was not in the Room when we came in?

J. *Gurrey*. She was in our House that Day; but whether when They came, I can't tell.

Mr *Cowper*. Pray, Have not you had some Discourse with your Sister the Widow *Davis*, concerning some Suspicion that you had of *Sarah Walker*, that hath been produc'd as a Witness?

J. *Gurrey*. I don't remember any such.

Mr *Cowper*. Then did not you say these Words? We must not concern our selves with *Sarah Walker*, for she is the only Witness against the *Cowpers*.

J. *Gurrey*. I can't remember any such Thing.

Mr *Baron Hatfield*. You may answer according to the best of what you remember; if you say you have forgotten when you have not, you are forsworn.

Mr *Cowper*. If your Lordship pleases to give Leave to Mr *Gurrey* to recollect himself. I ask him, Whether he did not talk with his Sister *Davis* about some Suspicion, Wife and He had about *Sarah Walker* the Maid-Servant of the deceased?

J. *Gurrey*. I believe there might be some talk of a Person that was seen to go into the Church-yard at some Distance with *Sarah Walker*.

Mr *Cowper*. Did your Wife say that she did suspect that Person?

J. *Gurrey*. Yes.

Mr *Cowper*. Did your Wife say they behaved themselves strangely, and that she would have persuaded the Widow *Blewis* to have watched her?

J. *Gurrey*. There was something of that.

Mr *Cowper*. Was there not some such Words that they must not meddle with *Sarah Walker*? For she is the Witness against the *Cowpers*.

J. *Gurrey*. I said do not concern your self with *Sarah Walker* for fear of taking off her Evidence.

Mr *Cowper*. Pray did not the Widow *Davis* warm the Sheets for these Gentlemen?

J. *Gurrey*. She was with my Wife, but I can't say whether she warmed the Sheets.

Mr *Cowper*. When they came home had you any Lodgers that wanted to come home? Had not you one *Gape*?

J. *Gurrey*. I can't say whether he was in before or after them.

Mr *Cowper*. Did not you say to your Sister *Davis*? Now these Gentlemen are in Bed, if Mr *Gape* would come home our Family would be quiet.

J. *Gurrey*. I do not remember that.

Mr *Cowper*. Pray did not you go to look for Mr *Gape*?

J. *Gurrey*. Yes, I went to *Hockleys*.

Mr *Cowper*. Who did you employ to speak to Mr *Gape* to come home?

J. *Gurrey*. Mrs *Hockley*.

Mr *Cowper*. When you came home to your own House, and after you had been at *Hockleys* to speak with Mr *Gape*, what Account did you give of the Time of Night, and other Particulars?

J. *Gurrey*. I gave no Account of the Time.

Mr *Cowper*. Not to Mrs *Davis*?

J. *Gurrey*. I can't tell whether I did or no.

Mr *Cowper*. Did not you say Mr *Gape* ask'd Mrs *Hockley* what a Clock it was?

J. *Gurrey*. No, I don't remember that, but Mrs *Hockley* went in and told him what Time of Night it was, it was Eleven or Twelve of the Clock, whether I can't say.

Mr *Jones*. Call *Martha Gurrey*. (Who was Sworn) Which of these Gentlemen do you know?

Mrs *Gurrey*. Mr *Marson*, Mr *Rogers*, and Mr *Stevens*.

Mr *Jones*. What Time of the Night was it when they came to your House, give an Account of it, and of what you heard them say?

Mrs *Gurrey*. It was a little after Five or thereabouts, that they came——

Mr *Jones*. Who came?

Mrs *Gurrey*. Mr *Stevens*, and Mr *Rogers*, and there was one Mr *Gilbert* that married a first Cousin of mine, he came and ask'd me for my Husband, and I ask'd him his Business, and he said he wanted to speak with him.——

Mr *Jones*. Pray come to these Men, when did they come to your House?

Mrs *Gurrey*. They hired the Lodging at Five of the Clock; when they first came to see them, I was not at home, Mr *Gilbert* brought them, and as I was coming along the Street, I saw Mr *Gilbert* walking off, and would not look at me.——

Mr *Jones*. When did they go out?

Mrs *Gurrey*. They never staid there.

Mr *Jones*. When did they come in again?

Mrs *Gurrey*. Between Eleven and Twelve.

Mr *Bar Hatfield*. What did they do when they came in again?

Mrs *Gurrey*. I was laying on some Sheets two Pair of Stairs when they came, and then there was three of them; so they saw me a little after and beg'd my excuse for bringing in another; for they said it was so late they could not get a Lodging any where else, and said if I thought fit the Gentleman should lie with them, and I told them I liked it very well.

Mr *Jones*. What Firing had they?

Mrs *Gurrey*. The Firing I laid on in the Morning, and they sent for my Husband to fetch them some Wine.

Mr *Jones*,

Mr Jones. What did you hear them talk on?

Mrs Gurrey. They discours'd with my Husband, and ask'd him if he knew Mrs Sarah Stout, and one of them said to Mr Marson, I think she was an old Sweet-heart of yours, ay saith he, but she turn'd me off, but a Friend of mine is even with her; and Mr Rogers said he was in with her, and afterwards said her Business was done; they had a Bundle that was wrapt in a pure white Cloth (like to an Apron) but I can't say it was an Apron, and there was a Parcell hanging loose by it, and when he laid it down, he said, he would pass his Word Mrs Sarah Stout's courting Days were over, and I said, I hop'd it was no hurt to the Gentlewoman, and then I looking upon Mr Marson, I saw him put his Peruke aside, and his Head reek'd, and he told them he was but just come from London that Night, which made him disappointed of a Lodging.

Mr Jones. What did you hear them say about any Money.

Mrs Gurrey. I ask'd them how they would have their Bed warm'd, and Mr Marson answer'd very hot, and with that I went down to send my Daughter up, and she could not go presently, I told her then she must go as soon as she could.

Mr Bar. Hatfield. Pray don't tell us what pass'd between you and your Daughter, what do you know of these Gentlemen?

Mrs Gurrey. I went to the next Room, to see if every Thing was as it should be, I hearken'd, and they had some Discourse about Money, and I heard some Body (I don't know who it should be, except it were Mr Stevens) answer, and say, the use Money was paid to Night, but what Money they meant I can't tell.

Mr Jones. What did you find when they were gone?

Mrs Gurrey. Sir, I found a Cord at the End of the Trunk.

Mr Jones. Was it there in the Morning, or before they came?

Mrs Gurrey. No it could not, for I swept my Room and wip'd down the Dust.

Mr Jones. Was the Cord White?

Mrs Gurrey. No, it was more Dirty than it is now, for my Husband and I have worn it in our Pockets.

Mr Cowper. Pray, who brought the Cord down from above Stairs?

Mrs Gurrey. My Daughter that liv'd with me, and she laid it upon the Shelf.

Mr Cowper. Did not you hear there was a Coroner's Inquest sitting?

Mrs Gurrey. The next Day at Night I did hear of it.

Mr Cowper. Why did not you go to the Coroner's Inquest, and give an Account of it there?

Mrs Gurrey. I told my Husband of it, and I ask'd my Husband if he did not hear what they said concerning Mrs Sarah Stout, and he answer'd yes, they ought to be taken up for the Words they said last Night; why, saith I, don't you take notice of it, I think you ought to take them up, but he went out of Doors, and I saw no more of him till the Afternoon; when I heard the Words I thought some Body had stole her away and got to Bed to her.

Mr Cowper. Pray if your Husband heard these Words, why did not he go to the Coroner's Inquest.

Mrs Gurrey. I did speak to him to have them taken up.

Mr Cowper. Why did he not do it?

Mrs Gurrey. He said he would not do it, he did not know but it might cost him his Life.

Mr Jones. How came you after this to discover it?

Mrs Gurrey. Because I was so troubled in Mind I could not rest Night nor Day, and I told him if he would not tell of it, I would tell of it my self, for I was not able to live.

Then Elizabeth Gurrey was Sworn.

Mr Jones. Pray do you know Mr Rogers, Mr Stevens, and Mr Marson?

E. Gurrey. I know Mr Marson, and these are the other Gentlemen I reckon.

Mr Jones. What Discourse did you hear from them?

E. Gurrey. Mr Marson ask'd the other Gentlemen how much Money they had spent, the other answer'd what was that to him, you have had forty or fifty Pounds to your Share; then the other ask'd him whether the Business was done, and he answer'd he believ'd it was, but if it was not done, it would be done to Night, then my Lord, he pull'd a handful of Money out of his Pocket, and swore he would spend it all for joy the Business was done.

Mr Jones. Was Mr Cowper's Name mentioned?

E. Gurrey. I heard them mention Mr Cowper's Name, but not Mrs Sarah Stout's.

Mr Jones. What Condition was the Gentleman's Shooes in?

E. Gurrey. I think it was Mr Marson, his Shooes were very wet and dirty, one of them was very hot, and he wip'd his Head with his Handkerchief.

Mr Jones. Now my Lord we have done as to our Evidence, Mr Marson pretended he was just then alighted and come from London, and was in a great Heat, and his Shooes were wet, I wonder what Mr Marson had been doing, for when he was Examined, he said he came to Town about Eight of the Clock, and went to the *Glove and Dolphin* Inn, and stay'd there while he came to his Lodging; now 'tis a wonderful Thing that he should come wet-shod from a Tavern where he had been sitting four or five Hours together.

[Then the Examination of Mr John Marson was read.]

The Examination of John Marson, taken before Me, this 27th Day of April, 1699.

WHO being examined where he was on Monday the 13th of March last, saith, That he was at the Borough of Southwark (he being an Attorney of the said Court) till past Four of the Clock in the Afternoon; and saith, That he set out from Southwark for Hartford soon after, and came to Hartford about Eight of the Clock the same Afternoon, and put up his Horse at the Sign of ——— an Inn there, and then went to the Hand and Glove, together with Godfrey Gimbart, Esq; Ellis Stevens, William Rogers, and some others, where they stay'd till about Eleven of the Clock at Night, and then this Examinant went thence directly to the House of John Gurrey, with the

the said Stevens and Rogers, who lay all together in the said Gurrey's House all that Night. And being asked what he said concerning the said Mrs. Sarah Stout, deceas'd, this Examinant saith, That on Sunday the 12th of March last, this Examinant being in Company with one Mr. Thomas Marshall, and telling him that this Examinant intended the next Day for Hartford with the Marshal of the King's Bench, the said Thomas Marshall desired this Examinant and the said Stevens, who was then also in Company, that they would go and see the said Sarah Stout (his Sweet-heart): He confesseth, That he did ask the said Gurrey if he would shew this Examinant where the said Stout lived, telling the said Gurrey that his Name was Marshall, and asked him if he never heard of him before, and jocularly said, That he would go to see her the next Morning; but doth not believe that he said any Thing that any Friend was even with the said Sarah Stout, or to such like Effect. And doth confess, That he did, the next Day, upon the said Gurrey's telling him that the said Stout was drowned, say, that he would keep his Word, and would see her. And saith, That meeting with Mr. Cowper (who is this Examinant's Acquaintance) he believes he did talk with him concerning the said Stout's being drowned, this Examinant having seen her Body that Morning.

Cogn. Die & Anno
antedict. coram
J. Holt.

John Marson.

Mr Jones. All that I observe from it, is this; that he had been five Hours in Town, and when he came to his Lodging he came in wet and hot, and said he was just come from London.

Mr Marson. I had rid forty Miles that Day, and could not be soon cold,

Mr Bar. Hatsell. They have done now for the King, come Mr Cowper, what do you say to it?

Mr Jones. If your Lordship please we will call one Witness more, Mary Richardson. Mrs Richardson, Do you know Mr Marson, or any of these Gentlemen.

Mrs Richardson. They came on Tuesday Night to the Bell at Hodesdon and lay there, and one of the Gentlemen when I was warming of the Sheets, ask'd me if I knew Mrs Sarah Stout, and I said yes; he ask'd me if I knew which Way she came to her End, and I told him I could not tell.

Mr Jones. Is that all, what did they say more?

Mrs Richardson. They did desire and wish it might be found out how it came about; and one Gentleman took no notice of her at all; they had a little Bundle, but what was in it, I can't tell, but there I see it bound up in some colour'd Stuff or other, but what it was, I can't tell.

Mr Jones. Is that all that you can say?

Mrs Richardson. Yes, that's all.

Mr Jones. Then we have done.

Mr Bar. Hatsell. Come Mr Cowper, what do you say to it?

Mr Cowper. Now they have done on the Part of the King, my Lord, and you Gentlemen of my Jury, I must beg your Patience for my Defence: I

confess it was an unfortunate Accident for me (as Mr Jones calls it) that I happened to be the last Person (for ought appears) in the Company of a melancholy Woman. The Discourse occasioned by this Accident had been a sufficient Misfortune to me without any Thing else to aggravate it; but I did not in the least imagine that so little, so trivial an Evidence as here is could possibly have affected me to so great a Degree, as to bring me to this Place to answer for the worst Fact that the worst of Men can be guilty of.

My Lord, your Lordship did just now observe, that I have appear'd at the Bar for my Clients, but I must say too, that I never appear'd for my self under this, or the like Circumstances, as a Criminal for any Offence whatsoever.

Mr Jones, very well said, when he spoke on the Part of the King, that if this Gentlewoman was Murther'd, the Crime was Villanous, Base, Barbarous, and Cruel; and for my Part I think so too, the Crime would be so great, that it could never be sufficiently Condemned: But at the same Time I may averre, that to suppose a Murther without good Grounds for it, and afterwards to charge Innocent Men with it knowingly and Maliciously, is to a Trifle as Base and Barbarous as the Murther it self could be. My Lord, I speak for my own Part, I know not at what Price other Men may value their Lives, but I had much rather my self was Murther'd than my Reputation; which yet, I am sensible hath suffer'd greatly hitherto by the Malice and Artifice of some Men, who have gone pretty far in making this Fact, as Barbarous as it is, to be Credited of me. And therefore I must beg your Lordship's, and the Juries Patience, while I not only defend my Life, but justifie my self also from these Things that have unjustly aspers'd me, by the Conspiracy and Artifice of my Accusers.

My Lord, in all the Evidence that hath been given, I must observe there is no positive Evidence, with Submission, to induce the Jury, or any one to believe the General, that this Gentlewoman was Murthered; but they go upon Suppositions and Inferences, which are contradicted by other Circumstances, in the very Evidence of the Prosecutor, that make full as strong to prove she was not Murther'd, as that she was; so that as it stands, it can amount only to a bare Supposition that she was Murther'd by any Body.

Then as to the Evidence that particularly relates to my self, or the Gentlemen who stand with me at the Bar; that they, or I were concerned in it (if she was Murther'd) there is not one Syllable of Proof; at most, it amounts but to make us suspect of a Murther; not prov'd, but only suspected: This I observe upon the Evidence, as it now stands without Answer, as it has been given on the King's Part: And how far, in the Case of Life, Men shall be affected with Evidence of this Nature, which neither proves the Murther in General, nor that they did it in Particular, though no Defence was made, or any further Answer given, I must submit to your Lordship's and the Jury's Judgment.

But, my Lord, I do not doubt but I shall be able to wipe away, even that remote Suspicion by my Defence: They have been long in their Evidence for the King, and therefore I must beg your Patience while I give a particular Answer to every Part of it, in as good a Method as I am able; and I will waste as little Time as may consist with the justifying of my Reputation; for which I know your Lordship will have as tender a Regard,

gard, to see it doth not suffer unjustly, as for my Life itself.

And, I promise your Lordship, I shall trouble you with no Evidence which is not Express and Plain; no Inuendo's or Suspensions; but I shall prove fully and clearly, in the first Place, That there was no Ground at all, in this Case, to suppose she was murther'd by any one but herself.

The first Fact that they insisted upon to infer a Murther from it, was, that the Body was found floating; now, my Lord, that Fact I am able by the Evidence I have, as well as from that of the Prosecutor, to deny; for the Fact was directly otherwise, that is, she was not found floating.

And whereas the Prosecutor's Witnesses, who have been produced to this Point, are obscure and poor Men, and your Lordship observes have been taught to say generally that she floated, which, when they are required to explain, and describe how she lay, they contradict themselves in, by shewing she lay Sideways between the Stakes, and almost all under Water: Now I shall give your Lordship, and the Jury a full and particular Account and Description from the Parish Officers, Men employed by the Coroner to take the Body out of the Water, of the very Manner and Posture in which it was first found; which they are much better able to do, than the Prosecutor's Witnesses, having seen her before all, or most of those People, and these Officers clearly agree that her Body was under Water, when found, except some small Appearance of her Petticoats, near, or on the Surface of the Water, which may be very easily accounted for; because the Stakes the Witnesses mention, and which are driven into the Ground cross the River to prevent Weeds and Trumpery from running into the Mill-stand, as the Witnesses have already said, about a Foot distance from one another, and are set with their Feet from the Mill, and their Heads inclining towards the Mill with the Stream: Now, my Lord, every one knows, that though a drowned Body will at first sink, yet it is buoyant, and does not go down-right, and rest in one place like Lead; for a humane Body is seldom or never in a Stream found to lie where it was drowned; a Body drowned at *Chelsea*, has been often found by Fishermen at *London*, and that before it came to float above Water. Now if a Body is so buoyant, as that it is driven down by the impellant Force of the Current (though it do not float above Water) it seems a Consequence that when it comes to be stopp'd and resisted by the Stakes, which lie with their Heads downwards, inclining with the Stream, the Stream bearing the Body against the Stakes, must needs raise it upwards to find another Passage, if possible, when the Ordinary and Natural is obstructed. I have seen, I remember, that where Weeds have been driven down a River, and have been rolled along at the Bottom, when they have come down to a Board or Stakes of a Wyer, or Turnpike, they have been by the Force of the Water raised up against those Boards, or Stakes, and forced over them, though without such Obstruction they had undoubtedly continued to rool under the Water. I don't know of any other Symptom they pretend to, of her not being drowned, from any thing observed of her in the Water. Then as to the flatness of her Belly, when she was put into her Coffin, I shall shew it is a common and natural Accident, sometimes drowned Bodies are swelled more, some-

times less, sometimes not at all; I think it hardly deserves a Physician to prove that a Body may be drowned with very little Water, that a Man may be drowned by strangling, or Suffocation caused by a little Water in the Lungs, without any great Quantity of Water received in the Body, is a certain and established Truth; for I am told that when Respiration ceases, the Party dies, and can receive no more Water after that; so that nothing is to be inferred from a Body's having more or less Water found in it, especially, if your Lordship will give me leave to observe this Distinction, where a Body is voluntarily drowned, and where it is drowned by Accident; for People that fall in by Accident do struggle and strive as long as they can, every time they rise they drink some Water into the Stomach to prevent its passing into the Lungs, and are drowned no sooner than needs must; but Persons that voluntarily drown themselves, to be sure desperately plunge into the Water to dispatch a miserable Life, as soon as they can; and so that little quantity in the Lungs, which causes Death, may be the sooner taken in; after which no more is received: And I hope by Physicians it will appear there is good Ground for this difference.

The next is the Evidence that the Chirurgeons have given on the other Part, relating to the taking this Gentlewoman out of her Grave, after she had been buried six Weeks, whether this ought to have been given in Evidence for the Reasons I hinted at in a Criminal Case, I submit to your Lordship. But as it is, I have no Reason to apprehend it, being able to make appear, that the Gentlemen who spoke to this Point have delivered themselves in that manner, either out of extreme Malice, or a most profound Ignorance; this will be so very plain upon my Evidence, that I must take the Liberty to impute one, or both of those Causes to the Gentlemen that have argued from their Observations upon that Matter.

And now, if your Lordship will but please to consider the Circumstances under which they would accuse me of this horrid Action, I don't think they will pretend to say, that in the whole Course of my Life, I have been guilty of any mean or indirect Action; and I will put it upon the worst Enemy I have in the World to say it. Now, for a Man in the Condition I was in, of some Fortune in Possession, related to a better, in a good Employment, thriving in my Profession, living within my Income, never in Debt, (I may truly say not five Pounds at any one time these eight Years past) having no possibility of making any Advantage by her Death, void of all Malice; and as appears by her own Evidence in perfect Amity and Friendship with this Gentlewoman, to be guilty of the murdering her, to begin at the Top of all Baseness and Wickedness, certainly is incredible.

My Lord, in this Prosecution my Enemies seeing the Necessity of Assigning some Cause, have been so malicious to suggest before, (though not now, when I have this Opportunity of vindicating my self publicly) that I have been concerned in the Receipt of Money for this Gentlewoman, had her Securities by me, and sometimes that I had been her Guardian, or her Trustee, and I know not what. I now see the Contrivers and Promoters of that Scandal, and they know it to be Base, False, and Malicious; I never was concerned

cerned in Interest with her, directly, or indirectly, and so I told them when I was before my Lord Chief Justice; 'tis true, it was then just suggested by the Prosecutors, I then denied it, and I deny it still ——— I thank God I have not been used, nor have I needed to deny the Truth.

My Lord, you find the Prosecutors have nothing to say to me upon this Head, after all the Slanders and Stories they have publish'd against me, of my having Money in my Hands which belonged to the Deceased. But though they do not stir it, I will, and give your Lordship a full Account of all that ever was in that Matter. When I lodg'd at *Hertford*, some time since, she desired me to recommend to her a Security for 200*l.* if it came in my Way; my Lord, when I came to Town, I understood that one Mrs *Puller*, a Client of mine, had a Mortgage formerly made to her by one Mr *Loftus* of *Lambeth* in *Surrey* for the like Sum, and that she was willing to have in her Money; I wrote to this Gentlewoman, the Deceased; to acquaint her of the Security, she thereupon did send up 200*l.* and some odd Pounds for Interest (the Account of which I produced to my Lord Chief Justice;) this Money was sent to me by Mr *Cramfield*, as I have been informed, and by him given to Mr *Toller's* Clerk, and by him brought publickly to me; my Lord, this Mortgage I immediately transferr'd by Assignment, Indors'd on the Back of it, And Mrs. *Habbersfield*, a Trustee for Mrs *Puller*, Sign'd and Sealed it, and that very 200*l.* and Interest due was at one and the same time paid to Mrs *Puller*, and by her the Principal was paid to her Daughter, in Part of her Portion. All this was transacted the beginning of *December* last, and she was not drowned till the 13th of *March* following: And my Lord, these People that are now the Prosecutors, did own before my Lord Chief Justice, that they had found this Mortgage amongst the Deceased's Writings in her Cabinet at the Time of her Death. Now, my Lord, I say, that saving this one Service I did her, as I said in *December* last, I never was otherwise concerned with her in the receiving, or disposing of any of her Money; nor had I ever any of her Securities for Money in my keeping; and I desire any Adversary I have to shew the contrary.

My Lord, as there appears no Malice, no Interest, so they have proved for me that there was no Concealment of Shame, to induce me to commit so barbarous an Action; otherwise, perhaps now they find they can assign no other Cause, they would content themselves to give that Reason, and fling that Scandal at me: And though I take it by the Experience I have had of them, they did not design to do me any Favour, yet I thank them, in endeavouring to vindicate her Honour, they have secured my Reputation against that Calumny; and though I am satisfied, as I said, they did not intend me Kindness, yet I thank God they have given me a just Opportunity to take Advantage of their Cunning, for the clearing my Innocence in that Particular.

Then, my Lord, not to rest it here, but to satisfy the Jury and the World how this Gentlewoman came to destroy her self, I shall give the clearest Evidence that was ever given in any Court, that she murdered her self. When I enter upon this Proof, I must of necessity trespass upon the Character of this Gentlewoman that is dead. I confess this is a tender Point, 'tis a Thing I would

willingly be excused from, and 'tis not without a great deal of Reluctancy and Compulsion forced from me: That she was melancholy the Prosecutors themselves have proved; but I must of necessity show you the Occasion and Reasons of it, and the Witnesses will tell your Lordship what desperate Resolutions she had been under formerly, and that will lead me to near the time of her Death; to show why, and upon what Accidents she made away her self. I will not enumerate Particulars, by way of opening; only I must tell your Lordship, that some Letters of hers must of necessity be produced, which truly as I said, I should not meddle with, if I had not these innocent Gentlemen here to defend, as well as my self; perhaps it may be said, that in Honour I ought to conceal the Weakness of this Gentlewoman, but then in Honour and Justice to these Gentlemen that are falsely accused with me, I cannot do it; I hope this one Reason will excuse me to the World, for I have no other that could have obliged me to bring these Letters upon the Stage; I solemnly protest, if I stood here singly in the Case of my own Life, upon the Evidence given against me, I take it to be so inconsiderable, I would not do it; but I must do it to show that these Gentlemen also are innocent, and to preserve them, because I am satisfied in my own Mind they are so. My Lord, when I have done that, I shall shew your Lordship in the next Place, that it is utterly impossible I could be concerned in this Fact, if I had had all the Motives and Provocations in the World to have done it: I shall show your Lordship in point of time it could not be.

The Maid *Sarah Walker*, who is the single Witness, I take it, that says any Thing in the least relating to me, said but now, the Clock had struck Eleven before she carried up the Coals, and about a quarter of an Hour after, while she was warming the Bed above Stairs, she heard the Door clap, and sometime after that she came down and found that I and her Mistress were gone. Now in point of time I shall prove it utterly impossible I could be guilty of the Fact I am accused of, being seen to come into the *Glove Inn* as the Town Clock struck Eleven, and staying there more than a quarter of an Hour, was, after several Things done at my Lodging, in Bed before twelve a Clock, and went no more out that Night as I shall prove. As for that little Circumstance of sending for my Horse, which they have made use of all along to back this Prosecution; their very telling me of that matter, shews how they are put to their Shifts to justify their accusing me; I say in Prudence I ought to have done what I did: I sent for him on the *Tuesday*, but as their Witness saith, I told him, at the Time I bid him fetch my Horse, not to use then, nor till by the Course of the Circuit I was to go into *Effex* with the Judges the next Morning; and till then the Prosecutor's Witness, who is the Ostler of the *Glove Inn*, was ordered to set him up there, to litter him down, and to take care of him and feed him, and that he should be ready for me to go to *Chelmsford* on the Morrow, whither I went with the other Council the next Morning being *Wednesday*; and this my Lord is the Whole of that Matter.

My Lord, this Business slept near Two Months after the Coroner's Inquest before I heard of it, or imagined my self to be concerned in it, and was never stirr'd till two Parties differing on all other Occasions had laid their Heads together; I beg

leave to let your Lordship a little into that Matter, to shew you how this Prosecution came to be managed, with so much Noise and Violence as it hath been. I can make it appear, that one of the greatest of the Quakers, Mr *Mead* by Name, has very much, and indirectly too, concerned himself in this Matter; it seems they fancy the Reputation of their Sect is concerned in it, for they think it a wonderful Thing, nay absolutely impossible (however other People may be liable to such Resolutions) that one who was by her Education intituled to the Light within her, should run headlong into the Water, as if she had been possess'd with the Devil; of this they think their Sect is to be clear'd, though by spilling the Blood of four innocent Men. The other sort of People that concur with the Quakers in this Prosecution, I shall mention, now I come to observe what the Witnesses are that have been produced against me; some of them I have nothing to object to, but that they are extreme indigent and poor, and have been helped by the Prosecutor, those that are so say nothing as to me; others who live in this Town, and give their Opinions of the manner of her Death, are possess'd with much prejudice against me, upon Feuds that have risen at the Elections of my Father and Brother in this Town, and these with the Quakers have wholly drest up this Matter for several Ends, the Quakers to maintain the Reputation of their Sect, and the others to destroy, or break at least, the Interest of my Family in this Place: But however effectual these Designs may have been, to have made a great Noise in the World out of nothing; I am satisfied now, that I am in a Court of Justice, where no Person's Reputation, much less his Life, will be sacrificed to the Policy or Malice of a Party without Proof; and therefore I have taken up so much of your Time, to set the true Rise of this Prosecution before you in a clear Light.

My Lord, as to my coming to this Town on *Monday*, it was the first Day of the Assizes, and that was the Reason that brought me hither; before I came out of Town, I confess, I had a Design of taking a Lodging at this Gentlewoman's House, having been invited by Letter so to do; and the Reason why I did not was this; my Brother when he went the Circuit always favoured me with the Offer of a Part of his Lodging, which out of good Husbandry I always accepted: The last Circuit was in Parliament Time, and my Brother being in the Money Chair could not attend the Circuit as he us'd to do; he had very good Lodgings, I think one of the best in this Town, where I us'd to be with him, these were always kept for him, unless notice was given to the contrary; the *Friday* before I came down to the Assizes, I happened to be in Company with my Brother and another Gentleman, and then I shew'd them the Letter, by which I was earnestly invited down to lie at the House of this Gentlewoman, during the Assizes, (it is dated the 9th of *March* last;) and desirous to comply with the Invitation, I thereupon desired my Brother to write to Mr *Barefoot*, our Landlord, and get him, if he could, to dispose of the Lodgings, for said I, if he keeps them they must be paid for, and then I cannot well avoid lying there; my Brother did say he would write, if he could think on't; and thus, if Mr *Barefoot* disposed of the Lodgings, I own I intended to lie at the Deceas'd's House, but if not, I look'd on my self as oblig'd to lie at Mr *Barefoot*'s.

Accordingly I shall prove, as soon as ever I came to this Town in the Morning of the first day of the Assizes, I went directly to Mr *Barefoot*'s, (the Maid and all agree in this) and the Reason was, I had not seen my Brother after he said he would write, before I went out of *London*; and therefore it was proper for me to go first to Mr *Barefoot*'s, to know whether my Brother had wrote to him, and whether he had disposed of the Lodgings or not; as soon as I came to Mr *Barefoot*'s, there was one Mr *Taylor* of this Town came to me, and I in his hearing ask'd Mr *Barefoot*, his Wife, and Maid Servant, one after another, if they had received a Letter from my Brother to unbespeak the Lodgings; they told me no, that the Room was kept for us, and I think that they had made a Fire, and that the Sheets were airing; I was a little concerned he had not writ, but being satisfied that no Letter had been received, I said immediately, as I shall prove by several Witnesses, if it be so, I must stay with you, I will take up my Lodging here; thereupon I lighted, and sent for my Bag from the Coffee-house, and lodg'd all my Things at *Barefoot*'s, and thus I took up my Lodging there as usual: I had no sooner done this, but *Sarah Walker* came to me from her Mistress to invite me to Dinner, and accordingly I went and dined there, and when I went away it may be true, that being asked, I said I would come again at Night; but that I did say I would lie there, I do positively deny, and knowing I could not lie there, 'tis unlikely I should say so: My Lord, at Night I did come again and paid her some Money, which I received from Mr *Loftus*, who is the Mortgager for Interest of the 200 *l.* I before mentioned (it was Six Pounds odd Money in Guineas and half Guineas) I writ a Receipt, but she declined the Signing of it, pressing me to stay there that Night, which I refused, as engaged to lie at Mr *Barefoot*'s and took my leave of her; and that very Money which I paid her was found in her Pocket, as I have heard, after she was drowned.

Now my Lord, the Reason that I went to her House at Night was first, as I said, to pay her the Interest Money; in the next Place it was but fitting, when I found my self under a Necessity of disappointing her, and lying at *Barefoot*'s to go to excuse my not lying there; which I had not an Opportunity at Dinner Time to do. My Lord, I open my Defence shortly, referring the Particulars to the Witnesses themselves, in calling those who will fully refute the Suppositions and Inferences made by the Prosecutors, whom first, my Lord, I shall begin with, to shew there is no Evidence of any Murder at all committed; and this I say again ought to be indisputably made manifest and prov'd before any Man can be so much as suspected for it.

Mr Baron *Hatfield*. Do not flourish too much, Mr *Comper*, if you have opened all your Evidence, call your Witnesses, and when they have ended, then make your Observations.

Mr *Comper*. Then my Lord I will take up no more of your Time in opening this Matter.

Call Robert Dew (who appeared.)

When Mrs *Sarah Stout* drowned herself, was not you a Parish Officer?

R. Dew. I was I was next House to the Coach and Horses, and about six of the Clock came a little Boy, (*Thomas Parker's Boy*) and said there

there was a Woman fallen into the River, I considered it was not my Business, but the Coroner's, and I sent the Boy to the Coroner, to acquaint him with it, and the Coroner sent Word by the Boy, and desired she might be taken out, so I went to the River and saw her taken out; she lay in the River, (as near as I could guess) half a Foot in the Water, she was covered with Water, she had a strip'd Petticoat on, but nothing could be seen of it above Water; I heaved her up, and several Sticks were underneath her, and Flags, and when they took her out, she froth'd at the Nose, and Mouth.

Mr Cowper. How was she, was she driven between the Stakes?

R. Dew. She lay on the right Side, her Head leaning rather downwards, and as they pull'd her up, I cry'd, hold, hold, hold, you hurt her Arm, and so they kneel'd down and took her Arm from the Stakes.

Mr Cowper. Did you see any Spots upon her Arm?

R. Dew. Yes, Sir.

Mr Cowper. What sort of Spot was it?

R. Dew. It was reddish, I believe the Stakes did it; for her Arm hit upon the Stake where she lay.

Mr Cowper. Pray how do these Stakes stand about the Bridge of the Mill?

R. Dew. I suppose they stand about a Foot asunder, they stand slanting, leaning down the Stream a little.

Mr Cowper. Could you discern her Feet?

R. Dew. No, nothing like it; nor the strip'd Petticoat she had on.

Mr Cowper. Might not her Knees and Legs be upon the Ground, for what you could see?

R. Dew. Truly, if I was put upon my Oath, whether they were so, or not, I durst not swear it; sometimes the Water there is four Feet, sometimes three and a half, I believe her Feet were very near the Bottom.

Mr Cowper. Are not the Stakes nail'd with their Head against the Bridge?

R. Dew. They are nail'd to the Side of the Bridge.

Mr Cowper. Pray describe the Manner in which they took her up.

R. Dew. They stoop'd down and took her up.

Mr Cowper. Did they take her up at once?

R. Dew. They had two heavings, or more.

Mr Cowper. What was the Reason they did not take her up at once?

R. Dew. Because I cry'd out, they hurt her Arm.

Mr Cowper. Was she not within the Stakes?

R. Dew. No, this Shoulder kept her out.

Mr Cowper. When you complained they hurt her Arm, what Answer did they make you?

R. Dew. They stoop'd down and took her Arm out from between the Stakes, they could not have got her out else.

Mr Cowper. After she was taken out, did you observe any Froth or Foam come from her Mouth, or Nose?

R. Dew. There was a white Froth came from her, and as they wip'd it away, it was on again presently.

Mr Cowper. What was the appearance of her Face and upper Parts at that time?

R. Dew. She was so much disfigured, I believe, that scarce any of her Neighbours knew her, the Slime of the Water being upon her.

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Mr Cowper. Did you see her Maid Sarah Walker at that Time?

R. Dew. No.

Mr Baron Hatsell. Mr Cowper, do you intend to spend so much Time with every Witness, I don't see to what Purpose many of these Questions are ask'd?

Mr Cowper. I have done with him, call Young.

Mr Bar. Hatsell. Mr Cowper, I would not have you straiten your self, but only ask those Questions that are Pertinent.

Mr Cowper. Pray give an Account of what you know of this Matter:

Young. On Tuesday Morning between five and six a Clock last Assizes —

Mr Cowper. What Officer was you?

Young. I was Constable.

Mr Cowper. Was you employed by the Coroner?

Young. Not by him in Person. Between five and six a Clock some of the Men that came into my Yard to work, told me a Woman was drowned at the Mill, I staid a little, and went down to see; and when I came there, I saw a Woman, as they had told me; and I saw part of her Coat lie on the top of the Water to be seen, and I looked strictly and nicely within the Bridge, and saw the Face of a Woman, and her left Arm was on the outside the Stakes, which I believe kept her from going through; so I looked upon her very wishfully, and was going back again, and as I came back I met with R. Dew, and two of my Neighbours, and they ask'd me to go back with them, and said they were going to take her up, and being Constable, I told them I thought it was not proper to do it, and they said they had Orders for it; so I being Constable went back with them; and when I came there I found her in the same Posture as before, we viewed her very wishfully; her Coat that was driven near the Stakes was seen, but none of her other Coats, or her Legs, and after we had looked a little while upon her, we spake to Dell, and Ulse to take her up, and one of them took hold of her Coat till he brought her above Water; and as her Arm drew up, I saw a black Place, and she laid sideway, that he could not take her up till they had let her down again, and so they twisted her out sideway; for the Stakes were so near together, that she could not lie upon her Belly, nor upon her Back, and when they had taken her up, they laid her down upon a green Place, and after she was laid down, a great Quantity of Froth (like the Froth of New Beer) work'd out of her Nostrils.

Mr Baron Hatsell. How much do you call a great Quantity?

Young. It rose up in Bladders, and run down on the Sides of her Face, and so rose again; and seeing her look like a Gentlewoman, we desired one Ulse to search her Pockets to see if there were any Letters, that we might know who she was, so the Woman did, and I believe there was twenty or more of us that knew her very well when she was alive, and not one of us knew her then, and the Woman searched her Pockets, and took out six Guineas ten Shillings three pence half penny, and some other Things; and after that, I desired some of my Neighbours to go with me and tell the Money; for when it came to be known who she was, I knew we must give an Account on't, and I laid it upon a Block and told it, and they tied it up in an Handkerchief, and I said I would keep the Money, and they should seal it up, to prevent any

Question about it; and during all this while of Discourse, and sealing up the Money, the Froth still work'd out of her Mouth.

Mr Cowper. Have you measured the Depth of the Water; what depth is it there?

Young. I measured the Water this Morning, and 'twas so high that it run over the Floodgate, and the Height of it was about 4 Foot 2 Inches, but sometimes 'tis penn'd up to a greater Height than 'tis to Day.

Mr Cowper. Was it higher to Day than when the Body was found?

Young. To the best of my remembrance 'twas as high to Day as it was then.

Mr Cowper. Was any Part of the Body above Water?

Young. No, nor nothing like the Body could be seen.

Mr Cowper. Could you see where her Legs lay?

Young. No, nor nothing but her upper Coats which were driven against the Stakes.

Mr Cowper. Pray give an Account how long she lay there, and when she was conveyed away.

Young. I staid a quarter of an Hour, and then I went and sealed up the Money at my own House, so that I did not see her removed.

Mr Jones. Was any Body there besides your self at this time?

Young. Yes, Twenty People at the least.

Mr Jones. Now here is ten of them that have Sworn that the Body was above the Surface of the Water.

Mr Baron Hatfell. No, her Cloaths they say were, but the Body was something under the Water.

Mr Cowper. Now I will trouble your Lordship no more with that Fact, but I will give you an Account of the Coroner's Inquest, how diligent they were in their Proceedings, and produce a Copy of the Inquisition it self, that she was found to have drowned herself.

Mr Baron Hatfell. Mr Cowper that is no Evidence, if it be produced in order to contradict what these Witnesses have said, that have been examined for the King; but if you will prove, that they have sworn otherwise before the Coroner, than they now do, then you say something, otherwise the Coroner's Inquest signifies nothing as to the present Question.

Mr Cowper. Call Thomas Wall. I am loth to be troublesome, but if you please to favour me, I desire to know of them, whether they do admit there was an Inquisition, and that she was found *Non Compos Mentis*, and did kill her self.

Mr Jones. We do admit it.

Juryman. We desire it may be read.

Mr Baron Hatfell. Why won't you believe what they agree to on both Sides.

Juryman. If they do agree so I am satisfied.

Mr Cowper. Thomas Wall, pray do you give an Account of what you know of Mrs Stout's being taken up?

Wall. My Lord, I was one of the Jury, that viewed her at the Place where she was laid, when she was taken up, and there was no Marks upon her, only a little Mark about her Ear, and something near her Collar-bone, that was all I see upon her.

Mr Cowper. Do you know any Thing of any Surgeons being employ'd to view those Marks?

Wall. My Lord, we had several Persons that came before us that we examined, we had a dis-

pute concerning these Marks what might effect them, and we desired Mr Dimsdale and Mr Camlin to see them, that we might be the better satisfied, and they both went down and viewed the Body after it was brought down to Mrs Stout's, and they came back both of them, and Mr John Dimsdale told us, that these Marks were no more than were usual in such Cases, and it was only the Stagnation of Blood.

Mr Cowper. Was it the old Man or the young Man?

Wall. It was the young Man.

Mr Cowper. Usual did he say?

Wall. I can tell the very Words, I have them writ down.

Mr Cowper. Pray do so, for he has denied it here.

Wall. (Looks on his Paper.) Here 'tis. Mr Dimsdale and Mr Camlin came to us, and Mr Dimsdale spake and said these Marks are usual, or might be usual, or if they were Marks, it was no more than was usual in such Cases; and that it was the Stagnation of Blood.

Mr Cowper. Now you have your Notes in your Hand, pray what did Sarah Walker say to you as to the time I went from Mrs Stout's?

Wall. Sarah Walker said it was about 11 a Clock when she took up Coals to warm the Bed, but she said she could not, nor did not know when Mr Cowper went out, for she warm'd the Bed, and Mr Cowper not coming up, she took up some more Coals, and tarried a little longer, and no Body coming up, she went down, and found Mr Cowper was gone, and she look'd into the Parlour, and her Mistress was gone.

Mr Baron Hatfell. The Woman said the same Thing.

Mr Cowper. 'Tis necessary in this particular as to the Time.

Mr Baron Hatfell. She told you the Clocks did differ.

(Then Mr Bowden was called.)

Mr Cowper. Well, what do you know of the taking up of Mrs Stout?

Bowden. I went with the rest of the Neighbours to view her, and I did perceive it was Mrs Sarah Stout's Body, though some questioned it; I do believe I was the second Person that discovered it was she; and, my Lord, I did see a great deal of Froth that came out of her Mouth and Nostrils.

Mr Cowper. Did you go about to wipe it away?

Bowden. No, but some other Person did, it came out in a great Quantity.

Mr Jones. How much do you call a great Quantity?

Bowden. Her Mouth and Nostrils were very full of it.

Mr Jones. Was not her Mouth shut?

Bowden. I did not observe that.

Mr Cowper. How long had she lain there before you came?

Bowden. I believe I was there in half an Hour, as soon as I heard the Report of it I went down.

Mr Cowper. Call Mr Shute.

Mr Baron Hatfell. Well, what can you say to this Matter?

Shute. Sir, I was summoned upon the Jury upon the Coroner's Inquest, and I perceived when I was there, that the same Stuff worked out of Mrs Stout's Nostrils as worked out of the Childs.

Mr

Mr Baron *Hatfield*. What Child is that you speak of, is it the Child that was drowned in the same Place as Mrs *Stout* was?

Shute. Yes.

Mr *Cowper*. My Lord, I am very tender how I take up your Lordship's Time, and therefore I will not trouble you with any more Witnesses upon this Head, but with your Lordship's Leave, I will proceed to call some Physicians of Note and Eminence, to confront the Learning of the Gentlemen on the other Side—Dr *Sloane*, you were in Court when these Gentlemen delivered their Opinion concerning Mrs *Stout*'s having no Water in her, I desire you would give your Opinion in that Matter.

Dr *Sloane*. I have not heard them very particularly or distinctly, because of the great Croud, some of them I have; Cases of this kind are very uncommon, and none of them have fallen directly under my own Knowledge. As to my Opinion of drowning, it is plain, that if a great Quantity of Water be swallowed by the Gullet into the Stomach, it will not suffocate nor drown the Person: Drunkards, who swallow freely a great deal of Liquor, and those who are forced by the Civil Law to drink a great quantity of Water, which in giving the Question (as 'tis called) is poured into them by way of Torture to make them confess Crimes, have no suffocation or drowning happen to them: But on the other Hand, when any quantity comes into the Wind-pipe, so as it does hinder or intercept the Inspiration, or coming in of the Air, which is necessary for respiration or breathing, the Person is suffocated. Such a small quantity will do as sometimes in Prescriptions, when People have been very weak, or forced to take Medicines, I have observed some Spoonfuls in that Condition (if it went the wrong way) to have choaked or suffocated the Person. I take drowning in a great measure to be thus, and though it is very likely when one struggles he may (to save himself from being choaked) swallow some quantity of Water, yet that is not the Cause of his Death, but that which goes into the Wind-pipe and Lungs: Whether a Person comes dead or alive into the Water, I believe some quantity will go into the Wind-pipe, and I believe without Force after Death little will get into the Stomach, because that it should, swallowing is necessary, which after Death cannot be done.

Mr Baron *Hatfield*. Pray, Doctor, I understand you say this, that in Case a Person is drowned, that there may be but little Water in the Stomach?

Dr *Sloane*. That it is accidental, my Lord.

Mr Baron *Hatfield*. But what do you say to this, if there had been Water in the Body, would it not have putrified the Parts after it had lain six Weeks?

Dr *Sloane*. My Lord, I am apt to think it would have putrified the Stomach less than the Lungs, because the Stomach is a Part of the Body that is contrived by Nature, partly to receive Liquids, but the Contrivance of the Lungs is only for the receiving of Air, they being of a spongy Nature, the Water might sink more into them than the Stomach; but I believe it might putrify there too after some time. I am apt to think that when a Body is buried under Ground, according to the Depth of the Grave, and difference of the Weather and Soil, the Fermentation may be greater or lesser, and that according to the several Kinds of Meats or Liquids in the Stomach the Putrifica-

tion will likewise vary, so that it seems to me to be very uncertain.

Mr Baron *Hatfield*. But when they are in a Coffin, how is it then?

Dr *Sloane*. No doubt there will be a Fermentation more or less, according as the Air comes more or less to the Body. Indeed it may be otherwise, where the Air is wholly shut out, which is supposed to be the way of Embalming, or preserving dead Bodies of late, without the use of any Spices, which is thought in a great measure to be brought about by the closeness of the Coffin, and hindring of the Air from coming into the Body.

Mr *Cowper*. Is it possible in your Judgment for any Water to pass into the Thorax?

Dr *Sloane*. I believe 'tis hardly possible that any should go from the Wind-pipe into the Cavity of the Thorax, without great Violence and Force, for there is a Membrane that covers the outside of the Lungs, that will hinder the Water from passing through it into any Part without them.

Mr *Cowper*. Now, do you think it possible to find Water in a drowned Body after six Weeks time?

Dr *Sloane*. I am apt to think if there was any Quantity in the Lungs, the sponginess of the Part would suck up some Part of it. As to the Stomach I have not known it tried, but 'tis like if there was a great Fermentation, a great deal of it would rise up in Vapours or Steams, and go off that way.

Mr *Cowper*. Dr *Garth*, I can't tell whether you were in Court when the Surgeons who are Witnesses for the King gave their Evidence.

Dr *Garth*. Yes, I was.

Mr *Cowper*. Then I desire you, Sir, to give your Opinion as to those Particulars.

Dr *Garth*. I observed in this Tryal the first Gentleman call'd for the King that spoke to this Matter was Mr *Coatsworth*. He saith he was sent for to open her, upon an Aspersion of her being said to be with Child. I agree with him in what he speaks to that Point, but must differ with him where he infers she was murdered because he found no great quantity of Water in her, as also her Head extremely mortify'd, but not her Lungs (Lungs and Bowels I think were used promiscuously.) Now, my Lord, as to the Matter of putrification, I think 'tis not much material whether there be any Water or no in the Cavities of the Body; if Water would hasten putrification, it wou'd do it as well in the Lungs as otherwise; there is always some Water in the Lympheducts there, the breaking of which may be one Occasion of Catarrhs. As to what relates to the Putrification of the Head, it may happen from a stoppage of the reflux Blood, which is staid there in a great Quantity, through the suffocation in the Water, or from the nearness of the Brain, which is observed often to mortify first.

The next was Mr *Dimsdale* (I would speak to them all in order if my memory would permit) I think he was of the same Opinion with Mr *Coatsworth*; he laid the Stress of his Suspicion upon the Mortification of the Head, which I think is not at all material, no more than what they infer from her floating: It being impossible the Body should have floated, unless it had rested, or had been entangled among the Stakes, because all dead Bodies (I believe) fall to the bottom, unless they be prevented by some extraordinary Tumour. My Lord, we have not only Philosophy, but Experiments for this. The Witnesses all agree she was

found upon her Side, which to suppose her to float in this posture, is as hard to be conceived, as to imagine a Shilling should fall down and rest upon its Edge rather than its broad Side; or that a Deal Board shou'd rather float Edgeways than otherwise: therefore 'tis plain she was entangled, or else the Posture had been otherwise.

As to the Quantity of Water, I do not think it necessary it should be very great. I must own the Water will force it self into all Cavities where there's no resistance, I believe when she threw her self in, she might not struggle to save her self, and by Consequence not sup up much Water. Now there's no direct Passage into the Stomach but by the Gullet, which is contracted or purs'd up by a Muscle in Nature of a Sphincter: For if this Passage was always open, like that of the Wind-pipe, the Weight of the Air would force it self into the Stomach, and we should be sensible of the greatest Inconveniencies. I doubt not, but that some Water fell into her Lungs, because the Weight of it, wou'd force it self down, but if we consider the Wind-pipe with its Ramifications, as one Cylinder, the Calculation of its Contents will not amount to above twenty three or twenty four solid Inches of Water, which is not a Pint, and which might imperceptibly work and fall out. I remember I offered a Wager at *Garaway's Coffee-House* to a Gentleman here in Court.

Mr Baron *Hatsell*. Pray Doctor tell us your Opinion as to what the Seaman said, and also as to what Dr *Sloan* said whether Water in the Body will putrifie it.

Dr *Garth*. I say not, for in some Places they keep Flesh Meat from corrupting by preserving it in Water, and 'tis well known 'twill putrify less so, than when exposed to Air.

Mr Baron *Hatsell*. But what do you say as to the sinking of dead Bodies in Water?

Dr *Garth*. If a strangled Body be thrown into the Water, the Lungs being filled with Air, and a Cord left about the Neck, 'tis probable it may float, because of the included Air, as a Bladder wou'd; but here is neither Cord, nor any Mark of it, nor nothing but a common Stagnation.

Mr Baron *Hatsell*. But you don't observe my Question, the Seaman said, that those that die at Sea, and are thrown overboard, if you don't tie a Weight to them, they will not sink, What say you to that?

Dr *Garth*. My Lord, no doubt in this they're mistaken. The Seamen are a superstitious People, they fancy that whistling at Sea will occasion a Tempest; I must confess I never saw any Body thrown overboard, but I have tried some Experiments on other dead Animals, and they will certainly sink; we have tried this since we came hither. Now, my Lord, I think, we have reason to suspect the Seaman's Evidence, for he saith, that threecore Pound of Iron is allowed to sink the dead Bodies, whereas six or seven Pounds wou'd do as well. I cannot think the Commissioners of the Navy guilty of so ill Husbandry, but the Design of tying Weights to their dead Bodies, is to prevent their floating at all, which otherwise wou'd happen in some few Days, therefore what I say is this, that if these Gentlemen had found a Cord, or the Print of it, about the Neck of this unfortunate Gentlewoman, or any Wound that had occasioned her Death, they might then have said something.

Mr *Cowper*. Do you apprehend that any quantity of Water, can enter into the Cavity of the Thorax.

Dr *Garth*. 'Tis impossible there should till the Lungs be quite rotten, there is no way but by the Lungs, which are invested with so strong a Membrane, that we cannot force Breath with our Blow-pipes through it, and there's a great Providence in such a Texture, for if there were any large Pores in this Membrane, the Air would pass thro' it into the Cavity of the Thorax, and prevent the Dilatation of the Lungs, and by consequence there would be an end of breathing.

Mr *Cowper*. Dr *Morley* pray be pleased to give your Opinion of these Matters.

Dr *Morley*. Those which seem to be Questions of greatest Moment, are whether there was a Necessity for this Body (if drown'd) to have a great quantity of Water in it, and whether Bodies thrown dead into the Water float: To the first I answer positively, that there is no absolute necessity, that she should have a great quantity of Water in her; and I think the Question Mr *Cowper* ask'd Dr *Coatsworth*, whether he had like to have been drowned by Accident or Design, suits with my Assertion; for if this Gentlewoman did voluntarily drown her self, she then in all likelihood threw her self into the Water, with a Resolution of keeping her Breath for a speedy Suffocation, and then if upon the first Endeavours for respiration (which naturally must be) she drew into her Lungs two Ounces of Water, it was the same Thing to drowning of her, as if there had been two Tun. We see the same Thing done by Divers in order to save themselves, as it happened to this unfortunate Gentlewoman, in her design of destroying her self: If a Diver before he comes to the Surface of Water should so far mistake his Power of holding his Breath, that he should be forced to endeavour Respiration, the little Water he drew into his Lungs by this Attempt to respire may drown him. We last Night drown'd a Dog, and afterwards dissected him, and found not a Spoonful of Water in his Stomach, and I believe about two Ounces in his Lungs, while we were doing this, we drowned another, and he lay at the bottom and did not float; no more would he have done, if he had been hang'd before thrown into the Water: We took him up, and opening him we found much about the same Quantity of Water in his Lungs, and little or none in his Stomach, they both froth'd at Nose and Mouth, because the Water coming into the little Bladders of the Lungs, and there meeting with Air, a Commotion arose between the Water and Air, which caused the Froth. To the second Question, I think if Bodies new killed swim, 'tis by Accident, for the Reason that Bodies swim, is because by Putrifaction they rarifie, by rarification they grow lighter, which brings them to the Top of the Water.

Mr *Cowper*. I desire to know if any Man of skil in Prudence would give his Opinion? —

Mr Baron *Hatsell*. That is not a proper Question.

Mr *Cowper*. Then I will ask it thus, do you think, Doctor, it is to be known 6 Weeks after if a Person was drowned.

Dr *Morley*. I think it is morally impossible.

Mr *Cowper*. Can there be any Water in the Thorax?

Dr *Morley*. By an Imposthume or some Violence to Nature possibly, but I think no otherwise.

Mr *Cowper*. Dr *Woollaston*, what is your Opinion if a Person be drowned, whether it can be discovered six Weeks after?

Dr *Woollaston*. My Lord, I think it is impossible to be known, for if there had been never so much Water in the Body at first, it could not lie there so long, but must of Necessity have forced its way out. We see in Persons that die of Dropsies, that the Water will work it self out (and sometimes burst the Body) before it is buried. And I am sure, if it do so in Dropsies where there are no visible Passages for it to get out at, it must do so much more in drowned Persons, where the Water lies only in the Stomach and Guts; and has nothing to hinder its working out, when it ferments, as it always doth.

Mr *Cowper*. Have you ever made any Experiments in that Nature, Doctor?

Dr *Woollaston*. I have made no Experiments, but I have seen a very particular Instance.

Mr Baron *Hatfield*. That is very well, pray let us hear it, Doctor.

Dr *Woollaston*. My Lord, about three Years since, I saw two Men that were drowned out of the same Boat. They were taken up the next Day after they were drowned. One of 'em was indeed prodigiously swell'd, so much that his Cloaths were burst in several Places of his Sides and Arms, and his Stockings in the Seams; his Hands and Fingers were strangely extended, his Face was almost all over Black; but the other was not in the least swelled in any Part nor discolour'd. He was as lank, I believe, as ever he was in his Life time, and there was not the least Sign of any Water in him, except the watry Froth at his Mouth and Nostrils. My Lord, this I saw my self, and took very particular notice of it.

Mr *Jones*. Did you see these Bodies taken out of the Water your self, Doctor?

Dr *Woollaston*. No, Sir.

Mr *Jones*. How long had they been taken out when you saw them?

Dr *Woollaston*. I enquired, and to the best of my Memory, it was that same Day.

Mr Bar. *Hatfield*. But what do you think Doctor, of a Person's being drowned, without taking in any Water.

Dr *Woollaston*. My Lord, what is taken in, is I believe chiefly at the Surface of the Water, when they open their Mouths for Breath, and the Water that rushes in, they are forced to drink down, to keep it from the Lungs. But when the Head is quite under Water, I don't think it is possible for any quantity to get down into the Stomach: Because it being Breath they open for, the very first Water they take in, would of Necessity fill the Lungs, and when the Breath is stop'd, I don't see how they can swallow.

Mr *Cowper*. Dr *Gelfrop*, what is your Opinion of this Matter?

Dr *Gelfrop*. I don't think they can make any Judgment of Persons being drowned after six Weeks time.

Mr *Cowper*. Can any Water get into the Thorax?

Dr *Gelfrop*. No, not unless the Lungs be putrified.

Mr *Cowper*. Is a great quantity of Water necessary to Persons dying by drowning.

Dr *Gelfrop*. No, only so much as may hinder Respiration.

Mr *Cowper*. Now, my Lord, I would call Mr *William Cowper*, and because of his Name, I must acquaint your Lordship, that he is not at all related to me, though I should be proud to own him if he were so, he is a Man of great Learning, and I believe most People admit him the best Anatomist in Europe. Mr *Cowper*. Pray will you give your Opinion of this Matter?

Mr *W. Cowper*. My Lord, I hope what I shall say, will not be suspected because I am of the same Name, for this Gentleman is an utter Stranger to me.

Mr Baron *Hatfield*. Pray, Mr *Cowper*, without any Apology, give your Opinion concerning Persons drowned, and how 'tis with them in their inward Parts.

Mr *W. Cowper*. I will give you a short Account, I hope to your Satisfaction too, my Lord. I will not only speak from Reason, but give you the Testimony of the Experiments I have made upon this Occasion. My Lord, I heard it made a mighty Argument, that this Person had no Water that seemed to flow out, but the Witnesses agree there was a Froth. Now, my Lord, it was not reasonable to expect any Thing but Froth. My Lord, had she been thrown into the Water, and made her utmost Efforts, which she would then have done to have saved herself, and been often buoyed up to the top of the Water, no doubt but she would have swallowed a considerable quantity of Water before she had been drowned; and it may be expected to flow from her, if her Head had been inclined downwards.

This is a Truth that no Man can deny, who is acquainted with any thing of this Nature, that when the Head of an Animal is under Water, the first Time it is obliged to inspire (or draw in Air) the Water will necessarily flow into its Lungs, as the Air would do if it were out of the Water: which quantity of Water (if the Dimensions of the Windpipe and its Branches in the Lungs be considered) will not amount to three Inches square, which is about three Ounces of Water. Nor is a greater quantity of Water in the Windpipe necessary to choak any Person, if we do but reflect what an Ebullition is caused by its meeting with the Air, which remained in the Lungs, whereby a small quantity of Water is converted into Froth, and the Channel of the Windpipe, and those of the Bronchia are filled with it; insomuch that no Air can enter the Lungs, for the Office of Respiration. After a Suffocation is thus commenced (I am apt to think) all regular Animal Actions are perverted, and particularly that of swallowing (or deglutition) and what Water flows into the Lungs at the instant or after this Suffocation, is from its own Weight; which is more or less as the Body is farther under, or nearer the Surface of the Water. My Lord, I don't speak this by way of Conjecture or Hypothesis, but I have made Experiments, which have suggested what I here offer. I shall by the by tell you how fallacious the first Experiment was, when I proposed to satisfy my self, whether a dead Body would float in Water; it happened, that a Spaniel, that had a great deal of long Hair was hanged for this Purpose, which I found swim on the Surface of the Water; but when I considered that his Hair might buoy him up, I caused another Dog, which had shorter and less Hair to be hanged

ed, and put into the Water, which (agreeable to what I had always conceived of a Human Body) sunk directly to the bottom. In order to satisfy my self what quantity of Water was necessary to enter the Body of an Animal, and cause a Suffocation in Water, I caused three Dogs when alive to be suddenly plunged under Water, till they were stifled, one was before I left London, the other two I made the Experiment on last Night, in the presence of Dr *Sloane* and Dr *Mortley*, and we could not compute there was more than three Ounces of Water in their Lungs, and none that we could perceive in their Stomachs.

Dead Bodies necessarily sink in Water, if no Distention of their Parts buoy them up; this Distention sometimes happens before Death, at other Times soon after, and in Bodies that are drowned after they lie under Water: This enlargement of them is caused by a Rarefaction of the Humours within the Cavities, and the Body necessarily rises to the Surface of the Water. Your Lordship may infer this from what the Seaman told you, and the great Weight they use to fasten to their Bodies that die of Diseases, was not of such use to sink them, as it was to prevent their floating afterwards; so that the Weight was necessary for those that were killed as well as those that died of Diseases.

It is so commonly known that the Contents in the Stomach of a dead Body are discharged by the Mouth and Nostrils so soon as it begins to ferment, and the Belly becomes distended, that 'tis no wonder that Water, if the greatest quantity of that had been in the Stomach, or any Thing else that was fluid, must be forced from thence six Weeks after Death.

My Lord, I can't but think it ridiculous to expect Water in the Cavity of the Thorax; it is such a Conceit as nothing in Nature can account for: Unless the Lungs had suffered some Aposthumation, or the like, whereby the Water may pass their outward Membranes into that Cavity.

Mr *Cowper*. With your Lordship's Favour, I now think it a proper time to make this Observation. The Witnesses that have given Evidence for the King, do say, they believe she was not drowned; but they have not pretended to say how she died otherwise.

Mr Baron *Hatsell*. That is very true.

Mr *Cowper*. Dr *Crell*, I desire you will be pleased to give an Account of this Matter.

Dr *Crell*. My Lord, I have little to say in this Affair, the Physicians that have been examined already, having made it out, that Persons who are drowned may have but little Water in their Bodies; but I have taken what Pains I could, upon so short Warning, and I will tell you the Opinion of several eminent Authors. My own Opinion is, That a very small quantity of Water, not exceeding three Ounces, is sufficient to drown any Body; and I believe that the Reason of the Suffocation, or of any Persons being stifled under Water, is from the intercepting of the Air, that the Person can't breathe, without which he cannot live. Now my Lord I will give you the Opinion of several ancient Authors.

Mr Baron *Hatsell*. Pray Doctor tell us your own Observations.

Dr *Crell*. My Lord, it must be reading as well as a Man's own Experience, that will make any one a Physician; for without the reading of Books of that Art, the Art it self cannot be attained

to; besides, my Lord, I humbly conceive, that in such a difficult Case as this, we ought to have a great Deference for the Reports and Opinions of Learned Men: Neither do I see any Reason why I should not quote the Fathers of my Profession in this Case, as well as you Gentlemen of the Long-Robe quote *Cook* upon *Littleton* in others; but I shall not trouble the Court long, I shall only insist upon what *Ambrose Parey* relates in his Chapter of Renunciations. He was chief Surgeon to *Francis* the First, employed by him in most of his Sieges and Battles against the Emperor *Charles* the Fifth, and consequently must observe, and could not be ignorant of such like Casualties in such great Bodies of Men. He tells us, that the certain sign of a Man's being drowned, is an Appearance of Froth about his Nostrils and Mouth. Now, my Lord, I think, that every one of the King's Evidences observed it in the present Case, and a Woman swore, that she saw her purge at the Nose; which could not be, as he declares, if the Person had been strangled, or otherwise killed before.

As to the quantity of Water requisite to drown a Person, I believe that three Ounces, or less, is enough, to wit, as much as will fill the Windpipe, and so stop the breathing of the Person drowning. I am not now to descend upon Matter of Fact, whether she drowned her self; but my firm Opinion is, that she was drown'd; for though sometimes, not always, there is Water found in the Bodies of such Persons, yet where-ever it be, besides the Lungs, it is superfluous as to this End, and accidental upon violent strugglings.

Mr *Cowper*. I desire Mr *Harriot* may be asked what Observations he hath made concerning this Matter.

Mr *Harriot*. My Lord, when I was a Surgeon in the Fleet, I made it always my Observation when we threw Men over-board that were killed, some of them swam, and some sunk; and I remember particularly, when the *Sandwich* was burnt, we saw abundance leap off from on Board and they sunk directly, but in a little time I observed some swim again.

Mr Baron *Hatsell*. When a dead Body is thrown over-board, does it sink or swim?

Mr *Harriot*. I always observed that it did sink; when we were in the Channel, and in time of Peace, we never threw any over-board but we put some Weight to them, but it was not to make them sink, but for decency sake, that they might not be driven to Shore when they began to float.

Mr *Cowper*. I desire that Mr *Bartlet* may be ask'd to the same Purpose.

Mr *Bartlet*. I have been in several of the King's Ships of War that have been disabled and forced to lye by, in several Engagements between the *French* and *English*, and I never saw any Bodies float either of the Men that were killed in our Ship, or in the Ships that have been near us, I have not seen a Body upon the Surface of the Water.

Mr Baron *Hatsell*. Another Witness said, that after an Engagement he saw them swimming.

Mr *Bartlet*. I can't tell what he saw, my Lord, but what I say I am ready to make Oath of.

Mr *Cowper*. Dr *Camlin*, will you please to give my Lord and the Jury an Account whether you were employed by the Coroner's Inquest to view the Body of Mrs *Stout*, after she was drowned, and the Marks upon it, and tell my Lord your Opinion of it.

Mr *Camlin*. I was sent for by the Coroner and the Jury that sat upon the Body of Mrs *Sarah Stout*, the Coroner being then at her Mother's House, and the Coroner desired Mr *Dimsdale* and me to go and take notice of the Marks upon her Neck, and upon her Breast; we viewed all about, and perceived a Mark under her left Ear, we looked to see if there was any Contusion, and we perceived a settlement of Blood upon her Breast, and another upon her Arm; and when we came back, Mr *Dimsdale* made the Report, I stood by him at that time, That it was only a common Settlement.

Mr *Cowper*. Pray, Mr *Camlin*, was the Spot above or below the Collar-bone.

Mr *Camlin*. Below the Collar-bone.

Mr *Cowper*. What did Mr *John Dimsdale* say then, concerning this Matter?

Mr *Camlin*. I understood that he was of Opinion that it was only a common Stagnation of Blood, that happens in the Case of drowned People.

Mr Baron *Hatsell*. Did he say so to the Jury?

Mr *Camlin*. Mr *Dimsdale* spake for us both, and I understood him that it was a Stagnation that did commonly happen to drowned People, and that was my Opinion of it too.

Mr *Cowper*. And that you agreed to be your Report.

Mr *Camlin*. Yes.

Mr *Cowper*. Pray, Mr *Camlin*, was you present when the Child which was drowned in the same Place was taken up?

Mr *Camlin*. Yes, it was taken up some time after, near the same Place as I was told, and there was more and greater Signs of the Stagnation of Blood, on the Body of this Child, than on the Body of Mrs *Stout*, the Child's Face was black and discolour'd.

Mr Baron *Hatsell*. How old was the Child?

Mr *Camlin*. Between 10 and 11, as near as I could guess.

Mr Baron *Hatsell*. Had Mrs *Stout* any Signs of being strangled when you saw her first.

Mr *Camlin*. Nothing at all that I could discern.

Mr *Cowper*. My Lord, I will give you no more trouble upon this Head; I shall go now to the next Thing I opened, and shall prove substantially, that this Gentlewoman is not only more to be suspected to have murder'd her self, than to be murdered by any Body, but 'tis almost a Certainty, that she was the Cause of her own Death. Mr *Firmin* I would begin withal, if he be here.

(But he not presently appearing.)

Mr *Cowper*. Then my Lord if you please, I will desire Mr *Bowd* in the mean time to give your Lordship an Account of what he knows of the Melancholy of this Gentlewoman.

Mr *Bowd*. 'Twas much about this time twelve Month, I had some Business in London, and she sent to me, to know when I should go to London, and I waited upon her before I went, and she desired me to do some Business for her, and when I returned I acquainted her with what I had done, and sitting together in the Hall, I asked her what's the Matter with you? Said I, there's something more than ordinary, you seem to be melancholy. Saith she, you are come from London, and you have heard something or other: Said I, I believe you are in Love. In Love! said she,

Yes, said I, *Cupid* that little Boy hath struck you home; She took me by the Hand, truly, said she, I must confess it, but I did think I should never be guilty of such a Folly; and I answered again, I admire that should make you uneasy; if the Person be not of that Fortune as you are, you may, if you love him, make him happy, and your self easy. That can't be, saith she, the World shall not say I change my Religion for a Husband, and some time after I had been in London, having bought som *India* Goods, she came to my Shop and bought some of me for a Gown, and afterwards she came to pay me for it, and I asked her, how do you like it, have you made it up? No, said she, and I believe I shall never live to wear it.

Mr *Cowper*. Pray how long is it since?

Mr *Bowd*. It was about February or January before her Death. I asked her why she did not come to my House oftener, she said she had left off all Company, and applyed her self to reading, and Company was indifferent to her.

Mr *Cowper*. Mr *Firmin* will you please to inform my Lord, and the Jury, what you know of Mrs *Sarah Stout*'s being melancholy?

Mr *Firmin*. I did observe about three quarters of a Year ago that she was melancholy; I can't say that she acknowledged her self to be so, but I have charged her with it.

Mr *Cowper*. Did you believe she was melancholy when you charged her with it?

Mr *Firmin*. Yes, I did.

Mr *Cowper*. Mrs *Bendy*, if you please to inform the Court what you know of this Gentlewoman's being melancholy.

Mrs *Bendy*. Sir, I can say she always acknowledged her self extreamly melancholy, and when I have asked her how she did, she has said pretty well in Health, but so much troubled with melancholy she could not tell what to do with her self.

Mr *Cowper*. Did she tell you any Thing particularly.

Mrs *Bendy*. It disordered her so, she said, that she had rather have chosen Sicknefs than so much disorder in her Mind.

Mr *Cowper*. Have you any Thing more to recollect?

Mrs *Bendy*. Nothing but what I heard from Mrs *Cowper*.

Mr Baron *Hatsell*. How old was this Gentlewoman?

Mrs *Bendy*. About Six and Twenty.

Mr *Cowper*. Call Mrs *Jane Low*, *Martha Grub*, and Mrs *Cowper*. Mrs *Low*, pray do you inform my Lord and the Jury, what you know concerning the Melancholy of Mrs *Sarah Stout*, and when you first observed it.

Mrs *Low*. It was a Week before *Whitsontide* was Twelve-month.

Mr *Cowper*. What did she say then?

Mrs *Low*. She often complained to me that she was very melancholy and uneasy, one time particularly, as we were walking together in the Fields, I asked her the Occasion of it, and she told me that was a secret; but she said, she led a very melancholy Life; said I, I am apt to believe you are in Love, she did not disown it, and with a little more speaking, she own'd she was; I asked her who the Person was, she said, that should be a secret, but it would end her Days; said I, a Woman of your Fortune may command any Body, she shook her Head, and said no; perhaps, said I,

he may not be a Quaker, and you may be afraid of disobliging your Mother; but if you tell your Mother that your Life depends upon it, your Mother (rather than lose her only Child) will consent to it; she said no, it was a Person she could not marry, and shook her Head and looked very melancholy.

Mr *Copper*. When was this?

Mrs *Low*. This was the Week before *Whitsontide*, and in *Whitson*-week she saw me often, and said she would take her full swing of Melancholy when her Mother was away, and she used to lie a Bed that Week.

Mr *Copper*. Have you observed any Melancholy in her since?

Mrs *Low*. Yes, at several times.

Mr *Copper*. Do you remember any Thing of an intermitting Fever?

Mrs *Low*. Yes, she told me her Melancholy had occasioned an intermitting Fever, and I mentioned Dr *Eales* to her, and she said her Distemper lay in her Mind, and not in her Body, and she would take nothing, and the sooner it did kill her the better.

Mr *Copper*. Did she say any Thing of her Disposition to Reading?

Mrs *Low*. She said nothing delighted her now, neither reading nor any thing else.

Mr *Copper*. My Lord, *Sarah Walker* when I asked her if she did not observe the Melancholy of her Mistress, and whether she had not said that her Mistress had been melancholy, denied that she had said so, pray have you heard her say any thing to that Purpose.

Mrs *Low*. I have often ask'd her how her Mistress did, and she would answer, very much indisposed, but not otherwise.

Mr *Copper*. Mrs *Copper*, what do you know of Mrs *Scout*'s Melancholy.

Mr *Copper*. My Lord, this is my Brother's Wife.

Mrs *Copper*. About Spring was twelve-month, she came up to *London*; and I believe it was not less than once or twice a Week, I saw her; and I never had an opportunity to be an Hour alone with her at any time, but I perceived something of her Melancholy. I have asked her the Reason of it several times, and sometimes she seemed to dislike her Profession, being a Quaker, and sometimes she would say that she was uneasy at something that lay upon her Spirits, which she should never out-live, and that she should never be well while she was in this World; sometimes I have endeavoured to persuade her out of it seriously, and sometimes by raillery, and have said are you sure you shall be better in another World, and particularly I remember I have said to her, I believe you have Mr *Marshall* in your Head, either have him or do not trouble your self about him, make your self either easy one way or another, and she hath said no, in an indifferent way, I cannot make my self easy; then I have said marry him, no saith she, I can't. Sometimes with Company she would be diverted, and had frequently a way of throwing her Hands, and shewed great Disturbance and Uneasiness. This Time twelve-month, at the Summer Assizes, I was here six Days, and I saw her every Day, and one time among other Discourse, she told me she had received great Disturbance from one *Theophilus*, a Waterman and a Quaker, who coming down to old Mrs *Scout*, that was then lame, she had gathered about 20 or 30 People together to hear him preach, and she said

he directed his Discourse to her, and exasperated her at that rate, that she had thoughts of seeing no Body again, and said, she took it heinously ill to be so us'd, and particularly that he told her that her Mother's falling outwardly in the Flesh, should be a warning that she did not fall inwardly, and such canting Stuff as she called it; and she said, that *Theophilus* had so used her, that she was ashamed to shew her Head. Another time the same Week, she had a Fever, and she said she was in great Hopes it would end her Days, and that she neglected her self, in doing those Things that were necessary for her Health, in hopes it would carry her off, and often wish'd her self dead; another time, which I think was the last time I saw her, was at my Sister's Lodgings, and I sent for her to drink a Dish of Tea with us, and she came in a great toss and melancholy; said I, What is the Matter you are always in this Humour, saith she, I can't help it, I shall never be otherwise; saith my Sister, for God's sake keep such Thoughts out of your Head as you have had, don't talk any more of throwing your self out of Window; saith she, I may thank God that ever I saw your Face, otherwise I had done it; but I can't promise I shall not do it.

Mr Bar. *Hatsell*. What is your Name, Madam?

Mr *Copper*. 'Tis my Brother's Wife, my Lord. I desire Mrs *Toler* may give an account what she knows as to her being Melancholy.

Mrs *Toler*. My Lord, she was once to see me, and she look'd very melancholy, and I asked her what was the matter, and she said something had vex'd her that Day, and I asked her the cause of it, and she stop'd a little while, and then said, she would drown her self out of the way.

Mr Bar. *Hatsell*. How long ago was this?

Mrs *Toler*. About three quarters of a Year ago.

John *Scout*. I desire to know whether she has always said so, or not told another Story.

Mrs *Toler*. I told you no Story; it may be I did not say so much to you, but I said she talk'd something of drowning. I have been with her when Mr *Copper*'s Conversation and Name has been mention'd, and she said she kept but little Company, that sometimes she went to Mrs *Lowe*'s, and that she kept none but civil modest Company, and that Mr *Copper* was a civil modest Gentleman, and that she had nothing to say against him.

Mr *Copper*. This is Mrs. *Eliz. Toler* my Lord.

Mrs. *Eliz. Toler*. My Lord, she came to see me sometime after *Christmas*, and seem'd not so chearful as she us'd to be; said I, What is the matter? Why are you not so merry as you us'd to be? Why do you not come often to see me? Saith she, I don't think to go abroad so much as I us'd to do, and said, it would be as much a rarity to see her go abroad as to see the Sun shine by Night.

Mr *Copper*. Mrs. *Grub* what do you know concerning Mrs. *Scout*'s pulling out a Letter at her Brother Mr *John Scout*'s? give an account of it, and what she said upon that occasion.

Mrs *Grub*. I have a Daughter that lives at *Guernsey*, and she sent me a Letter, and I pray'd Mrs *Sarah Scout* to read the Letter, and while she was reading it, I cry'd; saith she, why do you cry? said I, because my Child is so far off; said she, if I live till Winter is over, I will go over Sea as far as I can for the Land.

Mr Bar. *Hatsell*. What was the occasion of her saying so.

Mrs *Grub*. I was washing my Master's Study, Mrs *Sarah Stout* came in, and I had a Letter from my Daughter at *Guernsey*, and I pray'd Mrs *Sarah Stout* to read it, and she read my Letter, and I cry'd, and she ask'd me why I cry'd; said I, because my Child is so far off; saith she, if I live to Winter, or till Winter is over, I will go over Sea as far as I can for the Land.

Mr *Cowper*. Now my Lord, to bring this matter of Melancholy to the point of time, I will call one Witness more, who will speak of a remarkable Instance that happen'd on Saturday before the Monday when she did destroy her self.

Call Mr *Joseph Taylor*. Pray will you inform the Court and Jury of what you observ'd on Saturday before the Monday on which Mrs *Stout* destroy'd her self.

J. *Taylor*. I happen'd to go in at Mr *Firmin's* Shop, and there she sat the Saturday before this Accident happen'd the former Assizes, and I was saying to her, Madam, I think you look strangely discontented, I never saw you dress'd so in my Life; saith she, the dress will serve me as long as I shall have occasion for a Dress.

Mr *Cowper*. In what posture did she appear in the Shop?

J. *Taylor*. She appear'd to be very Melancholy.

Mr *Cowper*. What part of her dress did you find fault with?

J. *Taylor*. It was her Head-cloaths.

Mr. *Cowper*. What was the matter with them?

J. *Taylor*. I thought her Head was dawb'd with some kind of Grease or Charcoal.

Mr *Cowper*. What Answer did she make?

J. *Taylor*. She said they would serve her time.

Mr *Cowper*. As to this piece of Evidence, if your Lordship pleases, I desire it may be particularly taken notice of, it was her Head-dress that she said would serve her time.

Pray Mr *Taylor* was you at Mr *Barefoot's* when I came in there on Monday Morning.

J. *Taylor*. Yes, I went up Stairs with you into your Chamber.

Mr. *Cowper*. Pray what did I say to Mr *Barefoot*?

J. *Taylor*. You ask'd him if they had receiv'd a Letter from your Brother, and he said, no, not that he knew of, but he would call his Wife, and he did call his Wife, and ask'd her if she had receiv'd a Letter, and she said no; then said you, I will take up this Lodging for mine, and accordingly you went up Stairs, and I went with you, and staid there about four times as long as I have been here.

Mr *Cowper*. Are you very sure that I said I would take up my Lodging there?

J. *Taylor*. Yes, I am very sure of it.

Mr Bar. *Hatsell*. What time of the Day was it?

J. *Taylor*. 'Twas the fore part of the Day; while I was there, my Lord, Mrs *Sarah Stout's* Maid came to invite Mr *Cowper* to her House to Dinner.

Mr *Cowper*. Did you know any thing of my sending to the Coffee-house.

J. *Taylor*. You sent to the Coffee-house for your things.

Mr Bar. *Hatsell*. Did Mr *Cowper* use to lie at Mr *Barefoot's*?

J. *Taylor*. His Brother did, but I do not know whether this Gentleman did; but at that time he took up that place for his Lodging, and said it was all one, my Brother must pay for't, and therefore I will take it up for my self.

Mr *Cowper*. Call Mrs *Barefoot* and her Maid.

(But they not presently appearing)

Mr *Cowper*. My Lord, in the mean time I will go on to the other part of my Evidence, in opening of which I shall be very short.

My Lord, my Wife Lodging at *Hertford*, occasion'd me frequently to come down. Mrs *Stout* became well acquainted with her; when Business was over in the long Vacation. I resided pretty much at *Hertford*, and Mr *Marshall* came down to pay me a visit, and this introduc'd his Knowledge of Mrs *Stout*; when she was first acquainted with him she receiv'd him with a great deal of Civility and Kindness, which induc'd him to make his Addresses to her, as he did, by way of Courtship. It happen'd one Evening, that she and one Mrs *Crook*, Mr *Marshall*, and my self, were walking together, and Mr *Marshall* and Mrs *Crook*, going some little way before us, she took this Opportunity to speak to me, in such Terms I must confess surpriz'd me: Says she, Mr *Cowper*, I did not think you had been so dull; I was inquisitive to know in what my dullness did consist: Why, says she, do you imagine I intend to Marry Mr *Marshall*, I said I thought she did, and that if she did not, she was much to blame in what she had done; no, says she, I thought it might serve to divert the Censure of the World, and favour our Acquaintance. My Lord, I have some original Letters, under her own Hand which will make this fully manifest, I will produce the Letters, after I have call'd Mr *Marshall*. Mr *Marshall*.

Mr. *Marshall*. If your Lordship pleases, it was in the long Vacation, I came down to spend a little of my leisure time at *Hertford*, the reason of my going thither, was because Mr *Cowper* was there at that time. The first Night when I came down, I found Mrs *Sarah Stout* Visiting at Mr *Cowper's* Lodgings, and there I first came acquainted with her; and she afterwards gave me frequent Opportunities of improving that Acquaintance; and by the manner of my Reception by her, I had not reason to suspect the use it seems I was designed for; when I came to Town, my Lord, I was generally told of my Courting Mrs *Stout*, which I confess was not then in my Head, but it being represented to me as a thing easily to be got over, and believing the Report of the World as to her Fortune, I did afterwards make my Application to her, but upon very little Tryal of that sort, I receiv'd a very fair Denial, and there ended my Suit: Mr *Cowper* having been so friendly to me as to give me notice of some things, that convinc'd me I ought to be thankful I had no more to do with her.

Mr Bar. *Hatsell*. When did she cast you off?

Mr *Marshall*. I can't be positive as to the time my Lord, but it was in answer to the only serious Letter I ever writ to her; as I remember, I was not over importunate in this Affair, for I never was a very violent Lover.

Mr Bar. *Hatsell*. Well, but tell the time as near as you can.

Mr *Marshall*. I believe it was the second or third Time I came down to *Hertford*, which is about a Year and half since; and during the whole of my Acquaintance with her, I never till then found her averse to any Proposal of mine; but she then telling me her Resolution was not to comply with what I desired, I took her at her Word, having partly by my own Observation, but more by Mr *Cowper's* Friendship, been pretty well able to guess at her meaning.

Mr *Cowper*. Because what you say may stand confirmed beyond contradiction, I desire you to say whether you have any Letters from her to your self.

Mr *Marshall*. Yes, I have a Letter in my Hand, which she sent me upon occasion of some Songs I sent her when I came to Town, which she had before desired of me, and this is a Letter in Answer to mine, 'tis her Hand-writing, and directed to me.

Mr *Baron Hatsell*. How do you know 'tis her Hand writing?

Mr *Marshall*. I have seen her write, and seen and received several Letters from her.

Mr *Cowper*. Pray shew it Mr *Beale*.

Mr *Beale*. I believe it to be her Hand I have seen her write, and have a Receipt of hers.

Clerk of Arr. 'Tis directed to Mr *Thomas Marshall*, at *Lyons-Inn*, and dated *Sept. 26, 1697*.

Sept. 26, 1697.

SIR,

Yours came very safe, but I wish you had explained your Meaning a little more about the Accident you speak of, for I have been puzzling my Brains ever since, and without I shall set my self to conjuring, I cannot imagine what it should be, for I know of nothing that happened after you went away, nor no Discourse about you, only when we were together, the Company would sometimes drink your Health, or wish you had been there, or the like. So that I fancy it must be something Mr — has invented for diversion; tho' I must confess we have a sort of People here, that are inspired with the gift of foreknowledge, who will tell one as much for nothing as any Astrologer will have a good Piece of Money for, but to leave jesting, I cannot tell when I shall come to London, unless it be for a Night and away, about some Business with my Brother, that I must be obliged to attend his Motions; but when I do, I shall remember my Promise, although I do not suppose you are any more in earnest than my self in this Matter. I give you thanks for your Songs, and your good Wishes, and rest your loving Duck.

Mr *Cowper*. Have you any more Letters?

Mr *Marshall*. Yes, I have another Letter here, but before 'tis read I think 'twill be proper to give the Court an Account of the Occasion of its being writ. I waited on Mrs *Stout* one Evening at her Lodgings in *Houndsditch*, and at our parting she appointed to meet me the next Day, and to excuse her not coming according to that Appointment, she sent me this Letter.

Clerk of Arr. 'Tis directed to Mr *Thomas Marshall*, tis without date.

Mr *Marshall*,

I Met unexpected, with one that came from H——d last Night, who detained me so long with relating the most notorious Invention, and Lies that are now extant amongst that People, that I could not possible come till it was late, and this Day was appointed for Business, that I am uncertain when it will be finished; so that I believe I cannot see you whilst I am in Town. I have no more at present, but that I am your obliged Friend.

Mr *Cowper*. Now, my Lord, if your Lordship please, I proceed to shew you, that I went not so much voluntarily, as prest by her to come to this House, and for that I will produce one Letter from her to my self; and, my Lord, I must a little inform you of the Nature of this Letter. It is on

the outside directed to Mrs *Jane Ellen*, to be left for her at Mr *Hargrave's* Coffee-House. For her to direct for me at a Coffee-house might make the Servants wonder, and the Post-man might suspect, and for that reason she directed it in that Manner. There was Mr *Marshall* by when I received it, and I can prove the Hand by Mr *Beale*.

Mr *Marshall*. My Lord, I verily believe I was by, and that Mr *Cowper* shewed me this Letter immediately on Receipt of it, as he had done several others from the same Hand.

Clerk of Arr. This is directed for Mrs *Jane Ellen*; 'tis dated *March* the 5th, without any Year.

SIR,

March the 5th.

I Am glad you have not quite forgot that there is such a Person as I in being but I am willing to shut my Eyes, and not see any Thing that looks like Unkindness in you, and rather content my self with what Excuses you are pleased to make, than be inquisitive into what I must not know; I should very readily comply with your Proposition of changing the Season, if it were in my Power to do it, but you know that lies altogether in your own Breast: I am sure the Winter has been too unpleasant for me to desire the continuance of it. And I wish you were to endure the sharpness of it, but for one Hour, as I have done for many long Nights and Days, and then I believe it would move that rocky Heart of yours, that can be so thoughtless of me as you are: but if it were designed for that End. to make the Summer the more delightful, I wish it may have the Effect so far as to continue it to be so too, that the Weather may never over-cast again; the which if I could be assured of, it would recompence me for all that I have ever suffered, and make me as easie a Creature as I was the first Moment I received Breath; when you come to H—— pray let your Steed guide you, and don't do as you did the last Time; and be sure order your Affairs to be here as soon as you can, which cannot be sooner, than you will be heartily welcome to your

very sincere Friend.

For Mrs *Jane Ellen* at Mr *Hargrave's* near *Temple-Bar*, London.

Mr *Cowper*. Though 'tis directed to Mrs *Jane Ellen*, it begins in the Inside, Sir; and 'tis dated the 5th of *March* next before the 13th.

Mr *Bar. Hatsell*. What *March* was it?

Mr *Marshall*. I kept no Account of the Time, but I am very positive by the Contents, that Mr *Cowper* shew'd me this Letter, and I read it, but by my now Remembrance, it should be longer since than *March* last.

Mr *Cowper*. It was *March* last. That which will set Mr *Marshall's* Memory to rights is this other Letter which I received at the *Rainbow*, when he was by, and he read it, and it importuning me to a Matter of this Kind, I did produce it to my Brother and him, they both knew of it, and both read it, and that will refresh his Memory concerning the Date of the other.

Mr *Marshall*. My Lord, I was in the Coffee-house with Mr *Cowper* when he received this Letter, and he afterwards shew'd it to Mr *William Cowper* at the *Covent-Garden Tavern*, when I was by.

Clerk of the Arr. This is dated the 9th of *March*, and directed to Mrs *Jane Ellen*, at Mr *Hargrave's*.

March 9.

SIR,

I Writ to you by Sunday's Post, which I hope you have received; however as a Confirmation, I will assure you I know of no Inconvenience that can attend your cohabiting

habiting with me, unless the Grand Jury should there-upon find a Bill against us, but I won't fly for't, for come Life, come Death, I am resolved never to desert you, therefore according to your Appointment, I will en-pell you, and till then I shall only tell you, that I am,

For Mrs Jane Ellen at
Mr Hargrave's near
Temple-Bar, London.

Yours &c.

Mr Cowper. If your Lordship please, I will further prove this Letter by my Brother.

Mr W. Cowper. I can bear my Brother Witness, that when he has been advised to make these Letters Part of his Defence, he has expressed great unwillingness, and has said, nothing but the Life of these Gentlemen could incline him to it.

My Lord, all I can say to this Matter is this, I do remember, that when she was one Time in London, I think it was about a Year and an half since, I am not positive as to the Time, but when she was in London, my Brother came in the Morning to my Chamber in the Temple, and after some Discourse, he told me he had received a Letter from Mrs Stout that Day, wherein she said, she intended him a Visit at his Chamber that Afternoon; he told me at the same Time, that his Friend Mr Marshal had some Thoughts of her, and therefore for that, as well as other Reasons, he would decline receiving the Visit intended him; and upon consideration, this was the Method agreed upon: At that Time I lived with my Father in Hatton-Garden, and this Gentlewoman having writ in the same Letter I now speak of, that she designed to dine there, and to come from thence in the Afternoon; says my Brother, you may casually, as it were, take occasion to say at Dinner, that my Business obliges me to go to Deptford in the Afternoon, as in good earnest it did, as he then told me, and from that she may take a hint of my not being at home, and so save her self the Disappointment of coming to my Chamber; I told him, I would find an opportunity of doing it if I could. At Dinner my Father hapened to ask me, as he often did, when I saw my Brother; I took this hint, and said, I had seen him at my Chamber in the Morning, and that he was gone to Deptford that Afternoon about some Law Business. My Lord, Mrs Stout was then at the Table. I no sooner said it, but I observ'd she chang'd colour presently, and rose with her Napkin, and went into the Back yard, and we saw her through a Sash-window fall into a Woman's Fit of swooning, and they gave her the Assistance that is usual in such Cases.

My Lord, the next Thing I can speak to is this, the Parliament sitting late the Friday before the Monday of the last Assizes at Hertford, I came late from Dinner, I had din'd about seven a Clock, as I remember, and having occasion to speak with my Brother, I found him out by enquiry at the Covent-Garden Tavern, and there was Mr Marshal of Lions-Inn with him. I had not drunk above a Glass or two of Wine, but my Brother began with me, and said, I seldom trouble you with Affairs of mine, but now I do not know well how to avoid it. I have received an importunate Letter, which I will shew you, it came from a Lady whose Name I believe you will guess; so he pull'd it out of his Pocket, and I read it so often, because of the oddness of the Expression, that I can say, I am sure this is the very Letter he shew'd me at the Covent-Garden Tavern, the Friday before the last Assizes; saith he, the Occasion of my shewing it, is not to

expose a Woman's Weakness, but I would not willingly lie under too many Obligations, nor engage too far; not on the other Hand, would I be at an unnecessary Expence for a Lodging. Upon this Subject there was some Discourse I think Foreign to this purpose, and therefore I would not trouble your Lordship with the Repetition of it; that which is Material is this, I did undertake to write to Mr Barefoot to dispose of his Lodgings, where I us'd to be at the Time of the Assizes, and my Brother with me. I said I would write the next Day, being Saturday, but when I should have writ, it was very late, and I was weary, being then tied down to the Business of Parliament, and partly for that Reason, and partly in Point of Discretion, which I had upon my second Thoughts, that 'twould be better for my Brother's Business to be at Mr Barefoot's, which is near the Court, and in the Market-place. I did neglect writing; and though I thought of it about eleven a Clock, yet as I said, partly for one Reason, and partly for the other, I did not write that Time. My Lord, my Brother could know nothing of this Matter, for I did not see him from the Friday he shew'd me the Letter, till he went to the Assizes, so that he could not know before he was at Hertford, that I had not writ. My Lord, I say as to this Letter I am sure he shew'd me the Friday next before the last Assizes.

Mr Bar. Hatfell. Let me see that Letter, (which was shewn his Lordship.)

Mr Cowper. My Lord, one or two of the Jury seem to question whether the Letters are sufficiently prov'd; for their Satisfaction, I will further prove them. Call Mr John Beale, William Oker, and Mrs Low. My Lord, Mr Beale is one of their own Sect.

(The Witnesses prov'd her Hand.)

Jury. My Lord, we are satisfied.

Mr Bar. Hatfell. I believe you may ask her Mother, she will tell you whether it be her Daughter's Hand.

Mrs Stout. How should I know! I know she was no such Person, her Hand may be counterfeited.

Mr Bar. Hatfell. But if they were written in a more sober Stile, what would you say then?

Mrs Stout. I shan't say it to be her Hand, unless I saw her write it.

Then the Letter was shew'd to Mr Stout.

Mr Stout. 'Tis like my sister's Hand.

Mr Bar. Hatfell. Do you believe it to be her Hand?

Mr Stout. No, I don't believe it, because it don't suit her Character.

Mr Bar. Hatfell. But do you think she might not conceal from you what were her inward Thoughts?

Mr Stout. Not in such a Degree as this.

Mr Cowper. Call Mrs Barefoot and her Maid. I desire they may be ask'd what they know about my taking of Lodgings at their House.

Mr Bar. Hatfell. That is taken for granted.

Mrs Barefoot. When you came to my House, you ask'd me, if I had receiv'd a Letter from your Brother, and I told you no.

Mr Cowper. What did I say to that?

Mrs Barefoot. Then you ask'd me if I expected you, and I told you yes, by reason I had heard nothing from you.

Mr Cowper. Where did I lodge that Night?

Mrs.

Mrs Barefoot. I had prepar'd the Lodging before you came, expecting you or Mr Cowper your Brother.

Mr Cowper. And did I come?

Mrs Barefoot. Yes, as you us'd to do.

Mr Cowper. Did I send for my Things from the Coffee-house?

Mrs Barefoot. Yes, you did, and I carried them up into your Chamber as I us'd to do.

Mr Bar. Hatsell. Where did Mr Cowper dine that Day?

Mrs Barefoot. Mrs Stout sent her Maid to desire him to come to Dinner at their House, whether he went thither or no I can't say, but he went out.

Mr Cowper. What Time did I come into my Lodging at Night?

Mrs Barefoot. It was a little after Eleven.

Mr Cowper. You are sure I came in a little after Eleven.

Mrs Barefoot. Yes.

Mr Jones. By what Clock? By the Town Clock?

Mrs Barefoot. Yes.

Mr Cowper. Did I go out any more that Night?

Mrs Barefoot. No.

Mr Cowper. Is your Maid there?

Mrs Barefoot. Yes.

Mr Bar. Hatsell. What is your Name?

Mrs Hanwell. Mary Hanwell.

Mr Cowper. Pray what Time was it I came to my Lodging?

Mrs Hanwell. You came in a little after eleven a Clock.

Mr Cowper. Are you very positive in that?

Mrs Hanwell. Yes, I am very positive.

Mr Cowper. What was done before I went to Bed?

Mrs Hanwell. My Lord, I went up and made a Fire, and then I came down again, and then I went up and warm'd Mr Cowper's Bed, and then he desir'd another Blanket, and I came down for it; and all this took up a considerable Time; and Mr Cowper was in Bed before twelve a Clock.

Mr Cowper. Did I go out again that Night?

Mrs Hanwell. No, you went out no more.

Mr Cowper. Now, if your Lordship pleases, I would explain that Part of *Sarah Walker* the Maid's Evidence; where she says, her Mistress ordered her to warm the Bed, and I never contradicted it: Your Lordship observes the Words in the last of the two Letters, *No Inconvenience can attend your cohabiting with me; and afterwards, I won't Fly for it: For come Life come Death I am resolv'd, and so on,* — I had rather leave it to be observed than make the Observation my self, what might be the Dispute between us at the Time the Maid speaks of. I think it was not necessary she should be present at the Debate; and therefore I might not interrupt her Mistress in the Orders she gave; but as soon as the Maid was gone, I made use of these Objections; I told Mrs Stout, by what Accident I was obliged to take up my Lodging at Mr Barefoot's, and that the Family was sitting up for me: That my staying at her House under these Circumstances, would in probability provoke the Censure of the Town and Country; and that therefore I could not stay, whatever my Inclination otherwise might be; but, my Lord, my Reasons not prevailing, I was forc'd to decide the Controversie by going to my Lodging, so that the Maid may swear true, when she says I did not contradict her Orders.

Mr Bar. Hatsell. I believe you have done now Mr Cowper?

Mr Cowper. No my Lord, I have more Evidence to give. Call *Elizabeth Spurr*.

If your Lordship pleases to observe, I have already proved by two Witnesses that I was actually at Mr Barefoot's a little after Eleven; so that if I was to rest upon this Proof, here is not the least Article of Time, in which it can be supposed I was employ'd in this Matter: But, says *Sarah Walker*, the Maid, to obviate (I presume) this Evidence of mine, our House-Clock went faster than the Town-Clock: Now to answer this too, I shall further prove to your Lordship, that before I came to my Lodging, I was at the *Glove and Dolphin* Inn, where I had a little Account of about six or seven Shillings, as I remember, for Horse-keeping, and which I then paid.

Mr Cowper. Do you remember my coming to your House, and at what Time?

E. Spurr. The Clock struck Eleven, just as you came into the Door.

Mr Cowper. How long did I stay at the *Glove*?

E. Spurr. About a quarter of an Hour.

Mr Cowper. How far is it from the *Glove and Dolphin* to Mrs Stout's House?

E. Spurr. About a quarter of a Mile, or not quite so far.

Mr Cowper. Call *Mary Kingitt*; and *George Man*, (who not then appearing) in the mean Time, I would observe to your Lordship, That to go from Mrs Stout's House to the Place where she was drown'd, and to return from thence to the *Glove and Dolphin*, will take up at least half an Hour, as I shall prove; and then the Matter will stand thus: Says *Sarah Walker*, you went about a quarter after Eleven; but our Clock went half an Hour too fast: Then according to her Account, I went three quarters after Ten by the Town-Clock; and if it requires, (as I say, I shall prove it does) half an Hour to go to the Place where she was drown'd, and to return from thence to the *Glove* Inn, that would make it a quarter past Eleven when I came to that Inn, by the Town-Clock, which it was not; and if I staid there a quarter of an Hour (which is proved I did) it must be half an Hour after Eleven when I came to my Lodging by the same Clock, which it was not; so that I think this Matter as to the Time is very clear: My Lord, to prove the Time it requires to go from Mrs Stout's to the Place where she drown'd her self, and to return to the *Glove*, I desire Sir *William Ashurst* may be called.

Sir *William Ashurst*. My Lord, I can't say I walk'd as fast as I could, but I went with a Gentleman I see here to satisfy my self about the Probability of this Matter; I walk'd as People usually do, and I found it took up half an Hour and a Minute, when I walk'd with that Gentleman.

Mr Bar. Hatsell. Who was with you Sir?

Sir *William Ashurst*. Mr *Thompson* was with me, the Time I mention, I walk'd it before with Sir *Thomas Lane*.

Mr *Thompson*. My Lord, indeed it will take a compleat half Hour.

Mr Cowper. I desire Sir *Thomas Lane* may give you an Account of the Distance between one Place and the other.

Sir *Thomas Lane*. Sir *William Ashurst* and I did walk to the Place mentioned, and we were careful to take notice of the Time, and it took up about three quarters of an Hour, according to my Observation; and we did not stay at all by the Way, except just to look upon the Hospital.

Mr Cowper. Now my Lord, *Mary Kingitt* and *George Man*, the Servants at the *Glove* are come: Pray

Pray Mrs *Kingitt* do you remember my coming into the *Glove and Dolphin*?

Mary Kingitt. Yes.

Mr *Cowper*. How long did I stay there?

Mary Kingitt. About a quarter of an Hour.

Mr *Cowper*. What was my Business there?

Mary Kingitt. You came and enquir'd what you ow'd.

Mr *Bar. Hatsell*. What a Clock was it then?

Mary Kingitt. I thought it was about Eleven, our t'other Maid told it Eleven.

Mr *Jones*. How came you to take notice of the Time?

Mary Kingitt. She heard the Clock go Eleven, but I did not.

Mr *Cowper*. Was there any Dispute about the Account?

Mary Kingitt. You ask'd the Hostler how that came to stand in the Book, concerning the Horse; for you told him, you thought you had paid some Part of it, and he told you, you had not.

Mr *Cowper*. My Lord, with your Lordship's favour I would ask *George Man* a Question to the same Point. Do you remember my coming into the *Glove and Dolphin*?

G. Man. Yes.

Mr *Cowper*. How long did I stay there?

G. Man. You staid about a quarter of an Hour, as near as I can guess.

Mr *Cowper*. I will now call a Witness to prove that this Maid *Sarah Walker* is not so cautious and careful how she Swears, as I think she ought to be.

Call Mrs *Mince*.

Mr *Bar. Hatsell*. Pray wherein has *Sarah Walker* said any Thing that is false?

Mr *Cowper*. In this; I ask'd her when she gave Evidence, Whether she went out to see for her Mistress all that Night, and whether her Mistress did not use to stay out a Nights; and whether she herself had not used to say so? If your Lordship pleases to remember she said no. Pray Mrs *Mince* what have you heard Mrs *Stout*'s Maid say concerning her Mistress, particularly as to her staying out all Night.

Mrs *Mince*. She hath said, That her Mistress did not love to keep Company with Quakers; and that she paid for her own Board and her Maid's; and that when she entertain'd any Body, it was at her own Charge. And she hath said that Mrs *Stout* us'd to ask who is with you Child? And she would not tell her; and that she did entertain her Friends in the Summer-house, now and then with a Bottle of Wine. And when her Mother ask'd who was there, her Mistress would say bring it in here, I suppose there is none but Friends; and after the Company was gone, she us'd to make her Mother believe that she went to Bed; but she us'd to go out and take the Key with her, and sometimes she would go out at the Window, and she said particularly one Time she went out at the Garden Window, when the Garden Door was lock't, and that she bid her not sit up for her, for she would come in at any Time.

Mr *Bar. Hatsell*. Did ever *Sarah Walker* tell you that Mrs *Stout* had staid out all Night?

Mrs *Mince*. She hath said she could not tell what Time she came in, for she went to Bed.

Mr *Cowper*. Now if your Lordship please, I will prove to you, if it may be thought material, that *Gurrey*, at whose House these Gentlemen lodged,

should say, That if I had visited Mrs *Stout* none of all this had been (upon so little an Omission it seems did this Prosecution depend.) To which I give this Answer, my Lord, I never did once go to visit her in my Life; she knows it. Now for a Man officiously to make a new Visit in the Time of the Assizes, one engaged in Business as I was, and especially upon so melancholy an Occasion, I say for me to go officiously to see a Woman I never had the least Knowledge of, would have been thought more strange (and justly might have been so) than the Omission of that Ceremony. For my Part I cannot conceive what Mr *Gurrey* could mean, this being the Case, by saying, that if I had visited Mrs *Stout*, nothing of this had happened.

Mr *Bar. Hatsell*. Mr *Cowper*, he is not the Prosecutor, I think it is no Matter what he said.

Mr *Cowper*. I take it my Lord, with humble submission, it is material as he is a principal Witness against these Gentlemen, and the rather for that he now pretends, that what he did was out of Conscience. My Lord, I have only one Thing more to say, I know not whether it will be requisite for me or no to give some Account of my self. Sir *William Ashurst*, if you please.

Sir *William Ashurst*. My Lord, if I had not had a good Opinion of this Gentleman, I had not come on purpose to hear this Cause, which has made so great a Noise all *England* over.

Mr *Bar. Hatsell*. But what do you say as to Mr *Cowper*'s Reputation, for which you are called?

Sir *William Ashurst*. I always thought Mr *Cowper* to be a Gentleman of singular Humanity and Integrity; he is an Officer in *London*, and as to his Management of his Office, I think no Man ever performed it better, or has a better Reputation in the Place where he lives.

Sir *Thomas Lane*. My Lord, I came hither on purpose to own this Gentleman; and indeed he deserves to be owned by his Friends, and those that know him; his Character is altogether untainted with us, he has gained a good Reputation in the Business wherein he is concerned; he has behaved himself in his Office which he holds of the City of *London*, very honestly and well; I never knew him discover any ill Nature in his Temper, I think he cannot be suspected of this or any other Act of Barbarity.

Mr *Cowper*. My Lord, in the next Place, I would call Mr *Cox*, who has the Honour to serve in Parliament, for the Burrough of *Southmark*; and has been my near Neighbour these eight or nine Years. If you please Mr *Cox*, give an Account what Reputation and Character I have in that Place.

Mr *Cox*. My Lord, I live in *Southmark*, where Mr *Cowper* lives; I have lived by him eight or nine Years, I know him to be a Person of Integrity and Worth; all the Neighbours court his Company. I take him to have as much Honour and Honesty as any Gentleman whatsoever; and of all Men that I know, he would be the last Man, that I should suspect of such a Fact as this is: I believe nothing in the World could move him to entertain the least Thought of so foul a Fact.

Mr *Cowper*. Mr *Thompson*, I desire you would be pleas'd to give an Account of what you know of me.

Mr *Thompson*. If you please, my Lord, the first Acquaintance I had with Mr *Cowper*, was in our Childhood, I had the Honour to go, to *Westminster* School with him; I did not renew my Acquaintance with him till about five Years ago; since that Time I have been often with him, and have several

Times

Times had occasion to ask his Advice, in Matters relating to his Profession; and I think no Man more faithful in the Service of his Client than he is, and I am sure he is very deserving of the Esteem of any Man, and I believe he never entertain'd a Thought of so foul and barbarous a Fact as this, of which he is accused.

Mr Bar. *Hatsell*. Mr *Marson*, you have heard the Evidence, what do you say to it?

Mr *Marson*. My Lord, our Business at *Hertford* was this; Mr *Ellis Stephens* and I went down, he is Clerk of the Papers of the *King's Bench*, and Mr *Rogers* is Steward of the *King's Bench*, and it was their Duty to wait upon my Lord Chief Justice with the Marshal of the *King's Bench* out of Town; and on Monday Morning we went to my Lord Chief Justice's House in *Lincoln's-Inn-Fields* as we used to do, and there set out; but I being an Attorney of the Borough Court could not with any Convenience go farther with them than to a Place which I think is called *Kingsland*, and therefore I returned to my Business in *Southwark*, where I attended the Court as was customary and necessary for me to do, and set forth from thence at past Four in the Afternoon; by the Way as I remember about *Waltham-Cross* I met one Mr *Hanks* a Clergyman of my Acquaintance, who had been likewise to attend my Lord Chief Justice to *Hertford*, and was returning from thence; with some persuasion I prevailed with him to go back again with me to *Hertford*, telling him, I did not know the Way, and we gallop'd every step of it because Night was coming on, it was about eight a Clock when we came in. Mr *Hanks* and I found the Marshal, Mr *Stevens*, Mr *Rogers*, Mr *Rutkin*, and others of the Marshal's Acquaintance at the Coffee-house; and truly when I came in I might for ought I know be in a Sweat with riding so hard as we did, but even then I was not in such a Sweat as the Witnesses would have it. My Lord, we went from thence to the *Glove and Dolphin* and stayed there till about eleven a Clock, Mr *Rogers* and I had a Dispute who should lie with Mr *Stevens* at the now Witness Mr *Gurrey's*, at last it was agreed between us to go to *Gurrey's* to see what Convenience he could make for us, and Mr *Rutkin* and Mr *Hanks* went with us with design to drink a Glass of Wine at our Lodging; but afterwards it came in Mr *Rutkin's* Head, that he was to lie with the Marshal, and for that Reason he said he would go back again, and accordingly he went, and Mr *Hanks* with him after they had seen us into our Lodgings, and Mr *Stevens* and Mr *Rogers* and I drank three Bottles of Wine together, Mr *Gurrey* our Landlord was sent to fetch it; and afterwards in jocular Conversation I believe Mr *Stevens* might ask Mr *Gurrey* if he knew one Mrs *Sarah Stout*, and the Reason why he ask'd that Question our Witnesses will explain; I believe he might likewise ask, what sort of Woman she was; and possibly I might say the Words, *My Friend may be in with her*, tho' I remember not I did say any Thing like it, but I say there is a Possibility I might; because I had heard she had deny'd Mr *Marshall's* Suit, and that might induce me to say, *My Friend may be in with her*, for all that I remember; I confess Mr *Rogers* ask'd me what Money I had got that Day, meaning at the Borough Court, I answer'd, fifty Shillings; faith he, we have been here a spending our Money, I think you ought to treat us, or to that purpose; as for the Bundle mention'd, I had no such, except a Pair of Sleeves and a Neckcloth: As to the Evidence which goes to Words spoken, the Witnesses have

fruitful Inventions, and as they have wrested and improved the Instances I have been particular in, so have they the rest, or otherwise forged them out of their own Heads.

Mr Bar. *Hatsell*. Mr *Rogers*, What do you say to it?

Mr *Rogers*. We came down with the Marshal of the *King's Bench*, it rained every Step of the Way, so that my Spatter dashers and Shoes were fain to be dried; and it raining so hard, we did not think Mr *Marson* would have come that Day, and therefore we provided but one Bed, tho' otherwise we should have provided two, and were to give a Crown for our Night's Lodging: We went from the Coffee-house to the Tavern, as Mr *Marson* has said, and from the Tavern the next Way to our Lodging, where there was some merry and open Discourse of this Gentlewoman, but I never saw her in my Life, nor heard of her Name before she was mention'd there.

Mr *Stevens*. We never stir'd from one another, but went along with the Marshal of the *King's Bench* to accompany my Lord Chief Justice out of Town, as is usual.

Mr Bar. *Hatsell*. I thought it had been usual for him to go but half the Way with my Lord Chief Justice.

Mr *Rogers*. They generally return back after they have gone half the Way, but some of the head Officers go throughout.

Mr *Stevens*. It was the first Circuit after the Marshal came into his Office, and that's the Reason the Marshal went the whole Way.

Mr Bar. *Hatsell*. Did not you talk of her Court-ing days being over?

Prisoners. Not one Word of it: We absolutely deny it.

Mr *Stevens*. I never saw her.

Mr *Jones*. Mr *Marson*, Did you ride in Boots?

Mr *Marson*. Yes.

Mr *Jones*. How came your Shoes to be wet?

Mr *Marson*. I had none.

Call Mr *Heath*, Mr *Hunt*, and Mr *Foster*.

Mr *Marson*. Mr *Hunt*, Will you please to acquaint my Lord and the Jury with what Discourse we had on Sunday Night, before the Assizes, at the *Old Devil Tavern* at *Temple bar*.

Mr *Hunt*. On Sunday Night I happened to be in Company with Mr *Marson* and three or four more of *Clifford's Inn*, and there was a Discourse of the Marshal's attending my Lord Chief Justice out of Town, to *Hertford*, and Mr *Marson* said, *It may be the Marshal may require my waiting upon him too*; and the whole Company being known to Mr *Marshall*, and there being a Discourse of Mr *Marshall's* courting of Mrs *Stout*, faith one of the Company, *If you do go to Hertford, pray enquire after Mr Marshall's Mistress, and bring us an Account of her*.

Mr *Jones*. Who was in Company?

Mr *Hunt*. There was Mr *Heath*, Mr *Foster*, Mr *Marson*, Mr *Stevens*, Mr *Bevor*, and Mr *Marshall*.

Mr *Marson*. Now it was this Discourse that gave us Occasion to talk of this Woman at *Gurrey's* House, which we did openly and harmlessly. Mr *Foster*. Do you remember any Thing of our talking of this Gentlewoman on Sunday Night?

Mr *Foster*. Yes: I and they were talking that they should go to *Hertford* the next Day, to wait on the Marshal, in compliment to my Lord Chief Justice, and go as far as *Hertford*; and there being a Report, that Mr *Marshall* courted this Woman,

man, we put it in a jesting Way, *Pray enquire after Mr Marshall's Mistress, how the Match goes on; for there was some Wagers between him and the Company, who should be marry'd first:* And so, in a jocular Way, it went about, and Mr Marson or Mr Stevens said, *They would do their Endeavour, and they would enquire after the Lady, and give as good an Account of her as they could.*

Mr Stevens. If you please, my Lord, we will call another to this Purpose.

Mr Bar. Hatfell. No: I think you need not, for it seems not material.

Then Mr Hanks was call'd.

Mr Hanks. I came as far as *Waltham's Cross* to wait upon my Lord Chief Justice, I stay'd there till about four or five a Clock, and then set out for *London*, and I met with Mr Marson, who importun'd me to go back with him to *Hertford*, and accordingly I did so, and we came in about Seven or Eight at Night, and we enquired after the Marshal of the *King's Bench*, and where he had set up his Horses, and we found him in the Coffee-House just by the Court, and we went and set up our Horses, and came again to him; from thence we went to the *Glove and Dolphin Tavern*, these three Gentlemen and the Marshal, and one Mr Rutkin came afterwards to us, and we stay'd till about Eleven at the *Glove and Dolphin*.

Mr Marson. Do you remember how we rid?

Mr Hanks. Yes: Very hard.

Mr Bar. Hatfell. What Time did you come in to the Tavern?

Mr Hanks. Between Seven and Eight, as I remember.

Mr Bar. Hatfell. And did you stay there till past Eleven?

Mr Hanks. Till about Eleven, little more or less, we went away together in order to drink a Glass of Wine with them at their Lodging, but Mr Rutkin considering that he was to drink a Glass of Wine, and lie with the Marshal, thought it would disturb the Marshal; so, saith he, *I will not go in;* but we saw them go into their Lodgings and returned to the *Bull*, where we eat Part of a Fowl, and I was never out of Mr Marson's Company all that Time.

Mr Marson. When you took your Leave of me, Don't you remember that the Door was clap'd too?

Mr Hanks. I can't remember that.

Mr Marson. Mr Gurrey saith, I never went out after I came home. Mr Rutkin, Pray give an Account to my Lord, and the Gentlemen of the Jury, of what you know of my coming to *Hertford*.

Mr Rutkin. My Lord, I came to wait on the Marshal of the *King's Bench* to *Hertford*, and when we were come to *Hertford* we put up our Horses at the *Bull*, and made our selves a little clean, we went to Church, and din'd at the *Bull*, and then we walk'd in and about the Court, and diverted our selves till about Seven a-Clock; and between Seven and Eight a-Clock came Mr Marson and Doctor Hanks to Town, and then we agreed to go to the *Dolphin and Glove* to drink a Glass of Wine, the Marshal went to see an ancient Gentleman, and we went to the *Dolphin and Glove* and stay'd there till past Ten a-Clock; and after the Reckoning was paid, we went with them to their Lodging with a Design to take a Glass of Wine; but then I consider'd I was to lie with the Marshal, and for

that Reason I resolv'd not to go in, but came away, and went to the *Bull-Inn*, and after I drank Part of a Pint of Wine, and afterwards I went to the next Door to the *Bull-Inn*, where I lay with the Marshal.

Mr Jones. What Time did the Gentlemen go to their Lodging?

Mr Rutkin. I am not positive as to That; but I believe it was about Eleven a-Clock.

Mr Marson. If your Lordship pleases, now I'll call some Persons to give an Account of me.

Mr Cox. I have known Mr Marson a long Time, and had always a good Opinion of him; I don't believe 5000 l. would tempt him to do such a Fact.

Mr Marson. Capt. Wife, I desire you would please to speak what you know of me.

Mr Cowper. My Lord, because these Gentlemen are Strangers in the Country, I think, if in taking an Account of any Evidence for my self, there is any Thing occurs to me, that they may have a just Advantage of, I think I ought not to conceal it; for I am as much concern'd to justify their Innocence as my own. The principal Witness against them is one Gurrey, and I will prove to you, That since he appear'd in this Court and gave his Evidence, he went out in a triumphant Manner, and boasted, That he, by his Management, had done more against these Gentlemen, than all the Prosecutor's Witnesses could do besides: To add to That, I have another Piece of Evidence that I have been just acquainted with. My Lord, it is the Widow Davis, Gurrey's Wife's Sister that I would call.

Major Lane. My Lord, I have known Mr Marson ever since he was two Years old, and never saw him but a civiliz'd Man in my Life; he was well bred up among us, and I never saw him given to Debauchery in all my Life.

Mr Bar. Hatfell. Where do you live?

Major Lane. In *Southmark*, my Lord.

Mr Bar. Hatfell. Well; What do you say, Mrs Davis?

Mrs Davis. I came to the House where these Gentlemen lodg'd; I was in about half an Hour, and my Sister ask'd me to air two or three Pair of Sheets: When I had air'd the Sheets, she ask'd me to go up and help to lay them on; and before I had laid them on, these Gentlemen came into the Room.

Mr Bar. Hatfell. What Hour?

Mrs Davis. By the Time of my going out again, I believe it might be about Ten, or something better, and they drank three Quarts of Wine, and they had some Bread and Butter and Cheese carry'd up, and so they went to Bed; and after my Brother went to fetch Mr Gape, that lay at his House, from *Hockley's*.

Mr Cowper. I only beg leave to observe, that Gurrey deny'd that he went for him.

Mr Bar. Hatfell. Ay; but this signifies very little whether it be true or false.

Mrs Davis. The next Day after, these Gentlemen were about the Town, and she said, she did believe they were come to clear a young Man (a Minister's Son) that was tried at the Bar for robbing the Mail: I ask'd, Why she thought so; she said, She was sure of it: And I ask'd her, How she could be sure of it, when she was never told so? Why, said I, do they accuse these Gentlemen? they ought rather to take up the Gentleman that was with Mrs Stout's Maid; and she said, If they

took up Mrs *Stout's* Maid they should have never a Witness.

Mr Bar. *Hatsell*. Who was That that was talking with Mrs *Stout's* Maid?

Mrs *Davis*. I don't know, but she said she did not like their Actions; and therefore she ought to have been examined who she was with.

Capt. *Wife*. I have known Mr *Marson* several Years, and he is a Person of as fair Reputation as any in the *Borough*.

Mr *Reading*. I have been acquainted with Mr *Marson* Twenty Years, he lives near the House where I now do: He has a general good Character among his Neighbours, for a fair Man in his Practice, an honest Man, and a Man of good Conversation.

Mr Bar. *Hatsell*. Well, Mr *Stevens*, What do you say?

Mr *Stevens*. I desire Sir *Robert Austin* to give an Account of me.

Sir *Robert Austin*. I have known Mr *Stevens* many Years; his Brother is Captain in a neighbouring County, he is reckon'd not only an honest Man in his Practice, but has the general Character of a good-natur'd Man, and he is so far from being a Person likely to do such an Action, that, for a younger Brother, he was very well provided for; his Father left him a Thousand Pounds, and he is Clerk of the Papers, which is reputed worth a Hundred Pounds a Year, and is in good Practice besides.

Juryman. I have known him several Years, and he hath the same Reputation Sir *Robert* hath given him.

Sir *John Shaw*. I know Mr *Stevens*, and his Brother Captain *Stevens*: As to this Gentleman, he hath always behav'd himself well in our Country, and hath the Character of an honest Gentleman.

Mr *Evans*. I have known him for these eight Years, and to be a very civil Person, and well educated, and never heard but a good Character of him: I have also known Mr *Marson* these Ten Years, and never saw any Ill by him, and do believe, that he or the other would not have done such an ill Thing to have gain'd this County.

Mr *Menlove*. My Lord, Mr *Stevens* was my Clerk, and he behav'd himself very honestly with me. And since That, I have kept a Correspondence with him, and I believe he would not do such a Thing for all the World.

Mr Bar. *Hatsell*. Call some Body to speak for Mr *Rogers*, if there be any.

Mr *Evans*. My Lord, Mr *Rogers* hath a general Character in *Southwark*, for a very honest Man.

Mr *Rogers*. Pray call Mr *Lygoe*. Sir, please to give my Lord and the Court an Account what you know of me.

Mr *Lygoe*. My Lord, I have known all the three Gentlemen at the Bar, but particularly Mr *Rogers* and Mr *Stevens*, from their Infancy. I have employ'd them both in Business several Times, and always found them fair Practicers; and believe neither of them would be guilty of doing an ill Act.

Mr *Rogers*. Call Mr *Thurlby*. Sir, Pray give the Court an Account how I behaved my self in your Service.

Mr Bar. *Hatsell*. Come Mr *Thurlby*, What do you say of Mr *Rogers*?

Mr *Thurlby*. My Lord, Mr *Rogers* lived with me about eight Years, in which Time I frequently

trusted him with very great Sums of Money, I ever found him just and faithful, and can't believe, that any Money could tempt him to do an Act of this Kind.

Mr *Jones*. My Lord, we insist upon it, That Mr *Comper* hath given a different Evidence now from what he did before the Coroner; for there he said he never knew any Distraction or Love-fit, or other Occasion she had to put her upon this extravagant Action. Now, here he comes, and would have the whole Scheme turn'd upon a Love-fit. Call *John Mason* (who was Sworn.)

Mr Bar. *Hatsell*. What do you say, Sir, to this Matter?

Mr *Stout*. When Mr *Comper* was examined before the Coroner, he was ask'd, If he knew any Reason why she should do such a Thing? and he said, She was a very modest Woman, and he knew no Cause why she should do such a Thing as this. *John Mason*, Was you by when Mr *Comper* gave Evidence before the Coroner.

Mason. Yes.

Mr *Jones*. What did he say?

Mason. He said he did not know any Thing was the Cause of it, but she was a very modest Person.

Mr *Jones*. Was he upon his Oath?

Mason. Yes, he was.

Mr Bar. *Hatsell*. When did he say this?

Mason. It was the same Day she was found.

Mr *Jones*. Did they ask him any Question, If he knew any Person that she was in Love with?

Mason. He said he knew but of one, and his Name was *Marshall*, and Mr *Marshall* told him, That he was always repuls'd by her.

Mr *Stout*. I desire *John Archer* may be asked the same Question, (who was Sworn.)

Mr *Jones*. Was you present with the Coroner's Inquest?

J. Archer. Yes.

Mr *Jones*. Was Mr *Comper* examined by them?

J. Archer. Yes, he was.

Mr *Jones*. What did he say concerning Mrs *Stout* then?

J. Archer. They ask'd him, If he knew any Occasion for Mrs *Stout's* Death? and he said, He knew nothing of it, or of any Letters.

Mr *Comper*. Then I must call over the whole Coroner's Inquest to prove the contrary.

Mr Bar. *Hatsell*. Did they ask him concerning any Letters?

J. Archer. They ask'd him, If he knew of any Thing that might be the Occasion of her Death.

Mr Bar. *Hatsell*. I ask you again, If they ask'd him if he knew of any Letters?

J. Archer. My Lord, I don't remember That.

Mr *Stout*. I would have called some of the Coroner's Inquest, but I was stop'd in it.

Juryman. We have taken Minutes of what has pass'd: If your Lordship please, we will withdraw.

Mr Bar. *Hatsell*. They must make an End first.

Mr *Jones*. If your Lordship please, we will call one Witness to falsify one Piece of their Evidence, and that is one Widow *Larkin*, (who was Sworn.)

Mr *Jones*. Do you remember one Mr *Rutkin's* being at your House?

Larkin. Yes.

Mr *Jones*. At what Time did he come in?

Larkin. Between Nine and Ten of the Clock.

Mr *Jones*. Was the Marshal then in the House?

Lar-

Larkin. No: The Marshal did not come till near an Hour after.

Mr Jones. Did not he go out afterwards?

Larkin. Not that I know of.

Mr Rutkins. I am satisfied it was past Eleven when I came in.

Mr Bar. Hatfell. It is likely it may be true; for, I believe, they did not keep very good Hours at that Time.

Mr Stout. I desire to call some Witnesses to my Sister's Reputation.

Mr Jones. My Lord, they would call Witnesses to this Gentlewoman's Reputation; I believe the whole Town would attest for That, that she was a Woman of a good Reputation: Indeed they have produced some Letters without a Name, but if they insist upon any Thing against her Reputation, we must call our Witnesses.

Mr Bar. Hatfell. I believe no Body disputes That; she might be a virtuous Woman, and her Brains might be turned by her Passion, or some Distemper.

Gentlemen of the Jury, You have heard a very long Evidence; I am sure that you can't expect that I should sum it up fully; but I will take Notice of some Things to you, that I think are most material, and if I omit any Thing that is material, I would desire *Mr Jones* (that is Council for the King) and *Mr Cowper*, to put me in Mind of it.

The Indictment against the Prisoners at the Bar, is for a very great Crime, it is for Murder, which is one of the most horrid of all Crimes: You are to consider first, what Evidence you have heard to prove it; and though there be no direct Proof, you are to consider what is Circumstantial.

They do begin with *Sarah Walker*, who was *Mrs Sarah Stout's* Maid, and she tells you, That *Mr Cowper*, when he came to this Town upon Monday the 13th of March last, came to *Mrs Stout's* House and dined there, and went away about Four of the Clock in the Afternoon; but she tells you, That the Friday before, there came a Letter from *Mr Cowper's* Wife to *Mrs Stout*, to let her know that *Mr Cowper* would come and lodge at their House at *Hertford*, at the Assizes; so that when he came, she thought that he had intended to have done according to that Letter. She saith, That after Dinner *Mr Cowper* went away, and came again at Nine at Night, and there he supped, he was desired so to do, (and indeed had been invited to Dinner also that Day) and she doth say, that after Supper there was a Fire made in his Chamber (for this young Gentlewoman, *Mrs Stout*, press'd him to lie at their House) and she ordered the Maid to warm his Bed, and I believe, says she, *Mr Cowper* heard her say so, for he was nearer to her than I, at that Time; and he doth not deny but that he heard it: She says, that accordingly she went up to warm the Bed, and having stay'd there a While, she heard the Door clap; and when she came down into the Parlour, where she had left them, they were both gone, and that she could not tell what the Meaning of it was, and they waited for her all Night, old *Mrs Stout* and this Maid, and she did not come in all Night, nor was afterwards seen alive. But *Mr Cowper* was the last Person seen in her Company.

The other Witnesses that came afterwards speak concerning the finding of the Body in the River,
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and tell you in what Posture it was: I shall not undertake to give you the Particulars of their Evidence, but they tell you, She lay on her right Side, the one Arm up even with the Surface of the Water, and her Body under the Water, but some of her Cloaths were above the Water; particularly, one says, the Ruffles of her left Arm were above the Water; you have heard also what the Doctors and Surgeons said on the one Side and the Other, concerning the Swimming and Sinking of dead Bodies in the Water, but I can find no Certainty in it, and I leave it to your Consideration.

Another Circumstance they build on, and which seems to be material, is, of her Belly being lank, and that there was no Swelling; whereas, say they, when a Person is drowned, there is a great deal of Water goes in, and makes the Belly to swell, but here was no Swelling that Morning she was taken out, and no Water come out of her Mouth and Nostrils, only a little Froth there was, and her Belly was lank. But, say they, on the other Side, that may very well be; for, perhaps, she might be choaked immediately, as soon as she was in the Water, and, say they, you may not wonder at That, for if she went to drown her self, she would endeavour to be choaked as soon as she could, for those Persons that are drowned against their own Consent, do swallow a great deal of Water; but those that drown themselves, don't swallow much Water, for they are choaked immediately by the Water going into the Windpipe, that we commonly call going the wrong Way. The Doctors and Surgeons have talk'd a great deal to this Purpose, and of the Water's going into the Lungs or the Thorax; but unless you have more Skill in Anatomy than I, you won't be much edified by it: I acknowledge I never studied Anatomy, but I perceive that the Doctors do differ in their Notions about these Things; but as to Matter of Fact, it is agreed to by all the Witnesses for the King, that her Body was lank, her Belly was thin, and there was no Sign of any Water to be in it. They on the other Side tell you, That her Stays was on, and she was strait-laced, and that might occasion her Belly's being so small, and hinder the Water from going in.

Gentlemen, I was very much puzzled in my Thoughts, and was at a Loss to find out what Inducement there could be to draw in *Mr Cowper*, or these three other Gentlemen, to commit such a horrid, barbarous Murder. And, on the other Hand, I could not imagine what there should be, to induce this Gentlewoman, a Person of a plentiful Fortune, and a very sober good Reputation, to destroy her self.

Now, Gentlemen, I must confess, the Evidence that the Defendants have given by these Letters, if you believe them to be this Gentlewoman's Hand-writing, do seem to fortify all that *Mr Cowper's* Witnesses have said, concerning her being melancholy; it might be a Love-distraction, and she might have been a virtuous Woman for all that, for it might be a Distemper which came upon her, and turned her Brains, and compos'd her Mind, and then no Wonder at her Writing thus, in a Manner different from the Rest of the Actions of her Life. Gentlemen, You are to consider and weigh the Evidence, and I will not trouble you any more about that Matter.

As to these three other Gentlemen that came here to this Town, at the Time of the last Assizes,

fizes, what there is against them you have heard: They talk'd at their Lodging at a strange Rate, concerning this Mrs Sarah Stout, saying, Her Business is done, and that there was an End of her Courting-days, and that a Friend of theirs was even with her by this Time. What you can make of it, That I must leave to you, but they were very strange Expressions; and you are to judge, Whether they were spoken in Jest, as they pretend, or in Earnest. There was a Cord found in the Room, and a Bundle seen there, but I know not what to make of it. As to Mrs Stout, there was no Sign of any Circle about her Neck, which, as they say, must have been if she had been strangled. Some Spots there were, but it is said, possibly those might be occasioned by rubbing against some Piles or Stakes in the River. Truly, Gentlemen, these three Men, by their talking, have given great Cause of Suspicion; but whether They, or Mr Cowper, are guilty or no, That you are to determine. I am sensible I have omitted many Things, but I am a little faint, and cannot repeat any more of the Evidence.

Jury. We have taken Minutes, my Lord.
Mr Bar. *Hatsell*. Well then; Gentlemen, go together, and consider your Evidence, and I pray God direct you in giving your Verdict.

[Then One was Sworn to keep the Jury, and, in about half an Hour, the Jury returned.]

Cl. of Arr. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Cl. of Arr. Who shall say for you?

Omnes. Foreman.


Cl. of Arr. *Spencer Cowper*, hold up thy Hand, (which he did) Look upon the Prisoner; How say you? Is he guilty of the Felony and Murther whereof he stands Indicted, or not guilty?

Foreman. Not guilty.

[In like Manner the Jury did give their Verdict, that John Marson, Ellis Stevens, and William Rogers, were not guilty.]

The TRYAL of Mary Butler alias Strickland,

At Justice-Hall in the Old-Baily, in London, on the 12th Day of October, 1699.

Cl. of Arr. RING Mary Butler to the Bar.

Accordingly she was brought.

Mary Butler alias Strickland, you stand Indicted by the Name of Mary Butler alias Strickland, late of London, Widow, for that you endeavouring, and maliciously intending, to deceive and oppress Sir Robert Clayton, Knight and Alderman of London, the first Day of December, in the Seventh Year of his now Majesty's Reign, at London aforesaid, in the Parish of St. Mary Woolnoth, in the Ward of Langborne, a certain false Writing, sealed in Form of a Bond, bearing Date the fourteenth Day of April, 1687, in the Name of the said Sir Robert Clayton, for the Payment of the penal Sum of Forty Thousand Pounds, to be made by the said Sir Robert Clayton to you Mary Butler alias Strickland, with Condition there underwritten; concerning, among other Things, the Payment of Twenty Thousand Pounds, to be made to you Mary Butler alias Strickland, after the Death of the said Sir Robert Clayton, by his Heirs, Executors and Administrators; falsely, knowingly, unlawfully, and subtilly did make, counterfeit and write, and cause to be made, counterfeited and written: And further, That you Mary Butler alias Strickland, afterwards, viz. the first Day of December, in the seventh Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, a certain false and forged Writing, sealed in Form of a Bond, in the Name of the said Sir Robert Clayton, for the Payment of

the penal Sum of Forty Thousand Pounds by the said Sir Robert Clayton, to you Mary Butler alias Strickland, with Condition under-written, concerning, among other Things, the Payment of Twenty Thousand Pounds, to be made to you Mary Butler alias Strickland, after the Death of the said Sir Robert Clayton, by his Heirs, Executors, or Administrators, as a true Bond of the said Sir Robert Clayton, as if really made by him; falsely, subtilly, and deceitfully, did publish, you Mary Butler alias Strickland, well knowing the said Writing to be false, forged, and counterfeited, and not the Deed of the said Sir Robert Clayton, to the great Damage of the said Sir Robert Clayton, to the evil Example of all others in the like Case, offending against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Cl. of Arr. How say'st thou, Mary Butler alias Strickland, art thou guilty of this Forgery whereof thou stands Indicted, or not guilty?

Prisoner. Not guilty.

Cl. of Arr. Prisoner, look to your Challenges. Cryer, swear the Jury, which follow.

JURY SWORN.

William Clark,
William Christopher,
Thomas Wharton,
George Kimble,
James Church,
John Whistler,

George Ludlam,
Richard Kemble,
John Clarke,
Stephen Broughton,
Joseph Sheppard,
Thomas Wickham.

Cl. of

Cl. of Arr. You of the Jury that are sworn, look upon the Prisoner, and hearken to her Cause. She stands indicted, &c.

Mr Mountague. May it please your Lordship, and you Gentlemen of the Jury, this Indictment does charge the Prisoner at the Bar, *Mary Butler*, *alias Strickland*, with a Fraud and intended Cheat. It sets forth, That the Prisoner at the Bar, intending to cheat *Sir Robert Clayton*, did counterfeit a certain Writing, purporting to be the Bond of *Sir Robert Clayton* for Payment of Twenty Thousand Pounds, and that it was to be paid to the said *Mary Butler*, *alias Strickland*, after the Death of the said *Sir Robert Clayton*. Likewise, that she did publish this Writing as *Sir Robert Clayton's* Deed. To this Indictment she has pleaded not guilty. If we prove the Fact, I do not question but you will find her guilty, that she may have her due Punishment.

Mr Serj. Wright. My Lord, I am of Council for the King in this Cause. You hear what sort of Crime it is that is charged on the Prisoner. It is for Forging a Bond of no less Penalty than Forty Thousand Pounds, for the Payment of Twenty Thousand Pounds. This is made in the Name of *Sir Robert Clayton*, and the twenty Thousand Pounds were to be paid a little after his own Death, by his Executors or Administrators: And that in the mean time twelve Hundred Pounds a Year were to be paid for the Interest of this Sum. But my Lord, the Prisoner did not rest here; (a Second Contrivance will be opened to you.) That which she is now charged with, is the forging of a Bond of the Penalty of Forty Thousand Pound.

My Lord, the Prisoner for some Years had a great Intimacy with a great Peer, the late Duke of *Buckingham*. And she either had, or pretended to have, a Bond from him for Five Thousand Pounds, payable to her self after his Death, and an Annual Interest in the mean time, till the Principal was paid. *Sir Robert Clayton* being a Trustee of the Duke's Estate for the Payment of his Debts, the Prisoner came frequently to *Sir Robert Clayton*, to sollicite his Favour and Interest for the Payment of this Debt. On this Account she insinuated her self into his Company and into his Family. Sometimes she pretended to be a great Penitent, and that she was sorry for the Conversation she had with the Duke, that her own Relations were Papists, and if she should go to them, they would send her into a Nunnery. All which was but Counterfeit; and in order to win upon *Sir Robert Clayton*, and he finding she was an ill Woman, notwithstanding all her Pretences, he at last, about twelve Years ago, forbid her his House, and since that she never was there.

About the Year 1695, *Sir Robert Clayton* had some private Intimation given him, that the Prisoner had a great Demand on him, no less than Twenty Thousand Pounds. Upon this *Sir Robert Clayton* took the best Course he could to find it out, and exhibited a Bill in *Chancery* against her, and some of her Accomplices, to discover whether they had any Pretences upon him or his Estate. To this Bill the Prisoner put in an Answer, that she had no Claim or Demand against him upon any Account whatsoever. While this was in agitation, the Prisoner came to *Mr Woodward*, an Attorney of this City, and brought him a Writing, purporting a Bond, with the Name *Robert Clayton* subscribed to it, sealed and attested by four Witnesses, as the Bond of *Sir Robert Clayton*; and told *Mr Woodward*, "That Bond was

"given to her by *Sir Robert Clayton*, upon some
"good Considerations; but it having taken Air,
"some Uneasiness had arisen about it in *Sir Robert
"Clayton's* Family; and (as she pretended) upon
"this Account he had exhibited a Bill in Equi-
"ty against her, therefore this Bond must be de-
"livered up; and *Sir Robert* had promised to
"give her a new Bond for Twenty Thousand
"Pounds, and that all the Money in Arrears for
"Interest, was to be turned to Principal, and
"put into the new Bond. But this was to be done
"very privately, so as not to be known by any
"of *Sir Robert Clayton's* Family; and therefore
"none of his Servants were to be privy to it."
Thereupon she gives to *Mr Woodward* the Bond, desiring him to make a new Bond by it, and to turn all the Interest that was due into Principal. Upon this *Mr Woodward* made her a Bond of the Penalty of Fifty Four Thousand Pounds Conditioned, for Payment of Twenty Seven Thousand Pounds after *Sir Robert Clayton's* Death, and Interest in the mean time. This Bond she took away with her, and likewise the first Bond; but what she did with them since we are not privy to. And a great Charge she laid upon *Mr Woodward*, to carry it with all possible Privacy, that no notice might be taken in *Sir Robert's* Family.

Some few Months ago there was another Intimation sent to *Sir Robert Clayton*, that this Gentlewoman pretended to have a great Claim upon him of a great Sum of Money that was to be paid her, either at present, or after his Death; and that *Mr Woodward* made the Bond, and he could give an Account of it. Upon this *Sir Robert Clayton* sent to *Mr Woodward*, who like a very honest Man, told the whole Business, in what manner it was the Prisoner came to him, and how he came to make the Bond; and that he was desired to be silent in it, *Sir Robert Clayton* having desired this Bond should be made out of his own House, that none of his Family might take notice of it.

Sir Robert Clayton having this notice, and finding from *Mr Woodward*, the Prisoner had taken this Course to carry on this Design to charge his Estate, he got a Warrant from the Lord Chief Justice to have her before him, to be examined before his Lordship. Where being brought, she upon her Examination, has confess'd the whole Matter, her having the first Bond, and where it was made. What is become of the latter Bond, we cannot get out of her, nor whether she ever affixed the Name of *Sir Robert Clayton* to that. But we will produce credible Witnesses to prove her guilty of Forging the first Bond for the Payment of Twenty Thousand Pounds; and that it had the Name and Seal of *Sir Robert Clayton* affix'd to it, and that she affirmed it to be a good Bond, well executed by *Sir Robert Clayton*, and that there was Interest due upon it from *Sir Robert Clayton*, and that the Interest was in the Second Bond to be turned into Principal. We will call Witnesses to prove this, and then I hope she shall have such Punishment as she deserves.

Mr Northey. My Lord, What the Nature of our Evidence will be, I shall inform you. It cannot be expected from us to produce the Bond, for that she carried away from *Mr Woodward*, so that we cannot give the Writing it self in Evidence; but if she insist on it, we hope she will produce the Bond. We have the Copy (taken by *Mr Woodward*) of the first Bond, which he had from her, that he might draw the Second Bond by it. But we can
prove

prove from that which agrees with our Record, that she affirmed, that the first Bond that she produced was Sir *Robert Clayton's*; That that Bond which she produced, of which this is the Copy, she affirmed to be Sir *Robert Clayton's* Deed. We shall do that, and afterwards prove her publishing it: For our Indictment is against her for Forging a Bond, and publishing that forged Bond, knowing it to be such; and close all with her own Confession. And, my Lord, there is this to show there could be nothing in the Bond, that from the Time she pretended to have this Bond, when she was to have Twelve Hundred Pounds a Year, she remained a Prisoner all that time, and got her self out by swearing she was not worth Five Pounds in all the World. Call Mr *Woodward*, (who appeared and was sworn.)

Mr Serj. *Wright*. Mr *Woodward*, you hear what the Charge is, pray give an Account of what you know in reference to it.

Mr *Woodward*. My Lord, Mrs *Butler* has been my Client many Years. About two or three Years ago, more or less, Mrs *Butler* came to me, and brought me a Bond; she gave it me to peruse, and told me another must be drawn by it. When I had perused the Bond, I found it was signed *Robert Clayton*, and four Witnesses Names set to the Bond. It was a Bond of the Penalty, as I remember, of Forty Thousand Pounds, and I think it was in the Year 1687, for to pay, I think, Twelve Hundred Pounds a Year, by four quarterly Payments Yearly, during Sir *Robert Clayton's* Life. And twenty Thousand Pounds within six Months after his Death. There were some other Things in that Bond, which will appear by the Copy, which indeed I did take: For Mrs *Butler* desired it might be a Secret, being of a very great Concern. And I asked her why such a Bond should be given, I thought it must be great Generosity, and not for Money lent. But she told me the Forty Thousand Pound Bond was to be delivered up to Sir *Robert*. I asked her why, since she had it, she did not keep it; she said, that he would give her another Bond. She told me it had taken Air, and my Lady *Clayton* had some Disquiet about it; and for my Lady's Satisfaction, a Bill in *Chancery* was exhibited against her, to which she was to put in her Answer, and thereby disclaim any sort of Bond, or Interest, or any Pretence that she had upon Sir *Robert Clayton*.

Mr Serj. *Wright*. She told you this her self?

Mr *Woodward*. Yes, and when she gave me the Bond, she told me it was Sir *Robert Clayton's* Bond, or to that Purpose. But there being about nine or ten Years Arrears of Interest, she desired me to cast up the Interest that was in Arrear, and that it might be put to the Principal in the new Bond; saying, That Sir *Robert* would give her a Bond for the whole together.

Serj. *Wright*. Was the whole Interest pretended to be in Arrear?

Mr *Woodward*. I cannot say all the Interest.

Mr Serjeant *Wright*. How did you compute it, from the Date of the Bond, or from what she told you?

Mr *Woodward*. She said she had received some Money, and I computed the rest, rather under than over, and so made the Interest to come to Seven Thousand Pounds, (the Interest payable by the Bond, being twelve Hundred Pounds a Year.) Whereupon she desired I would draw a Bond for it my self; and accordingly she left the first Bond with me. I took some time, and drew it; and

made the Penalty thereof Fifty Four Thousand Pounds, conditioned for the Payment of Twenty Seven Thousand Pounds. And it was to be made in the same Nature as the former was, in respect of the Principal, and in the mean time to continue the Payment of the Interest Yearly, by proportionable Quarterly Payments.

Mr *Mountague*. What Discourse had you with her about it?

Mr *Woodward*. I did draw a Bond, and did take notice, That whereas Sir *Robert Clayton* had given her this Bond of Forty Thousand Pounds, and at his Request, she had delivered it up to him; and upon an Account stated, there did remain Seven Thousand Pounds in Arrears for Interest, which in all, amounted to Seven and Twenty Thousand Pounds, or thereabouts; when I gave it her, I said, It is a very great Sum, it concerns you to have Witnesses of Credit, for no Body will believe Sir *Robert Clayton* did give you this Bond, especially after his Death, unless it be very well attested. I told her, if she pleased, I would go and be a Witness for her to see it executed. So she went away. And when she came to me again, she told me, that Sir *Robert* knew me very well, but did not think fit to have me for a Witness. I answered, I do not care; but it being a very great Sum, take care it be well executed. I gave her both the Bonds, and from that time heard no more of it till about two Months since.

Mr *Northey*. Was there any Body came to discourse with you of making a new Bond, besides her self?

Mr *Woodward*. Not that I know of, I do not remember any. It was an extraordinary Sum, I did take a Copy of the Bond.

Mr *Northey*. Have you it here?

Mr *Woodward*. Yes, I have it here.

Mr *Northey*. He swears he took a Copy of it, and delivered it to the Prisoner again. We desire it may be read.

Mr *Mallet*. Is it a true Copy?

Mr *Woodward*. I cannot say I examined it.

Mr *Northey*. Did you write it from the Bond?

Mr *Woodward*. I did.

Mr *Northey*. Do you believe it is a true Copy?

Mr *Woodward*. I believe it is. The Reason why I did not examine it, was because it was to be a Secret.

Mr *Mallet*. Do you look upon your self to be infallible?

Mr Serj. *Wright*. Had you any Direction from the Prisoner to take a Copy?

Mr *Woodward*. I cannot say that.

L. C. J. *Holt*. Why did you write it out, for your Direction to draw the new Bond?

Mr *Woodward*. I did write it out, because it is a special Condition, more than is usual in Bonds: For it is expressed, that there should be no Prosecution against her by Sir *Robert Clayton*, or his Executors, either at Law, or in Equity, for the 20000*l.* or the Interest, or to do any Act to obstruct her in receiving the same.

L. C. J. *Holt*. When did you take a Copy of it?

Mr *Woodward*. At the same time, and before I returned it.

L. C. J. *Holt*. Did you make the New Bond by this Copy, or by the former Bond?

Mr *Woodward*. Very likely I might use both.

L. C. J. *Holt*. Did you keep them both?

Mr *Woodward*. I did keep them both by me till I delivered the new Bond.

Mr Serj. Wright. Is the Copy your own Hand writing?

Mr Woodward. Yes.

Mr Mountague. What did you take it from?

Mr Woodward. From the Original.

Mr Wright. And do you take that to be a true Copy?

Mr Woodward. I believe it is a true Copy.

Mr Hall. Did you read it over at that time?

Mr Woodward. I did read it over.

L. C. J. Holt. Did you write it?

Mr Woodward. I did write it.

Mr Mallet. And did you examine it afterwards?

Mr Woodward. No, I did not examine it, it was not to be taken notice of.

Mr Hall. Can you say you read it carefully over at that time?

Mr Cutts. It may not be the very same Bond, if he did not examine it by the Original, signed by Sir Robert Clayton.

Mr Northey. They may show that Bond.

Mr Mallet. Did the Prisoner bring the Bond to you, of which this is the Copy, and tell you this was her Bond?

Mr Northey. We will prove it by her own Confession.

Mr Mallet. If it be not the same Bond, she cannot be convicted.

Mr Northey. No doubt of it.

Mr Serj. Wright. Produce the Copy; and if your Lordship please, it may be read.

L. C. J. Holt. Let it be read.

NOverint Universi per presentes me Robertum Clayton, Militem & Decurionem Anglice, Kt. & Alderman de London, teneri & firmiter obligari Mary Butler, alias Strickland, de South-street in parochia de Edmonton, in Comitatu Middlesex. vidue Quadringenta mille libris bone & legalis monet' Anglie solvend' eidem Mary Butler, alias Strickland, aut suo certo Attornat' Executor' vel Administrator' suis, ad quam quidem solutionem bene & fideliter faciendam obligo me heredes Executores & Administratores meos, firmiter per presentes Sigillat' dat' decimo quarto die Aprilis, Anno Regni Domini nostri Jacobi Secundi Dei Gratia Anglie, &c. Regis tertio Annoq; Domini, 1687.

THE Condition of this Obligation is such, That if the above bounden Sir Robert Clayton, or his Assigns, do, and shall well and truly pay, or cause to be paid unto the above-named Mary Butler, alias Strickland, her Executors, Administrators, or Assigns, or any of them, yearly and every Year, during the Term of his natural Life, the full and just Sum of 1200 l. of Lawful Money of England, by four equal quarterly Payments, being the just and legal Interest; to grow due of, and for the Principal Sum of Twenty Thousand Pounds herein after-mentioned, in Manner and Form following, that is to say, 300 l. on the 14th of July next ensuing the Date of these Presents, 300 l. on the Fourteenth of October next coming; 300 l. on the 14th of January, which shall be in the Year of our Lord, 1688. and 300 l. on the 14th of April following; and so on every the said 14th Day of the said Months in every Year, one next, and consequently coming after another the like Sum of 300 l. during the Time and Term of the natural

Life of the said Sir Robert Clayton: And also, if the Heirs, Executors and Administrators of the said Sir Robert Clayton, do, and shall, on or before the End and Expiration of Six Months next after the Death or Decease of him the said Sir Robert Clayton, not only well and truly pay, or cause to be paid unto the said Mary Butler, alias Strickland, her Executors, Administrators, or Assigns, the full and just Sum of Twenty Thousand Pounds of Lawful Money of England above expressed; but also all such Interest thereof, after the Rate aforesaid, as shall be in Arrear and unpaid at the Death of the aforesaid Sir Robert Clayton, and also all such as shall grow due to be paid for the same, for so long time of the said six Months as the said Sum of 20000 l. shall be unsatisfied and unpaid after the Death or Decease of the said Sir Robert Clayton, without Coven, Fraud, or Deceit; nor shall not commence any Suit either in Law or Equity, against the said Mary Butler, alias Strickland, her Heirs, Executors, or Administrators, for, concerning, or in respect of the said 20000 l. and Interest, or any Part thereof; and shall not do any Act or Thing, to obstruct, molest, or hinder her, them, or any of them, from receiving, having, or enjoying the same, then this Obligation to be void, and of none Effect, or else to remain in full Force,

Robt. Clayton:

Sealed and delivered in
the Presence of us,

J. Pennington,
Edw. Spencer,
John Hebden,
Eliz. Rivers.

Mr Serj. Wright. Did the Prisoner bring you the Bond, of which this is a Copy, as a true Bond?

Mr Woodward. Yes, my Lord.

Mr Serj. Wright. I ask you this, had you a Charge from her to keep this Matter secret?

Mr Woodward. Yes; and that I would write the Bond with my own Hand.

Mr Serj. Wright. She giving you this Charge, how came this Matter to be known then?

Mr Woodward. Mr Nicholas Baker came to me from Sir Robert Clayton, and asked me if I did not know the Prisoner, and particularly about a Bond, and whether I did not make one for her. It was not in my Memory at first, till further Discourse occasioned me to remember it, and I told him that I did do some Business for her. He told me Sir Robert Clayton had some Information given him, that there was such a Bond drawn by me. Then I told him, I did remember there was such a Bond brought to me, and that I had made a Bond for Mrs Butler, and had taken a Copy of the first Bond, which I had by me; and also of the second Bond, in which I had left out a material Word in the Obligation, and was fain to write it over again, and had the first Draught by me till about a Month before that time, when meeting with it among my Papers, I threw it into the Fire in my Closet, but this Copy did remain by me.

Mr Hall. You say this Copy is all your own Hand-writing?

Mr Woodward. Yes it is.

Mr Hall. Was it Sealed, or Cancell'd?

Mr Woodward. No, it was sealed, I am very positive.

Mr Hall. Are you positive the Seal was on it at that Time?

Mr Woodward. Yes, Sir,

Mr Mallet. Did she tell you that Bond was to be Cancell'd?

Mr Woodward. She told me she was to deliver up that Bond to Sir Robert Clayton, and that he would give her another instead of it.

Mr Mallet. Was the Bond then delivered up, or no?

Mr Woodward. I cannot say she did.

Mr Cutts. Did you never hear of any Bill in Chancery? To what end was this Bond delivered to you, for what Reason?

Mr Woodward. I asked her why the Bond was to be delivered up, and she told me there was some Uneasiness, in the Family, and my Lady Clayton had got the Air of it; and therefore to satisfy her, there was a Bill prefer'd against her in Chancery, and she was to put in her Answer; and that he would give her another Bond, and that was to be delivered up.

Mr Northey. We have other Witnesses to prove the Forging of it. Call Mr Baker, (who appeared and was Sworn.)

Mr Serj. Wright. Mr Baker, were you present when the Prisoner Mrs Butler was before my Lord Chief Justice concerning this Bond? Look on that Copy.

Mr Baker. I was present at my Lord Chief Justice's Chamber, when the Prisoner was brought before his Lordship; and she did there acknowledge that the Bond of which she was accused she had ordered to be made.

Mr Serj. Wright. Was that the Bond in Question?

Mr Baker. Yes, she did confess she caused Sir Robert Clayton's Name to be set to it, and the Witnesses Names, and that it was done by one Mr Lewkar, a Scrivener, in Bishopsgate street.

Mr Serj. Wright. She said so.

Mr Baker. Yes, Sir.

Mr Hall. Did she confess it? Where was it?

Mr Baker. At my Lord Chief Justice's Chamber, she confessed it was her own Act, she caused it to be made, and directed the Scrivener to set Sir Robert Clayton's Name, and the Witnesses Names to it.

Mr Mallet. Was there not at that Time a Discourse of a Bond that she had on the late Duke of Buckingham?

Mr Baker. I cannot be positive in that; but this was the Fact she was charged with, and she did confess that she caused it to be done, and that the Persons as Witnesses were innocent of it, and that she did direct Mr Lewkar to set Sir Robert Clayton's Name to it.

Mr Hall. How do you know this is the very same Bond?

Mr Baker. Mr Woodward showed me this very Bond, when I went to him from Sir Robert Clayton, to know whether he was acquainted with the Prisoner; who after some Discourse with him relating to this Bond, he very frankly and ingenuously told me the whole Matter of Fact, as he has done here.

Mr Mallet. But we ask you about her Confession, did you shew her that Copy? Did she confess that?

L. C. J. Holt. What was the Discourse of, at that Time?

Mr Baker. It was about the Bond of forty thousand Pounds, with which she was charged before your Lordship, to have counterfeited.

Mr Northey. Did he give an Account then of this Bond?

Mr Baker. Yes, Mr Woodward produced this Copy before my Lord Chief Justice, and she owned she had ordered Mr Lewkar to make it, and to put Sir Robert Clayton's Name to it.

Mr Serj. Wright. Now, my Lord, we will show you that she is going on still, and that very lately she has owned it, and that she is going about to make the Bond of fifty thousand Pounds a very good Bond.

Mr Mallet. When it is in Question, you may then invalidate it.

Mr Serj. Wright. Mr Woodward has told you he did make the Bond of fifty four thousand Pounds. But I think we have no need of it.

Mr Hall. They have failed in the Indictment, so that it cannot be supported by this Bond; it should be laid specially, according to the Condition of the Bond to be paid: For it is a Bond of forty thousand Pounds, to be paid by his Heirs after his Death twenty thousand Pounds. Now the Bond, whereof they produce a Copy, is of other Things.

Mr Northey. It is for the same.

Mr Hall. It is a different Thing.

L. C. J. Holt. Not at all.

Mr Mallet. It is laid in the Indictment to be paid by Sir Robert Clayton. In the Bond it is said it is not to be paid till after his Death.

Mr Serj. Wright. It is laid in the Indictment, that the Bond was of the Penalty of forty thousand Pounds to be paid by Sir Robert Clayton, with Condition thereto underwritten concerning, among other Things, the Payment of twenty thousand Pounds to the Prisoner, after the Death of Sir Robert Clayton, by his Executors.

L. C. J. Holt. Let your Exceptions proceed from the Indictment, it is to be paid after the Death of Sir Robert, by his Executors.

Mr Serj. Wright. Have you any more to say for your selves?

Mr Hall. We have a great many Witnesses here to prove her Reputation. It is a strange Thing any one should go to forge a Bond on such an eminent Person.

L. C. J. Holt. It is strange indeed, but the Question is, whether it be not true.

Mr Hall. Her Confession is proved by Mr Baker. But we have many Witnesses as to her Reputation.

Mr Mallet. This Bond is not in the Indictment. The Bond of forty thousand Pounds is several Years since. Now there are two Bonds. Now that of fifty four thousand Pounds is not in this Indictment, and this of forty thousand Pounds is several Years since that it was shown to him. It is strange he should be so very exact, and yet did not examine it. And probably he might mistake in the Copy, and it may not be the very Bond in the Indictment. Now as to Mr Baker, it is true, we have a Bond of five thousand Pounds from the Duke of Buckingham, and we are suing Sir Robert Clayton for this Money, and hope to have it, now after so many Years. And Sir Robert Clayton did prefer a Bill in Chancery against us, and we in Answer did disclaim having any such Bond. And now when we are like to have a Decree for this Sum against this Trustee of the Duke of Buckingham's Estate, he comes and would take off our Credit in this Matter. We did in the Year 1695. disclaim any such Bond.

Mr Northey. Then you do admit that she owned the Bond.

Then her Witnesses were called.

Mr Mallet. Mr Glover, do you know Mrs Butler?

Mr Glover. Yes.

Mr Mallet. Give an Account of what you know, as to her Reputation.

Glover. I have known her fifteen or sixteen Years. All that I know of her is fair and clear.

L. C. J. Holt. Where do you live?

Glover. In Red-Lyon-street.

L. C. J. Holt. What Profession are you of?

Glover. I belonged to *Lincolns-Inn*.

L. C. J. Holt. A Gentleman of *Lincolns-Inn*.

Glover. I was brought up at the University, but have not resided there lately.

L. C. J. Holt. How do you live? Are you a House-keeper?

Glover. I live privately at present.

L. C. J. Holt. Who knows you?

Glover. I cannot tell who knows me here. I believe Mr Northey does.

Mr Northey. I do not intend to give any Character of you, I do not use to give Characters of my Clients.

L. C. J. Holt. How long have you lived in Red-Lyon-street?

Glover. Ten or Eleven Years.

Mr Mallet. How did she live?

Glover. I knew her live in *Devonshire-Square* very reputably, I always thought so.

Mr Serj. Wright. Had she any Estate of her-own?

Glover. I cannot say so certainly, it was thought so. She paid every Body very punctually.

Mr Hall. Acquaint my Lord how long you have known her, and whether you think she would be guilty of such a Forgery.

Glover. I have known her fourteen or fifteen Years, I cannot believe she would.

Mr Mountague. Have you heard the Evidence?

Glover. Yes.

Mr Mountague. What do you think of it then?

Glover. I know not what to think.

Mr Mountague. Do you think she would confess her self guilty of a Forgery, if she were not?

Glover. I cannot tell what to say to that. I suppose no Body would confess, if they were not guilty.

Mr Serj. Wright. Do you know one Hebden?

Glover. I know Hebden.

Mr Serj. Wright. He is a Witness to the Bond. Was he Sir John Hebden's Son?

Glover. I can give no Account of that, but he has had a very honourable Character.

Mrs Rodum called, and appeared.

Mr Hall. Mrs Rodum, do you know Mrs Butler?

Rodum. Yes.

Mr Hall. How long have you known her?

Rodum. Five or Six Years.

Mr Hall. What do you know of her Character?

Rodum. I am the Widow of one of them that kill'd one another by the Temple. I never knew of any Bond, nor ever heard her lay claim to any such Bond. She lived in good Reputation. She was in my House when my Husband was killed. She lived in my House about a Year, I never heard she made any such Pretension. She lived honestly and decently. She owes me upwards of three hundred Pounds.

L. C. J. Holt. For what? How came she to owe you three hundred Pounds?

Rodum. I kept a Shop in the Exchange, and my Husband was a Broker. She owed it me partly

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for Goods out of my Shop, and partly for Goods out of Scotland. He was killed about half a Year agoe, and I have kept the Shop still. About three or four Months agoe she left me, and I never heard of any Bond.

Mr Serj. Wright. Did you never hear of a Bill in Chancery against her?

Rodum. No Sir.

Mr Mallet. Did you hear of any Money that was due to her from the Duke of Buckingham?

Rodum. I was told she was suing Sir Robert Clayton for Money that was to be paid her on the Duke of Buckingham's Account, and upon the Credit of that I trusted her.

Shaw called.

Mr Hall. How long have you known Mrs Butler?

Shaw. About sixteen Years.

Mr Hall. Do you think she would Forge a Bond?

Shaw. Indeed I cannot give any Account of that.

Mr Hall. How has she behaved her self?

Shaw. I never knew her guilty of any Rudeness.

Mr Serj. Wright. Put up more Witnesses, if you have any.

Mr Hall. We have done.

L. C. J. Holt. Mrs Butler, will you say any Thing for your self?

Mrs Butler. I am altogether Innocent in the Matter, I never wrong'd Sir Robert Clayton, nor any Body else, in my Life.

L. C. J. Holt. Gentlemen of the Jury, This Mrs Butler, alias Strickland, stands indicted for forging a Bond in the Name of Sir Robert Clayton, in the Penalty of forty thousand Pounds, the Condition for the Payment of twenty thousand Pounds, among other Things, within six Months after the Death of Sir Robert Clayton. And also, That she did publish this Bond as the true Bond of Sir Robert Clayton. You have heard what Evidence has been given, to prove her guilty of this Forgery, and the Publication of it.

It seems, some Time since, as is proved to you by Mr Woodward, this Gentlewoman came to him with this Bond of forty thousand Pounds. And it was upon this Account, as she said: To wit, Sir Robert Clayton having given her this Bond, it had taken Air, and was come to the Lady Clayton's Ear; which occasioned some Difference between Sir Robert Clayton and his Lady. She said, That this Bond, by Direction from Sir Robert, was to be delivered up to him to be Cancell'd; and that Sir Robert Clayton had engaged to enter into a new Bond in the Penalty of fifty four thousand Pounds, for the Payment of twenty six thousand Pounds (there being at that Time supposed an Arrear of Interest for twenty thousand Pounds.) payable after Sir Robert's Death, and Interest in the mean Time. She delivered this Bond to Mr Woodward. He takes a Copy of it, which is produced and read. And so, according to her Direction, Mr Woodward does draw another Bond, with the Penalty of fifty four thousand Pounds. And she then told Mr Woodward Sir Robert would seal this Bond upon the Delivery up of the Bond of forty thousand Pounds. Mr Woodward having considered, that it was an extraordinary Sum for Sir Robert to engage himself in, and he being a very considerable Man, he advised her to have this new Bond well attested; and to be sure to get Witnesses of unquestionable Credit to see it executed. And thereupon he offered himself to go with her to Sir

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Robert,

Robert, to be a Witness to this new Bond. No, says she, *Sir Robert* is not willing that this should be known, you are not a proper Person to be a Witness to it; therefore, says she, I will get some other Witnesses to attest it. Whereupon he gives her this first Bond for forty thousand Pounds, which she brought to him, for the Payment of twenty thousand Pounds, and gave her also the Draught of the new Bond. He says, this Bond that she brought to him, was attested by four Witnesses. *Sir Robert*, it seems, upon her Answer in *Chancery*, not imagining any Thing of this, she having disclaimed in *Chancery* the having of any; some Time after he had heard a Report as if she was setting up of a new Bond, and that *Mr Woodward* could give an Account of it. Wherefore he sends *Mr Baker* to *Mr Woodward*, who gave him the same Account that he has done here. Then *Sir Robert* makes a Complaint, and has her brought before me; and there was *Mr Woodward* with this Copy. And this was objected to her, as if she had forged this Bond. And it seems, when she was there under Examination, as is proved to you by *Mr Baker*, she did plainly confess, that she had forged this Bond of forty thousand Pounds, and that she had procured one *Lewkar* to do it for her, who set *Sir Robert's* Name to it; and said, that the Witnesses, whose Names were set to it, were innocent, and knew nothing of the Matter.

Now what is said for her on the other Side? They bring some Persons for her, that say they have known her. One, that says he belonged to *Lincolns-Inn*, and had been acquainted with her fourteen or fifteen Years, and did look upon her as a civil Woman; and for his Part, he does not believe she would be guilty of such a Forgery. Another, who is a Woman, says she has known her some Time, and she says, she has trusted her much, and did never hear her say any Thing of this Bond, but she behaved her self civilly, and she took her to be a very sober Person. Another Witness says, she

look'd on her to be a very honest Person. This is the Sum of the Evidence.

There is a very strong Evidence to induce you to believe that she did forge the Bond. Such a Bond she had, that is plain. She does give no Account what is become of it; and she does not show any manner of Pretence of having so much Money from *Sir Robert Clayton* due to her, she does not make it appear why *Sir Robert* should give her a Bond upon any Account. Now for any to say that they knew her, and they do not believe she would forge a Bond, that is no Evidence; no Body ought to believe Ill of *Mrs Butler*, or any one else, unless it be made to appear. But the Question is not, what they do believe; but whether the Matter be not proved to you to your Satisfaction, that she has forged this Bond. And if you are satisfied that she did forge it, you ought to find her guilty; and if you do not believe the Evidence to be satisfactory, you ought to acquit her.

Then the Jury withdrew, and being returned, gave their Verdict as follows.

Cl. of Arr. Are you agreed of your Verdict?

Jury. Yes.

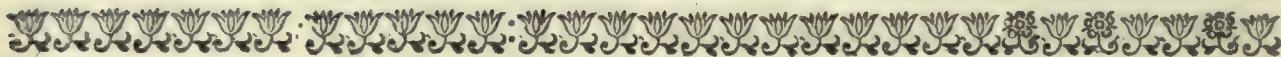
Cl. of Arr. Who shall say for you?

Jury. Foreman.

Cl. of Arr. Bring *Mary Butler* to the Bar. How say ye? Is the Prisoner at the Bar guilty of the Forgery whereof she stands Indicted, or not guilty?

Foreman. Guilty.

The Judgment which the Court pronounced against her was, That she should pay a Fine of five hundred Pounds to the King, and continue in Prison till she paid it.



*The T R Y A L of Captain W I L L I A M K I D D, for
Murther and Piracy, upon Six several Indictments.*

Published by A U T H O R I T Y.

*As also, The T R Y A L S of Nicholas Churchill, James
Howe, Robert Lamley, William Jenkins, Gabriel Loff,
Hugh Parrot, Richard Barlicorn, Abel Owens, and Darby
Mullins, at the same Time and Place for P Y R A C Y.*

*At the Admiralty Sessions held at the Old-Baily, London, on the 8th, and 9th of
May, 1701.*

*H E King's Commission for holding the
Court being first read, the Court pro-
ceeded to call the Gentlemen summoned
upon the Grand Jury, and the Persons
Sworn were these Seventeen following,
viz.*

<i>William Broughton,</i>	}	<i>Stephen Thompson,</i>
<i>Thomas Hanwell,</i>		<i>Thomas Cooper,</i>
<i>Daniel Borwell,</i>		<i>Robert Gower,</i>
<i>Humphry Bellamy,</i>		<i>Robert Clement,</i>
<i>Nath. Rolston, Senior,</i>		<i>Thomas Sesson,</i>
<i>Joshua Bolton,</i>		<i>William Goodwin,</i>
<i>Benjamin Pike,</i>		<i>Robert Callow,</i>
<i>Joseph Marlow,</i>		<i>Thomas Haws.</i>
<i>Benjamin Travis,</i>		

*Cl. of Arr. Gentlemen of the Grand Jury, stand
together, and hear the Charge.*

*The King's Majesty commands all Justices of the
High Court of Admiralty, that have any Au-
thority to take any Inquisitions, Recognizances,
Examinations, or Informations of Offences com-
mitted within the Jurisdiction of the Admiralty
of England, to deliver the Records of the same
into this Court, &c. And all others are command-
ed to keep Silence upon Pain of Imprisonment.*

*Then Dr Oxenden gave the Charge to the Grand
Jury, explaining the Nature of the Commission,
and the Crimes inquirable by vertue of it by the
Grand Jury.*

*Then the Grand Jury withdrew, and after some
time returned into Court, and found the Bill of
Indictment against Captain Kidd for Murther,
and another against him and Nicholas Church-
hill, James Howe, Robert Lamley, William
Jenkins, Gabriel Loff, Hugh Parrot, Richard
Barlicorn, Abel Owens, and Darby Mullins,
for Piracy. Then Proclamation (as usual) being
made, the foresaid Prisoners were brought to the
Bar, and Arraigned.*

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*Cl. of Arr. William Kidd, hold up thy Hand.
Kidd. May it please your Lordships, I desire
you to permit me to have Council.*

*Mr Recorder. What would you have Council
for?*

*Kidd. My Lord, I have some Matter of Law
relating to the Indictment, and I desire I may have
Council to speak to it.*

*Dr Oxenden. What Matter of Law can you
have?*

*Cl. of Arr. How does he know what it is he is
charged with? I have not told him.*

*Mr Recorder. You must let the Court know
what those Matters of Law are, before you can
have Council assigned you.*

Kidd. They be Matters of Law, my Lord.

*Mr Recorder. Mr Kidd, do you know what you
mean by Matters of Law?*

*Kidd. I know what I mean, I desire to put off
my Tryal as long as I can, till I can get my Evi-
dence ready.*

*Mr Recorder. Mr Kidd, You had best mention
the Matter of Law you would insist on.*

*Dr Oxenden. It cannot be Matter of Law to
put off your Tryal, but Matter of Fact.*

*Kidd. I desire your Lordship's Favour, I desire
Dr Oldish and Mr Lemmon may be heard as to my
Case.*

*Cl. of Arr. What can he have Council for before
he has pleaded?*

*Mr Recorder. Mr Kidd, The Court tells you,
you shall be heard what you have to say when you
have pleaded to your Indictment. If you plead to
it, if you will, you may assign Matter of Law, if
you have any; but then you must let the Court
know what you would insist on.*

*Kidd. I beg your Lordship's Patience till I can
procure my Papers, I had a Couple of French Pas-
ses, which I must make use of in order to my ju-
stification.*

*Mr Recorder. That is not Matter of Law. You
have had long Notice of your Tryal, and might
have prepared for it. How long have you had
Notice of your Tryal?*

Kidd. A matter of a Fortnight.

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Dr Oxenden. Can you tell the Names of any Persons that you would make use of in your Defence?

Kidd. I sent for them, but I could not have them.

Dr Oxenden. Where were they then?

Kidd. I brought them to my Lord Bellamont in New-England.

Mr Recorder. What were their Names? You cannot tell without Book. Mr Kidd, the Court sees no Reason to put off your Tryal, therefore you must plead.

Cl. of Arr. W. Kidd, hold up thy Hand.

Kidd. I beg your Lordships I may have Council admitted, and that my Tryal may be put off, I am not really prepared for it.

Mr Recorder. Nor never will if you could help it.

Dr Oxenden. Mr Kidd, You have had reasonable Notice, and you knew you must be tried, and therefore you cannot plead you are not ready.

Kidd. If your Lordship permit those Papers to be read, they will justify me. I desire my Council may be heard.

Mr Coniers. We admit of no Council for him.

Mr Recorder. There is no Issue joined, and therefore there can be no Council assigned. Mr Kidd, you must plead.

Kidd. I cannot plead till I have those Papers that I insisted upon.

Mr Lemmon. He ought to have his Papers delivered to him, because they are very material for his Defence. He has endeavoured to have them, but could not get them.

Mr Coniers. You are not to appear for any one till he pleads, and that the Court assigns you for his Council.

Mr Recorder. They would only put off the Tryal.

Mr Coniers. He must plead to the Indictment. Cl. of Arr. Make Silence.

Kidd. My Papers were all seized, and I cannot make my Defence without them. I desire my Tryal may be put off till I can have them.

Mr Recorder. The Court is of Opinion, they ought not to stay for all your Evidence, it may be they may never come. You must plead, and then if you can satisfy the Court, that there is Reason to put off your Tryal, you may.

Kidd. My Lord, I have Business in Law, and I desire Council.

Mr Recorder. Mr Kidd, The Course of Courts is, when you have pleaded, the Matter of Tryal is next; if you can then show there is Cause to put off the Tryal, you may; but now the Matter is to plead.

Kidd. It is a hard Case, when all these Things shall be kept from me, and I be forced to plead.

Mr Recorder. If he will not plead there must be Judgment.

Kidd. My Lord, would you have me plead, and not have my Vindication by me?

Cl. of Arr. Will you plead to the Indictment?

Kidd. I would beg that I may have my Papers for my Vindication.

Cl. of Arr. Nicholas Churchill, hold up thy Hand.

Churchill. My Lord, I desire I may have the Benefit of the Proclamation, I came in upon the King's Proclamation.

Mr Recorder. If you do not plead, the Court must pass Judgment upon you. You can have no Benefit in what you say, till you have pleaded. If you were Indicted for Felony, and you will not

plead, the Law takes it in Nature of a Confession, and Judgment must pass, as if you were proved guilty.

Cl. of Arr. Nith. Churchill, hold up thy Hand. James How, hold up thy Hand. Robert Lamley, hold up thy Hand. (which they did.)

Mr Recorder. W. Kidd has not held up his Hand.

Cl. of Arr. He does hold up his Hand. William Jenkins, hold up thy Hand. Gabriel Loff, hold up thy Hand. Hugh Farrot, hold up thy Hand. Richard Barlicorn, hold up thy Hand. Abel Owens, hold up thy Hand.

Owens. I came in upon the King's Proclamation, and entered my self into the King's Service.

Mr Recorder. You must plead first, and then, if there be Occasion, you will have the Benefit of it. (Then he held up his Hand.)

Cl. of Arr. Darby Mullins, hold up thy Hand.

Mullins. May it please your Lordships, I came in voluntarily on the King's Proclamation.

Mr Recorder. This is the same Case with Owens, you must speak to that afterwards.

Cl. of Arr. W. Kidd, You stand Indicted by the Name of William Kidd, &c. Art thou guilty, or not guilty.

Kidd. I cannot plead to this Indictment, till my French Passes are delivered to me.

Cl. of Arr. Are you guilty, or not guilty?

Kidd. My Lord, I insist upon my French Papers, pray let me have them.

Mr Recorder. That must not be now, till you have put your self on your Trial.

Kidd. That must justify me.

Mr Recorder. You may plead it then, if the Court see Cause.

Kidd. My Justification depends on them.

Mr Recorder. Mr Kidd, I must tell you, if you will not plead, you must have Judgment against you, as standing mute.

Kidd. I cannot plead till I have these Papers, and I have not my Witnesses here.

Mr Recorder. You do not know your own Interest; if you will not plead, you must have Judgment against you.

Kidd. If I plead, I shall be accessory to my own Death, till I have Persons to plead for me.

Mr Recorder. You are accessory to your own Death, if you do not plead. We cannot enter into the Evidence, unless you plead.

Cl. of Arr. Are you guilty, or not guilty?

Mr Recorder. He does not understand the Law, you must read the Statute to him.

Cl. of Arr. Mr Kidd, are you guilty of this Piracy, or not guilty?

Kidd. If you will give me a little Time to find my Papers, I will plead.

Cl. of Arr. There is no Reason to give you Time; will you plead or not?

Mr Coniers. Be pleased to acquaint him with the Danger he stands in by not pleading. What ever he says, nothing can avail him till he pleads.

Mr Recorder. He has been told so, but he does not believe us.

Mr Coniers. If there be any Reason to put off his Tryal, it must be made appear after Issue is joined.

Mr Recorder. If you say guilty, there is an End of it; but if you say, not guilty, the Court can examine into the Fact.

Officer. He says he will plead.

Cl. of Arr. W. Kidd, art thou guilty, or not guilty?

Kidd. Not guilty.

Cl. of Arr. How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.
(And so of all the rest.)

Kidd. My Lord, I beg I may have my Tryal put off for Three or Four Days, till I have got my Papers.

Mr Recorder. The Judges will be here by and by, and you may move the Court then; we are only to prepare for your Tryal. We do not deny your Motion; but when the Court is full, they will consider of the Reasons you have to offer.

Then William Kidd was tried upon the Indictment for Murther.

Cl. of Arr. W. Kidd, Hold up thy Hand, Thou standest Indicted by the Name of William Kidd, late of London, Mariner, &c.

The First Indictment for MURTHUR.

THE Jurors for our Sovereign Lord the King, do, upon their Oath, present, That William Kidd, late of London, Mariner, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, the 30th Day of October, in the Ninth Year of the Reign of our Sovereign Lord, William the Third, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High-Sea, near the Coast of Malabar, in the East-Indies, and within the Jurisdiction of the Admiralty of England, in a certain Ship called the Adventure-Galley, (whereof he the said William Kidd, then was Commander;) then and there being, feloniously, voluntarily, and of his Malice afore-thought, then and there did make an Assault, in and upon one William Moore, in the Peace of God, and of our said Sovereign Lord the King, to wit, then and there being, and to the Ship afore-said, call'd the Adventure-Galley, then and there belonging; and that the afore-said William Kidd, with a certain Wooden Bucket, bound with Iron Hoops, of the Value of Eight Pence, which he the said William Kidd, then and there had and held in his right Hand, did violently, feloniously, voluntarily, and of his Malice afore-thought, beat and strike the afore-said William Moore, in and upon the right Part of the Head of him the said William Moore; a little above the right Ear of the said William Moore, then and there upon the High-Sea, in the Ship afore-said, and within the Jurisdiction of the Admiralty of England afore-said, giving to the said William Moore, then and there with the Bucket afore-said, in and upon the afore-said right Part of the Head of him the said William Moore, a little above the right Ear of the said William Moore, one mortal Bruise, of which mortal Bruise the afore-said William Moore, from the said 30th Day of October, in the Ninth Year afore-said, untill the One and Thirtieth Day of the said Month of October, in the Year afore-said, upon the High-Sea afore-said, in the Ship afore-said, and within the Jurisdiction of the Admiralty of England afore-said, did languish, and languishing did live; upon which One and Thirtieth Day of October, in the Ninth Year afore-said, the afore-said William Moore upon the High Sea afore-said, near the afore-said Coast of Malabar, in the East-Indies afore-said, in the Ship afore-said, called the Adventure-Galley, and within the Jurisdiction of the Admiralty of England afore-said, did die; and so the Jurors afore-said, upon their Oath afore-said, do say, That the afore-said William

Kidd, feloniously, voluntarily, and of his Malice afore-thought, did kill and murther the afore-said William Moore, upon the High Sea afore-said, and within the Jurisdiction of the Admiralty of England afore-said, in manner and form afore-said, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, William Kid, art thou guilty of this Murther, whercof thou standest Indicted, or not guilty?

Kidd. Not guilty.

Cl. of Arr. How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlisorn, Abel Owens, Darby Mullins, hold up your Hands. You the Prisoners at the Bar, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King, and you, upon Tryal of your several Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them; your time is to speak to them as they come to the Book to be sworn, and before they be sworn.

Kidd. My Lord, I desire Council may be assigned me.

Mr Recorder. Capt. Kidd, I told you it would be your time, when the Jury was called, to offer what you had to offer; therefore if you have any Thing now to say to the Court, you had best say it.

Kidd. I beg I may have Council, Dr Oldish, and Mr Lemmon, that they may be heard on my behalf.

Mr J. Powel. If he desires it, you may be Council for him, provided there may be any Matter of Law that he has to plead; otherwise he must be tried.

Dr Oldish. My Lord, he moves that his Tryal for Piracy may be put off for several Reasons; one is, there is one Davis, that is a necessary Witness for him; he was taken a Passenger into the Ship, and therefore could not be concerned in any Piracy: Now this Davis stands Indicted, so that he is deprived of this Person, who is a necessary Witness for him in this Case.

Mr Coniers. He is not Indicted yet, he may call him if he thinks fit.

Mr J. Powel. If he be Indicted, yet he may be a Witness.

Dr Oldish. My Lord, we desire he may be here.

Mr J. Powel. Where is he?

Cl. of Arr. He is in Newgate.

Mr J. Powel. Let him be sent for.

Dr Oldish. My Lord, it is very fit his Tryal should be delayed for some time, because he wants some Papers very necessary for his Defence. It's very true, he is charged with Piracies in several Ships; but they had French Passes when the seizure was made. Now if there were French Passes, it was a lawful Seizure.

Mr J. Powel. Have you those Passes?

Kidd. They were taken from me by my Lord Bellamont, and these Passes would be my Defence.

Dr Oxenden. Had you any other Passes when you took the Armenian Ship?

Dr Oldish. If those Ships that he took had French Passes, there was just Cause of Seizure, and it will excuse him from Piracy.

Kidd.

Kidd. The Passes were seized by my Lord *Bellamont*, that we will prove as clear as the Day.

Mr Lemmon. My Lord, I desire one Word as to this Circumstance; he was doing his King and Country Service, instead of being a Pirate: For in this very Ship there was a *French Pass*, and it was shown to *Mr Davis*, and carried to my Lord *Bellamont*, and he made a Seizure of it. And there was a Letter writ to testifie it, which was produced before the Parliament; and that Letter has been transmitted from Hand to Hand, so that we cannot at present come by it. There are several other Papers and Letters that we cannot get; and therefore we desire the Tryal may be put off till we can procure them.

L. C. B. Ward. Where are they?

Mr Lemmon. We cannot yet tell whether they are in the Admiralty Office, or whether *Mr Jodrell* hath them.

Mr J. Powell. Let us see on what you go. You talk of *French Passes*, you should have been prepared to make Affidavit of it. What Ship was that which had the *French Passes*?

Mr Lemmon. The same we were in, the same he is Indicted for.

Mr J. Powell. Make out this, *Mr Lemmon*.

Mr Lemmon. My Lord, we desire *Mr Davis* may be sent for, he will prove it.

L. C. B. Ward. Send for *Edward Davis*.

Mr Fell. My Lord, will you have him brought into Court?

L. C. B. Ward. Yes.

Mr Soll. Gen. They have had a Fortnight's Notice to prepare for the Tryal.

Dr Oldish. We petitioned for Money, and the Court ordered fifty Pounds; But the Person that received it went away, and we had none till last Night.

Dr Oxenden. I ordered that the Money might be paid into his own Hands, that he might be sure to have it.

Mr Crawley. Register, declar'd, That he paid the fifty Pound into his own Hands on *Tuesday Morning*.

L. C. B. Ward. You ought to make it out, that there is a reasonable Cause to put off the Tryal, or else it cannot be allowed.

Mr Lemmon. My Lord, we will be ready to morrow Morning.

L. C. B. Ward. They ought to have had due Notice, What Notice have they had?

Mr Soll. Gen. A Fortnight's Notice, this Day Fortnight.

Dr Oldish. My Lord, he should have had his Money delivered to him.

Kidd. I had no Money nor Friends to prepare for my Tryal till last Night.

L. C. B. Ward. Why did you not signifie so much to the King's Officers?

Mr Soll. Gen. My Lord, this we will do, let *Davis* be brought into Court; and if that be a just Excuse, we are contented. In the mean Time, let him be tryed for the Murther, wherein there is no pretence of want of Witnesses or Papers.

Officer. *Davis* is here, my Lord

Cl. of Arr. Set all aside but Captain *Kidd*. *William Kidd*, You are now to be tried on the Bill of Murther, the Jury is going to be sworn; if you have any Cause of Exception, you may speak to them as they come to the Book.

Will. Kidd. I shall challenge none, I know nothing to the contrary but they are honest Men.

The JURY Sworn, were.

Nathaniel Long,
Jo. Exwers,
Jo. Child,
Ed. Reeves,
Tho. Clark,
Nath. Green.

Henry Sherbrook,
Henry Dry,
Richard Greenaway,
Jo. Sherbrook,
Tho. Emms,
Rog. Mott.

After Proclamation made, (as usual) the Court proceeded to the Tryal, as follows:

Cl. of Arr. W. Kidd, hold up thy Hand. (which he did) You Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause. He stands Indicted by the Name of *William Kidd*, &c. as before in the Indictment. Upon this Indictment he has been arraigned, and thereunto has pleaded, *Not Guilty*, and for his Tryal has put himself on God and his Country, which Country you are. Your Charge is to enquire, Whether he be guilty of the Murther whereof he stands Indicted, in Manner and Form as he stands Indicted, or *Not Guilty*, &c.

Mr Knap. My Lord, and you Gentlemen of the Jury,

This is an Indictment of Murther. The Indictment sets forth, That *William Kidd*, on the 30th of October, on the high Sea, on the Coast of *Malabar*, did assault one *William Moore*, on Board a Ship called the *Adventure*, whereof *William Kidd* was Captain, struck him with a wooden Bucket, hooped with Iron, on the Side of the Head, near the right Ear, and that of this Bruise he died the next Day, and so that he has murdered the said Person. To this Indictment he has pleaded not Guilty; if we prove him Guilty, you must find him so.

Mr Soll. Gen. My Lord, and Gentlemen of the Jury, We will prove this as particularly as can be, that *William Kidd* was Captain of the Ship, and that *William Moore* was under him in the Ship, and that without any Provocation he gave him this Blow, whereof he died.

Mr Coniers. My Lord, It will appear to be a most barbarous Fact, to murther a Man in this Manner; for the Man gave him no Manner of Provocation. This *William Moore* was a Gunner in the Ship, and this *William Kidd* abuses him, and calls him *Lousie Dog*; and upon a civil Answer he takes this Bucket, and knocks him on the Head, whereof he died the next Day. Call *Joseph Palmer*, and *Robert Bradinham*, (who appeared and were Sworn.) *Joseph Palmer*, give my Lord and the Jury an Account of what you saw done by *William Kidd*, on the Coast of *Malabar*, as to *William Moore* his Gunner.

Joseph Palmer. About a Fortnight before this Accident fell out, Captain *Kidd* met with a Ship on that Coast, that was called the *Loyal Captain*. And about a Fortnight after this, the Gunner was grinding a Chissel aboard the *Adventure*, on the high Sea, near the Coast of *Malabar*, in the *East-Indies*.

Mr Coniers. What was the Gunner's Name?

Joseph Palmer. *William Moore*: And Captain *Kidd* came and walked on the Deck, and walks by this *Moore*; and when he came to him, says, Which way could you have put me in a way to take this Ship, and been clear; Sir, says *William Moore*, I never spoke such a Word, nor ever thought such a Thing. Upon which Captain *Kidd* called him a *Lousie Dog*. And says *William Moore*, If I am a *Lousie Dog*, you have made me so; you have brought me to Ruin, and many more. Upon his saying this, says Captain *Kidd*, Have I ruin'd you, you Dog? and took a Bucket bound with

with iron Hoops, and struck him on the right Side of the Head, of which he died the next Day.

Mr Cowper. What was the Gunner doing at that Time, when he gave him that Blow?

Joseph Palmer. He was grinding a Chissel at the Time that he struck him.

Mr Cowper. Did he give him the Blow immediately after he gave him that Answer?

Joseph Palmer. He walked two or three Times backward and forward upon the Deck, before he struck the Blow.

Mr J. Turton. What did Captain Kidd say first?

Joseph Palmer. Which way could you have put me in a way of taking this Ship, and been clear; Says the Gunner, I never said so, nor thought any such Thing.

Mr Cowper. Hark you, Friend, explain that Matter.

Mr Baron Hatfell. What was the Occasion of those Words?

Palmer. It was concerning this Ship.

L. C. B. Ward. What Ship was it? Name the Ship.

Palmer. It was the *Loyal Captain*. Captain Kidd said to William Moore, Which way could you have put me in the way to have taken this Ship, and been clear? Says William Moore, I never said such a Thing, nor thought it. And upon that he called him *Lousie Dog*.

L. C. B. Ward. Was that Ship taken?

Palmer. No, she was gone.

Mr Coniers. You say he call'd him *Lousie Dog*.

Palmer. Yes.

Mr Coniers. What did William Moore say to him then?

Palmer. He said, If I am a *Lousie Dog*, you have brought me to it; you have ruined me and many more. Upon this, says Captain Kidd, Have I brought you to ruin, you Dog? Repeating it two or three times over, and took a turn or two upon the Deck, and then takes up the Bucket, and strikes him on the Head.

Mr Cowper. You say he made a turn or two on the Deck, and then struck him.

Palmer. Yes.

Mr Coniers. Tell my Lord what pass'd next after the Blow.

Palmer. He was let down the Gun-Room, and the Gunner said, Farewel, farewel, Captain Kidd has given me my last. And Captain Kidd stood on the Deck, and said, You are a Villain.

Mr Cowper. How near was Captain Kidd to him when he said he had given him his last?

Palmer. He was near him.

Mr Cowper. Was he within hearing of what Moore said?

Palmer. Yes, he was within Seven or Eight Foot.

Mr Soll. Gen. Did you apprehend that he died of that Blow?

Palmer. He was in perfect Health before that.

Mr Soll. Gen. What did the Surgeon think of it?

Palmer. The Surgeon is here.

Mr Soll. Gen. Did you see him afterwards?

Palmer. No, I did not see him after till he was dead.

Mr Cowper. How did the Wound appear when you saw him?

Palmer. After he was dead, the Surgeon was called to open his Head, and Captain Kidd said, You are damn'd busie without Orders.

Mr Cowper. Though we ask you Questions, you must turn your Face there towards the Jury. Give the Jury an Account of what you saw.

Palmer. I felt on his Head, and I felt something give way, and about the Wound, there was a Bruise.

Mr Cowper. You say you saw him when he was carried off after the Blow, how did his Head appear then? Was he bloody.

Palmer. There was not much Blood came from him.

L. C. B. Ward. Was you by when these Words were spoken?

Palmer. Yes, my Lord.

L. C. B. Ward. Did you see the Prisoner give the Blow with the Bucket upon those Words?

Palmer. Yes, my Lord.

L. C. B. Ward. How long was it before he went down the Deck?

Palmer. Presently.

L. C. B. Ward. Did he complain of the Wound?

Palmer. He said, Farewel, farewel, Captain Kidd has given me my last.

L. C. B. Ward. Was this Moore in a good Condition of Health before this Blow was given him?

Palmer. Yes, my Lord.

L. C. B. Ward. And afterwards he complained.

Palmer. Yes, my Lord.

L. C. B. Ward. When he was dead, what Marks were on his Head?

Palmer. On the right side of his Head, on this Place (pointing to his own Head) it was bruised a considerable Breadth; and in one Place I could feel the Skull give way.

Mr Cowper. How long after the Blow did he die?

Palmer. The next Day following.

Mr Cowper. And you say you saw him dead then.

Palmer. Yes, Sir.

L. C. B. Ward. Captain Kidd, if you will ask him any Questions, you may.

Kidd. My Lord, I would ask this Man what this Moore was doing when this Thing happened.

L. C. B. Ward. Mr Palmer, you hear what he says; what was Moore doing?

Palmer. He was grinding a Chissel.

Kidd. What was the Occasion that I struck him?

Palmer. The Words that I told you before.

Kidd. Was there no other Ship?

Palmer. Yes.

Kidd. What was that Ship?

Palmer. A Dutch Ship.

Kidd. What were you doing with the Ship?

Palmer. She was becalmed.

Kidd. This Ship was a League from us, and some of the Men would have taken her, and I would not consent to it, and this Moore said I always hindred them making their Fortunes; was not that the Reason I struck him? Was there not a Mutiny on Board?

Palmer. No, you chased this Dutchman, and in the way took a Malabar Boat, and chased this Ship all the whole Night; and they showed their Colours, and you put up your Colours.

Kidd. This is nothing to the Point, was there no Mutiny aboard?

Palmer. There was no Mutiny, all was quiet.

Kidd. Was there not a Mutiny, because they would go and take that Dutchman?

Palmer. No, none at all.

Mr Coniers. Call Robert Bradinham.

Jury. What was the Cause that he struck him?

Palmer.

Palmer. A Fortnight before this was done, we met with this *Loyal Captain*, of which Captain *Hoar* was Commander, and he came on Board Captain *Kidd's* Ship, and Captain *Kidd* went on Board his, and then Captain *Kidd* let this Ship go. About a Fortnight after this, the Gunner was grinding his Chissel on the Deck; and Captain *Kidd* said to him, *Which way could you have put me in a way to take this Ship, and been clear?* To which he reply'd, *I never said such a Thing, nor thought of such a Thing.* Whereupon Captain *Kidd* called the Gunner *Louise Dog*. And says *Moore*, *if I am a Louise Dog, you have made me so; you have brought me to Ruin, and a great many more.* And says Captain *Kidd*, *Have I brought you to Ruin, you Dog?* and after struck him with the Bucket. These were all the Words that pass.

Mr J. Powell. Was Captain *Kidd* aboard that Ship;

Palmer. Yes, and Captain *Hoar* was aboard him.

Mr J. Powell. Was there any Body nigh at that Time?

Palmer. Yes, there were eight or nine Men, that had Muskets and other Arms, and they were for taking the Ship, and Captain *Kidd* was against it, so it was not done.

Kidd. My Lord, I was in the Cabin, and heard a Noise, and came out; and *William Moore* said, *You Ruin us because you will not consent to take Captain Hoar's Ship.* Says a *Dutchman*, *I will put Captain Kidd in a way to take this Ship, and come off fairly.*

L. C. B. Ward. You may ask him any Questions you have a Mind to, but you must reserve what you have to say for your self till you come to make your Defence.

Mr Soll. Gen. *Mr Palmer*, Do you know of any other Provocation to strike him, besides those Words?

Palmer. I know of no other Provocation.

Mr Coniers. Set up *Robert Bradinham*. (who appeared.) *Mr Bradinham*, In what Office was you in the Ship?

Bradinham. I was Surgeon of the Ship.

Mr Coniers. Of what Ship?

Bradinham. The *Adventure Galley*; whereof Captain *Kidd* was Master.

Mr Coniers. Was you there when the Blow was given?

Bradinham. No.

Mr Coniers. Was you sent for when Captain *Kidd* had given the Gunner the Wound upon the Head?

Bradinham. I was sent for to his Assistance after he was wounded, and I came to him, and asked him how he did; he said, He was a dead Man, Captain *Kidd* had given him his last Blow. And I was by the Gun-Room, and Captain *Kidd* was walking there, and I heard *Moore* say, *Farewel, Farewel, Captain Kidd has given me my last Blow*; and Captain *Kidd*, when he heard it, said, *Damn him, he is a Villain.*

Mr Coniers. Did you hear him say so?

Bradinham. I did hear it.

Mr Cowper. Was it in a Way of Answer to what he said?

Bradinham. Yes.

Mr Cowper. How long did he live after the Blow?

Bradinham. He died the next Day. The Wound was but small, the Scull was fractured.

Mr Cowper. Do you believe he died of that Wound?

Bradinham. Yes.

Mr Cowper. Had you any Discourse with Captain *Kidd*, after this, about this Man's Death?

Bradinham. Some Time after this, about two Months, by the Coast of *Malabar*, Captain *Kidd* said, *I do not care so much for the Death of my Gunner, as for other Passages of my Voyage; for I have good Friends in England, that will bring me off for that.*

L. C. B. Ward. *Mr Kidd*, Will you ask him any Questions?

Kidd. I ask him whether he knew of any Difference between this Gunner and me before this happened.

Bradinham. I knew of no Difference between them before at all.

Mr Soll. Gen. *Mr Kidd*, Have you any Thing more to ask him?

Kidd. No.

Mr Coniers. Then we have done for the King.

L. C. B. Ward. Then you may make your Defence, you are charged with Murther, and you have heard the Evidence that has been given, What have you to say for your self?

Kidd. I have Evidence to prove it is no such Thing, if they may be admitted to come hither. My Lord, I will tell you what the Case was, I was coming up within a League of the *Dutch-man*, and some of my Men were making a Mutiny about taking her; and my Gunner told the People he could put the Captain in a Way to take the Ship, and be safe. Says I, *How will you do that?* The Gunner answered, *We will get the Captain and Men aboard.* And what then? *We will go aboard the Ship, and plunder her, and we will have it under their Hands that we did not take her.* Says I, *This is Judas like, I dare not do such a Thing.* Says he, *We may do it, we are Beggars already.* Why says I, *May we take this Ship because we are Poor?* Upon that a Mutiny arose, so I took up a Bucket, and just throwed it at him, and said, *You are a Rogue to make such a Motion.* This I can prove, my Lord.

L. C. B. Ward. Call your Evidence.

Mr Cowper. *Mr Palmer*, Was there any Mutiny in the Ship, when this Man was killed?

Palmer. There was none.

L. C. B. Ward. Captain *Kidd*, Call what Evidence you will.

Kidd. They are Prisoners I desire they may be called up.

L. C. B. Ward. Whatever other Crimes they may be guilty of, they may be Witnesses for him in this Case.

Mr Baron Hatsell. *Mr Palmer*, Did he throw the Bucket at him, or strike him with it?

Palmer. He held it by the Strap in his Hand.

Kidd. Call *Abel Owens*. (who appeared) Can you tell which Way this Bucket was thrown?

Mr J. Powell. What was the Provocation for throwing this Bucket?

Owens. I was in the Cook-room, and hearing some Difference on the Deck, I came out; and the Gunner was grinding a Chissel on the Grindstone, and the Captain and he had some Words; and the Gunner said to the Captain, *You have brought us to Ruin, and we are Desolate.* And says he, *Have I brought you to Ruin? I have not brought you to Ruin, I have not done an ill Thing to Ruin you, you are a sawcy Fellow to give me these Words;* and then he took up the Bucket, and did give him a Blow.

Kidd. Was there not a Mutiny among the Men?

Owens. Yes, and the bigger Part was for taking the Ship; and the Captain said, *You that will take the Dutch-man, you are the strongest, you may do what you please; if you will take her, you may take her; but if you go from aboard, you shall never come aboard again.*

L. C. B.

L. C. B. Ward. When was this Mutiny you speak of?

Abel Owens. When we were at Sea.

L. C. B. Ward. How long was it before this Man's Death?

Owens. About a Month.

Mr J. Powel. At this time when the Blow was given, did Moore the Gunner endeavour to make any Mutiny?

Owens. No.

Mr J. Powel. Was there any Mutiny then?

Owens. None at all.

Kidd. Did not he say, he could put me in a way to take the Dutchman, and be clear?

Owens. I know there were several of them would have done it, but you would not give Consent to it.

Kidd. No, but this was the Reason I threw the Bucket at him.

L. C. B. Ward. Captain Kidd, he tells you this was a Month before you struck him.

Fury. My Lord, we desire he may be asked, whether he did throw the Bucket, or strike him with it.

L. C. B. Ward. Answer the Jury to that Question.

Owens. He took it with the Strap, and struck him with it.

Kidd. Did not I throw it at him?

Owens. No, I was near you when you did it.

Mr Coniers. Did you see the Stroke given?

Owens. I did see the Stroke given.

L. C. B. Ward. Captain Kidd, Will you call any more?

Kidd. Yes, my Lord. Call Richard Barlicorn.

Mr J. Powel. What Questions would you have him ask'd?

Kidd. R. Barlicorn, what was the Reason that Blow was given to the Gunner?

Barlicorn. At first when you met with the Ship there was a Mutiny, and Two or Three of the Dutchmen came aboard; and some said she was a rich Vessel, and they would take her: And the Captain said, *No, I will not take her.* And there was a Mutiny in the Ship, and the Men said, *If you will not, we will.* And he said, *If you have a Mind, you may; but they that will not, come along with me.*

Kidd. Do you think William Moore was one of those that was for taking her?

Barlicorn. Yes.

L. C. B. Ward. How long was that before Moore died, do you know?

Barlicorn. No, I did not keep a Journal.

L. C. B. Ward. Was it after Moore died?

Barlicorn. No Sir, it was before Moore died.

Mr Coniers. How long before?

Barlicorn. I believe it was about a Month or Three Weeks, I cannot tell which.

L. C. B. Ward. You say there was a Mutiny in the Ship, what was the Mutiny about?

Barlicorn. About taking the Ship.

L. C. B. Ward. What was the Ship's Name?

Barlicorn. The *Loyal Captain*. And the Captain said, *If they take the Ship, they shall never come aboard again.*

L. C. B. Ward. Was you by when Moore received this Blow?

Barlicorn. No, I was not by then.

Kidd. Do you know of any Quarrel between this Moore and I before that Accident?

Barlicorn. No, I did not.

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Mr J. Powel. Was there any Mutiny in the Ship when this Moore died?

Barlicorn. They were talking of it.

Kidd. Was there not a Dutchman close by us, when this Blow was given?

Barlicorn. Yes, Sir.

Kidd. He was going to make another Mutiny, and I prevented him.

Mr J. Powel. Did Moore endeavour to make any Mutiny at that time?

Barlicorn. The Ship was gone at that time.

Mr J. Powel. How long had she been gone?

Barlicorn. About a Week.

Mr B. Hatfell. Was there any Mutiny about the Dutch Ship you saw?

Barlicorn. The Dutch Ship? Not that I know of; but there was a Mutiny about the *Loyal Captain*.

Kidd. Do you not know of another Mutiny?

Mr B. Hatfell. Do you know of any other Mutiny?

Barlicorn. No.

Kidd. At that very time they were going to make a Mutiny.

L. C. B. Ward. Will you ask him any more Questions?

Kidd. What Discourse had I with Moore at that time?

Barlicorn. I was aboard our Ship, but did not see the Blow given.

Kidd. They were saying they would take her, and He said, he could put me in a way to take her, without coming to any harm.

L. C. B. Ward. What occasion could those Words be of a Mutiny?

Barlicorn. There were many of the Men would have gone with Arms, and taken that Ship without the Captain's Consent.

L. C. B. Ward. At that Time when this Moore was killed, was there any Mutiny?

Barlicorn. No.

L. C. B. Ward. When was it that Moore said, they might have taken this Ship?

Barlicorn. At the same time when the Ship was in Company with us.

L. C. B. Ward. That was a Week or Fortnight before?

Barlicorn. No, Sir, the *Loyal Captain* was within sight of us.

Mr B. Hatfell. What, when Moore was killed?

Barlicorn. No, not then. William Moore lay sick a great while before this Blow was given; and the Doctor said, when he visited him, This Blow was not the Cause of his Death.

L. C. B. Ward. Then they must be confronted. Do you hear, Bradinham, what he says? He says you said, That Blow was not the Cause of his Death. Did you ever say so?

Bradinham. My Lord, I never said so.

L. C. B. Ward. Did you see that young Man there?

Bradinham. Yes, he was aboard the Ship.

L. C. B. Ward. Was Moore sick before that Blow?

Bradinham. He was not sick at all before.

Barlicorn. He was sick some time before, and this Blow did but just touch him; and the Doctor said, he did not die on the Occasion of this Blow.

Mr J. Gold. Did you ever say so, Mr Bradinham?

Bradinham. No, my Lord.

Mr Soll. Gen. You say he did but just touch him, were you present when the Blow was given.

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Barlicorn. No, but I saw him after he was dead, and I was by when the Doctor said, he did not die of that Blow.

Mr Comper. What did he die of?

Barlicorn. I cannot tell, he had been sick before, we had many sick Men aboard.

Mr Soll. Gen. How long did he lie after this Blow, before he died?

Barlicorn. I cannot tell justly how long it was.

L. C. B. Ward. How long do you think? You took notice of the Blow, how long did he live after that?

Barlicorn. I believe about a Week.

L. C. B. Ward. And the two Witnesses swore he died the next Day.

Barlicorn. I cannot tell justly how long he lived afterwards.

Jury. We desire to know whether he knew what was the Occasion of this Blow.

Barlicorn. All the Reason I can give is, because it was thought he was going to breed a Mutiny in the Vessel.

L. C. B. Ward. Did you hear of that by any Body?

Kidd. Was *Bradinham* in the Mutiny? declare that.

L. C. B. Ward. Mr *Kidd*, why do you ask that Question?

Kidd. I ask him whether *Bradinham* was not in any Mutiny in the Ship.

L. C. B. Ward. Why do you ask that?

Barlicorn. If any Thing was to be, he was as forward as any one.

L. C. B. Ward. You say he was as forward as any, but it does not appear any one made a Mutiny at this time.

Barlicorn. I do not know, Sir.

L. C. B. Ward. Have you any more to call?

Kidd. My Lord, here is another Witness.

L. C. B. Ward. What is your Name?

Hugh Parrot. *Hugh Parrot.*

L. C. B. Ward. Mr *Kidd*, what do you ask him?

Kidd. I ask you whether *Bradinham* was in a Mutiny in my Ship.

Hugh Parrot. I cannot say whether he was or no.

L. C. B. Ward. Captain *Kidd*, you are tried for the Death of this *Moore*, now why do you ask this Question? what do you infer from hence? You will not infer, that if he was a Mutineer, it was lawful for you to kill *Moore*.

Kidd. Do you know the Reason why I struck *Moore*?

Hugh Parrot. Yes, because you did not take the *Loyal Captain*, whereof Captain *Hoar* was Commander.

L. C. B. Ward. Was that the Reason he struck *Moore*, because the Ship was not taken?

Hugh Parrot. I shall tell you how it happened, according to the best of my Knowledge. My Commander fortun'd to come up with this Captain *Hoar's* Ship, and some were for taking her, and some not; and afterwards there was a little sort of Mutiny, and some rose in Arms, the greatest Part, and they said they would take this Ship, and the Commander was not for it; and so they resolv'd to go away in the Boat, and take her. Captain *Kidd* said, *If you desert my Ship, you shall never come aboard again, and I will force you into Bombay, and I will carry you before some of the Council there: Infomuch as my Commander stilled them again, and they remained on Board. And about a Fortnight afterwards there passed some*

Words between this *William Moore*, and my Commander; and then says he, *Captain, I could have put you in a way to have taken this Ship, and been never the worse for it. He says, Would you have me take this Ship? I cannot answer it, they are our Friends, and my Commander was in a Passion; and with that I went off the Deck, and I understood afterwards the Blow was given, but how I cannot tell.*

Mr J. Powel. Captain *Kidd*, have you any more to ask him, or have you any more Witnesses to call?

Kidd. I could call all of them to testify the same thing, but I will not trouble you to call any more.

L. C. B. Ward. Have you any more to say for your self?

Kidd. I have no more to say, but I had all the Provocation in the World given me; I had no design to kill him, I had no Malice or Spleen against him.

L. C. B. Ward. That must be left to the Jury to consider the Evidence that has been given; you make out no such Matter.

Jury-man. My Lord, I desire the Prisoner may give an Account whether he did do any Thing in order to his Cure.

L. C. B. Ward. He is to be tried according to Law; the King's Evidence hath been heard, and he has the Liberty to produce what Evidence he can for himself; will you put him to produce more Evidence than he can? If he has any more to say, it will be his Interest to say what he can, the Court is willing to hear him as long as he hath any thing to offer for himself, either upon that Account or any Thing else.

Kidd. It was not designedly done, but in my Passion, for which I am heartily sorry.

L. C. B. Ward. Gentlemen of the Jury, the Prisoner at the Bar, *William Kidd*, is Indicted for the Murder of *William Moore*; and whether he be guilty of this Murder, or not guilty, it is your part to determine on the Evidence that has been given. The Fact charged against him is this, That the Prisoner at the Bar, *William Kidd*, being the Commander of the Ship, called the *Adventure-Galley*, and the deceased *William Moore*, the Gunner in that Ship; That upon the High Sea, near the Coast of *Malabar*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, in *October*, in the Ninth Year of his Majesty's Reign, 1697, the Prisoner, *William Kidd*, out of his Malice fore-thought, did strike the Deceased, *William Moore*, with a Bucket hoop'd with Iron, on the right Side of his Head, and that that Blow was the Occasion of the Death of the said *William Moore*; that this was done on the 30th of *October*, and that his Death ensued on the 31st of *October*, being the next Day. This is the Fact charged upon him.

Now you have heard the Evidence that has been given on the King's Part, and you will weigh it well. You hear the first Witness that has been produced on behalf of the King, is *Joseph Palmer*. He tells you he was present on board this Ship, at the time when this Blow was given. And he says there had been some Discourse between the Prisoner *William Kidd*, and the Deceased *Moore*, concerning taking a Ship that was called the *Loyal Captain*, and that Captain *Kidd* said to him, *How could you have put me in a way to take that Ship, and be clear? No, says Moore, I said no such Thing.* The Reply Captain *Kidd* made to him

him was, *He was a Lousie Dog.* The Answer of the Deceased was this, *If I am so, you have made me so, you have ruined me and a great many others.* With that says Captain Kidd, *Have I ruined you, you Dog?* And up he took a Bucket, hoop'd with Iron, and gave him a Blow on the right side of his Head. And thereupon he complained and said, *You have given me my last Blow.* And then Moore went down below Deck, and he saw him no more till the next Day, and then he was dead; and he felt upon his Head, and perceived a Bruise in one part of it, as broad as a Shilling, and he felt the Skull was broke; and he does take on him to say, that he believes that Blow was the Occasion of his Death. Being asked whether he knew in what State of Health he was before, he says, he was in a healthy Condition; he was grinding a Chissel at that time when the Blow was given; and that Blow he believes was the Occasion of his Death. And being asked whether he heard any other Words, or saw or knew any Thing that could be any Cause of Provocation, he says, he knew no more than the Reply of the Party deceased, *If I am a Lousie Dog, you have made me so, and have been my Ruin:* And then having taken two or three Turns upon the Deck, he gave him the Blow; and then Moore went down the Deck, and used these Words, *You have given me my last Blow, or to that Effect.*

Gentlemen, You have heard the Surgeon also, Robert Bradinham, and he tells you he did not see the Blow given; but he was sent for after; and the Deceased said, Captain Kidd had given him his last Blow: And thereupon he did examine him, as a Surgeon, and does believe that Blow on the Head was the Occasion of his Death, and he did observe it as well as he could.

Jury-man: My Lord, I think Bradinham, said he was not then by, when the Prisoner gave the Blow.

L. C. B. Ward. I did not say he was: He says he was sent for after the Blow; and when he came, the Deceased said he gave it him, and what would be the Consequence.

Now these two being cross-examined by the Prisoner William Kidd, whether they did not know of some Mutiny in the Ship, that might be the Occasion of his giving this Blow; they have told both their Stories, of what Discourse there was of taking this Ship the *Loyal Captain*, and of what Design there was upon the *Dutch Ship* after. Now the first of these was a Fortnight before this happen'd, and the other a Week; so that there was then no Occasion of Mutiny, nor do they know of any Mutiny at that time.

Now, Gentlemen, he has produced for himself Three Witnesses. The first that he calls is *Abel Owens*; and this Witness has not in his Testimony made for the Prisoner, but in effect confirmed what the other Witnesses for the King said: For he tells you he was by when the Blow was given, and gives you an Account how this Thing was, That there was some Discourse between them, much what to the Effect aforesaid, both as to what Capt. Kidd said to Moore, and what Moore replied; and that Capt. Kidd should say to Moore, *You are a scarce Fellow*, or to that purpose; and Moore said, *You have ruined me, and a great many others*; and with that the Prisoner took up the Bucket, and struck him with it. And he being asked if there was any Provocation or Occasion why this Blow was given,

and whether there was any Mutiny at that time, as pretended, he says he knew of none, only he speaks of one about a Month before.

They have call'd two other Witnesses, one is *Richard Barlicorn*: He is the Prisoner's Servant; and though he be his Servant, yet the Law allows him to be a Witness for him, and the Credit of his Testimony is left to you. Now what has he said? He has told you something different Stories. He thinks there was a Mutiny in the Ship. And being ask'd about what time; he thinks it was about a Month or three Weeks before; and, upon further Examination saith, there was no Mutiny when Moore was killed. He is willing to say what he can for his Master, and believes Mr Kidd did not design to do any harm to that Man; for he heard the Surgeon say, that Blow was not the Occasion of his Death. Now, in Contradiction to that, Bradinham the Surgeon says he never did say so, but believes that this Blow was the Occasion of his Death. You have heard what Objections the young Man's Testimony is liable to, and you will consider his whole Evidence.

The last Witness the Prisoner has called is *Hugh Parrot*. He says there was something of these Words, and that the Deceased did say, he could have put the Captain in a way to have taken the Ship, and hereupon Words arose, and the Captain was in a Passion; and that then he went away, and understood afterwards the Blow was given, but how he could not tell.

Now, Gentlemen, this being the Matter of Fact, the Prisoner is indicted upon it for Murder. Now to make the killing of a Man to be Murder, there must be Malice prepense, either express or implied: The Law implies Malice, when one Man, without any reasonable Cause or Provocation, kills another. You have had this Fact opened to you. What Mutiny or Discourse might be a Fortnight or Month before, will not be any Reason or Cause for so long continuance of a Passion. But what did arise at that time, the Witnesses tell you. The first Witness tells you, the first Words that were spoken, were by Mr Kidd; and upon his Answer, Mr Kidd calls him *lousie Dog*. The Reply was, *If I am so, you have made me so; You have ruined me, and a great many more.* Now, Gentlemen, I leave it to you to consider whether that could be a reasonable Occasion or Provocation for him to take a Bucket and knock him on the Head, and kill him. You have heard the Witnesses have made it out that he was a healthy Man, and they are of Opinion that that Blow was the Occasion of his Death. Now for the Prisoner, on such a Saying, and without any other Provocation, to take a Bucket and knock the Deceased on the Head, and kill him, must be esteemed an unjustifiable Act. For, as I said, if one Man kill another without Provocation, or reasonable Cause, the Law presumes and implies Malice; and then such Killing will be Murder, in the Sense of the Law, as being done out of Malice prepense. If there be a sudden falling out, and fighting, and one is killed in heat of Blood, then our Law calls it Manslaughter: But in such a Case as this, that happens on slight Words, the Prisoner called the Deceased a *Lousie Dog*; and the Deceased said, *If I be so, you made me so*; Can this be a reasonable Cause to kill him? And if you believe them to be no reasonable Cause of Provocation, and that this Blow was given by the Prisoner, and was the Oc-

casion of *Moore's Death*, as the Witnesses alledge, I cannot see what distinction can be made, but that the Prisoner is guilty of Murther. Indeed, if there had been a Mutiny at that time, and he had struck him at the time of the Mutiny, there might have been a reasonable Cause for him to plead in his Defence, and it ought to have been taken into Consideration; but it appears, that what Mutiny there was, was a Fortnight at least before. Therefore, Gentlemen, I must leave it to you; if you believe the King's Witnesses, and one of the Prisoner's own, that this Blow was given by the Prisoner, in manner aforesaid, and are satisfied that it was done without reasonable Cause or Provocation, then he will be guilty of Murther; and if you do believe him guilty of Murther, upon this Evidence, you must find him so: If not, you must acquit him.

Kidd. My Lord, I have Witnesses to produce for my Reputation.

L. C. B. Ward. Mr *Kidd*, we gave you Time to make your Defence; why did not you produce them? You were asked more than once, if you had any more to say; and you said you would call no more Witnesses.

Kidd. I can prove what Service I have done for the King.

L. C. B. Ward. You should have spoken sooner; but what would that help in this Case of Murther? You said you had no more to say, before I began.

Then an Officer was sworn to keep the Jury; and about an Hour after, the Jury returned, and gave in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names.
Nath. Long.

Nath. Long. Here, &c.

Cl. of Arr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who shall say for you?

Omnes. Foreman.

Cl. of Arr. *William Kidd*, hold up thy Hand; (which he did.) Look upon the Prisoner. Is he guilty of the Murther whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper.

THE TRYAL of *William Kidd*, *Nicholas Churchill*, *James Howe*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, *Abel Owens*, and *Darby Mullins*, for Piracy and Robbery on a Ship called the *Quedagh Merchant*.

THE Jurors for our Sovereign Lord the King, do, upon their Oath, present, That *William Kidd*, late of London, Mariner; *Nicholas Churchill*, late of London, Mariner; *James Howe*, late of London, Mariner; *Robert Lamley*, late of London, Mariner; *William Jenkins*, late of London, Mariner; *Gabriel Loffe*, late of London, Mariner; *Hugh Parrot*, late of London, Mariner; *Richard Barlicorn*, late of London, Mariner; *Abel Owens*, late of London, Mariner; and *Darby Mullins*, late of London, Mariner: The 30th Day of January, in the Ninth Year of the Reign of our Sovereign Lord, *William the Third*, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon

the High Sea, in a certain Place distant about Ten Leagues from Cuttshen in the East-Indies, and within the Jurisdiction of the Admiralty of England, did Piratically and Feloniously set upon, board, break, and enter a certain Merchant-Ship called the *Quedagh Merchant*, then being a Ship of certain Persons, (to the Jurors aforesaid unknown) and then and there Piratically and Feloniously did make an Assault in and upon certain Mariners (whose Names to the Jurors aforesaid are unknown) in the same Ship, in the Peace of God, and of our said now Sovereign Lord the King, then and there being, Piratically and Feloniously did put the aforesaid Mariners of the same Ship, in the Ship aforesaid then being, in corporal Fear of their Lives, then and there, in the Ship aforesaid, upon the high Sea, in the Place aforesaid, distant about Ten Leagues from Cuttshen aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, Piratically and Feloniously did Steal, Take, and carry away the said Merchant Ship called the *Quedagh Merchant*, and the Apparel and Tackle of the same Ship, of the Value of 400 l. of lawful Money of England; Seventy Chests of Opium, of the Value of 1400 l. of lawful Money of England; Two Hundred and Fifty Bags of Sugar, of the Value of 100 l. of lawful Money of England; Twenty Bales of Raw Silk, of the Value of 400 l. of lawful Money of England; an Hundred Bales of Callico's, of the Value of 200 l. of lawful Money of England; Two Hundred Bales of Muslin's, of the Value of 1000 l. of lawful Money of England; and three Bales of Romels, of the Value of 30 l. of lawful Money of England: The Goods and Chattels of certain Persons (to the Jurors aforesaid unknown;) then and there, upon the High Sea aforesaid, in the aforesaid Place, distant about ten Leagues from Cuttshen aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship in the Custody and Possession of the said Mariners in the same Ship, from the said Mariners of the said Ship, and from their Custody and Possession, then and there, upon the High Sea aforesaid, in the Place aforesaid, distant about ten Leagues from Cuttshen aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

Cl. of Arr. **S**ET Will. *Kidd*, *Nicholas Churchill*, &c. to the Bar; (and so of the rest.) Will. *Kidd*, hold up thy Hand; (which he did, and so the rest.)

You the Prisoners at the Bar, those Men that you shall hear called, and that personally appear, are to pass between our Sovereign Lord the King and you, upon Tryal of your several Lives and Deaths: If therefore you, or any of you will Challenge any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

And there being no Challenges, the Twelve that were sworn on the Jury were as follow:

<i>John Cooper,</i>	<i>P. Walker,</i>
<i>Jo. Hall,</i>	<i>William Hunt,</i>
<i>Jo. James,</i>	<i>John Micklethwait,</i>
<i>Peter Parker,</i>	<i>Richard Chiswell,</i>
<i>Caleb Hook,</i>	<i>Abraham Hickman,</i>
<i>R. Rider,</i>	<i>George Grove.</i>

Cl. of Arr. Cryer, Count these; *John Cooper.*
Cryer. One, &c. Twelve good Men and true, stand together, and hear your Evidence.

Then

Then the usual Proclamation for Information was made; and the Prisoners being bid to hold up their Hands, the Clerk of Arraignments charged the Jury with them thus:

Cl. of Arr. You of the Jury, look upon the Prisoners, and hearken to their Cause. They stand Indicted by the Names of *William Kidd, &c.* (as before in the Indictment.) Upon this Indictment they have been Arraigned, and thereunto have severally pleaded, not guilty; and for their Trial, put themselves on God and their Country, which Country you are. Your Charge is, to enquire whether they be guilty of the Piracy and Robbery whereof they stand Indicted, in Manner and Form as they stand Indicted, or not guilty, &c.

Nic. Churchill. My Lord, I beg your Opinion, whether I may not plead the King's Pardon?

L. C. B. Ward. Let us see your Pretences: You shall have all legal Defences and Advantages allowed to you.

N. Churchill. I came in upon his Majesty's Proclamation.

L. C. B. Ward. Have you the King's Proclamation? If you have, let us see it.

Churchill. We had notice of it at *Guiana*, and we delivered up our selves to *Col. Bass*, Governor of *East-Jersey*, and I have it under his Hand. I beg your Lordship would appoint me Council to plead my Case.

The Paper was shown, and read.

Mr Crawley. I know not when it was.

Churchill. I had notice of it at *Guiana*: I have been two Years in Custody.

L. C. B. Ward. How long have you been a Prisoner?

Churchill. Almost two Years: Two Years next July.

L. C. B. Ward. and the rest of the Judges. The Proclamation (for what you say your self) does not reach your Case.

Howe, Churchill, Mullins. We came in, upon the Proclamation, all the same Day.

Mr F. Powell. How can you make it appear you surrendered?

Prisoners. Here is an Affidavit made of it by the Governor's Secretary; and there's the Gentleman himself, *Col. Bass*.

Mr F. Powell. You must make it out that you have come in within the Conditions of that Proclamation, if you have any Benefit by it.

L. C. B. Ward. Let the Proclamation be read, (which was done accordingly, and it here follows:)

By the KING, A Proclamation.

William R.

Whereas We being informed, by the frequent Complaints of our good Subjects Trading to the East-Indies, of several wicked Piracies committed on those Seas, as well upon our own Subjects, as those of our Allies, have there-

fore thought fit (for the Security of the Trade of those Countries, by an utter Extirpation of the Pirates in all Parts Eastward of the Cape of Good Hope, as well beyond Cape Comorin, as on this side of it, unless they shall forthwith surrender themselves as is herein after directed) to send out a Squadron of Men of War, under the Command of Captain Thomas Warren. Now We, to the Intent that such who have been guilty of any Acts of Piracy in those Seas, may have Notice of our most gracious Intention, of extending our Royal Mercy to such of them as shall surrender themselves, and to cause the severest Punishment according to Law to be inflicted upon those who shall continue obstinate, have thought fit, by the Advice of our Privy Council, to Issue this Proclamation; hereby Requiring and Commanding all persons who have been guilty of any Act of Piracy, or any ways Aiding or Assisting therein, in any place Eastward of the Cape of Good Hope, to surrender themselves within the several respective Times herein after limited, unto the said Captain Thomas Warren, and the Commander in chief of the said Squadron for the time being, and to Israel Hayes, Peter Dellanoye, and Christopher Pollard, Esquires, Commissioners appointed by us for the said Expedition, or to any Three of them, or, in case of Death, to the major part of the Survivors of them. And We do hereby declare, That We have been Graciously pleased to Impower the said Captain Thomas Warren, and the Commander in chief of the said Squadron for the time being, Israel Hayes, Peter Dellanoye, and Christopher Pollard, Esquires, Commissioners aforesaid, or any Three of them, or, in case of Death, to the major part of the Survivors of them, to give Assurance of our most gracious Pardon unto all such Pirates in the East-Indies, (viz.) all Eastward of the Cape of Good Hope, who shall so surrender themselves for Piracies or Robberies committed by them upon the Sea or Land; except nevertheless such as they shall commit in any Place whatsoever after Notice of our Grace and Favour hereby declared; And also Excepting all such Piracies and Robberies as shall be committed from the Cape of Good Hope Eastward, to the Longitude or Meridian of Socatora, after the last Day of April 1699. and in any Place from the Longitude or Meridian of Socatora Eastward, to the Longitude or Meridian of Cape Comorin, after the last Day of June, 1699. and in any Place whatsoever Eastward of Cape Comorin

morin after the last Day of July, 1699. And also excepting Henry Every alias Bridgman, and William Kidd.

Given at our Court at *Kensington*, the Eighth Day of *December*, 1698. In the Tenth Year of our Reign.

God save the King.

Clerk. There is no Day mentioned in this Paper when they surrendered themselves.

Mr Moxon. My Lord, about the Year 1697, there was a special Commission given to Four Persons, and they were to proceed in their Voyage to the *Indies*, and they carried a great Number of *Proclamations*, that all the Pirates in such and such Places should surrender themselves. Now they came to *St. Helena* with them, and Captain *Warren* was sent to *St Mary's*, and he was to deliver some of these *Proclamations* there, and the Commissioner had then the Embassador to the *Great Mogul* on Board, and this Captain *Warren* these *Proclamations*. *Warren* comes and delivers the *Proclamations* out, and among the rest the Prisoner at the Bar having notice of this, he goes to the Governor, and confesses he had been a Pirate, and desired them to take notice that he surrendered himself; and we have the Governor here, to give an Account of this Matter.

L. C. B. Ward. The *Proclamation* says they must surrender themselves to such and such Persons by Name. See if it be not so. (*Then the Proclamation was read again.*) Here are several Qualifications mentioned; you must bring your selves under them, if you would have the Benefit of it.

Dr Newton. Let them show that they surrendered themselves to the Persons they were to surrender to.

Mr Moxon. My Lord, we will prove we gave Notice within the Time, by this Paper.

Mr Soll. Gen. There is no Time mentioned in it. (*The Affidavit was read.*) *Charles Hally, Gent. Maketh Oath, That in the Year 98, there being Notice of his Majesty's gracious Pardon to such Pirates as should surrender themselves, James Howe, Nicholas Churchill, and Darby Mullins, in May 1699, did surrender themselves to Jeremiah Bass, and he did admit them to Bail.*

L. C. B. Ward. There are Four Commissioners named in the *Proclamation*: There is no Governor mentioned that is to receive them, only those Four Commissioners.

Mr Moxon. But, my Lord, consider the Nature of this *Proclamation*, and what was the Design of it, which was to invite Pirates to come in.

Mr Coniers. We must keep you to the *Proclamation*. Here is not enough to put off the Tryal.

L. C. B. Ward. If you had brought your selves within the Case of the *Proclamation*, we should be very glad. You that offer it, must consider it is a special *Proclamation*, with divers Limitations; and if you would have the Benefit of it, you must bring your selves under the Conditions of it. Now there are Four Commissioners named, that you ought to surrender to; but you have not surrendered to any one of these, but to Colonel *Bass*, and there is no such Man mentioned in this *Proclamation*.

Mr Knapp. My Lord, and Gentlemen of the Jury, The Indictment sets forth, That the Prisoners at the Bar, on the 30th of *January*, in the Ninth Year of his Majesty's Reign, ten Leagues distant from *Cusheen*, did Piratically seize and rob a certain Ship called the *Quedagh Merchant*, and put the Men in fear of their Lives; and the said Ship, with her Apparel, Tackle, and Goods, did then and there, upon the High Sea, take and carry away, against the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment they have Pleaded, Not guilty. If we prove it upon them, you must find them guilty.

Dr Newton, Advocate of the Admiralty. My Lord, and Gentlemen, The Prisoners at the Bar, Captain *Will. Kidd*, late Commander of the *Adventure Galley*, and nine other Mariners in the same Vessel, stand Indicted for Feloniously and Piratically Assaulting and taking a Ship called the *Quedagh Merchant*, on the High Sea near *Cusheen*, in the *East-Indies*, about the 30th of *January*, in the Ninth Year of his Majesty's Reign: The Ship was considerable for its Force and Bulk, being about 400 Tun; and more considerable for its Lading, having on Board to the Value of many Thousand Pounds.

This Cap. *Kidd*, who thus acted the Pirate himself, went from *England* in *April 1696*, with a Commission dated the 26th of *January* preceeding, to take and seize Pirates in the *Indian Seas*, which were then very much and very dangerously infested by them, to the great Hazard, and Loss, and Ruine of the Merchant.

The Ship carried 30 Guns, and there were on Board about 80 Men; but the Captain being come to *New-York* in *July 96*, pretending, as indeed it was designed he should, and he had undertaken to make that Design good, that he was going to *Madagascar*, (which was the known and common Receptacle of the Pirates in those Seas) to take Pirates, and free the Seas from those Disturbers of the Commerce of Mankind; so many came in to him, being invited by Articles publicly set up by him in that Place, that his Number quickly increased to 155 Men; a Force sufficient, if he had meant well, to have made him useful to the Publick; and to prove as mischievous, if his Designs were otherwise: And what those were will quickly appear.

After calling in at several Places for Provisions, and among others at *Madagascar*, in *July 97*, he failed to *Babs-key*, a small Island at the Entrance of the *Red-Sea*, and a convenient Station for the observing what Vessels went from thence to the *Indies*; and now instead of taking Pirates, he becomes one himself, and the greatest and the worst of all. Here he staid three Weeks, in expectation of the *Mocca Fleet*, to make his Benefit and his Fortune out of it: For whatever he had before pretended, this was his real Design, and now so possessed his Mind, that he could not refrain from declaring, and that often, to his Men, That now he should make his Voyage and ballast his Ship with Gold and Silver. After long Expectation, the Fleet, on the 14th of *August*, to the Number of 14, came by: He fell in with the middle of them, fired several Guns at them; but finding they had an *English* and *Dutch* Convoy, that Design happily failed of the wish'd for Success.

This Disappointment however did not discourage him, but that he proceeded on for the Coast of *Malabar*, where he knew the Trade was considerable,

siderable, and hoped his Advantage would be proportionable in the disturbing it; and there accordingly, for several Months, he committed many great Piracies and Robberies, taking the Ships and Goods of the *Indians* and others at Sea, *Moors* and *Christians*, and torturing cruelly their Persons, to discover if any thing had escaped his Hands; burning their Houses, and killing after a barbarous manner the Natives on the Shore; equally cruel, dreaded and hated both on the Land and at Sea.

These Criminal Attempts and Actions had rendered his Name (to the Disgrace and the Prejudice of the *English* Nation) too well known, and deservedly detested, in those remote Parts of the World; and he was now looked upon as an Arch-Pirate, and the Common Enemy of Mankind; and accordingly two *Portuguese* Men of War went out in pursuit of him, and one met with him and fought him for several Hours; but *Kidd's* Fortune then reserved him for another Place, and another manner of Tryal.

Amongst the great number of Vessels he took on that Coast, was the Ship he now stands Indicted for, the *Quedagh Merchant*, being then on a Trading Voyage from *Bengal* to *Suratt*, the Commander *English*, Captain *Wright*, the Owners *Armenian* Merchants, and others; he had taken *Moors* before, but *Moors* and *Christians* are all alike to Pirates, they distinguish not Nations and Religions.

Those on Board the Vessel offered 30000 *Rupees* for her Ransom; but the Ship was too considerable to be parted with, even for so great a Sum: So *Kidd* sold Goods out of her, on the Neighbouring Coast, to the Value of Ten or Twelve Thousand Pounds, out of which he took whatever he could pretend to for Ammunition and Provisions, with Forty Shares for himself; and the Remainder was disposed of amongst the Crew, and particularly those who are here Indicted with him, who accompanied him, who assisted him throughout in all his Piracies, and who now too share the Spoils and the Guilt with him.

With this Ship and another, and the Remainder of the Goods not sold on the Coast, he sailed once more for *Madagascar*, where he arrived in the beginning of *May* 98, and there again, what was left on Board, was divided according to the same Proportions, and amongst the same Persons as before, each Mariner having about three Bales to his Share.

Then the Jury brought in their Verdict against William Kidd for Murther: And Dr Newton proceeded;

It is not to be omitted, That at his Return to *Madagascar*, there came on board him some Persons from the Ship *The Resolution*, formerly the *Mocca Frigat*, (for the Piratical seizing of which Vessel there have been formerly Tryals and Convictions in this Place) of which Captain *Culliford*, a notorious Pirate, now in Custody, and against whom two Bills have been found for Piracy, by the Grand Jury, was the Commander: They at first seemed to be afraid of *Kidd*, but without any Ground, as his former Actions had demonstrated, and the Sequel shewed. They who were hardened Pirates, and long inured to Villanies, could scarce think that any Man could so betray the Trust and Confidence the Publick had placed in him, and said, They heard he was come to take

and hang them. But Captain *Kidd* assured them, That he had no such Design, and that he had rather his Soul should broil in Hell, than do them any Harm; bid them not be afraid, and swore he would be true to them. And here indeed he did not break his Word: This was his way of being True to his Trust, and making good the Ends of his Commission, in acting with the greatest Treachery and the greatest Falseness that ever Man did. And to make all that has been represented of him true, Captain *Kidd* and Captain *Culliford* went on Board, Treated, and presented each other; and instead of taking *Culliford*, as it was his Duty to have done, and his Force was sufficient to have performed it, he gave him Money and Ammunition, two great Guns and Shot, and other Necessaries to fit him out to Sea, that he might be in a Condition the better to take and seize other Innocent Persons.

His own Ship he now left, and went on Board the *Quedagh Merchant*; several of his Men then went from him, but not the Prisoners, they were all along Well-wishers and Assistants to him, fought for him, divided the Plunder with him, and are now come to be tryed with him.

This, Gentlemen, is the Crime he is Indicted for, Piracy; the growing Trouble, Disturbance and Mischief of the Trading World, and the peaceable part of Mankind, the Scandal and Reproach of the *European* Nations, and the Christian Name, (I wish I could not say, that the *Kidd's* and the *Avery's* had not made it more particularly so of the *English*) amongst *Mahometans* and *Pagans*, in the extremest Parts of the Earth; which turns not only to the Disadvantage of the immediate Sufferers, but of all such as traffick in those Countries, whether Companies or single Merchants, who are to suffer for the Misfortunes of others, with whom, it may be, they have no Dealings; and for the Villanies of such, whom they and all Mankind equally and justly detest and abhor.

This is the Person that stands Indicted at that Bar, than whom no one in this Age has done more Mischief, in this worst kind of Mischief; or has occasioned greater Confusion and Disorder, attended with all the Circumstances of Cruelty and Falseness, and a Complication of all manner of Ill.

If therefore these Facts shall be proved upon him, you will then, Gentlemen, in finding him Guilty, do Justice to the injured World, the *English* Nation, (our Common Country) whose Interest and Welfare so much depend on the Increase and Security of Trade; and, lastly, to your selves, whom the Law has made Judges of the Fact.

Mr Sol. Gen. My Lord, and Gentlemen of the Jury, I am of Council for the King, against the Prisoners at the Bar, in this Case, with the Doctor that has opened the Matter from the beginning. These Prisoners at the Bar went out with Commissions for good Purposes, though they made use of them to very bad ones. Gentlemen of the Jury, I must tell you, The Charge upon which you are to enquire, is only upon a certain Ship called the *Quedagh Merchant*, and to that we shall apply our Evidence. What was taken in her, has been opened already: All we will do now, is to call our Witnesses, and make out to your Satisfaction the Things charged upon them.

Mr Coniers. My Lord, we shall prove this Charge by the Persons that were Evidence before, *Robert Bradinham,*

Bradinham, and *Joseph Palmer*. They went out with Captain *Kidd* in his Voyage, and he began it in April 1696. I believe it will be necessary that they give some Account before this Piracy was committed, which was not in Time till February 1697. They will give you an Account of some Plunders that happened before this, and then of the taking of this Ship, and the dividing it amongst them.

Mr Justice *Powell*. When went they out?

Mr *Coniers*. They began their Voyage in April 1696, and took this Ship in February 1697. They did all along that Voyage commit several Plunders on several Ships they thought a Prey. Their Design was, not to take Pirates, but to take what they could get out of any Ships, Friends or Enemies; For in this Ship, the *Quedagh Merchant*, which was a *Moorish* Ship, there were several *Armenians*; and they offered them a great Sum of Money to redeem the Ship, but they refused it; and they disposed of the Goods, and divided the Money: And for the Proof of that, we will call Mr *Bradinham*.

Mr *J. Powell*. I understand that he had a Commission; therefore if any one has a Commission, and he acts according to it, he is not a Pirate; but if he take a Commission for a Colour, that he may be a Pirate, it will be bad indeed: And therefore if you can prove that he was a Pirate all along, this will be a great Evidence against him.

Mr *Coniers*. My Lord, We will prove that; so that the Commission was but a Colour. Mr *Bradinham*, Pray give my Lord and the Jury an Account when you began your Voyage, and your Proceedings afterwards.

Bradinham. Sometime in the Year 1696; about the beginning of May, I and others, were with Capt. *Kidd*: And we sailed from *Plymouth*, designing for *New-York*; and in the Way to *New-York* we met with a *French* Banker, and took her.

Mr *Coniers*. Tell the Court what Ship it was you went in, and with whom.

Bradinham. We went with Captain *Kidd*, in the *Adventure-Galley*.

Mr *Coniers*. What Number of Men had you when you went first out?

Bradinham. About Seventy or Eighty Men.

Mr *Coniers*. What Force of Guns had you?

Bradinham. We had thirty Guns.

Mr *Coniers*. In what Office was Captain *Kidd* in the Ship?

Bradinham. He was the Commander of her.

Mr *Coniers*. Now tell my Lord, and the Jury, what time you left *England*, and how you proceeded.

Bradinham. In May 1696, we left *Plymouth*, and went to *New-York*, and in the way met with a *French* Ship, and took her: And when we came to *New-York*, Captain *Kidd* put up Articles, That if any Men would enter themselves on Board his Ship, they should have their Shares of what should be taken, and he himself was to have Forty Shares.

Mr *Coniers*. What Number of Men did he get after these Articles were published?

Bradinham. He carried from *New-York* an Hundred and fifty five Men.

Mr *Coniers*. Whither did he sail then?

Bradinham. To the *Madera's*, from thence to *Bonavis*, from thence to *St Jago*, from thence to *Madagascar*, from thence to *Joanna*, from thence to *Mahala*, from *Mahala* to *Joanna* again, and from thence to the *Red-Sea*; and there we waited for the *Mocca* Fleet. They passed us one Night, and

he pursued them, and went among them, and was designed to take what he could of them; but he found they were too strong for him, and was fain to leave them.

Mr *Cowper*. How long did you lie in wait for that Fleet?

Bradinham. A Fortnight or Three Weeks.

Mr *Cowper*. Did he express himself so, that he did lie in wait for that Fleet?

Bradinham. Yes; he said that he did design to make a Voyage out of them.

Mr *Cowper*. Did he not lie in wait for any *French* Effects in that Fleet?

Bradinham. No, only for the *Moorish* Fleet.

Mr *Cowper*. What do you mean by the *Moorish* Fleet?

Bradinham. The Natives of *India*, the *Mabometans*.

Mr *Cowper*. Where did you lie in wait for that Fleet?

Bradinham. In the *Red-Sea*.

Mr *Cowper*. In the Mouth of it?

Bradinham. Yes.

Mr *Cowper*. Is it a fit Place for that Purpose?

Bradinham. Several Sail of Ships may lie there.

Mr *Cowper*. Did you expect them?

Bradinham. Yes; Capt. *Kidd* waited for them.

Mr *Coniers*. How long did you stay there?

Bradinham. About a Fortnight.

Mr *Coniers*. Did you do any thing in that time to get Intelligence?

Bradinham. Captain *Kidd* sent his Boat three times to *Mocca*, to see if they could make any Discovery; and the two first times they could make none; but the third time they brought word the Ships were ready to sail: And accordingly they came, and we sailed after them, and fell in with them, and Captain *Kidd* fired at them.

Mr *Cowper*. You say, he sent his Boat three times for Intelligence; Can you remember what Answer they brought?

Bradinham. The two first times they brought no Intelligence, but the third time they brought Word that fourteen or fifteen Ships were ready to sail.

Mr *Cowper*. What Colours did they say they had?

Bradinham. I cannot tell that. When Captain *Kidd* had fetched them up, he found they were under Convoy, and so he left them: And then he was going to the Coast of *Malabar*, and by the Way met with Captain *Parker*.

Mr Justice *Powel*. Did they fire any Guns at the *Mocca* Fleet?

Bradinham. Yes; Captain *Kidd* fired divers Guns at them.

Mr *Coniers*. After such time as you left the *Mocca* Fleet, What happened after that? Recollect your self.

Bradinham. We took a Ship that Capt. *Parker* was Commander of, between *Carawar* and the *Red-Sea*.

Mr *Coniers*. What Ship was this that Captain *Parker* was Commander of?

Bradinham. A *Moorish* Ship, she came from *Bombay*, and Captain *Parker* was the Master.

Mr *Coniers*. What did you take from this Ship?

Bradinham. Captain *Kidd* took out *Parker*, and a *Portuguese* for a *Linguister*.

Mr *Coniers*. A *Linguister*; What do you mean by that?

Bradinham. An Interpreter. He took out of her a Bail of Coffee, a Bail of Pepper, about twenty

ty Pieces of *Arabian Gold*, and ordered some Men to be taken and hoisted up by the Arms, and drub'd with a naked Cutlace.

Mr *Coniers*. Why did he do that?

Bradinham. That they might confesse what Money they had.

Mr *Coniers*. Were those Men *Frenchmen* that were thus used?

Bradinham. No; they were *Moors*.

Mr *Coniers*. Was there any Demand made of those Men, Captain *Parker*, and the *Portuguese*?

Bradinham. Yes; The *English Factory* sent for this *Parker* and the *Portuguese*, and he deny'd that he had any such Persons on Board, for he kept them in a Hole.

Mr *Coniers*. Do you know any thing more?

Bradinham. Then he went to Sea, and that Night he met with a *Portuguese Man of War*; the next Morning he came up with her, and the *Portuguese* first fired at Captain *Kidd*, and he at him again; they fought four or five Hours; Captain *Kidd* had ten Men wounded.

Mr *Coniers*. So that there was nothing more than Fighting.

Bradinham. No.

Mr *Coniers*. Go on; What did you do next?

Bradinham. We went to the Coast of *Malabar*.

Mr *Coniers*. What did you go thither for?

Bradinham. We went to one of the *Malabar Islands* for Wood and Water, and Captain *Kidd* went a-shore, and several of his Men, and plundered several Boats, and burnt several Houses, and ordered one of the Natives to be ty'd to a Tree, and one of his Men to shoot him.

Mr *Coniers*. Pray go on: What was the Reason of his shooting this *Indian*?

Bradinham. One of his Men, that was his Cooper, had been a-shore, and some of the Natives had cut this Man's Throat, and that was the Reason he ordered his Men to serve this Man so.

Mr *Coniers*. Pray go on, and give an Account what happened afterwards.

Bradinham. Then we came back again to the *Malabar Coast*, and cruised; and in *October* he killed his Gunner, *Williams Moore*.

Mr *Coniers*. Tell what happened next after that.

Mr *Cowper*. Was this the *October* next after he left *England*, or the Year following.

Bradinham. It was in *October* 1697.

Mr *Coniers*. Well, Go on.

Bradinham. Some time in *November* he took a *Moorish Ship* belonging to *Swast*, there were two *Dutchmen* belonging to her, the rest were *Moors*. Captain *Kidd* chased this Ship under *French Colours*; and when the *Dutchman* saw that, he put out *French Colours* too. And Captain *Kidd* came up with them, and commanded them on Board; and he ordered a *Frenchman* to come upon Deck, and to pretend himself Captain. And so this *Commander* comes aboard, and comes to this *Monsieur Le Roy* that was to pass for the Captain; and he shows him a Paper, and said it was a *French Pass*. And Captain *Kidd* said, *By God, Have I catch'd you? You are free Prize to England.* We took two Horses, some Quilts, &c. and the Ship he carried to *Madagascar*. In *December* he took a *Moorish Ketch*, she was taken by the Boat, we had one Man wounded in taking of her.

Mr *Coniers*. When was this done?

Bradinham. In *December* 1697.

Mr *Coniers*. What did you plunder then?

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Bradinham. Our People took the Vessel a-shore, and Captain *Kidd* took out of her thirty Tubes of Sugar, a Bail of Coffee, &c. and then he ordered the Vessel to be turned a-drift.

Mr *Coniers*. What followed in *January*?

Bradinham. *January* the 20th, Captain *Kidd* took a *Portuguese* that came from *Bengal*: He took out of her two Chests of *Opium*, some *East-India Goods*, and Bags of *Rice*, &c.

Mr *Coniers*. How long did you keep this Ship?

Bradinham. He kept this *Portuguese Ship* about seven Days: He took out of her some Butter, Wax, and *East-India Goods*: He kept her till he was chased by seven or eight Sail of *Dutch*, and then he left her.

Mr *Coniers*. My Lord, Now we are come to that on which the Indictment is founded. Mr *Bradinham*, give a particular Account of that.

Bradinham. Some time in *January*, Captain *Kidd* took the *Quedagh-Merchant*: He gave her chase under *French Colours*: He came up with her, and commanded the Master aboard: And there came an old *Frenchman* in the Boat; and after he had been aboard a while, he told Captain *Kidd* he was not the Captain, but the Gunner. And Captain *Kidd* sent for the Captain on board his Ship.

Mr *Coniers*. Who was that?

Bradinham. Mr *Wright*.

Mr *Coniers*. What Countryman was he?

Bradinham. An *Englishman*. He was sent for aboard, and he came; and Captain *Kidd* told him, he was his Prisoner. And he ordered his Men to go a-board, and take Possession of the Ship, and disposed of the Goods on that Coast to the Value of Seven or Eight Thousand Pounds.

Mr *Coniers*. What Persons were a-board her?

Bradinham. There was Captain *Wright*, and two *Dutchmen*, and a *Frenchman*, and some *Armenians*, and the rest *Moors*.

Mr *Coniers*. Did these *Armenians* make any Offer of any Money for their Ransom?

Bradinham. Captain *Kidd* told them, They should be ransomed, if they made an Offer that he liked of. So they offered him twenty thousand *Rupees*. He told them, That was but a small parcel of Money, and the Cargo was worth a great deal more.

Mr *Coniers*. Who did the Cargo belong to?

Bradinham. To those *Armenians*, as I was informed by Captain *Wright*.

Mr *Coniers*. What did he do with them?

Bradinham. He disposed of some of them on the Coast of *India*.

Mr *Coniers*. What did he do with the Proceed of the Goods he sold?

Bradinham. He shared the Money.

Mr *Coniers*. Had these Men (the other Prisoners) any of the Shares?

Bradinham. Yes, all of them. You were a Half-share Man, and you a Half-share Man, (pointing to two of them.)

Mr *Coniers*. Mr *Bradinham*, You say Capt. *Wright* came a-board *Kidd's Ship*.

Bradinham. Yes.

Mr *Coniers*. Did he discourse with him?

Bradinham. I was not with him, for he kept his Cabin to himself.

Mr *Coniers*. But you are sure he came a-board?

Bradinham. Yes.

Mr *Coniers*. And that he was an *Englishman*?

Bradinham. Yes.

Mr *Coniers*. How did Captain *Kidd* behave himself to the Ships or Boats there?

Bradinham. He boarded several Ships, and took out of them what was for his turn.

Mr Coniers. How did he use those that he traded with?

Bradinham. Some of them came a-board several times, and he traded with them: But some of them came a-board when he was going away, and he plundered them, and sent them a-shore without any Goods.

Mr Coniers. What Country Men were those he served thus?

Bradinham. *Mahometans*: They had dealt with him before considerably.

Mr Coniers. How much did he take from them.

Bradinham. About Five Hundred Pieces of Eight.

Mr Coniers. How do you know that?

Bradinham. I saw it told afterwards. We went to *Madagascar* afterwards, and by the Way met with a *Moorish Ship*, and took out of her several Casks of Butter, and other Things.

Mr Cowper. What were the Crew of this Ship?

Mr J. Powell. They are Indicted for the *Quedagh-Merchant*; Were all the Prisoners in that Action? You have given an Historical Account from the Beginning, that he was a meer Plunderer: But now you are come to the *Quedagh*, for which they are Indicted; Go not beyond it.

Mr Coniers. Look on the several Prisoners at the Bar, and tell whether any of the Prisoners were at the taking of the *Quedagh-Merchant*.

Cl. of Arr. Was *William Kidd* there, at the Time the Ship was taken?

Bradinham. Yes.

Cl. of Arr. Was *Nicholas Churchill* there?

Bradinham. Yes.

Cl. of Arr. Do you know *James Howe*? Was he there?

Bradinham. Yes.

Cl. of Arr. Had he a Share?

Bradinham. Yes.

Cl. of Arr. Had *Robert Lamley* a Share?

Bradinham. Yes. He was a Servant, and had but half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *William Jenkins*, was he there, and had a Share?

Bradinham. Yes.

Cl. of Arr. *Gabriel Loffe*, did you know what he had?

Bradinham. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *Hugh Parrot*, what had he?

Bradinham. Half a Share.

Cl. of Arr. Had *Richard Barlicorn* a Share?

Bradinham. He had half a Share of Money, and a whole Share of Goods.

Cl. of Arr. Had *Abel Owens* any?

Bradinham. He had half a Share.

Abel Owens. Had I any of it?

Bradinham. You had it: You took it.

Cl. of Arr. What had *Darby Mullins*?

Bradinham. He had half a Share of the Money, and a whole Share of the Goods.

Mr Coniers. Now we have fully proved this as to the *Quedagh-Merchant*.

Dr Newton. When you came to *Madagascar*, what was done there?

Bradinham. There came a *Canoe* to us with some *English Men* in her, they were formerly acquainted with Captain *Kidd*, and they told him, They had heard, that he was come to take them, and hang them.

Dr Newton. Who were they?

Bradinham. They belonged to the *Moco Frigate*.

Mr Coniers. Give a particular Account of that Matter.

Bradinham. When we came to *Madagascar*, there came a *Canoe* off to us.

Mr Coniers. From whom?

Bradinham. From the *Moco Frigate*, Captain *Culliford* was the Commander. And there were some white Men in her, that had formerly been acquainted with Captain *Kidd*; they heard that he was come to take them, and hang them. He told them, it was no such thing for he was as bad as they.

Mr Coniers. Were they thought to be Pirates?

Bradinham. They were so.

Mr Coniers. What was it that Captain *Kidd* said?

Bradinham. He assured them it was no such thing. And afterwards went aboard with them, and swore to be true to them; and he took a Cup of Bomboe, and swore to be true to them, and assist them; and he assisted this Captain *Culliford* with Guns, and an Anchor, to fit him to Sea again.

L. C. B. Ward. How came you to know all this? Was you aboard then?

Bradinham. I was aboard then, and I heard the Words.

Dr Newton. Were any of the Goods divided at *Madagascar*?

Bradinham. Yes.

Mr Coniers. Now look on the Prisoners again; you say after he met with this Captain *Culliford*, you went and had a Division made; pray give an Account of it.

Bradinham. When we came to *Madagascar*, Captain *Kidd* ordered the Goods to be carried a-shore, and shared. And he had forty Shares himself.

Cl. of Arr. Had *Nicholas Churchill* a Share?

Bradinham. Yes.

Cl. of Arr. Had *James Howe* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Robert Lamley* a Share?

Bradinham. Yes.

Cl. of Arr. Had *William Jenkins* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Gabriel Loffe* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Hugh Parrot* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Richard Barlicorn* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Abel Owens* a Share?

Bradinham. Yes.

Cl. of Arr. Had *Darby Mullins* a Share?

Bradinham. Yes.

Cl. of Arr. So that you say, every one of the Prisoners at the Bar had a Share.

Bradinham. Yes.

Mr Coniers. What became afterwards of the *Adventure-Galley*?

Bradinham. She was so leaky, that she had two Pumps going; and when they came to shore, they left her, because she was not fit to go to Sea again. And so Captain *Kidd* went aboard the *Scuddee Merchant*, and designed to make a Man of War of her.

Mr Coniers. What is that *Scuddee-Merchant*? Do you mean the *Quedagh-Merchant*?

Bradinham. Yes.

L. C. B. Ward. What became of that Ship afterwards?

Bradinham. I left him at *Madagascar*, after the Money and Goods were divided; and can give no Account afterwards.

Dr Newton. But you say, Captain Kidd went aboard the *Quedagh*.

Bradinham. Yes.

Mr Coniers. My Lord, we have done as to this Witness; if they will ask him any Thing they may.

Cl. of Arr. Will any of you ask him any Questions?

Kidd. He says, when we went out first from *England*, we went out of *Plymouth* in *May*, which we did not; for we went in *April*, therefore this is a Contradiction.

L. C. B. Ward. Mr Kidd, if you will ask him any Questions, you may. Do you desire he should be positive when you went from *Plymouth*?

Bradinham. It was about the first of *May*, my Lord.

L. C. B. Ward. What Year?

Bradinham. In the Year, 1696.

Cl. of Arr. Nicholas Churchill, will you ask him any Questions?

Churchill. I would have went a-shore at *Carawar*, but the Captain would not let me.

L. C. B. Ward. It is proved, that you was at the taking of the *Quedagh-Merchant*, and dividing the Goods.

Churchill. Yes, my Lord, but I could not help it, I was forced to do what the Captain ordered me.

Cl. of Arr. James Howe, will you ask him any Questions?

James Howe. Have not I obeyed my Captain in all his Commands?

L. C. B. Ward. There is no doubt made of that. If any of you will ask him any Questions, you may.

Kidd. Did you not see any *French Passes* aboard the *Queda Merchant*?

Bradinham. You told me you had *French Passes*, I never did see them.

Kidd. Did you never declare this to any body, that you saw these *French Passes*?

Bradinham. No, I did never see any; but I only said, I heard you say you had them.

Churchill. Had I any share?

Bradinham. Yes.

Churchill. How will you prove that?

Jenkins. My Lord, I ask him, Whether I was not a Servant?

L. C. B. Ward. Ask the Witness what Questions you will.

Bradinham. My Lord he was a Servant.

L. C. B. Ward. Who was he a Servant to?

Bradinham. To *George Bullen*.

Jenkins. My Lord, I beg you will examine my Indenture; for I have it in my Pocket, I had nothing aboard that Ship, but what my Master had.

Bradinham. But you had a share of the Goods, I cannot tell whether your Master had it afterwards.

Cl. of Arr. Gabriel Loff. Have you any Question to ask him?

Gab. Loff. I have nothing to say to him, but to ask him, Whether I did ever disobey my Captain's Commands, or was any ways mutinous on board the Ship?

Bradinham. No, I cannot say you did.

Cl. of Arr. Hugh Parrot, do you ask him any Questions?

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Parrot. No.

Cl. of Arr. Richard Barlicorn, do you ask him any Questions?

Barlicorn. I ask him, Whether I was not the Captain's Servant?

L. C. B. Ward. Yes, he says he was.

Cl. of Arr. Abel Owens, will you ask him any Questions?

Owens. I have nothing to say; but depend upon the King's Proclamation.

Cl. of Arr. Darby Molins, have you any Questions to ask him?

Molins. My Lord, he knows I had nothing but what Capt. Kidd was pleas'd to give me.

L. C. B. Ward. Was he a Servant to Capt. Kidd or no?

Bradinham. He had a half share of Money, and a whole share of Goods.

Mr. J. Powel. What was the reason some had whole shares, and some half shares?

Bradinham. Some were able Seamen, and some Landmen, or Servants. There were in all 160 shares, whereof Capt. Kidd had 40; and some of the Men had whole shares, and some only half shares.

Mr Cowper. You told us at first, That in your passage to *New-York*, you took a *French Banker*, and that he condemned her at *New-York*.

Bradinham. Yes.

Mr Cowper. Did he offer to carry any other Ships he took, to be condemned?

Bradinham. No Sir, never.

Mr Coniers. Call *Joseph Palmer*. [who appeared.] Mr Palmer, Give my Lord, and the Jury an account, whether you were one of the Men that went with Capt. Kidd in the *Adventure Gally*.

Palmer. Yes, I was.

Mr Coniers. Then give an account when you left *England*; and of your proceedings in your Voyage.

Palmer. About the last of *April*, or the beginning of *May*, 1696, we went out of *Plymouth* to *New-York*; and by the Way took a *French Banker*. And in *July* we came to *New-York*. About the 6th of *February* we went to *Maderas*.

Mr Coniers. When you were at *New-York*, was there any publication of any Thing to invite Men to come in to Captain Kidd?

Palmer. Yes, there were Articles set up for Men to come aboard Captain Kidd's Ship. He was to have Forty Shares for his Ship, and every Man was to have a Share. And they were to give him Six Pounds a Man for their Arms.

Mr Coniers. How many Men was his Complement?

Palmer. When he came from *New-York*, he had between 150 and 160 Men.

Mr Coniers. Give an Account what you did after this. Whither did you go then?

Palmer. We went from *New-York* to *Maderas*, and from thence to *Bona-vist*, and there we took in Salt; and from thence we went to *St. Jago*, and there we bought Provisions; and from thence we went to *Madagascar*. When we were not far from the *Cape of good hope*, he met with Capt. Warren, with three Sail of Men of War besides himself; there was the *Tyger*, and the *King-fisher*; and another Ship. And Capt. Kidd kept them company about three or four Days, and after that went to *Madagascar*, and sometime in *February* arriv'd there; and there we watered and victualled. We came to *Malabar* about the first of *June*. Then we went to *Joanna*, and from thence to *Mahala*; and from thence to *Joanna* again. And then we met with

with some *Indian Merchants*, so we watered the Ship there, and did them no harm. And from thence we went to *Mahala*, where Captain *Kidd* graved his Ship: We had a great sickness in the Ship, and sometimes we lost four or five Men in a Day. And afterwards we went to *Joanna* again, and there came aboard several *French Men*, and several *English Men* that had lost their Ship. Those *French Men* lent Captain *Kidd* some Money to mend his Ship. And after this, we went to a Place called *Mabbee* in the *Red-Sea*, and took in Water, and *Guiny Corn* that he took from the Natives. And from thence we went to *Babs Key*.

Mr *Coniers*. What Time was it that you came to that *Babs Key*?

Palmer. In *July 1697*.

Mr *Coniers*. Now pray tell us what passed there.

Palmer. When Captain *Kidd* came to *Babs Key*, he stayed there about three Weeks.

Mr *Coniers*. Why did you stay there? Tell us the Reason of it.

Palmer. I heard him say, *Come Boys, I will make Money enough out of that Fleet*.

Mr *Coniers*. Out of what Fleet?

Palmer. The *Mocco Fleet*. When he came to the Key, he ordered some of his Men to look out as Spies. He sent his Boat three Times to make Discovery, and he gave them Orders either to take a Prisoner, or to get an Account what Ships lay there. And the Boat went twice, and brought no News; but the third Time they brought Word, that there were Fourteen or Fifteen Ships lying there ready to Sail; some of them had *English Colours*, some *Dutch Colours*, and some *Moorish Colours*; and that there was a great Ship with *Red Colours*, with her Fore-top-sail loose, ready to Sail. And Captain *Kidd* ordered his Men to take care these Ships did not pass by in the Night.

Mr *Coniers*. You say, he ordered his Men to watch this Fleet, How did he order them?

Palmer. He ordered them by a List in their Turns, to look out for the coming of this Fleet. And so after four or five Days the Fleet came down in an Evening, about the 14th or 15th of *August*; the next Morning Captain *Kidd* went after them, and he fell into the Midst of the Fleet, and there was a *Dutch Convoy*, and an *English* one among them. He went into the midst of the Fleet, and fired a Gun after a *Moorish* Ship. And the two Men of War fired at us, but did no harm, for they did not reach us. So he left the Fleet, and from thence went to *Carawar*.

Mr *Coniers*. Tell what passed there.

Palmer. Then we met with a small Vessel belonging to *Aden*.

Mr *Coniers*. What Country did it belong to?

Palmer. Black People, only there was one *Thomas Parker*, and a *Portuguese* *Don Antonio* on board.

Mr *Coniers*. Was he the Commander of the Ship?

Palmer. I cannot tell.

Mr *Coniers*. What did Captain *Kidd* do with this Ship?

Palmer. He took this *Parker* for a Pilot, and the *Portuguese* for a Linguister.

Mr *Coniers*. What do you mean by that Word Linguister?

Palmer. An Interpreter to speak *Spanish* and *Portuguese*.

Mr *Coniers*. Did he take any Thing out of the Ship besides the Men?

Palmer. He took a Bail of Pepper, and a Bail of Coffee, and let the Ship go. But after this we came to *Carawar*.

Mr *Coniers*. Before you let the Ship go, how were the Men used by him?

Palmer. He ordered some of the Men to be hoisted up by their Arms, and drubb'd with a naked Cutlafs. They were laid with their Hands backward.

Mr *Coniers*. When they were hoisted up, give an Account how they were used, and for what Reason.

Palmer. They were beat with a naked Cutlafs to make them discover what Money was aboard.

Mr *Coniers*. What was the next Thing?

Palmer. He took out this *Parker* for a Pilot, and *Antonio* the *Portuguese* for a Linguister. I heard there was Money taken, but I did not see it.

Mr *Coniers*. What did he do with those Men?

Palmer. He kept them as the other Men were kept.

Mr *Coniers*. Was there any Demand made of these Men?

Palmer. When we came to *Carawar*, the Factory demanded them, and he denied them.

Mr *Coniers*. What Factory is this?

Palmer. An *English* Factory: There was one *Harvey* and *Mason* came to demand these Men.

Mr *Coniers*. And what said Capt. *Kidd* to them?

Palmer. He deny'd that he had any such Men, and he kept them in the Hold, I believe a Week. Several of his Men would have left him if they could.

Mr *Coniers*. What did he do after this?

Palmer. He put to Sea, and met with a *Portuguese* Man of War, and fought her; he engaged her five or six Hours, and afterwards left her, and then he bought some Hogs of the Natives. After he went from this *Carawar*, he went to *Porco*, and took in some Hogs there. And then went to the Island of *Malabar*, and watered his Ship. And his Cooper went ashore, and the Natives cut his Throat. And after this, Capt. *Kidd* sent some Men ashore, and ordered them, That if they should meet any of the Natives, they should kill 'em, and plunder 'em.

Mr *Coniers*. Go on, Sir.

Palmer. After That, they went to the Coast of *Malabar* again, and in *November* met with a Ship, and took her. One *Schipper Mitchel* was the Commander: She was a *Moorish* Ship.

Mr *Coniers*. What became of her?

Palmer. Capt. *Kidd* carried her to *Madagascar*.

Mr *Coniers*. What Goods were in her?

Palmer. There were two Horses, and ten Bails of Cotton, that he sold to the Natives.

Mr *Coniers*. Did he send for any aboard at this Time?

Palmer. There was a *Frenchman* that was to pretend himself the Captain. He took her under *French Colours*, and haled the Ship in *French*. And this *Monsieur le Roy* was to pass for Captain, and he shewed his *French Pass*, and —

Mr *Coniers*. Give an Account of his personating the Captain. Who order'd him to do so?

Palmer. Capt. *Kidd* ordered him to do so; and they haled him in *French*, and he came aboard, and he had a *French Pass*. And then Capt. *Kidd* told him, he was Captain.

Mr *Coniers*. And he took the Ship?

Palmer. Yes the Cotton, and Horses, and sold them afterwards.

Coniers. Whither went you next?

Palmer. We coasted about the Coast of *Malabar*.

Mr Coniers. Did you meet with any Boats there?

Palmer. Yes, several.

Mr Coniers. What did you do with them?

Palmer. Capt. Kidd robb'd and plunder'd them, and turn'd them adrift again.

Mr Coniers. What was the next Thing you did?

Palmer. About the First of *January* we met with a *Portuguese Ship*.

Mr Coniers. Where?

Palmer. On the same Coast. We took her.

Mr Coniers. What did you do with that Ship?

Palmer. He kept her a Week, and took out two Chests of *Indian Goods*, and thirty Jars of Butter, and a Tun of Wax, and half a Tun of Iron, and an hundred Bags of Rice.

Mr Coniers. Did you take those Goods you mention?

Palmer. Yes, and carried them aboard the *Adventure Gally*.

Mr Coniers. What was the next Ship you met with?

Palmer. The *Queda Merchant*.

L. C. B. Ward. Be very plain and particular in this, and how She was taken; for this is the Ship in the Indictment, and for taking of which the Prisoners are tried.

Palmer. About the last of *January* she was taken; I was not then aboard the Gally, for then I was aboard the *November*, and was ordered to get Water. After three or four Days I went aboard; but I was not aboard at the Time she was taken. About three or four Days after, I saw her, and Capt. Kidd was aboard; and I believe there were taken out of her, Goods, to the Value of Ten or Twelve Thousand Pounds; which were sold, some before they were put ashore, and some after.

Mr Coniers. To whom were they sold?

Palmer. To the *Banians*. Capt. Kidd kept the Seamen to help to sail the Ships.

L. C. B. Ward. What became of the Money the Goods were sold for?

Palmer. It was shared.

L. C. B. Ward. What Share had the Captain?

Palmer. He had forty Shares.

Cl. of Arr. What Share had *William Kidd*?

Palmer. He had forty Shares.

Cl. of Arr. In Goods, or Money?

Palmer. In both Goods and Money.

Cl. of Arr. Look upon *Nich. Churchill*, What had he?

Palmer. He had near Two Hundred Pounds of each, which was a Man's Share.

Cl. of Arr. Look upon *James Howe*, Had he any Share?

Palmer. Yes, a whole Share.

Cl. of Arr. Had *Robert Lumley* any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *Will. Jenkins*, Had he any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. Had *Gabriel Loff* any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Mr Coniers. Why had they no more?

Palmer. They were Land-men.

Cl. of Arr. *Hugh Parrot*, Had he any?

Palmer. He had a whole Share.

Cl. of Arr. Had *Richard Barlicorn* any Share?

Palmer. He had half a Share.

Cl. of Arr. Had *Abel Owens* any?

Palmer. He had a whole Share.

Cl. of Arr. Had *Darby Mullins* any Share?

Palmer. He had a whole Share.

Mr Coniers. What became of the rest of the Goods?

Palmer. They were carried to *Madagascar*.

Mr Coniers. Who ordered the Goods to be hoisted out, and shared? Who ordered that?

Palmer. At the Beginning I was not there.

Mr Coniers. Who ordered it?

Palmer. Captain Kidd. And most of the Goods were a-shore before I came back, and before I came back he had his Share, and most of the rest.

Mr Coniers. How many of the Prisoners at the Bar, had their Shares of the Goods?

Palmer. All these Men.

Cl. of Arr. Whose Shares were divided to them before you went away?

Palmer. None; but only they were prepared in order to be divided.

L. C. B. Ward. Did you hear any of them say, They had any Shares?

Palmer. Yes, *Hugh Parrot*, and *Gabriel Loffe*.

Cl. of Arr. What say you to *Will. Kidd*? Did he own he had any Share?

Palmer. No.

Cl. of Arr. Did you hear *Nich. Churchill* say he had any?

Palmer. No, I did not; I cannot say, I heard them say so.

Cl. of Arr. Did you hear *Gabriel Loffe* and *Hugh Parrot* say, they had any Shares?

Palmer. Yes, I heard them say so.

Mr Coniers. Whither did you proceed next?

Palmer. We left Captain Kidd there, I went no further with him.

Mr Coniers. I ask you, whether you met with any Ships, besides what you mentioned?

Palmer. When we came to *Madagascar*, in the latter end of *April*, or beginning of *May* 1696, there was a Ship called the *Resolution*, which was formerly called the *Moco Frigate*; several of the Men came off to Captain Kidd, and told him, they heard he came to take, and hang them. He said that it was no such thing, and that he would do them all the Good he could. And Captain *Cullisford* came aboard of Captain Kidd, and Captain Kidd went aboard of *Cullisford*.

Mr Coniers. Who was that *Cullisford*?

Palmer. The Captain of the Ship. And on the Quarter-deck they made some Bomboo, and drank together, and Captain Kidd said, before I would do you any harm, I would have my Soul fry in Hell-fire; and wished Damnation to himself several times, if he did. And he took the Cup, and wished that might be his last, if he did not do them all the Good he could.

Mr Powell. Did you take these Men to be Pirates?

Palmer. They were reckoned so.

Dr Newton. Did Captain Kidd make *Cullisford* any Presents?

Palmer. Yes, he had four Guns of him.

Dr Newton. Of whom?

Palmer. Of Captain Kidd, he presented him with them.

Mr Powell. Was there not a Present on the other Side?

Palmer. I believe there was, I have heard so; I heard *Cullisford* say, I have presented Captain Kidd to the Value of four or five Hundred Pounds.

Mr Comper.

Mr Cowper. Were these Kindnesses done to Culliford after Culliford's Men said, they heard that Captain Kidd was come to hang them?

Palmer. Yes.

Mr Cowper. What did Captain Kidd do after that?

Palmer. He went aboard the *Quedagh* Merchant.

Mr Cowper. What did he do with his own Ship?

Palmer. She was leaky, and he left her.

Mr Cowper. Did he carry, or attempt to carry, any of the Ships he took, in order to condemn them, besides that *French* Banker?

Palmer. He never did, nor talked of any such thing.

L. C. B. Ward. Mr Kidd, Will you ask this Witness any Questions?

Kidd. I ask him, Whether I had no *French* Passes?

Palmer. Indeed Captain Kidd, I cannot tell. I did hear him say, that he had *French* Passes, but I never saw them.

L. C. B. Ward. Those Goods that were taken out of the *Quedagh* Merchant, whose Goods were they supposed to be?

Palmer. The *Armenian* Merchants. I have heard Captain Kidd say several times, he had *French* Passes.

Kidd. And did you hear no Body else say so?

Palmer. No.

Cl. of Arr. Churchill, Will you ask him any Questions?

Churchill. My Lord, I have no Questions to ask him.

Cl. of Arr. James Howe, Will you ask him any Questions?

J. Howe. No.

Cl. of Arr. Robert Lamley, Will you ask him any Questions?

Robert Lamley. No.

Cl. of Arr. Will. Jenkins, Will you ask him any Questions?

William Jenkins. Had I half a Share?

Palmer. You received half a Share of Money, and a whole Share of Goods.

Will. Jenkins. You know that I was a Servant, and had nothing in this Voyage but what my Master had.

Cl. of Arr. Gabriel Loffe, Will you ask him any Questions?

Gabriel Loffe. No.

Cl. of Arr. Hugh Parrot, Will you ask him any Questions?

Hugh Parrot. No.

Cl. of Arr. Richard Barlicorn, Will you ask him any Thing?

Richard Barlicorn. No.

Cl. of Arr. Abel Owens, Will you ask him any Thing?

Abel Owens. No.

Cl. of Arr. Darby Mullins, Will you ask him any Thing?

Darby Mullins. No.

Kidd. It is in vain to ask any Questions.

L. C. B. Ward. Then you may make your own Defence. Come Mr Kidd, what have you to say in your own Defence?

Kidd. I had a Commission to take the *French*, and Pirates, and in order to that, I came up with two Ships, that had *French* Passes both of them. I called you all a Deck to consult; and did not a great many of the Men go aboard? Did not

you go? You know, Mr Palmer, I would have given these Ships to them again, but you would not; you all voted against it.

Palmer. This Man (pointing to the *Armenian*, that was in Court) offered you twenty thousand Rupees for the Ship, and you refused it.

Kidd. Did not I ask, Where will you carry this Ship? And you said, we will make a Prize of her, we will carry her to *Madagascar*.

Palmer. Says Captain Kidd to his Men, These *Armenians* make such a Noise for the Ship, that I must say, my Men will not part with her; but there was not a quarter part of the Men concerned in it. The *Armenians* came crying and wringing their Hands: Upon which, says Captain Kidd, I must say, my Men will not give them the Ship. And so some of the Men went on the Fore-castle, and pretended, they would not give them the Ship; but there was not a quarter part of the Men concerned in it.

L. C. B. Ward. Did those Goods belong to *Frenchmen*, or *Armenians*?

Palmer. To *Armenians*.

L. C. B. Ward. What was that Pretence of a *French* Pass that was on Board the *Quedagh* Merchant?

Palmer. I saw none.

Kidd. But you have heard of it.

Palmer. I have heard of it, but never saw it.

L. C. B. Ward. Mr Kidd, have you any more to say? You speak of a Commission that you had, you may have it read if you please.

Kidd. I desire to have them both read.

L. C. B. Ward. Yes, they shall.

Then his Commission for Reprisals upon the *French*, was Read.

WILLIAM the Third, By the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. Whereas We having taken into Our Consideration, the Injuries, Spoils, and Acts of Hostility committed by the *French* King and his Subjects, unto, and upon the Ships, Goods, and Persons of our Subjects extending to their grievous Damages, and amounting to great Sums; and that notwithstanding the many and frequent Demands made for redress and reparation, yet none could ever be obtain'd. We did therefore with the Advice of our Privy Council, think fit, and ordered, that general Reprisals be Granted against the Ships, Goods, and Subjects of the *French* King; so that as well Our Fleets and Ships, as also all other Ships and Vessels that shall be Commissioned by Letters of Marque, or general Reprisals, or otherwise, shall and may lawfully seize, and take all Ships, Vessels, and Goods belonging to the *French* King, or his Subjects, or Inhabitants within any of the Territories of the *French* King: And such other Ships, Vessels, and Goods, as are, or shall be liable to Confiscation, and bring the same to Judgment in our High Court of Admiralty of England, or such other Court of Admiralty as shall be lawfully Authorized in that behalf, according to the usual course and Laws of Nations. And Whereas William Kid is thought fitly qualified, and hath Equipped, Furnished, and Victualled a Ship called, The Adventure Gally, of the burthen of about Two hundred eighty seven Tunns, whereof the said William Kid is Commander. And whereas, he the said William Kid hath given Security with Sureties by Bond to Us, in Our said High Court of Admiralty according to the effect and form set down in certain Instructions made the

the second Day of May, One thousand six hundred ninetythree, and in the Fifth Year of Our Reign, a Copy whereof is given to the said Capt. William Kid. Know ye therefore, That We by these Presents, grant Commission to, and do Licence and Authorize the said William Kid to set forth in warlike manner the said Ship call'd, The Adventure Gally, under his own Command, and therewith by force of Arms to Apprehend, Seize and take the Ships, Vessels, and Goods belonging to the French King and his Subjects, or Inhabitants within the Dominions of the said French King; and such other Ships, Vessels, and Goods, as are, or shall be liable to Confiscation, and to bring the same to such Port as shall be most convenient, in order to have them legally adjudged in Our High Court of Admiralty, or such other Court of Admiralty as shall be lawfully Authorized in that behalf; which being Condemned, it shall and may be lawful for the said William Kid, to sell and dispose of such Ships, Vessels, and Goods, so adjudged and condemned, in such sort and manner as by the course of Admiralty hath been accustomed (except in such Cases where it is otherwise directed by the said Instructions and the Act of Parliament thereunto annexed.) Provided always, that the said William Kid keep an exact Journal of his proceedings, and therein particularly take notice of all Prizes which shall be taken by him, the nature of such Prizes, the times, and places of their being taken, and the values of them, as near as he can judge; as also of the station, motion, and strength of the Enemy, as well as he or his Mariners can discover by the best Intelligence he can get; and also whatsoever else, shall come unto him, or any of his Officers, or Mariners, or be discovered or declared unto him or them, or found out by examination, or conference with any Mariners or Passengers of, or in any of the Ships or Vessels taken, or by any other person, or persons, or by any other ways or means whatsoever touching or concerning the Designs of the Enemy, or any of their Fleets, Vessels, or Parties, and of their Stations, Ports, and Places, and of their intents therein; and of what Merchants Ships or Vessels of the Enemy's bound out, or home, or to any other place, as he, or his Officers, or Mariners shall hear of, and of what else material in those Cases may arrive to his, or their knowledge, of all which he shall from time to time, as he shall, or may have opportunity, transmit an account to our Commissioners for executing the Office of Lord High Admiral of England, or their Secretaries, and to keep a Correspondence with them by all opportunities that shall present. And further, Provided that nothing be done by the said William Kid, or any of his Officers, Mariners, or Company, contrary to the true meaning of Our aforesaid Instructions, but that the said Instructions shall be by them, and each and every of them, as far as they, or any of them are therein concern'd, in all particulars well and duly perform'd and observed. And We pray and desire all Kings, Princes, Potentates, Estates, and Republicks, being Our Friends and Allies, and all others to whom it shall appertain, to give the said William Kid all aid, assistance and succour in their Ports with his said Ship, Company and Prizes, without doing, or suffering to be done to him any wrong, trouble, or hindrance: We offering to do the like, when We shall be by them thereunto desired. And We will and require all Our own Officers whatsoever, to give him succour and assistance as occasion shall require. This Our Commission to continue in force till farther order to the contrary from Us, or Our Commissioners for executing the Office of Lord High Admiral of England. In Witness whereof We have caused the Great Seal of Our High Court of Admiralty of England to be hereunto affixed. Given at London the Eleventh Day of December, in the Year of Our Lord One thou-

sand six hundred ninety five, and in the Seventh Year of Our Reign.

Orlando Gee, Regi

Mr. Just. Powell. Capt. Kid, Can you make it appear there was a French Pass aboard the *Queda* Merchant?

Will. Kid. My Lord, these Men say, They heard several say so.

Mr. Coniers. But all came from you.

L. C. B. Ward, If there was a French Pass in the Ship, you ought to have condemned her as Prize.

Then his other Commission was Read for cruising against the Pirates.

WILLIAM Rex,

WILLIAM III. By the Grate of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To our trusty and well-beloved Capt. William Kid, Commander of the Ship Adventure Gally, or to any other, the Commander of the same for the time being, Greeting, Whereas, We are inform'd, that Capt. Thomas Too, John Ireland, Capt. Thomas Wake, and Capt. William Maze, or Mace, and other Our Subjects, Natives, or Inhabitants of New England, New York, and elsewhere, in Our Plantations in America, have associated themselves with divers other wicked and ill-disposed Persons, and do against the Law of Nations, daily commit many and great Piracies, Robberies, and Depredations upon the Seas in the parts of America, and in other parts, to the great hindrance and discouragement of Trade and Navigation, and to the danger and hurt of Our loving Subjects, Our Allies, and all others Navigating the Seas upon their lawful Occasions: Now Know Ye, That We being desirous to prevent the aforesaid Mischiefs; and as far as in Us lyes, to bring the said Pirates, Freebooters, and Sea-Rovers to Justice, have thought fit, and do hereby Give, and Grant unto you the said Capt. William Kid (to whom Our Commissioners for Exercising the Office of Our Lord high Admiral of England, have Granted a Commission as a private Man of War bearing date the Eleventh day of December, 1695.) and unto the Commander of the said Ship for the time being, and unto the Officers, Mariners and others which shall be under your Command, full Power and Authority, to Apprehend, Seize, and take into your Custody, as well the said Capt. Thomas Too, John Ireland, Capt. Thomas Wake, and Capt. William Maze, or Mace, as all such Pirates, Freebooters, and Sea-Rovers, being either Our own Subjects, or of other Nations associated with them, which you shall meet with upon the Coasts or Seas of America, or in any other Seas, or Ports, with their Ships and Vessels, and also such Merchandizes, Money, Goods and Wares, as shall be found on board, or with them, in case they shall willingly yield themselves. But if they will not submit without fighting; then you are by force to compel them to yield: And we do also require you to bring, or cause to be brought such Pirates, Freebooters, and Sea-Rovers as you shall seize to a legal Tryal; to the end they may be proceeded against according to the Law in such Cases. And We do hereby charge, and command all Our Officers, Ministers, and other Our loving Subjects whatsoever, to be Aiding and Assisting to you in the Premises. And We do hereby enjoin you to keep an exact Journal of your proceeding in the Execution of the Premises, and therein to set down the Names of such Pirates, and of their Officers and Company, and the Names of such Ships

Ships and Vessels as you shall by virtue of these Presents seize and take, and the quantities of Arms, Ammunition, Provision, and Loading of such Ships, and the true value of the same, as near as you can judge. And We do hereby strictly charge, and command you, as you will answer the same at your utmost peril, that you do not in any manner offend, or molest any of Our Friends or Allies, their Ships, or Subjects, by colour or pretence of these Presents, or the Authority thereby Granted. In Witness whereof, We have caused Our Great Seal of England to be affixed to these Presents. Given at Our Court at Kensington, the 26th Day of January, 1695, in the Seventh Year of our Reign.

L. C. B. Ward. Now you have had the Commissions Read, What do you excuse your self by? What use do you make of them to justify or defend your self?

Will. Kidd. About this *Queda Merchant*.

L. C. B. Ward. What would you have her a French Ship?

Will. Kidd. Under a French Commission. The Master was a Tavern-keeper at *Suratt*: Do not you know that, Mr. Palmer?

Jos. Palmer. I was not on board when this Pass came, I never saw it.

L. C. B. Ward. But then you should have Condemned this Ship, if she had been a French Ship, or had a French Pass.

Will. Kidd. The Evidence says, it was by my order that the Goods were taken out; I was not at the sharing of the Goods, I knew nothing of it.

L. C. B. Ward. Out of the Goods that were taken, some were sold in the Country there, and the produce of them was so much money; it is proved, that that money was divided; and pursuant to the Articles set up, you were to have forty Shares, and the rest of the Men whole, or half Shares as they deserved. Now this money both these Men Swear, it was taken by you. And the first Swears, That the Goods not sold then, that remained in the Ship were also divided, and that you had forty shares of them. And the other says, he did not see the Goods divided, but two of the Men acknowledged it.

Will. Kidd. My Lord, this Frenchman was aboard five or six Days before I understood there was any Englishman aboard. Well, said I, What are you? An Englishman, I am Master. What have you to shew for it? Nothing (says he.) When they see a French Pass, they will not let the Ship go.

Mr. J. Powel. You have produced Letters Patents that impowered you to take Pirates, why did you not take *Culliford*?

Will. Kidd. A great many of the Men were gone a-shore.

Mr. J. Powel. But you presented him with great Guns, and swore you would not meddle with them.

L. C. B. Ward. When the Question was put, Are you come to take us, and hang us? You answered, I will fry in Hell before I will do you any harm.

Will. Kidd. That is only what these Witnesses say.

L. C. B. Ward. Did you not go aboard *Culliford*?

Will. Kidd. I was not aboard *Culliford*.

L. C. B. Ward. These things press very hard upon you. We ought to let you know what is observed, that you may make your Defence as well as you can.

Will. Kidd. I desire Mr. Davis may be called (he was called accordingly, and appeared) Mr. Davis, pray give an account whether you did not see a French Pass?

L. C. B. Ward. You are his Witness, you must answer what he asks you.

Mr. Davis. I came a Passenger from *Madagascar*, and from thence to *Amboyna*, and there he sent his Boat a-shore, and this Man was a-shore; and there was one said, Capt. Kidd, was published a Pirate in England; and he gave those Passes to him to Read. The Captain said, they were French.

L. C. B. Ward. Who gave them?

Mr. Davis. Captain Kidd gave them.

L. C. B. Ward. Did you know any thing of taking the *Queda Merchant*?

Mr. Davis. No, no.

L. C. B. Ward. Then you cannot say, they have any relation to the *Queda Merchant*.

Mr. Davis. No, not I.

Will. Kidd. You heard Capt. Elms say, They were French Passes.

Mr. Davis. Yes, I heard Capt. Elms say, They were French Passes. Says he, if you will, I can turn them into Latin.

Mr. B. Harsh. Have you any more to say, Capt. Kidd?

Will. Kidd. I have some Papers, but my Lord *Bellamont* keeps them from me, that I cannot bring them before the Court.

Cl. of Arr. Have you any more to say?

Will. Kidd. I have some to call, that will bear testimony to my Reputation.

L. C. B. Ward. Call whom you please, we will not abridge you.

Kidd. Call Mr. *Bradinham*. I desire this of him, whether he never saw the French Passes, and whether he did not tell Coll. *Bass* so.

R. Bradinham. I never saw a French Pass, I only heard so.

Coll. Bass. I have heard Mr. *Bradinham* say, he heard Capt. Kidd say he had French Passes on Board; but I never heard him say he saw them Passes.

Kidd. He just now denied that he ever saw the French Passes, or heard of them.

L. C. B. Ward. He says so now, that he never saw them, only he heard you say so. Coll. *Bass*, have you heard him say the Passes related to the *Queda Merchant*?

Coll. Bass. He has often said he heard Kidd say the French Passes were aboard.

Cl. of Arr. Have you any more Witnesses to call?

Kidd. I desire Mr. *Say* may be called, he is in the Prison, I desire he may be sent for.

L. C. B. Ward. We will give you all the liberty you can expect, if you have any more, you were best call them all together. In the mean time what say you, *Churchill*?

N. Churchill. I desire Coll. *Bass* may be called, and that this Affidavit may be read.

L. C. B. Ward. Colonel *Bass*, what have you to say for N. Churchill?

Coll. Bass. My Lord, I only wait for his question.

L. C. B. Ward. Churchill, what will you ask Coll. *Bass*?

N. Churchill. Whether I did not Surrender my self to him.

L. C. B. Ward. If you can make your Case come within the Proclamation, you must make it appear that you Surrendered according to the Directions of it.

N. Churchill. My Lord, we came in, in the Year 1699, and Surrendered our selves to Coll. *Bass*.

L. C. B. Ward. If you can make it appear that you Surrendered your selves in pursuance of that, to the Persons appointed to receive your Surrender, that

that will be somewhat to the Point; but Colonel *Bass* had not Power by that Proclamation to receive your Surrender, and therefore you cannot have any Benefit by it, unless you can bring your Case within it. But you may call Col. *Bass*, if you will.

Churchill. My Lord, we came in upon that Proclamation, and might have gone away any Day if we would; but we stay'd in the Country, and we never offered to go away till it was my Lord *Bellamont's* Pleasure to send for us.

L. C. B. Ward. You may call Col. *Bass*, and hear what he says.

Churchill. Col. *Bass*, will you be pleased to tell my Lord whether we did not surrender our selves to you in pursuance of the King's Proclamation.

Col. *Bass*. My Lord, about the 29th of May, 1699, I had an Account of some Persons, that were supposed Pirates, that were come to surrender themselves; and on my Landing, these two Persons came to me, and surrendered to me the 4th of June, 1699. And I told them I must refer their Case to his Majesty at home.

L. C. B. Ward. Who were they that surrendred to you?

Coll. *Bass*. *Nicholas Churchill*, and *James Howe*.

L. C. B. Ward. Where were you Governour?

Coll. *Bass*. At the Province of *West-Jersey*.

Dr *Oxenden*. How came they here?

Coll. *Bass*. I left them under Bail.

L. C. B. Ward. Did you send them over?

Col. *Bass*. No, my Lord, I came to *England* before; I left them in Custody. They were sent over Prisoners by my Successor.

L. C. B. Ward. What did they say to you when they surrendred themselves to you?

Col. *Bass*. They said they had been in the *Indies*, and that they had committed several Piracies, and desired they might have the Benefit of his Majesty's Proclamation.

L. C. B. Ward. What Pirates did they mention to you?

Col. *Bass*. They mentioned the *Moco Frigate*, and Capt. *Kidd*.

Dr *Oxenden*. Had you the Proclamation?

Col. *Bass*. No, but I had seen one of them.

L. C. B. Ward. Did you take your self allowed to receive their Surrender?

Col. *Bass*. No, my Lord, I did not.

Cl. of Arr. *Nicholas Churchill*, have you quite done?

N. Churchill and *James Howe*. Yes, Sir, we came in upon his Majesty's Proclamation.

Cl. of Arr. *Robert Lamley*, what have you to say?

Robert Lamley. My Lord, I was but a Servant.

L. C. B. Ward. Who was you a Servant to?

Robert Lamley. To Mr *Owens*.

L. C. B. Ward. How does that appear?

Robert Lamley. The Surgeon knows it.

Bradinham. My Lord, he was concerned with the Cook.

Robert Lamley. My Lord, here is my Indenture (which was read.)

Cl. of Arr. *William Jenkins*, what have you to say?

William Jenkins. I have nothing to say, but I was a Servant to Mr *Bullen*.

L. C. B. Ward. Where is your Witness to prove it?

Jenkins. Both the King's Witnesses know it.

Bradinham and *Palmer*. My Lord, he was his Servant.

Cl. of Arr. *Gabriel Loff*, what say you for your self?

Loff. My Lord, about the Year 1696, I entered my self on Board Captain *Kidd*, and went out with him, and I never disobeyed his Command in any Thing.

L. C. B. Ward. Did he go out under the first Commission?

Palmer. He came aboard at *New-York*.

L. C. B. Ward. Did you take him in before, or after the Articles were set up.

Palmer. After the Articles were set up.

L. C. B. Ward. Did Captain *Kidd* take any Notice of his Commissions in the Articles?

Palmer. Yes, my Lord, he did mention them. I have a Copy of the Articles.

Mr *Crawley*. Mr *Palmer*, are these Articles the Copy of the Articles set up by Captain *Kidd*, at *New-York*?

Palmer. Yes.

Mr *J. Gould*. Did you examine them?

Palmer. To the best of my Knowledge they were a true Copy.

Mr *J. Turton*. Did you compare them with the Original?

Palmer. No, my Lord.

Cl. of Arr. *Gabriel Loff*, Have you any more to say?

Loff. Yes, a great deal more to ask the Evidence.

Cl. of Arr. What will you ask them?

Loff. Whether I did not obey the Captain.

Mr *J. Tourton*. There is no scruple to be made of that.

Loff. I went out to serve his Majesty under his Commission.

L. C. B. Ward. But how came you to take part of the Money?

Loff. I had what they pleased to give me.

L. C. B. Ward. You must needs imagine, that when Captain *Kidd* did these extravagant Things, and divided the Money and Goods, that he did not act according to his Commission. What could you think of it?

Cl. of Arr. *Hugh Parrot*, what have you to say for your self?

Parrot. My Lord, in the Year 1695, in the Month of *October*, I sailed out of *Plymouth* in a Merchant-man, bound for *Cork* in *Ireland*, there to take in Provisions; thence to the Island of *Barbadoes*; and in sight of the Island of *Barbadoes*, I was taken by a *French Privateer*, and carried to *Martinico*; and thence coming in a Transport-Ship, I was brought to *Barbadoes*, there I Ship'd my self in a Vessel bound to *Newfoundland*, and thence to *Maderai*. And then I went to *Madagascar*; and there I stay'd some short time after, and came in Company with Captain *Kidd*; and then the Commander and I had a falling out, and so I went ashore at that Island. And understanding that Captain *Kidd* had a Commission from the King, I came aboard Captain *Kidd's* Ship, and ever since have been with him.

L. C. B. Ward. Did you come to him after he had been at *New-York*?

Parrot. This was in the Year 1697.

L. C. B. Ward. You have acted with him, and shared with him. Could you imagine he was acting according to his Commission, when he was doing these Things?

Parrot. I thought I was safe where the King's Commission was.

L. C. B. Ward. The Commission was to take Pirates, and not to turn Pirates.

Parrot. Mr *Palmer*, did you ever see me guilty of an ill Thing? Did I ever disobey my Captain?

Palmer. You were always obedient to your Commander.

Parrot. Then I came to *Madagascar* with Captain *Kidd*, where I might have gone aboard a known Pirate, but I refused it, and kept close to my Captain: And when I came to *New-England*, I might have gone away as others did; but I had my Liberty at *Boston* for above a Week, and went up and down, and I surrendered my self.

L. C. B. Ward. You did not surrender your self, but only you had a liberty to go away, and did not.

Parrot. I thought there was no need of it. My Lord, I desire you will ask the Witnesses whether I ever disobeyed the Captain's Commands.

L. C. B. Ward. They say no otherwise, but that you went willingly.

Cl. of Arr. *Richard Barlicorn*, what have you to say?

Barlicorn. My Lord, I beg leave that I may produce some Evidence for my Reputation. Here is a Certificate from the Parish where I was born.

L. C. B. Ward. That will signify nothing, we cannot read Certificates, they must speak *Viva Voce*.

Barlicorn. Call *Benjamin Bond*, *Daniel Phillips*, and *James Newton*.

L. C. B. Ward. What do you call these Witnesses for?

Barlicorn. To give an Account of my Reputation, what they know of me.

Benj. Bond. I knew him when he was a Child, and he was very civil and honest; I lived near him till he was 13 or 14 Years old. And he came of honest Parents, and behaved himself very civilly all that time.

L. C. B. Ward. Have you known any Thing of him since?

Bond. No, my Lord.

L. C. B. Ward. What have you to say further?

Barlicorn. My Lord, I was a Servant to Captain *Kidd*, and I have been with him six Years, and I have a Certificate from several of my Relations that will testify it.

Cl. of Arr. *R. Barlicorn*, have you any Thing more to say?

Barlicorn. I am a Servant to Captain *Kidd*.

L. C. B. Ward. How long have you been so? Where was it that you came first to be his Servant?

Barlicorn. At *Carolina*.

Cl. of Arr. *Abel Owens*, what say you for your self?

Owens. My Lord, I desire the Privilege of the Proclamation. I entred my self into the King's Service. I have been in the King's Service, according to his Majesty's Proclamation. I desire it may be read. (*which was done*.)

L. C. B. Ward. You desire the Benefit of this Proclamation, but you must bring your self under the Qualifications it requires, if you would have any Benefit by it.

Mr Crawley. He has a Certificate of it.

L. C. B. Ward. Is it within the Proclamation?

Mr Crawley. The Certificate is dated the 15th of *March*, 1700, from Mr *Riches*, a Justice of the Peace in *Southwark*.

L. C. B. Ward. Mr *Riches*, I suppose, did believe he was within this Proclamation.

Mr J. Gould. The Pardon extends to all Persons for Piracies committed before that Time, if they surrender themselves to such and such, and enter themselves on Board one of his Majesty's Ships.

Mr Coniers. A Justice of the Peace is not within the Proclamation.

Cl. of Arr. Have you any more to say?

Owens. Only to desire the Benefit of that Proclamation.

L. C. B. Ward. He surrendered himself to Justice *Riches*, and then entred himself aboard one of his Majesty's Ships; and then there was Evidence against him, when on board, and he was seized. This may be fit to recommend him to the King's Mercy, but it is not a Defence against the Accusation.

Cl. of Arr. *Darby Mullins*, what do you say for your self?

Mullins. I came in upon the King's Act of Grace, I came ashore with the rest of the People.

L. C. B. Ward. What have you to shew, to intitle you to the Benefit of this Proclamation?

Mullins. I was ready to die of the Bloody Flux, and not able to go my self, but I sent my Name in to the Governour.

L. C. B. Ward. Where was you when you was so sick?

Mullins. In *West-Jersey*. I came ashore in *Cape May*. I was sick like to die all the Way from *Madagascar*, expecting every Minute to die with the Bloody Flux.

Dr Oxenden. How came you to leave Captain *Kidd*?

Mullins. He used me very hardly, and therefore I left him.

L. C. B. Ward. You had a Dividend of the Money and Goods.

Mullins. He gave it me, and afterwards took it from me.

L. C. B. Ward. Was he your Master?

Mullins. I had no Master.

Dr Oxenden. How did you come to *Jersey*?

Mullins. I came there with Captain *Shelly*, he is in Court.

Dr Oxenden. You were aboard Captain *Culliford*.

Mullins. I came home in hopes to get the King's Pardon.

L. C. B. Ward. That which you say is very odd, though you quitted Captain *Kidd*'s Ship, you went into *Culliford*'s.

L. C. B. Ward. Captain *Kidd*, you said you had more to say just now; if you have, let us hear it.

Kidd. I desire this Man may be heard two or three Words.

L. C. B. Ward. What is his Name?

Kidd. Mr *Say*.

Mr Say. I happened to be at the *Treasury-Office* in *Broad-street* to receive some Money, and Mr *White* was there; and he asked me, will you go along with me, and see one *Elbury* that is in the *Marshalsea* for Debt? says I, I am a Stranger to him, I do not care to go. Says he, bear me Company. So I went with him, and when I came there, I saw Captain *Kidd*'s Men. And this Mr *Elbury* was

n Company with Captain *Kidd's* Surgeon. Says I, I am a Brother of the Quill, I should be glad to drink a Glas with you. We stayed there but a little while, and asked what that Man was; says he, he is Captain *Kidd's* Surgeon. Upon this I said, here is a mighty Noise about Capt. *Kidd*; says he, I believe he has done nothing but what he can answer, or that can do him any hurt. Says I, where have you been with him? He said, at *Madagascar*.

L. C. B. *Ward*. Mr *Bradinham* was with them, there is no doubt of that. It is not to be questioned that he would not say any Thing ill of them then. Captain *Kidd*, have you any Thing more to say?

Kidd. Call Captain *Humphrys*, (who appeared.)

L. C. B. *Ward*. What Questions would you ask him?

Kidd. What do you know of me?

Capt. *Humphrys*. I knew you, Sir, in the *West-Indies* in the beginning of the late War, and I know you had the Applause of the General, as I can shew by the General's Letter. I know nothing further of you.

Kidd. Did you know any Thing that I was Guilty of any Piracies?

Humphrys. No, but you had a general Applause for what you had done from time to time.

L. C. B. *Ward*. How long was this ago?

Humphrys. Twelve Years ago.

L. C. B. *Ward*. That was before he was turned Pirate.

Kidd. Call Captain *Bond*, (who appeared.)

L. C. B. *Ward*. What do you call him for?

Kidd. Capt. *Bond*, pray will you give an Account what you know of me.

Capt. *Bond*. I know you was very useful at the beginning of the War in the *West-Indies*.

Mr B. *Hatsell*. To be sure they had a good Opinion of him in 1695, when they granted him the Commission.

Kidd. There is nothing in the World can make it appear I was guilty of Piracy, I kept Company with Captain *Warren* for six Days.

Mr *Coniers*. I believe you kept Company more with Captain *Culliford*, than with Captain *Warren*.

Kidd. I never designed to do any such Thing.

Mr *Coniers*. My Lord, we will say nothing at all, but leave it to your Lordship to direct the Jury.

Kidd. I have many Papers for my Defence, if I could have had them.

L. C. B. What Papers were they?

Kidd. My *French* Passes.

L. C. B. *Ward*. Where are they?

Kidd. My Lord *Bellamont* had them.

L. C. B. *Ward*. If you had had the *French* Passes, you should have condemned Ships.

Kidd. I could not because of the Mutiny in my Ship.

L. C. B. *Ward*. If you had any Thing of Disability upon you, to make your Defence, you should have objected it at the beginning of your Trial; what you mean by it now, I cannot tell. If you have any Thing more to say, you may say it, the Court is ready to hear you.

L. C. B. *Ward*. Gentlemen of the Jury, the Prisoners at the Bar, *W. Kidd*, *N. Churchill*, *J. Howe*, *R. Lamley*, *Will. Jenkins*, *Gabriel Luff*, *Hugh Parrot*, *Rich. Barlicorn*, *Abel Owens*, and *Darby Mullins*, in Number Ten; stand all here Indicted for the Crime of Piracy, charged to be committed by

them. And the Instance of the Crime, is for Feloniously and Piratically Seizing and Taking the Ship called the *Quedagh Merchant*, with the Apparel and Tackling thereof, to the value of 400 *l.* and divers Goods mentioned in the Indictment, to the value of 4500 *l.* the Goods of several Persons unknown, from the Mariners of the said Ship, and this at High Sea, within the Jurisdiction of the Court of Admiralty, about ten Leagues from *Cutheen* in the *East-Indies* the 30th of January, 1697, and in the 9th Year of his Majesty's Reign. Now whether all, or any, and which of these Prisoners are guilty of this Crime of Piracy laid in this Indictment, or not guilty, it is your Part to determine according to the Evidence that has been given on both Sides. The Crime charged on them is Piracy, that is, Seizing and Taking this Ship and Goods in it Piratically and Feloniously; the Time and Place is laid also in the Indictment. To make good this Accusation, the King's Council have produced their Evidence; and two Witnesses have been examined in this Case, each of them were in the Ship which took the *Quedagh Merchant*, and very well acquainted with all the Proceedings, that is, *Robert Bradinham*, and *Joseph Palmer*. The first has given you an Historical Account of the whole Proceedings of Captain *Kidd*, from his first going out of *England* in the *Adventure Galley*, to the Time of this Fact charged on them. They tell you, that about May 1696, the King intrusted this Captain *Kidd* with two Commissions, and they were both read to you. By one of them, under the Admiralty Seal, he was Authorized to set out as a Privateer the *Adventure Galley*, and therewith to Take and Seize the Ships and Goods belonging to the *French King*, or his Subjects, and such other as were liable to Confiscation. And by the other Commission under the Broad Seal of *England*, Authority was given for the taking of some Pirates by Name, and all other Pirates in the several Places therein mentioned. But in no sort to offend or molest any of the King's Friends or Allies, their Ships or Subjects by Colour thereof. And by both Commissions command was given to bring all such Ships and Goods, as should be taken to legal Trials and Condemnations. They tell us, that this Ship set out from *Plymouth* about May, 1696, and that in their Passage, they did take a *French Ship*, and they did condemn that Ship. Now Gentlemen, you must bear this in your Minds, that to make it Piracy, it must be the taking Piratically and Feloniously upon the High Sea, within the Jurisdiction of the Admiralty of *England*, the Goods of a Friend, that is such as are in Amity with the King. Now you see what Way they went to work, and what Measures they took. Captain *Kidd* goes out, and goes to *New-York*; and when he was there, he has a Project in his Head of setting up Articles between himself and the People that were willing to be concerned with him: For now whether it seems more probable from what followed that Captain *Kidd* designed to manage himself according to the Measures given him, and the Powers of his Commissions, or another Way, you must consider; for it is told you that between 150 and 160 Men came in under those Articles, whereof the other Prisoners were part and concerned in them. And as to those Articles, the Import of them was, that whatever should be taken by these People in their Expeditions, should be divided into 160 Parts, whereof Captain *Kidd* was

to have 40 Shares for his Part, and the rest were to have according to the Merit of each Party, some whole Shares, and some half Shares.

Now after these Articles, you perceive what Progress they made, and what Course they took. They went from one place to another, and used a pretty deal of Severity where-ever they came. A design they had to go into the *Red-Sea*, and they had expectations of the *Moco Fleet* that lay at *Moco*, and they sent their Spies three times to get Intelligence. The two first times they could make no Discovery; but the third time they made an effectual Discovery that the Fleet was ready to Sail; and in the mean time Capt. *Kidd* lay there in expectation of this Fleet; and as the first Witness tells you, Capt. *Kidd* said he intended to make a Voyage out of this Fleet. Well, he had a Discovery of this Fleet, and they came accordingly, and they tell you, that he and his Men in the Ship did attack one of the Ships: But these Ships being guarded by two Men of War, he could make nothing of them, however he shewed what his intention and design was. Could he have proved that what he did was in pursuance of his Commissions, it had been something: But what had he to do to make any attack on these Ships, the Owners and Freighters whereof, were in Amity with the King; this does not appear to be an action suitable to his Commission. After he had done this, he came to Land, and there, and afterwards at Sea, pursued strange Methods, as you have heard. The seeming justification he depends on, is his Commissions; now it must be observed how he acted with relation to them, and what irregularities he went by. He came to a place in the *Indies*, and sent his Cooper ashore, and that Cooper was killed by the Natives; and he uses Barbarity, and ties an *Indian* to a Tree, and shoots him to Death. Now he went from place to place, and committed Hostilities upon several Ships, dealing very severely with the People.

But this being something foreign to the Indictment, and not the Facts for which the Prisoners at Bar are Indicted, we are confined to the *Quedagh Merchant*; but what he did before shews his Mind and Intentions not to act by his Commissions, which warrant no such things. Gentlemen, you have an account that he met with this Ship the *Quedagh Merchant* at Sea, and took her; that this Ship belonged to People in Amity with the King of *England*; that he seized this Ship, and divers Goods were taken out of her, and sold, and the Money divided pursuant to the heads contained in those Articles set up at *New-York*. The Witnesses that speak to that, come home to every one of the Prisoners: They tell you that this Dividend was made, that Capt. *Kidd* had 40 Shares of the Money, and the rest of the Prisoners had their proportions according to the Articles, some whole Shares, and some a half Share of that Money. After they had seized on the Ship, you hear of a certain sort of project, that a *French Man* should come and pretend himself the Master, and produce, or pretend to produce a *French Pass*, under a colour that these Peoples Ship and Goods, who were *Moors*, should be *French Men's* Ship and Goods, or Sailed under a *French Pass*, and so justify what they did under the colour of his Commission from the King. Now no Man knows the Mind and Intention of another, but as it may be discovered by his Actions. If he would have this to be understood to be his Intention, or that it was a reality, that he took this as a *French Ship*,

or under a *French Pass*, then he ought to have had the Ship and Goods inventoried, and Condemned, according to Law, that he might have had what proportion belonged to him, and that the King might have had what belonged to him, as his Commissions directed. But here was nothing of that done, but the Money and Goods that were taken were shared; and you have an account likewise how some of the Goods were sold, and the Money disposed of, and how the remaining Goods were disposed of; and one Witness speaks positively of the distribution of the Goods that remain'd unsold, that they were divided according to the same proportions as the Articles mentioned, and every one of the Prisoners had his Share. There belonged 40 Shares to Capt. *Kidd*, and Shares and half Shares to the rest.

Now this is the great Case that is before you, on which the Indictment turns. The Ship and Goods, as you have heard, are said by the Witnesses, to be the Goods of the *Armenians*, and other People that were in Amity with the King; and Capt. *Kidd* would have them to be the Goods of *French Men*, or at least that the Ship was Sailed under *French Passes*. Now if it were so, as Capt. *Kidd* says, it was a lawful Prize, and liable to Confiscation, but if they were the Goods of Persons in Amity with the King, and the Ship was not Navigated under *French Passes*, it is very plain it was a Piratical taking of them. Gentlemen, it is to be considered what Evidence Capt. *Kidd* hath given to prove that Ship and Goods to belong to the *French King*, or his Subjects, or that the Ship was Sailed under a *French Pass*, or indeed that ever there was a *French Pass* shewn or seen. He appeals indeed to the Witnesses over and over again, Did you never see it? No, say they: Nor did not you, saith he, say you saw it? No, saith the Witness, I said that Capt. *Kidd* said he had a *French Pass*, but I never saw it. Now after all, the taking of the *Quedagh Merchant* is brought down to Mr. *Kidd*, and the Prisoners with others, and the distribution of the Money produced by the Sale of the Goods among Mr. *Kidd*, and his Crew, whereof every one of these Prisoners were present at the same time, and had Proportions.

Now Gentlemen, this must be observed, if this was a Capture on the High Sea, and these were the Goods of Persons in Amity with the King, and had no *French Pass*, then it is a plain Piracy. And if you believe the Witnesses, here is a taking of the Goods and Ship of Persons in Amity, and converting them to their own Use. Such a taking at Land as this would be Felony, and being at Sea it will be Piracy: For this is a taking the Ship from the right Owners, and turning it to their own use. So that you have Evidence as to the Seizing of the Ship, and dividing the Money rising from the Goods sold, and sharing the remainder according to the Articles.

Now, what does Capt. *Kidd* say to all this? He has told you he acted pursuant to his Commission; but that cannot be, unless he gives you satisfaction that the Ship and Goods belonged to the *French King*, or his Subjects, or that the Ship had a *French Pass*, otherwise neither of them will excuse him from being a Pirate; for if he takes the Goods of Friends he is a Pirate, he had no Authority for that: There is no colour from either of his Commissions for him to take them. And as to the *French Passes*, there is nothing of that appears by any Proof, and for ought I can see, none saw

saw them but himself, if there were ever any. It is proved that the People that were Owners of the Goods, made him very large Offers to redeem the Ship (Twenty Thousand Rupees, as I remember) but he would not accept their Proposal; but said, That is a small Summ, the Cargo is worth a great deal more, or to that effect: And further said, he must answer these People, that his Men will not part with it. And a *French* Man was to be set up for a Mock business, as you have heard; and if the Witnesses say true, they were said by the Captain of the Ship to be, and were reputed to be, the Ship and Goods of Friends, and not of Enemies; and if they were so, and had no *French* Pass, then is he, and those that were concerned with him, guilty of Piratically taking this Ship, and of Piratically seizing the Goods in the Ship; and neither of his Commissions will justify such an Action as this. If he had acted pursuant to his Commission, he ought to have condemned the Ship and Goods, if they were a *French* Interest, or Sailed under a *French* Pass; but by his not condemning them, he seems to shew his Aim, Mind and Intention, that he did not act in that Case by virtue of his Commission, but quite contrary to it; for he takes the Ship, and shares the Money and Goods, and is taken in that very Ship by my Lord *Bellamont*, and he had continued in that Ship till that time, so that there is no colour or pretence appears, that he intended to bring this Ship to *England*, to be condemned, or to have condemned it in any of the *English* Plantations, having disposed of the whole Cargo as aforesaid. Here I must leave it to you, to consider whether, according to the Evidence that appears, there is any Ground for him to say, he has acted by his Commission in taking the *Quedagh Merchant* and Goods in her, or whether he has not acted contrary thereunto.

Now for himself he has called some Persons here, to give an account of his Reputation, and of his Services done in the *West Indies*; and one of them says, about 10 or 12 Years, he did good Service there. Why so he might, and might have, and 'tis very like he had such Reputation, when the King trusted him with these Commissions, else I believe he had never had them; so that whatever he might be so many Years ago, that is not a matter to be insisted on now, but what he hath been since, and how he hath acted in this matter charged against him. So that, Gentlemen, as to Mr. Kidd, I must leave it to you, whether he is Guilty of Piracy or no, and if you believe him Guilty upon the Evidence, you will find him so, if not you will acquit him.

Now for the other Prisoners, it is proved they were all concerned in taking and sharing the Ship and Goods in the Indictment; yet their Circumstances differ pretty much among themselves. There are three of them, that it has been made out to you, and owned by the King's Witnesses that they were Servants. *Robert Lamley*, *William Jenkins*, *Richard Barlicorn*. All these are made out to be Servants, and you have had the Indentures of two of them produced, and the King's Witnesses prove them so, and they were admitted to be Servants. Now, Gentlemen, there must go an Intention of the Mind, and a Freedom of the Will, to the committing a Felony or Piracy. A Pirate is not to be understood to be under constraint, but a free Agent; for in this Case, the bare Act will not make him Guilty, unless the Will make it so. Now a Servant, it is true, if he go voluntarily, and have his Proportion, he must be

accounted a Pirate, for then he acts upon his own account, and not by Compulsion. And these persons, according to the Evidence, received their Part, but whether they accounted to their Masters for their shares afterwards, yea or no, as they pretend, but make no proof of it, I must leave that to you; and therefore there is a consideration to be had of them. For if these Men did go under the Compulsion of their Masters, to whom they were Servants, and not voluntarily, and upon their own Accounts, it may difference their Case from others, who went and acted willingly in this matter, and upon their own Accounts. So that as to those that were Servants under the command of their Masters that were present with them, I must leave it to you, whether you will distinguish between them and the others that were not Servants, but free Agents. It is true, a Servant is not bound to obey his Master, but in lawful things, which they say they thought this was, and that they knew not to the contrary, but that their Masters acted according to the King's Commission; and therefore their Case must be left to your consideration, whether you think them upon the whole matter Guilty or no. If you believe them Guilty, you will find them so, otherwise you will Acquit them.

For the other Persons, some of them pretend they came in on his Majesty's Proclamation, and for that you must consider the Evidence, and take it all together, and consider whether you are satisfied by what they have said or proved, that they have brought themselves within the benefit of the King's Favour by that Proclamation. You have heard it read, and observed the Qualifications and Directions by it, and the Terms upon which the Pardon was promised, which are not made out to you, to be complied with by them; they may apply another way, for the King's Mercy; this Court must proceed according to the Rules of Law and Justice. But then all of them hold on this: We were, say they, under the Captain, and acted under him as their Commander; and, Gentlemen, so far as they acted under his lawful Commands, and by Virtue, and in Pursuance of his Commissions, it must be admitted they were justifiable, and ought to be Justify'd. But how far forth that hath been, the Actions of the Captain and their own, will best make it appear. It is not contested, but that these Men knew, and were sensible of what was done and acted, and did take part in it, and had the benefit of what was taken, shared amongst them: And if the taking of this Ship and Goods was Unlawful, then these Men can claim no Advantage by these Commissions, because they had no Authority by them to do what they did, but acted quite contrary to them. What had they to do to enter into such Articles, and to act as they did? You must consider the Evidence given here, according to the Rules of the Law, and if you are satisfy'd that they have Knowingly and Wilfully been concerned or partaken with Capt. Kidd, in taking this Ship, and dividing the Goods, and that Piratically and Feloniously, then they will be Guilty within this Indictment. It is worthy of consideration what appears upon the Evidence, that they met with one reputed to be a Notorious Pirate, call'd *Culliford*; he was esteem'd an Arch-Pirate, and known to be so, yet this Capt. Kidd, that was Commission'd to take Pirates, instead of taking him, grows to such an Intimacy with him, that he said he would have his Soul fry in Hell, before he would hurt him,

or to that effect, and so they made Presents one to another; and Capt. Kidd left three of his Men with him. Whilst Men pursue their Commissions, they must be Justify'd, but when they do things not Authorized, or never acted by them, it is as if there had been no Commission at all. I have distinguished the Evidence as well as my memory serves me, and must leave it to you to determine upon the whole matter, who are Guilty, and who not; and such as you are satisfied to be Guilty, you will find so, and such as you are not satisfy'd to be Guilty, you will acquit.

Then the Jury withdrew, and after half an hour's stay, brought in their Verdict.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names, John Cooper, &c.

J. Cooper, Here, &c.

Cl. of Arr. Are you agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who shall say for you?

Omnes. Foreman.

Cl. of Arr. Will. Kidd, hold up thy Hand. (which he did.) How say you, Is he Guilty of the Piracy whereof he stands Indicted, or not Guilty? And so of the rest.

Foreman. Guilty.

Cl. of Arr. Is Nich. Churchill Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is James Howe Guilty, &c?

Foreman. Guilty.

Cl. of Arr. Is Rob. Lamley Guilty, &c?

Foreman. Not Guilty.

Cl. of Arr. Is Will. Jenkins Guilty, &c?

Foreman. Not Guilty.

Cl. of Arr. Is Gabriel Loff Guilty, &c?

Foreman. Guilty.

Cl. of Arr. Is Hugh Parrot Guilty, &c?

Foreman. Guilty.

Cl. of Arr. Is R. Barlicorn Guilty, &c?

Foreman. Not Guilty.

Cl. of Arr. Is Abel Owens Guilty, &c?

Foreman. Guilty.

Cl. of Arr. Is Darby Mullins Guilty, &c?

Foreman. Guilty.

Then Will. Kidd, and the other Nine Persons, were further Arraigned upon four Indictments, in manner following.

Cl. of Arr. Will. Kidd, hold up thy Hand. (which he did.) And so the other Nine.

You stand Indicted by the Name of Will. Kidd, late of London Mariner, &c.

The Jurors for our Sovereign Lord the King, do upon their Oath, present that William Kidd, late of London, Marriner, Nicholas Churchill, late of London, Marriner, James Howe, late of London, Marriner, Robert Lamley, late of London, Marriner, William Jenkins, late of London, Marriner, Gabriel Loffe, late of London, Marriner, Hugh Parrot, late of London, Marriner, Richard Barlicorn, late of London, Marriner, Abel Owens, late of London, Marriner, and Darby Mullins, late of London, Marriner, the 20th Day of September, in the Ninth Year of the Reign of our Sovereign Lord William the Third, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. By Force and Arms, &c. upon the High Sea, in a certain place, distant about

Fifty Leagues from the Port of Carrawar, in the East-Indies, and within the Jurisdiction of the Admiralty of England, did Piratically, and Feloniously set upon, board, break and enter a certain Ship call'd a Moorish Ship, then being a Ship of certain persons (to the Jurors aforesaid unknown) and then and there Piratically and Feloniously did make an assault, in and upon certain Marriners (whose Names to the Jurors aforesaid are unknown) in the same Ship in the Peace of God, and of our said now Sovereign Lord the King, then and there being, Piratically and Feloniously did put the aforesaid Marriners of the same Ship, in the Ship aforesaid then being, in corporeal fear of their Lives, then and there in the Ship aforesaid upon the high Sea, in the place aforesaid, distant about Fifty Leagues from the Port of Carrawar aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, Piratically and Feloniously did Steal, take and carry away One Hundred Pound weight of Coffee, of the value of Five Pounds of lawful Money of England, Sixty Pound weight of Pepper, of the value of Three Pounds of lawful Money of England, One Hundred weight of Myrrh, of the value of Five Pounds of lawful Money of England, and Twenty pieces of Arabian Gold, of the value of Eight Pounds of lawful Money of England, the Goods, Chattels and Moneys of certain persons (to the Jurors aforesaid unknown) then and there upon the high Sea aforesaid, in the aforesaid place, distant about Fifty Leagues from the Port of Carrawar aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and possession of the said Marriners in the same Ship, from the said Marriners of the said Ship, and from their custody and possession then and there upon the High Sea aforesaid, in the place aforesaid, distant about 50 Leagues from the Port of Carrawar aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, William Kidd, art thou Guilty of this Piracy and Robbery, whereof thou standest Indicted, or not Guilty?

Will. Kidd. Not Guilty.

Cl. of Arr. Culprit, how wilt thou be Tried?

Will. Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. (And so the other Nine.)

Cl. of Arr. Will. Kidd, hold up thy Hand. (Which he did.) And so the other Nine.

You stand Indicted, by the Name of Will. Kidd, late of London, Marriner, (and so the rest.)

The Jurors for our Sovereign Lord the King, do upon their Oath present, that William Kidd, late of London, Marriner, Nicholas Churchill, late of London, Marriner, James Howe, late of London, Marriner, Robert Lamley, late of London, Marriner, William Jenkins, late of London, Marriner, Gabriel Loffe, late of London, Marriner, Hugh Parrot, late of London, Marriner, Richard Barlicorn, late of London, Marriner, Abel Owens, late of London, Marriner, and Darby Mullins, late of London, Marriner, the 27th Day of November, in the 9th Year of the Reign of our Sovereign Lord William the Third, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the

the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place, distant about four Leagues from *Callicut*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, did Piratically, and Feloniously set upon, board, break, and enter a certain Ship, call'd a *Moorish Ship*; then being a Ship of certain Persons (to the Jurors aforesaid unknown) and then and there Piratically and Feloniously, did make an assault in and upon certain Marriners (whose Names to the Jurors aforesaid are unknown) in the same Ship in the Peace of God, and of our said now Sovereign Lord the King, then and there being, Piratically and Feloniously did put the aforesaid Marriners of the same Ship, in the Ship aforesaid then being, in corporal fear of their Lives, then and there in the Ship aforesaid, upon the High Sea, in the Place aforesaid, distant about four Leagues from *Callicut*, aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, did steal, take and carry away the said Ship, and the Apparel and Tackle of the same Ship, of the value of Five Hundred Pounds of lawful Money of *England*; Eleven Bales of Cotton, of the value of Sixty Pounds of lawful Money of *England*; Two Horses, each of them of the Price of Twenty Pounds of lawful Money of *England*, and Fifty *Indian Quilts*, of the Value of Five Pounds of lawful Money of *England*, the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there upon the High Sea aforesaid, in the aforesaid Place, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and Possession of the said Marriners, in the same Ship, from the said Marriners of the said Ship, and from their Custody and Possession, then and there upon the High Sea aforesaid, in the Place aforesaid, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *Will. Kidd*, art thou Guilty of this Piracy and Robbery whereof thou standest Indicted, or not Guilty?

Will. Kidd. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be try'd?

Will. Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. (And so of the other Nine.)

Cl. of Arr. *Will. Kidd*, Hold up thy Hand (which he did). And so the other Nine.

You stand Indicted by the Name of *Will. Kidd*, late of *London*, Marriner. (And so of the rest.)

" The Jurors for our Sovereign Lord the King, do, upon their Oath, present, That *William Kidd*, late of *London*, Marriner, *Nicholas Churchill*, late of *London*, Marriner, *James How*, late of *London*, Marriner, *Robert Lamley*, late of *London*, Marriner, *William Jenkins*, late of *London*, Marriner, *Gabriel Loff*, late of *London*, Marriner, *Hugh Parrot*, late of *London*, Marriner, *Richard Barlycorne*, late of *London*, Marriner, *Abel Owens*, late of *London*, Marriner, and *Darby Mullins*, late of *London*, Marriner; the Twenty Eighth Day of December, in the Ninth

" Year of the Reign of Our Sovereign Lord, *William the Third*, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place, distant about four Leagues from *Callicut*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, did Piratically and Feloniously set upon, board, break, and enter a certain Ketch, call'd a *Moorish Ketch*, then being a Ketch of certain Persons (to the Jurors aforesaid unknown) and then and there, Piratically and Feloniously did make an Assault, in and upon certain Marriners (whose Names to the Jurors aforesaid are unknown) in the same Ship, in the Peace of God, and of Our said now Sovereign Lord the King, then and there being, Piratically and Feloniously, did put the aforesaid Marriners of the same Ketch, in the Ketch aforesaid then being, in corporal Fear of their Lives then and there in the Ketch aforesaid, upon the High Sea, in the Place aforesaid, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, Piratically and Feloniously did steal, take and carry away the said Ketch, and the Apparel and Tackle of the same Ketch, of the Value of fifty Pounds of lawful Money of *England*, thirty Tubs of Sugar-Candy, of the Value of fifteen Pounds of lawful Money of *England*, six Bales of Sugar, of the Value of six Pounds of lawful Money of *England*, and ten Bales of Tobacco, of the Value of ten Pounds of lawful Money of *England*, the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there upon the High Sea aforesaid, in the aforesaid Place, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ketch, in the Custody and Possession of the said Marriners in the same Ketch, from the said Marriners of the said Ketch, and from their Custody and Possession, then and there upon the High Sea aforesaid, in the Place aforesaid, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, against the Peace of Our said now Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *Will. Kidd*, art thou Guilty of the Piracy and Robbery whereof thou standest Indicted, or not Guilty?

Will. Kidd. Not Guilty.

Cl. of Arr. How wilt thou be try'd?

Will. Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. (And so of the other Nine.)

Cl. of Arr. *Will. Kidd*, Hold up thy Hand (which he did). And so the other Nine.

You stand Indicted by the Name of *Will. Kidd*, late of *London*, Marriner, &c. (And so of the rest.)

" The Jurors for our Sovereign Lord the King, do, upon their Oath, present, That *William Kidd*, late of *London*, Mariner, *Nicholas Churchill*, late of *London*, Mariner; *James How*, late of *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jenkins*, late of *London*, Mariner; *Gabriel Loff*, late of *London*, Mariner; *Hugh*

“ *Hugh Parrot*, late of *London*, Mariner; *Richard Barlycorne*, late of *London*, Mariner; *Abel Owens*, late of *London*, Mariner; and *Darby Mullins*, late of *London*, Mariner; the Twentieth Day of *January*, in the Ninth Year of the Reign of Our Sovereign Lord, *William the Third*, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place, distant about twelve Leagues from *Callicut*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, did Piratically and Feloniously set upon, board, break, and enter a certain Ship, call'd a *Portuguese Ship*, then being a Ship of certain Persons (to the Jurors aforesaid unknown) and then and there Piratically and Feloniously did make an Assault in and upon certain Mariners, Subjects of the King of *Portugal* (whose Names to the Jurors aforesaid are unknown) in the same Ship, in the Peace of God, and of our said now Sovereign Lord the King, then and there being, Piratically and Feloniously did put the aforesaid Mariners of the same Ship, in the Ship aforesaid then being, in corporal Fear of their Lives, then and there in the Ship aforesaid, upon the High Sea, in the Place aforesaid, distant about twelve Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, Piratically and Feloniously did steal, take, and carry away two Chests of Opium, of the Value of Forty Pounds of lawful Money of *England*, eighty Baggs of Rice of the Value of Twelve Pounds of lawful Money of *England*, one Tun of Bees-Wax, of the Value of Ten Pounds of lawful Money of *England*, thirty Jarrs of Butter of the Value of Ten Pounds of lawful Money of *England*, and half a Tun of Iron of the Value of Four Pounds of lawful Money of *England*, the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there upon the High Sea aforesaid, in the aforesaid Place, distant about twelve Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and Possession of the said Mariners in the same Ship, from the said Mariners of the same Ship, and from their Custody and Possession, then and there upon the High Sea aforesaid, in the Place aforesaid, distant about twelve Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *William Kidd*, art thou guilty of the Piracy and Robbery whereof thou standest Indicted, or not guilty?

William Kidd. Not guilty.

Cl. of Arr. How wilt thou be try'd?

William Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.
(And so of the other Nine.)

[Then the Court adjourned till to Morrow Morning eight a Clock.]

The further Proceedings against *William Kidd*, and the other nine Prisoners, on the four indictments, May the 9th, 1701.

Cl. of Arr. CALL *William Kidd*, *Nicholas Churchill*, *James How*, *Robert Lamley*, *William Jenkins*, *Gabriel Loff*, *Hugh Parrot*, *R. Barlicorn*, *Abel Owens*, and *Darby Mullins* to the Bar. You the Prisoners at the Bar, *William Kidd*, &c. those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Tryal of your several Lives and Deaths; if therefore you, or any of you, will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be Sworn, and before they be Sworn. Call *William Smith*, who appeared, and there being no Challenges, the Twelve that were Sworn, are as follows.

The JURY.

<i>Will. Smith,</i>	}	{	<i>Peter Gray,</i>
<i>Benj. Hooper,</i>			<i>Rob. Comfort,</i>
<i>Jo. Hibbert,</i>			<i>Tho. Hollis,</i>
<i>Jo. Pettit,</i>			<i>Will. Ford,</i>
<i>Will. Hatch,</i>			<i>Tho. Stephens,</i>
<i>Jos. Chaplain,</i>			<i>Jo. Dodson.</i>

Cl. of Arr. Cryer, count these, *Will. Smith*.
Cryer. One, &c.

Cl. of Arr. *Benj. Hooper*.

Cryer. Two, &c. Twelve good Men and true, stand together, and hear your Evidence.

[Then the usual Proclamation for Information was made, and the Prisoners being bid to hold up their Hands, the Clerk of Arraignments charged the Jury with them thus:]

Cl. of Arr. “ You of the Jury, look upon the Prisoners, and hearken to their Cause. They stand indicted by the Names of *William Kidd*, &c. (as before in the Indictment) upon this Indictment they have been arraigned, and thereunto have severally pleaded, not guilty, and for their Tryal put themselves on God and their Country, which Country you are. Your Charge is to enquire, Whether they be guilty of the Piracy and Robbery whereof they stand Indicted, or not guilty, &c.

Nich. Churchill. May it please you, my Lord, I came in upon his Majesty's Proclamation, and if that do not do, I throw my self upon the Mercy of the Honourable Bench.

Mr Bar. *Hatsell*. If they will withdraw their Plea, and confess the Indictment, they may.

Nich. Churchill and *James How*. We refer our selves to the King's Proclamation.

Dr *Oxenden*. But do you confess the Matter of the Indictment? You may do that if you will, and then you need not be tried.

Abel Owens. My Lord, I came in upon the King's Proclamation, and enter'd my self aboard one of the King's Ships.

Dr *Oxenden*. You must answer first, and come to your Defence afterward.

Abel Owens. I hope your Honours will grant it me as well as the rest, I entred my self into the King's Service.

Cl. of Arr.

Cl. of Arr. You of the Jury, look on the Prisoners, and hearken to their Cause. They stand Indicted by the Name of *William Kidd, &c.*

Mr J. Turton. You may try all the Indictments together, if they are the same Persons concerned.

Cl. of Arr. They are the same that are concerned in the two first Indictments.

Mr J. Turton. Then proceed upon these two together.

Cl. of Arr. They stand a second Time indicted by the Name of *William Kidd*, late of *London*, Mariner, (and so of the rest.) Upon these two Indictments they have been Arraigned, and thereto have severally pleaded, not guilty; and for their Tryals have put themselves on God and their Country, which Country you are. Your Charge is to enquire, Whether they are guilty of the said Piracies and Robberies whereof they stand Indicted, or not guilty, &c.

Mr Knapp. May it please your Lordship, and Gentlemen of the Jury, these are two several Indictments against *William Kidd, &c.* and they are both for Piracy. One sets forth, That the Prisoners at the Bar, on the Twentieth of *September*, in the ninth Year of his Majesty's Reign, fifteen Leagues from *Caramar*, did Piratically invade and take a Ship called the *Moorish Ketch*, and put the Mariners in Fear of their Lives. The other Indictment sets forth, That on the 27th of *November*, in the ninth Year of his Majesty's Reign, four Leagues from *Calicut*, the Prisoners at the Bar did seize and take another Moorish Ship, to both which Indictments they have pleaded, not guilty. If we prove the Fact, you must find them guilty. We will call our Witnesses. The Witnesses are the same. The whole Story you have heard before, and we will apply our selves now to these Facts mentioned in these two Indictments.

Mr J. Turton. You must open your Matter first, because there is a new Jury.

Mr Knapp. Then, my Lord, and Gentlemen of the Jury, this Capt. *Kidd* went out of *England* in a Ship called the *Adventure-Galley*. He first went to *New York*, and there he set out Articles to procure Men, and promised them that would come in to him a Share in the Adventures they should get. From thence he goes to *Babs-Key* and lies about three Weeks there, watching for the *Moco Fleet*: He sent his Boat out three Times to see in what Condition the Ships were. He could get no Intelligence the two first Times, but the third Time he did; they brought him Word, there were fourteen or fifteen Ships ready to sail, and that their Colours were *English* and *Dutch*, and *Moorish*. He lay in wait for these Ships, and watched them; and when they came down, he fell in with them, and fired at them; but he found they were under an *English* and *Dutch* Convoy, and so away he went and left them. And then he came to cruise on the Coast of *Malabar*, and there he met with his first Prize, and that is the Moorish Ship mentioned in the first Indictment: They seized and took this Moorish Ship, and entred her, and took several Goods out of her, and then let the Ship go away. We will call our Witnesses as to this Ship first. Call *Robert Bradinham* and *Joseph Palmer*, (who appeared and were sworn.) *Mr Bradinham*, What have you to say as to this Matter?

Mr Bar. Hatfell. Tell it from the Beginning; from the Time that you went out of *England*, to the Time of taking this Ship, because there is a new Jury.

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Bradinham. About the Beginning of *May*, 1696, we went out of *England*, and went to *New-York*, in the *Adventure-Galley*, whereof Capt. *Kidd* was Commander.

Mr Knapp. Whither did you go?

Bradinham. To *New-York*: We took a Ship by the Way, and carried her to *New-York*, where we condemn'd her.

Mr Knapp. What Ship was that?

Bradinham. A *French* Banker. At *New-York* Capt. *Kidd* put up his Articles, that if any would come aboard his Ship they should be welcome, no Purchase no Pay, mentioning that he had the King's Commission. From thence we went to *St. Jauger*, then to *Maderat*, then to *Madagascar*, then to *Bonavis*, then to *Joanna*, and then to the *Red-Sea*, and then to *Babs-Key*: There he lay three Weeks looking for the *Moco Fleet*.

Mr Knapp. Where?

Bradinham. In *Babs-Key*.

Mr Knapp. You say he lay there about a Fortnight or three Weeks, how did he behave himself there?

Bradinham. He sent out his Boat three Times; and the two first Times they could get no Intelligence.

Mr J. Turton. Tell whose that *Moco Fleet* was.

Bradinham. They belong'd to the Moors; they were Merchant-men belonging to the Moors.

Mr Knapp. What News did they bring the third Time?

Bradinham. The third Time they brought Word that there were fourteen or fifteen Ships in the Harbour ready to sail.

Dr Newton. What did he say then?

Bradinham. That he would take as many of them as he could, and did not doubt but to make a Voyage out of them.

Mr J. Turton. What Account did the two first Boats bring?

Bradinham. No Account at all, my Lord.

Mr J. Turton. What Notice did they bring the third Time?

Bradinham. They brought Word, that there were about fourteen or fifteen Ships in the Harbour ready to sail.

Mr J. Turton. Which Time was it that they brought that Word?

Bradinham. The third Time. Then the Fleet came down and Capt. *Kidd* followed them.

Mr Knapp. Were there any on Shoar to watch this Fleet?

Bradinham. There were some sent to the high Land of the Island to see if the Fleet came; and when they saw it, they were to give a Sign with a Half-Pike and Flag, and then the Boat was to fetch them off. At last the Fleet came down, and Capt. *Kidd* went among them, and fired at them; but finding they were under a Convoy, and too strong for him, he was forced to leave them.

Mr Knapp. Whither did you go then?

Bradinham. From thence we went to *Caramar*, and by the Way we met with a Moorish Ship, of which Capt. *Parker* was Commander.

Mr Knapp. My Lord, that is the Ship that they are Indicted for. Where was it that you met with that Ship?

Bradinham. About fifty Leagues from *Caramar*.

Mr Knapp. Pray, what did they do with that Ship?

Bradinham. We took Capt. *Parker's* Ship, and took him aboard, and the *Portuguese* for a Linguist.

ster: And he took out some of the Men, and bound their Hands behind them, and order'd them to be drub'd with a naked Cutlace. And he took out of her some Pepper, and Coffee, and *Arabian* Gold, and wearing Apparel, and several other Things.

Mr Knapp. What did he do with these Men, after he had plundered the Ship?

Bradinham. He let the Ship go, and kept *Parker* and the *Portuguese* aboard.

Dr Newton. How many Men were there aboard the Ship?

Bradinham. About Thirty.

Dr Oxenden. What Countryman was this *Parker*?

Bradinham. He was an *English-man*.

Dr Oxenden. How do you know That?

Bradinham. He told me so.

Mr Knapp. What Ship was it?

Bradinham. A *Moorish* Ship.

Mr Knapp. What Time was this done?

Bradinham. In September, 1697.

Mr Knapp. What did he do with the two Men he took out of this Ship?

Bradinham. He kept them aboard his Vessel.

Mr Knapp. What Ship was Captain *Kidd* in then?

Bradinham. He was in the *Adventure-Gally*.

Mr Knapp. Tell us whether any other of these Prisoners at the Bar were in that Ship when this was done.

Bradinham. Every one of them;

Cl. of Arr. Was Captain *Kidd* himself there?

Bradinham. Yes.

Cl. of Arr. Was *Nicholas Churchill* there?

Bradinham. Yes.

Cl. of Arr. Was *James Howe* there?

Bradinham. Yes.

Cl. of Arr. Was *Robert Lamley* there?

Bradinham. Yes.

Cl. of Arr. Was *William Jenkins* there?

Bradinham. Yes.

Cl. of Arr. Was *Gabriel Loffe* there?

Bradinham. Yes.

Cl. of Arr. Was *Hugh Parrot* there?

Bradinham. Yes.

Cl. of Arr. Was *Richard Barlicorn* there?

Bradinham. Yes.

Cl. of Arr. Was *Abel Owens* there?

Bradinham. Yes.

Cl. of Arr. Was *Darby Mullins* there?

Bradinham. Yes.

Cl. of Arr. You say you are sure they were all there?

Bradinham. Yes, I am sure they were.

Mr J. Turton. What Goods did they take out of that Ship?

Bradinham. Several Bales of Pepper, Several Bales of Coffee, and some Myrrh, which is a Gum.

Mr Soll. Gen. What did they do with it?

Bradinham. Capt. *Kidd* made use of the Myrrh to make Pitch of.

Mr Soll. Gen. What was the Value of the Myrrh?

Bradinham. About fifteen Pounds.

Mr Soll. Gen. Where did they go after the Taking of this Ship?

Bradinham. To *Carawar*.

Mr Soll. Gen. What did they do there?

Bradinham. There the Captain wooded and watered his Ship.

Dr Oxenden. What is *Carawar*? Tell the Court.

Bradinham. There is an *English* Factory. They sent some Men aboard, and demanded this *Parker*, and the *Portuguese*; and the Captain denyed them, and kept them in the Hold, and would not let them know he had them on board.

Dr Oxenden. Had they any notice of *Parker's* being on board Capt. *Kidd's* Ship.

Bradinham. I suppose they had Information from *Bombay* by the *Marriners* that went away, for Capt. *Parker's* Vessel belonged to that Place.

Mr Soll. Gen. How far is that *Carawar* from *Bombay*?

Bradinham. About 40 Leagues.

Mr Soll. Gen. Where did you go after that?

Bradinham. They cruised on that Coast, and then went to one of the *Malabar* Islands.

Mr Soll. Gen. What was done there?

Bradinham. We wooded and watered our Ship.

Mr Soll. Gen. Did they take any Ships there?

Bradinham. Capt. *Kidd* went ashore there, and burnt some Houses, and plundered several Boats.

Mr Soll. Gen. Was there any Ship taken there?

Bradinham. Yes.

Mr Soll. Gen. What Ship?

Bradinham. Some time in *November*; about the 17th of *November*, they took a *Moorish* Ship, Skipper *Mitchel* was the Commander.

Mr B. Hatsell. You need go no further now.

Mr Knapp. We will call the other Evidence, if you please, Mr. Solicitor.

Mr Soll. Gen. We will give our Evidence upon both Indictments together.

Mr Knapp. They stand charged with taking another Ship. You have heard how far we have carry'd it: Now they went and took another Ship about the 17th of *November*.

Bradinham. They took a *Moorish* Ship four Leagues from *Callicut*.

Mr J. Turton. Now go on.

Bradinham. Capt. *Kidd* took this *Moorish* Ship on the Coast of *Malabar*, Skipper *Mitchel* was the Commander; she was a *Moorish* Ship. He took out of her two Horses, some Bails of Cotton, some Quilts.

Mr B. Hatsell. What Country-man was this Skipper *Mitchel*?

Bradinham. A *Dutch-man*.

Mr B. Hatsell. What Ship was it?

Bradinham. A *Moorish* Ship, she belong'd to *Suratt*.

Mr Soll. Gen. What Burden was she?

Bradinham. About 150 Tun.

Mr Soll. Gen. What was found in her?

Bradinham. Two Horses, about eleven or twelve Bales of Cotton.

Mr J. Turton. Was this on the Coast of *Callicut*?

Bradinham. It was on the Coast of *Malabar*.

Mr Knapp. How far from *Malabar*?

Bradinham. Seven or eight Leagues.

Mr Soll. Gen. What did they do after this with the Ship, and Goods, and People?

Bradinham. The People they set ashore, and kept the Ship, and carry'd her to *Madagascar*.

Mr Soll. Gen. What was the Value of the Horses taken out of her?

Bradinham. The Horses were worth about 40 l.

Mr Soll. Gen. What the Cotton?

Bradinham. About an Hundred Pounds.

Mr B. Hatsell. How do you know this Skipper *Mitchel* was a *Dutchman*?

Bradinham. He told me so, he came afterwards aboard Capt. *Kidd*, and took Arms under him.

Mr Soll. Gen.

Mr. Soll. Gen. Were all these Persons aboard this Ship when she was taken ?

Bradinham. Yes, my Lord.

Mr B. Hatfell. You say this Ship was about 150 Tun ; What might she be worth ?

Bradinham. About 500 l.

Mr B. Hatfell. To whom did she belong ?

Bradinham. To the Moors.

Mr B. Hatfell. What Moors ?

Bradinham. The Moors that belonged to Suratt, as I was informed by the Moors.

Mr Soll. Gen. What did he do with this Ship afterwards ?

Bradinham. She was carried to Madagascar.

Mr Soll. Gen. What did they do with the Ship ?

Bradinham. They sunk her.

Mr Soll. Gen. Do you know why they sunk her ?

Bradinham. She was sunk voluntarily.

Kidd. This Man contradicts himself in an hundred places.

Bradinham. The Ship was sunk purposely.

Dr Newton. What was done when you came to Madagascar ?

Bradinham. When we came to Madagascar, there came off a Canooe with white Men aboard that belong'd to the Moco Frigat. Some of these Men belong'd formerly to Capt. Kidd. She was suppos'd to be a Pirate-Ship.

Mr Soll. Gen. What was the reason of sinking that Ship ?

Bradinham. They sunk her in the Harbour, that she might be convenient for Vessels to Careen by. Some Men came off in this Canooe, and they told him, they heard he was come to take them, and hang them. He said it was no such thing.

Dr Newton. Who was the Captain of the Moco Frigat ?

Bradinham. Captain Culliford.

Dr Newton. Was he a Pirate ?

Bradinham. Yes, he was reputed so.

Mr. Soll. Gen. Well, go on.

Bradinham. Capt. Kidd swore he would be true to them, and that he would do them no harm.

Mr. Soll. Gen. Did you hear all this ?

Bradinham. Yes, he swore to be true to them.

Mr. Knapp. Was there any thing said about Capt. Kidd's taking her ?

Bradinham. Nothing.

Dr Newton. What passed afterwards between Captain Kidd and Culliford ?

Bradinham. They were very friendly together, and they made Presents to one another.

Dr. Newton. What Presents were there made ?

Bradinham. Culliford gave to Capt. Kidd some Pieces of China-Silk, and Kidd bid Culliford take any thing he had.

Mr Soll. Gen. Did Capt. Kidd give Culliford any Guns ?

Bradinham. He supply'd him with two Guns.

Dr Newton. Was there any Division of Goods or Money ?

Bradinham. After we came to Madagascar, Captain Kidd ordered the Goods to be hoisted out, and shared, and Captain Kidd had forty Shares for himself.

Mr Soll. Gen. What became of the Goods of those Ships ?

Bradinham. They were sold.

Mr Soll. Gen. What was done with the Product of the Goods ?

Bradinham. Captain Kidd kept it, and when there was something worth sharing, he shared it, and he had forty Shares for himself.

Cl. of Arr. Had N. Churchill any Share ?

Bradinham. He had a whole Share.

Cl. of Arr. Had James Howe any Share ?

Bradinham. He had a whole Share.

Cl. of Arr. Had R. Lamley any Share ?

Bradinham. He had half a Share.

Cl. of Arr. Had W. Jenkins any Share ?

Bradinham. He had half a Share.

Jenkins. How can you attest these wicked Lies ? I had nothing.

Mr B. Hatfell. Who shared it ?

Bradinham. The Captain.

Kidd. He tells a thousand Lies.

Cl. of Arr. Look on Hugh Parrot, had he any Share ?

Bradinham. No, half a Share of Money, and a whole Share of Goods.

Cl. of Arr. Had R. Barlicorn any Share ?

Bradinham. He had half a Share.

Cl. of Arr. Had Abel Owens any Share ?

Bradinham. He had a whole Share.

Cl. of Arr. Had Darby Mullins any Share ?

Bradinham. He had half a Share.

Mr Soll. Gen. Now if any of you will ask him any Questions you may ?

Kidd. Mr Bradinham, Pray what Share had you ?

Bradinham. If my Lord ask me, I will answer him.

Kidd. Had you any Share ?

Bradinham. Yes.

Kidd. Did not you come aboard my Ship, and rob the Surgeon's Chest ?

Bradinham. No, I did not.

Kidd. Did not I come to you, when you went away, and met you on the Deck, and said, why do you take the Chest away ?

Bradinham. No, I did not do it.

Kidd. You are a Rogue.

Mr J. Turton. It were the same thing for him to confess it, as to deny it, if he had done it.

Kidd. He did certainly do it.

Mr B. Hatfell. But he says he did not.

Mr J. Turton. Would any of you ask him any Questions ?

Cl. of Arr. Nich. Churchill, will you ask him any Questions ?

Churchill. I came in on the King's Proclamation, and depend wholly on it.

Kidd. Were there not any French Passes aboard that Ship ?

Bradinham. I heard say there were, I did never see them.

Kidd. I did not divide the Things, but the Men did what they pleased, and you took your Share, and saw the French Passes.

Mr B. Hatfell. What Ship is that you mean, that taken in September or that in November ?

Bradinham. The Moorish Ship, that Parker was Commander of.

Mr B. Hatfell. There were two mentioned.

Kidd. Just now he told you of two in November, now he says one in November, another in September.

Mr B. Hatfell. He says that in September, that Parker was Commander of.

Kidd. There was no such Thing in November ; he knows no more of these Things than you do. This Fellow used to sleep 5 or 6 Months together in the Hold.

Mr J. Turton. I assure you he gives a very good Account of the Matter.

Mr B. *Hatfell*. Why did you give him a Share then?

Kidd. Because he was Surgeon. As for the Goods they took it amongst them, and did what they pleased, I was never near them. They laid wait for me to kill me. They took away what they pleased, and went to the Island; and I, with about 40 Men, was left in the Ship, and we might go whither we pleased.

Mr *Soll. Gen.* Mr *Kidd*, will you ask him any Questions?

Kidd. No, no, so long as he swears it, our Words or Oaths cannot be taken.

Cl. of Arr. Will you ask him any more Questions?

Kidd. No, no, it signifies nothing.

Cl. of Arr. *N. Churchill*, Will you ask him any Questions?

Churchill. I came in on his Majesty's Proclamation, and rely upon that.

Cl. of Arr. *J. Howe*, Will you ask him any Questions?

Howe. I surrendered my self upon the King's Proclamation, and plead guilty.

Cl. of Arr. *R. Lamley*, Will you ask this Witness any Questions?

Lamley. Do you say I had half a Share of Money?

Bradinham. Yes.

Lamley. No, I had none.

Cl. of Arr. It was your Share, and you must make it appear it you accounted for it to your Master.

Lamley. If your Lordship please, I was an Apprentice.

Mr B. *Hatfell*. To whom was you a Servant?

Lamley. I was an Apprentice to *A. Owens*.

Mr J. *Turton*. Was *Lamley* an Apprentice to *Owens*?

Bradinham. My Lord, he was a Servant to *Owens*, who was a-board then.

Mr J. *Turton*. He had half a Share, but perhaps he might account for it to his Master afterwards.

Cl. of Arr. *W. Jenkins*, Will you ask the Witness any Questions?

Jenkins. My Lord, I beg he may speak the Truth, whether I was a Servant.

Bradinham. My Lord, he was a Servant to *George Bullen*.

Mr J. *Turton*. Was this *Bullen* aboard then?

Bradinham. Yes.

Mr J. *Turton*. When both Ships were taken?

Bradinham. Yes.

Cl. of Arr. Will you ask the Witness any Questions, *G. Loff*?

Loff. My Lord, when I came aboard, the Captain opened his Commission there. Did I ever disobey his Commands?

Bradinham. Not that I know of.

Loff. Did you see me receive any Share?

Bradinham. Yes, half a Share of Money, and a whole Share of Goods.

Loff. Where?

Bradinham. In the great Cabin.

Cl. of Arr. What Questions will you ask him *Hugh Parrot*?

Parrot. May it please your Lordship, I will give you an exact Account from the Time of my going out of *England*. In the Month of *October*, 1695.

Cl. of Arr. You may make your Defence after-

wards, in the mean time will you ask him any Questions now?

Parrot. I appeal to him, whether he ever saw me do any such Cruelty as he mentions.

Mr J. *Turton*. You hear what he says, answer him.

Bradinham. I cannot say you were the very Man that did it. But those Men were used so, they were hoisted up, and drubb'd with a naked Cut-lace.

Parrot. And then I ask him, whether I ever went any further than my Commander ordered me, or against the King's Commission as I thought.

Bradinham. I cannot say you did any Thing contrary to your Commander's Orders.

Parrot. I ask him, whether, when I might have went aboard this Pirate, I did not stick close to my Captain, and come home with him, and whether I had any Inclination to leave him.

Mr J. *Turton*. He knows not your Inclination. Where did you leave Captain *Kidd*? will you ask him that?

Parrot. I came home to *Boston* with Captain *Kidd*. Doctor, did I go away with them that left Captain *Kidd*?

Bradinham. You went with Captain *Kidd* to *Madagascar*.

Parrot. I came home with Captain *Kidd*, and surrendered my self to my Lord *Bellamont*.

Cl. of Arr. *Abel Owens*, will you ask the Witness any Questions?

Owens. I ask the Witness, whether I did not surrender my self.

Bradinham. I cannot say any Thing to that.

Cl. of Arr. Will you ask him any more Questions?

Owens. No, I stand to his Majesty's Proclamation, and the Mercy of the Honourable Bench.

Cl. of Arr. *Darby Mullins*, will you ask the King's Witness any Questions?

Mullins. No. May it please you, my Lord, I came in upon the King's gracious Proclamation, as the King's Evidence knows. Do you not know I came a-shore with you about the 28th of *May*?

Bradinham. I know he went a-shore.

Mullins. I went a-shore. I came home upon the King's Proclamation. We went a-shore at *Cape May*. I was very sick of the Bloody-Flux, and not able to travel, and was like to die every Day.

Bradinham. My Lord, I know this Man was very sick in the Passage.

Mullins. I was a Passenger aboard Captain *Shelley's* Ship.

Mr J. *Turton*. How came he to come aboard Captain *Shelley*? Where did he leave Captain *Kidd*?

Bradinham. He left Captain *Kidd* at *Madagascar*, and took his Passage with Captain *Shelley* afterwards, after these Ships were taken.

Mr *Soll. Gen.* How came he to leave Captain *Kidd* at *Madagascar*?

Bradinham. He went aboard Captain *Culliford's* Ship. There was about 60 or 70 Men went aboard *Culliford*.

Mr *Knapp*. Call *Joseph Palmer*.

Dr *Oxenden*. He says he came in upon the King's Proclamation, to *Cape May*, do you know any Thing of that?

Bradinham. Yes.

Dr *Oxenden*. Where is that *Cape May*?

Bradinham. Off of *Maryland*; where Captain *Shelley's*

Shelly's Ship was at Anchor; and Captain *Gravenport* came on Board Captain *Shelly's* Ship, and said he heard his Majesty's Proclamation was out to receive Pirates that would come in; and the Men rejoiced that there was such a Thing, and they went a-shore, and surrendered themselves.

Dr Oxenden. Where?

Bradinham. At *Cape May*.

Dr Oxenden. Did he go to the Governour?

Bradinham. I did not see him go a-shore.

Cl. of Arr. D. Mullins, will you ask him any more Questions?

Mullins. You was aboard when I went a-shore.

Bradinham. I did not see you go a-shore.

Mr Soll. Gen. Was he sick when he went a-shore?

Bradinham. He was sick.

Mullins. I was sick, and expected to die every Moment.

Cl. of Arr. All was done before that Time.

Mr Soll. Gen. Did he rejoice, when he heard the King's Proclamation was out?

Bradinham. I heard him say the King's Proclamation was out, and he rejoiced with others.

Mr Soll. Gen. Did he surrender himself to the Governour?

Bradinham. I cannot say that. He went a-shore.

Mr B. Hatfell. Now set up *Joseph Palmer*.

Mr J. Turton. Gentlemen, I would not have you under any Mistake; that surrendering himself comes not under your Consideration, it was after all the Facts were done that the Prisoner is charged with.

Mr Knapp. *Mr Palmer*, give my Lord and the Jury an Account of what you know concerning Captain *Kidd's* Voyage from *England* in the *Adventure-Gally*, when he went out of *England*, and his Proceedings afterwards.

Palmer. About the last of *April*, or beginning of *May*, he went from *Plymouth* to *New-York*; and in the way took a *French* Banker, and carried her to *New-York*, and condemned her there. And at *New-York* he set up Articles, to invite Men to come aboard his Ship; that if any would come aboard, they should have a Share of such Treasure as he should take: He was to have forty Shares himself, and every Man a half or whole Share. And about the first of *September* following, he went from *New-York* to *Maderas*, from thence to *Bonavis*, from thence to *St. Jauger*, then to *Madagascar*, then to *Malabar*, then to *Joanna*, then to *Mahala*, than to *Joanna* again, then to the *Red-Sea*.

Mr Knapp. Pray give an Account of what was done there.

Palmer. There he watered, and took *Guiny* Corn to victual his Ship. And then to *Babs-Key*, near the *Red-Sea*.

Mr Knapp. Give an Account what he did there.

Palmer. He sent out his Boat three times to discover the Fleet, and likewise some Spies on the High Land to look out on both Sides, to see that the Ships did not pass by.

Mr Soll. Gen. What Ships?

Palmer. *Moorish* Ships from *Moco*.

Mr. Soll. Gen. Whose Ships were those *Moorish* Ships?

Palmer. They were *Turks* and *Moors* together.

Mr. Knapp. What did he do then?

Palmer. He called the Men by Lot to look out, and he sent his Boat out twice, and they returned without bringing any Tidings. And he sent the

Boat the third time, with Orders to take a Prisoner, or to see what Ships lay there! And the third time word was brought, that there were about 14 or 15 Ships lay in the Road ready to sail, with *Dutch*, *English* and *Moorish* Colours. And when this News came, Captain *Kidd* ordered the Men to go on the other side upon the high Lands, to see that the Ships did not pass by in the Night. And in four or five Days the Ships came down, about the 14th of *August*. The Fleet came down in the Evening, and Capt. *Kidd* went after them. And some of the Men said, we will go among them to Night. No, says Capt. *Kidd*, we will go in the Morning, and then we will take our choice.

Kidd. Did you hear me say so?

Palmer. I heard you say so.

Kidd. I am sure you never heard me say such a word to such a Logger-head as you.

Palmer. These are the words I heard him say. And the next Morning he fell in with this Fleet, and went through them; and there was a *Dutch* and *English* Convoy; and they fired at one another.

Kidd. Hear me——

Mr Knapp. You shall ask him what Questions you will presently.

Mr J. Turton. Who fired first?

Palmer. The *Dutch* and *English* fired first. When we lay between the *English* and *Dutch*, a *Moorish* Ship came by, and he fired several Shot after her. And the *English* Ship flung a Shot almost home, and then he made Sail, and went out of the Fleet. And from thence he went to *Carrawar*, and in the way met with a Ship, whereof *Parker* was Commander, and there was one *Antonio* a *Portuguese*.

Mr Soll. Gen. Where was this done?

Palmer. About 50 Leagues from *Carrawar*.

Mr Soll. Gen. What time of the Year was it?

Palmer. It was about *September*.

Mr B. Hatfell. The Witness is now come to speak to the Ship, for which the Prisoners are indicted.

Mr. Soll. Gen. Go on, What did they do with that Ship?

Palmer. He fought the Ship, and took her, and took out of her several Bails of Coffee, and he retained only one Bail, and sent the rest back again. And he took a Bail of Pepper, and some Myrrh, to use instead of Pitch.

Mr Soll. Gen. What quantity of Pepper was there?

Palmer. About 60 pound weight.

Mr Soll. Gen. What Myrrh?

Palmer. About 30 pound weight.

Mr Soll. Gen. What Value was it of?

Palmer. I cannot tell that.

Mr Soll. Gen. What *Arabian* Gold?

Palmer. I did not see it. I did not see any taken out then. But a pretty while afterwards, when Captain *Kidd* came to *Carrawar*, he gave every Mess two Pieces of *Arabian* Gold?

Mr Knapp. How long was this after the Ship was taken?

Palmer. Ten or twelve Days.

Mr Soll. Gen. How was the Pepper dispos'd of?

Palmer. It was divided among the Messes.

Mr Soll. Gen. Had these Prisoners their part.

Palmer. Yes.

Mr Knapp. How did they use the Men of this Ship?

Palmer. There were several hoisted up, and drubb'd with a naked Cutlace.

Kidd.

Kidd. Where was this done?

Palmer. In your Ship.

Kidd. What Ship?

Palmer. The *Adventure-Galley*.

Kidd. Did not a parcel of Rogues go aboard their Ship, and do it?

Mr Knapp. For what purpose was this done?

Palmer. Because they thought they had more Money in the Ship.

Knapp. What Country-man was Parker?

Palmer. An *English-man*, born in the North of England. He said so.

Mr J. Turton. Who else was detained, besides Parker?

Palmer. One *Antonio a Portugeze*. Parker was detained for a Pilot, and the other for a Linguist.

Mr J. Turton. What do you mean by a Linguist?

Palmer. To speak *Moorish* and *Portugeze*.

Mr Soll. Gen. Where did they go then?

Palmer. From thence we went to *Carrawar*, and watered and wooded the Ship; and a great many of his Men left him there. And when he saw his Men leave him, he went to Sea, he would not trust any more to go ashore. And the next Evening he met a *Portugeze* Man of War, and fought her, but did not take her.

Mr J. Turton. Did you know any that left him?

Palmer. *Peter Lehair*, and *Churchill*, and others. They went to the *English* Factory, to know whether they would entertain them or no.

Mr J. Turton. Who went?

Palmer. Mr *Lehair*, *Nicholas Churchill*, and another, they went to know whether they should be entertained. And they told them, they were loth to entertain them, for fear Captain Kidd should know of it, and do them an Injury.

Kidd. My Lord, a parcel of these Men went ashore to run away with this Ship.

Mr J. Turton. Were there any more of these Prisoners at the Bar, that would have gone off, besides *Churchill*?

Palmer. No, but he would have gone off.

Mr J. Turton. How do you know that?

Palmer. He told me so.

Mr B. Gold. Had they an opportunity to go off?

Palmer. Some more were taken going off afterwards, and had got a Boat for that purpose; but they were taken, and Captain Kidd order'd them to be brought aboard, and whipt at the Gun.

Kidd. Certainly you have not the Impudence to say that?

Palmer. I say you order'd them to be whipt for attempting to go ashore.

Mr Soll. Gen. Whither did you go then?

Palmer. That Evening we went and met with a *Portugeze* Man of War.

Mr Soll. Gen. You may go on from that. Whither did you go then?

Palmer. To the *Malabar* Islands.

Mr Soll. Gen. What to do?

Palmer. To take in Water. His Cooper went ashore, and the Natives cut his Throat. And Capt. Kidd sent his Men ashore, and order'd them to divide themselves into Squadrons, and to burn all the Houses they came near, except the Houses that had white Flags upon them.

Mr Soll. Gen. Why not them?

Palmer. Because they helped us to water the Ship.

Mr Knapp. And were there any Houses burnt?

Palmer. Yes, a great many.

Mr Knapp. What did he do more?

Palmer. I heard what he did, I did not see it.

Mr B. Haisel. What do you know of any other Ship?

Palmer. About the 27th of *November*, he took the Ship *Maden* near *Calicut*. We spy'd a Ship in the Night, and chased her all Night, and the next Morning he took her.

Mr J. Turton. What Ship was that?

Palmer. Skipper *Mitchel* was Commander, it was a *Moorish* Ship, she belong'd to *Suratt*. She was taken in *November*, and after that she was called, *The November*.

Mr Soll. Gen. How was she taken?

Palmer. Capt. Kidd chased her under *French* Colours, and this Ship had *French* Colours, and when he haled her, it was in *French*. And this Skipper *Mitchell* answered in *French*.

Mr Soll. Gen. Had the *Moorish* Ship *French* Colours before Capt. Kidd put up *French* Colours, or after?

Palmer. After.

Mr Soll. Gen. What Colours had she, when she was chased at first?

Palmer. It was in the Night: In the Morning Capt. Kidd hoisted up *French* Colours, and then the *Moorish* Ship likewise hoisted up *French* Colours.

Mr Soll. Gen. What followed?

Kidd. Speak true.

Palmer. I will. He fired three or four Shot at the Ship, and commanded them aboard. And *Mitchel* did so, and some of his Men with him. And he ordered *Monfieur Leroy* to be as Captain. And he came from below Deck, and received him as Captain.

Kidd. Did you see that?

Palmer. I did not see that, but I know he was ordered to do so, and he received him as Captain, I was not in the Cabin at that time. *Monfieur Leroy* received him as Captain, and carried him aft. They haled this Ship in *French*, and bid him come aboard in *French*, and this *Frenchman* received him as Captain. And I heard them say, that he brought a *French* Pass along with him.

Mr Soll. Gen. Who did you hear say so?

Palmer. I heard People on board say so.

Kidd. Palmer, Did you not see that Pass?

Palmer. Indeed Captain I did not.

Mr Soll. Gen. What did you do with the Ship?

Palmer. There were two Horses on board, and ten or twelve Bails of Cotton, and some Quilts, and Capt. Kidd sold them at *Malabar*.

Mr Soll. Gen. What Goods were there?

Palmer. Two Horses.

Mr Soll. Gen. What besides?

Palmer. Ten or twelve Bails of Cotton, and some Quilts.

Mr J. Turton. What Countryman was Skipper *Mitchel* the Captain?

Palmer. A *Dutchman*.

Mr Soll. Gen. What was the Ship worth?

Palmer. I cannot tell the Value of her.

Mr Soll. Gen. What Burden was she?

Palmer. About 150 Tun.

Mr Soll. Gen. What did they do with those Horses, and the Cotton?

Palmer. They Sold them to the *Banians*.

Mr Soll. Gen. What did they do with the Proceed of those Goods?

Palmer. Capt. Kidd kept it, till they had a pretty deal of Money together, and then they Shared it.

Mr Soll. Gen.

Mr Soll. Gen. Had the Prisoners at the Bar any Shares of it ?

Palmer. Yes.

Cl. of Arr. Had Captain Kidd himself any Share ?

Palmer. Yes.

Cl. of Arr. Had Nicholas Churchill any Share ?

Palmer. Yes, he had a whole Share.

Cl. of Arr. Had James Howe any Share ?

Palmer. Yes, a whole Share.

Mr J. Turton. Where did they Share it ?

Palmer. On the Coast of Malabar.

Cl. of Arr. Had Robert Lamley any ?

Palmer. Yes, half a Share.

Cl. of Arr. Had William Jenkins any Share ?

Palmer. He had half a Share.

Cl. of Arr. Had Gabriel Loffe any ?

Palmer. He had a half Share.

Cl. of Arr. Had Hugh Parrot any ?

Palmer. He had a whole Share.

H. Parrot. Did you see me have any Share ? Can you speak that to my Face now ? Did you see any of us have any ?

Palmer. When Capt. Kidd shared this Money, I did not actually see him pay their Shares ; but he called every Man by the List, and they came with their Hats in their Hands, and he gave them their Money, and they swept it up, and went away.

Mr Soll. Gen. Were these Men called by the List ?

Palmer. Yes.

Mr Soll. Gen. And did they miss none ?

Palmer. Not that I know of.

Cl. of Arr. What say you to Richard Barlicorn ? had he any ?

Palmer. He had half a Share ; whether his Master had it or no afterwards, I know not.

Cl. of Arr. Had Abel Owens any Share ?

Palmer. He had a whole Share.

Cl. of Arr. What had Darby Mullins ?

Palmer. He had a half Share.

Mr Knapp. I think you were speaking of Arabian Gold, that they had it in Messes, had these Prisoners their Share of that ?

Palmer. Yes, there was no difference, they had all their Shares.

Mr Knapp. Now, if you will ask this Witness any Question, you may.

Kidd. What signifies it to ask him any Questions ? We have no Witnesses, and what we say signifies nothing.

Cl. of Arr. Nicholas Churchill, Will you ask him any Questions ?

Churchill. No, I have acknowledged all these Crimes, and Surrender'd my self, and rely on the King's Mercy.

Cl. of Arr. James Howe, Will you ask him any Thing ?

Howe. No.

Cl. of Arr. Robert Lamley, Will you ask him any Thing ?

Lamley. Mr. Palmer, How can you tell I had a half Share ?

Palmer. There was a half Share directed for you.

Lamley. I had not a Farthing.

Mr J. Turton. Was he an Apprentice ?

Palmer. Yes, he was Servant to Mr Owens.

Jenkins. Can you say I had any Share ?

Palmer. I know there was a half Share appointed for you, but I know not whether your Master had it.

Mr J. Turton. Was his Master Aboard then ?

Palmer. Yes, his Master was Aboard then.

Cl. of Arr. Gabriel Loffe, Have you any Questions to ask him ?

Loffe. Had I any Share ?

Palmer. You had a half Share, I did not see you take it, but you were in the List.

Cl. of Arr. Hugh Parrot, Have you any Questions to ask him ?

Jury-Man. Did you see them come out with the Money in their Hats ?

Palmer. Yes.

Mr Soll. Gen. Did Gabriel Loffe come out as contented as the rest ?

Palmer. No, because he had but half a Share.

Loffe. Did you see me come out with any Money ?

Palmer. I saw you come out with Money in your Hat, and I heard you say you had half a Share.

Loffe. As I live I had no Hat then.

Cl. of Arr. Have you any Questions to ask him, Hugh Parrot ?

Parrot. Did you see me have any Share ?

Palmer. I did not see you receive any Share, but you was called among the rest.

Mr J. Turton. He says they were all called Man by Man to take their Shares.

Cl. of Arr. Richard Barlicorn, Have you any Thing to ask him ?

Barlicorn. I desire of him, Whether he saw me have any Goods, or take any Share ?

Palmer. My Lord, when the Goods were shared at Madagascar, I was at Bonavis ; I was not present, but I heard of it afterwards.

Barlicorn. I hope the Jury will take notice of this.

Mr B. Hatsell. Mr Bradinham, Did any of these Men complain that they had not their Share ?

Bradinham. No, no, I heard nothing of that.

Mr J. Turton. Were these Shares such as were agreed on in the Articles at New-York ?

Palmer. Yes. Capt. Kidd ordered the Goods to be hoisted out.

Kidd. Did I order the Goods to be hoisted out ?

Palmer. Yes, you did.

Kidd. It was the Mutinous Men that did it.

Parrot. How do you know that I had any Share ? you did not see me in a Year after.

Palmer. I do not say I saw it given you.

Kidd. My Lord, there were 95 Men that deserted my Ship, and took away what they pleased, we could not stand in Defence of any Thing.

Barlicorn. Was not I an Apprentice to Captain Kidd, and waited on him continually in the Ship ?

Palmer. Yes you were.

Mr Soll. Gen. Had he a Share allotted him ?

Palmer. Yes, but I am apt to think his Master had it.

Mr J. Turton. Who was his Master ?

Palmer. Captain Kidd.

Cl. of Arr. Abel Owens. have you any Thing to say for your self ?

Owens. I refer my self to the King's Proclamation.

Cl. of Arr. Darby Mullins, have you any Thing to say for your self ?

Mullins. I came to Cape May, where I heard of the King's Proclamation. Did not you and I come ashore together ?

Palmer.

Palmer. Yes we did, the same Day.

Darby Mullins. Did not we come ashore on the King's Proclamation?

Palmer. We did hear of it.

Darby Mullins. Did not you hear that all the Men were glad at the News, when they heard of the Proclamation?

Dr Oxenden. What did the Men say then?

Joseph Palmer. They all rejoiced to hear of such a Thing.

Darby Mullins. From the Time I came from *Madagascar* I was sick of the Bloody-Flux, I could not walk a Mile in a Day.

Joseph Palmer. I know you was sick.

Darby Mullins. I have no more to say: I stand to your Lordship's Mercy, and the King's gracious Proclamation.

Mr Justice Turton. If you have any Witnesses to call for your selves, you may call them. Captain *Kidd*, what have you to say for your self? You may make your Defence first for that Ship taken in *September*, then for that in *November*.

William Kidd. What is it the near for me to speak? I have no Witnesses for these Things.

Mr Baron Haisell. Yesterday you produced your Commissions; if you will, they may be read now.

William Kidd. It availed nothing then. Here is all these Men saw the *French* Pass.

Joseph Palmer. Indeed, Captain, I never saw it.

William Kidd. You left my Ship, with 95 Men more, and you went a roguing afterwards.

Mr Soll. Gen. Why did you go aboard that Pirate?

William Kidd. My Lord, I had a Design to take that Frigate, and then I designed to come for *England*. I would not go with such a Roguish Crew as you were. Was not I threatned to be shot in the Cabin by such Villains as you, if I would not go along with you? This was the Reason I could not come home. Did not you, with others, set fire to the Boat, to destroy my Ship?

Palmer. I know nothing of that; but I am sure I saved your Life on the *Malabar* Island, when you burnt the Boat.

Kidd. My Lord, they took what they pleased out of this Ship, and I was forced to stay by my self, and pick up here a Man, and there a Man, to carry her home.

Cl. of Arr. N. Churchill. what have you to say for your self?

Churchill. My Lord, I plead guilty and rely on the King's Proclamation.

Cl. of Arr. James Howe. have you any Thing to say for your self?

Howe. I plead guilty, my Lord.

Kidd. Here are some Gentlemen here, I desire they may be heard as to my Reputation. Here is *Coll. Hewson*.

Mr J. Turton. What do you ask *Coll. Hewson*?

Kidd. I ask him what he knows as to my Reputation in the *West-Indies*?

Coll. Hewson. My Lord, he was a mighty Man there. He served under my Command. He was sent to me by the Order of *Coll. Codrington*.

Mr Soll. Gen. How long was this ago?

Coll. Hewson. About Nine Years ago. He was with me in two Engagements against the *French*, and fought as well as any Man I ever saw, according to the Proportion of his Men. We had

six *Frenchmen* to deal with, and we had only mine and his Ship.

Kidd. Do you think I was a Pirate?

Coll. Hewson. I know his Men would have gone a Piratering, and he refused it, and his Men seized upon his Ship. And when he went this Voyage, he consulted me, and told me they had engaged him in such an Expedition; and I told him he had enough already, and might be contented with what he had: And he said it was his own Inclination; but my Lord *Bellamont* told him, if he did not go the Voyage, that there were Great Men, and they would stop his *Brigantine* in the River, if he did not go.

Mr J. Turton. Who told you so, did he?

Coll. Hewson. Yes, my Lord.

Mr J. Turton. If he had kept to the honest Design of that Expedition, he had done very well. Did you apprehend that his Intention in that Undertaking was to be a Pirate?

Coll. Hewson. No, my Lord. He told me his Business was to go a cruising, and surprize Pirates.

Mr Soll. Gen. Did he tell you he had no such Design?

Coll. Hewson. Yes, he said he would be shot to Death before he would do any such Thing. I know he was very serviceable in the *West-Indies*.

Cl. of Arr. Robert Lamley. have you any Thing more to say?

Lamley. I can say nothing, for I have none of my Friends here.

William Kidd. Call *Thomas Cooper*. (who appeared.)

Mr J. Turton. What Questions do you ask him?

Kidd. Sir, pray tell my Lord what you knew of me in the *Indies*.

Thomas Cooper. I was aboard the *Lion*, and this Captain *Kidd* brought his Ship from a Place that belonged to the *Dutch*, and brought her into the King's Service at the Beginning of the War, about Ten Years ago. And he took Service under the Colonel; and we fought Monsieur *Du Cass* a whole Day, and I thank God we got the better of it, and Captain *Kidd* behaved himself very well in the Face of his Enemies.

Juryman. How many Years ago was this?

Tho. Cooper. About Ten Years ago.

Cl. of Arr. Robert Lamley. have you any Thing more to say?

Lamley. I have no Friends here, I am a Prentice, my Lord.

Cl. of Arr. William Jenkins. have you any more to say?

William Jenkins. I was an Apprentice, my Lord.

Cl. of Arr. Gabriel Loffe. have you any Thing to say for your self?

Gabriel Loffe. My Lord, I was a Servant under Captain *Kidd*, and always obeyed his Commands, and had no Share. I came home with Captain *Kidd* to *Boston*, and went to my Lord *Bellamont*, and the Men came and told us he had discharged us, and I went about my Business. And some Days after we were committed to Prison, and I was sick, and my Lord let me be in the Keeper's House, and I was trusted by him four or five Months with the Keys to look after the Prisoners. *Mr Davis* can testify this. If I had had a Mind to have done any ill Thing, I might have done it then. (Then *Davis* appeared) Pray, *Mr Davis*,

vis, declare what you know of me when I came to Boston, and how the Keeper intrusted me with the Prisoners.

Mr Davis. I remember when we came there to the Road-Island, Captain Kidd sent him home. And when he came to Boston, he was trusted with the Keys, and had Liberty to go where he pleased not out of the Yard.

Mr J. Turton. Was this after he was a Prisoner?

Mr Davis. Yes, my Lord.

Gabriel Loffe. I hope the Jury will take notice of this.

Kidd. Mr Davis, did you not hear of any French Passes that I had?

Mr Davis. I heard of them, and I saw them.

Mr Soll. Gen. How do you know they were French Passes?

Mr Davis. He told me they were French Passes, I did not know it, I could not read them.

Mr Justice Turton. They shewed you the Papers, did you know what Ship they belonged to?

Mr Davis. No, my Lord, not I.

William Kidd. I desire Captain Hunt may be called, to know what my Lord Bellamont said of me.

Mr Baron Hatsell. That will signify nothing.

Cl. of Arr. Hugh Parrot, have you any Thing to say for your self?

Hugh Parrot. My Lord, I had no Share of the Goods.

William Kidd. My Lord, I desire this Commission may be read.

Mr Baron Hatsell. Is it under the Broad-Seal?

Mr Crawley. It is a Letter of Mart and Reprisal, my Lord.

(Then the Commission was read, dated the 11th of December, 1695.)

William Kidd. Now, my Lord, in pursuance of this Commission, I went and took these Ships, which had French Passes on Board, and my Lord Bellamont took them by force from me.

Mr J. Turton. You took one French Ship, and acted in a regular manner to condemn her; but did you do so with the rest?

Will. Kidd. I could not carry these Ships home, by reason my Men left me.

Mr Justice Turton. Mr Bradinham, with what Number of Men did you go out of England?

Robert Bradinham. With about Seventy Men.

Mr Justice Turton. What Number had you when you went from New-York?

Robert Bradinham. About 155.

Mr Justice Turton. So that your Number was increased.

Robert Bradinham. Yes, my Lord.

Mr Justice Turton. Was there any other Ship condemned, besides the French Banker.

Robert Bradinham. No, my Lord.

William Kidd. These Men were some of them that left me, and took the Goods. What was left I carried with me.

Cl. of Arr. Hugh Parrot, have you any more to say?

Hugh Parrot. The Evidence cannot prove that I had any Share. I came with my Commander from Madagascar, and he paid me an hundred Pieces of Eight, and my Lord Bellamont seized all. And I had opportunity enough to have gone

a piratting with Captain Culliford, but I told them I would not. And I came to my Lord Bellamont, and surrendered my self.

Cl. of Arr. Robert Barlicorn, have you any Thing to say in your own Defence?

Robert Barlicorn. I desire Witness may be called, to know whether I was not a Servant aboard.

Mr Justice Turton. The King's Evidence say you were.

Cl. of Arr. Abel Owens, what have you to say?

Abel Owens. I own my self guilty, I came in upon the King's Proclamation.

Cl. of Arr. D. Mullins, what have you to say?

Darby Mullins. I did what I did under the King's Commission. I obeyed my Captain, and came home with him. I durst not for my Life do otherwise. Examine the Witnesses, and they will not say otherwise. Mr Bradinham did I do any Thing against the Captain's Command?

Robert Bradinham. I cannot say but he did always obey the Captain's Commands.

Mr Soll. Gen. Did he not go aboard Captain Culliford afterwards?

Robert Bradinham. Yes, my Lord.

Darby Mullins. I went for want.

Cl. of Arr. Have any of you any more to say?

Hugh Parrot. My Lord, I did not go out of England with Captain Kidd, but I shipt my self on Board a Merchant-man bound for Newfoundland, and I was taken by a French Privateer. And afterwards coming to Madagascar, Captain Kidd was there, and he took a Pistol to shoot me, but I avoided it. But hearing afterwards that Captain Kidd had the King's Commission, I went aboard him.

Mr Justice Turton. Had he any Commission to take any Goods from the King's Subjects?

Mr Baron Hatsell. Captain Kidd says the Seamen forced him from the Ship, and you shared the Goods your selves.

Hugh Parrot. He does not say so of us. My Lord, with submission, be pleased to ask my Commander, whether I ever disobeyed his Commands, or was forward to attempt any ill Thing, or did any Thing of that which is alledged against me.

William Kidd. Mr Bradinham, are not you promised your Life, to take away mine?

Mr Justice Turton. He is not bound to answer that Question. He is very fit to be made an Evidence for the King, perhaps there can be no other in this Case, than such who are in his Circumstances.

Hugh Parrot. With Submission, I ask the Evidence, whether I ever disobeyed the Captain's Orders.

Mr Justice Turton. The Captain's Orders will excuse you in honest Things, but not in unlawful Actions.

Hugh Parrot. As for the Ships that were taken, I had no Hand in it.

Mr Knapp. But you received your Share, and knew of the robbing of the Ships.

Mr Justice Turton. Gentlemen of the Jury, here is William Kidd, Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loffe, Hugh Parrot, Richard Barlicorn, Abel Owens, and Darby Mullins, the Prisoners at the Bar; who are all indicted for Piracy, or piratical and felonious taking a Moorish Ship on the High Seas, about fifty Leagues from Caramar in the East-Indies, and seizing the Goods that were in that Ship to a considerable Value. And they are also indicted

for the piratical and felonious taking another Ship, which was likewise a *Moorish* Ship, with the Tackle and Apparel thereof, to the Value of a Hundred and Five Pounds, four Leagues from *Calicut* in the *East-Indies*. Now to these Indictments they have pleaded, not guilty. And whether they are guilty or no, you are to determine, on the Evidence you have heard.

I need not tell you the Heinousness of this Offence wherewith they are charged, and of what ill Consequence it is to all Trading Nations. Pirates are called *Hostes humani generis*, the Enemies to all Mankind, but they are especially so to those that depend upon Trade. And these Things that they stand charged with, are the most mischievous and prejudicial to Trade that can happen. But as it is not my Business to aggravate the Offence, so it is yours to consider whether they or any of them are guilty or not.

Two Witnesses have been produced for the King, and both of them were concerned in all the Transactions relating to the Prisoners. And by their Evidence it appears, that in the Year 1696, about the beginning of May, Captain *Kidd*, who was Captain of the *Adventure Galley*, was fitted out on a very good Design, for he was to take Pirates, and to seize the Ships and Effects of the King's Enemies: That was the End of this Expedition. He went out from *Plymouth* with about Seventy Men from *England*; they sailed to *New-York*, and in their Passage they seized a *French* Vessel; and that Vessel was condemned in a due manner, and that was pursuant to their Commission.

When they came to *New-York*, there were other Things in Contemplation; then he made a Proclamation, to give notice, that if any would come aboard him, he proposed Terms for their Encouragement, that they should be Sharrers in all they could acquire; he himself would have Forty Shares, because the Ship, Arms, Ammunition and Provisions were his, and the rest should be divided proportionably to those that should be aboard him. And whereas they went out with Seventy Men, there their Number was increased to 155, for with that Number he sailed from *New-York*.

Gentlemen, The Witnesses tell you whither they went afterwards; I will not mention all the particular Places, but only such where any Thing remarkable was done. They say they came to a Place called *Babs-Key*; and there it seems they had an Intention to observe a Fleet called the *Moco* Fleet, there they stayed about three Weeks, and in that Time Captain *Kidd* sent his Boat Three Times to *Moco*, where this Fleet was; the Two first Times they brought no certain Account; but the last Boat that was sent, brought Intelligence that there were Fourteen or Fifteen Ships lay in the River or Harbour there, and were ready to Sail, and that they had *Dutch* Colours, *English* Colours, and *Moorish* Colours. And Captain *Kidd* said then, he expected to make a considerable Advantage of them. And after this Advertisement, he sent some Men to the *High Lands* to observe the Motion of this Fleet, who after some Time gave Notice that the Fleet was coming, and then he went out with his Vessel; and as they tell you, he went into this Fleet, and discharged some Guns at them. But they having a Convoy, he found he was not a Match for them, and that it would be in vain

to attempt any Thing further on so great a Disadvantage; and so that Design was frustrated. But it must be observed, that these Ships were all *English*, *Dutch*, and *Moorish*, and none of them *French*, which shews Captain *Kidd*'s Inclinations to take such Ships for which he had no Authority by any Commission.

But they tell you, after this, when he had met with this Disappointment, then he sailed towards the Coast of *Carawar*; And there they met with the first *Moorish* Ship that he is now charged with. And this Ship they seized, and took one *Parker*, who was the Captain; they seized him, and also a *Portuguese*, whom they made use of as an Interpreter, and some of the Men, whom they treated in a barbarous manner. They tell you, that there happening to be an *English* Factory near that Place, they of that Factory understanding that this *Parker* and the *Portuguese* were aboard the Ship, they sent to demand them; and Captain *Kidd* denied them, and said there were no such Men on board, and yet he had hid them under the Deck. You are also told by the Witnesses what they found and seized aboard this Ship, viz. Pepper, Coffee, Myrrh, and some Gold. They have told you, the Gold was shared amongst them, and in Specie, as I remember, every Mefs had two Pieces, and the rest of the Goods were divided amongst them in Proportion, according to their Original Agreement, or they had their Shares of the Money for which they were sold. This was the first Ship that he stands charged with the Piratical taking of; and this Ship was a *Moorish* Ship, and did belong to the Natives of that Place.

And then it appears they went to the Coast of *Malabar*, and there they took the other Ship that he is charged with by the other Indictment; the first was taken in September, and this in November. There was on Board that Ship two Horses, and several Bails of Cotton, and some other Goods; and this also belonged to the *Moors*, and one Skipper *Mitchel*, a *Dutchman*, was Captain of her. When they had taken this Ship, they went to *Madagascar*; and there it is told you, they sunk this Vessel. And they having several other Goods that they had taken out of another Vessel, the Goods were sold, and divided between the Captain and the rest of the Men, according to their several Proportions. And it is proved to you, that every one of these Prisoners had some Share of the Product of those Goods. And now to show what Captain *Kidd* was, and that he was a Favourer of those he ought to have opposed, there was another Pirate there, one Captain *Culliford*, who had a Vessel that he used to the same Purpose, called the *Great Mahomet*; and he having heard of *Kidd*'s Commission, had a jealousy that Captain *Kidd* had a Design to take him and his Company: But he told them he had no such Design, he was so far from that, that he assured them, nay Swore he would be true to them, and there were great Appearances of Friendship between Captain *Kidd* and Captain *Culliford*, they made mutual Visits to each other. And Captain *Kidd* did accommodate *Culliford* with some Guns, and gave him liberty to take any Thing he had; and Captain *Culliford* likewise presented him with *China* Silks. Now this also is given in Evidence, to show that Captain *Kidd* had a Piratical Design in all this, and that he did assist those that were engaged in the

the like Design with him, instead of endeavouring to suppress them.

Now, Gentlemen, the first Witness, *Robert Bradinham*, has declared all this to you; And likewise *Joseph Palmer* has spoken to the same Purpose, though something more than the other. And he tells you how they went ashore on one of the *Malabar* Islands, and how they burnt some Houses, and did other very barbarous Things. But that concerns not this Matter for which they are now Indicted. He tells you also, that when they took one of these Ships, whereof Captain *Parker* was Commander, they took two of the Men on board that Ship, and hoisted them up, and used them severely, which they did to cause them to discover what Things of Value they had on Board; but it seems they had nothing of any considerable Worth on Board. However this shows that Captain *Kidd* had a Design to act Piratically. The Witness gives you an Account of all the Transactions, in taking the two Ships, and disposing of the Goods, and dividing of the Money. Indeed he says, when the Distribution was made, he was not in the Cabin, but tells you he heard the List called over, and all the other Prisoners severally went in, and brought out their Shares in their Hats, or otherwise, and did not hear any one complain that he had not his Share.

Gentlemen, There are three Persons that were Servants, that is, *Robert Lamley*, he was Servant to *Owens* the Cook; *William Jenkins*, he was Servant to the Mate, and *Richard Barticorn*, who was Servant to Captain *Kidd*. Now though these might have their Shares delivered them, yet it is to be presumed that they were to be accountable to their Masters; And they being Servants, I suppose you will think fit to distinguish them from the rest.

Gentlemen, This is the Sum of the Evidence given for the King. And indeed this seems to be as strong an Evidence against the Prisoners at the Bar as can be. They did endeavour to take the *Moco* Fleet, but they were too strong for them; And they could have no suspicion that they were *French*, for they had *English*, and *Dutch*, and *Moorish* Colours: So that Captain *Kidd* could have no pretence from his Commission, to look after these Ships; There were no *French* among them, and yet there he lay three Weeks waiting for them. But they did actually take these two Ships mentioned in the Indictments, and disposed of the Goods, and shared the Product among themselves. Here is all the Evidence that can be given of Piracy.

Now Captain *Kidd*, when he comes to make his Defence, tells you, he had a Commission, and it was produced; (and that is no more than what is common in time of War) whereby he is Authorized to take the Ships and Goods of any of the Subjects of the *French* King. But it is Penned with great caution, he is to take none but the Goods and Ships of the *French* King, or his Subjects, and he is to keep an exact Account of all that he takes, and to procure them to be condemned in the Admiralty. Now if he had pursued this Commission, and gone no further, it had been well, he had done justly, and answered the end on which he was sent out. And it does appear, that the first Vessel that he took in his Passage to *New-York*, was thus condemned. But afterwards I do not find that he had any regard to his Commission;

but waited for that great *Moco* Fleet a considerable time, I think about three Weeks; and being disappointed there, he afterwards did take these two Ships mentioned in the Indictment; and it does not appear that they were *French* Ships, neither were there any *French* Passes on board. One of the Witnesses indeed says he heard of *French* Passes, but neither he or any other Person that hath been produced has seen one of them. Now I do not observe that his Commission does any manner of way tend to excuse the Captain in taking both, or either of these Ships. One of them was under an *English* Commander, which was *Parker*, the other under a *Dutchman*; there were no *Frenchmen* aboard, only *Leroy*, who was made a kind of a Mock-Captain by *Kidd* to serve a present Turn. But what Captain *Kidd* has said from his Commission, is so far from justifying him, that it seems rather an aggravation of his Crime. For he that will go out with the King's Commission on a just and laudable Design to take the Ships and Effects of the *French* King in War, and also to destroy Pirates (which were the principal Ends of his being fitted out to Sea) and instead thereof will turn Pirate himself, make use of the Force with which he was entrusted for the promoting his Piratical Purposes, and for the Felonious taking the Ships and Goods of those that were in Amity with the King of *England*, appears to be guilty of a manifest Breach and Violation of his Trust; attended with very aggravating Circumstances.

Now for those three that were Servants, I must leave it to you, whether they did act otherwise than they might do. A Servant is to obey his Master, but it must be in Things lawful and honest; If they did any thing else, you who have heard the Evidence will consider of their Guilt, and whether their Cases differ from the rest; but there is some probability that their Shares might be accounted for to their respective Masters.

Now, as to the rest, there are some of them that do pretend they did Surrender themselves, one of them to Mr *Riches*, a Justice of Peace in *Surrey*, others to Colonel *Bass*, that was a Commander in *East-Jersey*; and it does appear that they did Surrender themselves accordingly. But that does not come under your Consideration, you are to consider only whether they are Guilty of the Facts they stand charged with, or no. As to what effect their Surrendring themselves may have with his Majesty, must be left to the King's Royal Pleasure; but we are to consider the Evidence. Now they generally say, they did obey the Captain, and that they understood he had the King's Commission; Truly, so far as he pursued the King's Commission, they were to obey him; But when he acts contrary to the King's Commission, in acts of Piracy upon the Ships, Goods and Effects of the King's Friends, and those in Amity with the Crown of *England*, they should have been so far from obeying and assisting him, that they should have obstructed him, and seized him, that he might have been brought to Justice, and that would have been a greater Vindication of their Innocencies. But, as the Matter now appears, I do not see that any thing they have said tends to their Defence, and therefore I must leave it to your Consideration.

Indeed, there are some Witnesses appear for Captain Kidd. Colonel Hewson gives you this account of Captain Kidd, that he was under his Command in the beginning of the War, and that he Fought and behaved himself very well, and was serviceable in the *West-Indies*; and he says, he discoursed him about his going out on the Expedition he was sent, and that Kidd said he had no Inclination to go. And Mr Cooper likewise tells you, that about ten or twelve Years ago he knew him, and that he Fought the *French*, and behaved himself very well at that time; and that several of his Men ran away with his Ship when he was at *Ango*.

Then there is *Gabriel Loffe*, he has produced a Witness for himself, one *Davis*. And *Davis* tells you, he was a Prisoner in *New-York* by order from my Lord *Bellamont*; and at first they were some Days there before they were taken into Custody; and there was so little Apprehension of his being a dangerous Man, that he had some Favour allowed him, and had a great deal of Liberty. This is that he says. I find not that any of the rest have produced any Evidence, only they say they were under the Commander, and were to observe him. But if that would excuse them, then all Pirates would be excused. Now, as to Captain Kidd, it seems he has wofully transgressed the Business of his Commission, and acted contrary to the End and Design of his being sent out, in the Piratical taking the Ships and Goods mentioned in the Indictments, in which the other Prisoners at the Bar have joined with him; and they were so far from being the Ship and Goods of the *French King*, or his Subjects, or Pirates, that they were the Ships and Goods of Persons of other Nations in Amity with the King of *England*. Now if you believe these Witnesses, that Captain Kidd has taken these Ships in a Piratical manner, and that the other Persons assisted him in it, and had their Shares of the Money and Goods, which is an evidence of their consenting to, and spontaneous acting, I believe you will think fit to find them Guilty, but I leave it to you. And as to these three Persons that were Servants, I must leave their Case to your Consideration, whether you will think fit to distinguish them from the rest, or not.

Then an Officer was sworn to keep the Jury.

And after about half an Hour the Jury return'd and brought in their Verdict.

Cl. of Arr. Gentlemen, Answer to your Names, William Smith,

William Smith. Here, &c.

Cl. of Arr. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who shall say for you?

Omnes. Foreman.

Cl. of Arr. William Kidd, Hold up thy Hand; (which he did) Look upon the Prisoner. How say you? Is he Guilty of the Piracy and Robbery whereof he stands Indicted by the first Indictment, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Nicholas Churchill Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is James Howe Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Robert Lamley Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is William Jenkins, Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is Gabriel Loffe Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Hugh Parrot Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Richard Barlicorn Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is Abel Owens Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Darby Mullins Guilty, or not Guilty?

Foreman. Guilty.

In like Manner Kidd, and Six more, were found Guilty on the other Indictment, and the Three Servants Acquitted.

The Tryal of *William Kidd*, and the other Nine Persons, upon Two more Indictments of Piracy :

One committed on a *Moorish* Ship Four Leagues from *Calicut*, the other on a *Portuguese* Ship, Twelve Leagues from *Calicut*.

THE Prisoners being called to the Bar, and the Jury called; and Captain *Kidd* Challenging those that had Tryed him for the Murder, the Twelve that were Sworn are as followeth, viz.

JURY.

<i>Jos. Watson,</i>	} {	<i>Tho. Plaisted,</i>
<i>Jos. Villers,</i>		<i>Sam. Rown,</i>
<i>Geo. Ashby,</i>		<i>Marm. Bludder,</i>
<i>Ed. Fenwick,</i>		<i>Jo. Scot,</i>
<i>Gilbert East,</i>		<i>Jo. Reynolds,</i>
<i>Tho. Humsfrevil.</i>		<i>Rich. Drew.</i>

Cl. of Arr. Cryer, Count these : *Jo. Watson*.

Cryer. One, &c. Twelve Good Men and True, stand together and hear your Evidence.

Mr J. Turton. With what will you proceed on now ?

Cl. of Arr. With the two other Ships.

Then the usual Proclamation for Information was made, and the Prisoners being bid to hold up their Hands, the Cl. of Arr. charged the Jury with them thus.

Cl. of Arr. You of the Jury, Look upon the Prisoners, and hearken to their Cause. They stand Indicted by the Names of *William Kidd*, late of *London*, Mariner, &c. (as before in the Indictment.) Upon this Indictment they have been Arraigned, and thereunto have severally pleaded Not Guilty, and for their Tryal have put themselves on God and their Country, which Country You are. Your Charge is, to enquire whether they be Guilty of the Piracy and Robbery whereof they stand Indicted, or not Guilty, &c.

Churchill. I plead Guilty, my Lord, I submit myself to the King's Proclamation.

Cl. of Arr. James Howe, Do you stand to your Plea ?

Howe. Guilty, my Lord, I submit to His Majesty's Gracious Proclamation.

Cl. of Arr. Robert Lamley, What do you say ?

Robert Lamley. Not Guilty.

Mr J. Turton. You may enter their retracting their Pleas in Court.

Cl. of Arr. William Jenkins, What say you ? Do you stand to your Plea ?

Jenkins. Not Guilty.

Cl. of Arr. Gabriel Loffe, What say you ?

Loffe. Not Guilty.

Cl. of Arr. Hugh Parrot, What say you ?

Parrot. Not Guilty.

Cl. of Arr. Richard Barlicorn, What say you ?

Barlicorn. Not Guilty.

Cl. of Arr. Abel Owens, What say you ?

Owens. Guilty. I came in upon the King's Proclamation.

Mr. Knapp. The Jury is not to be charged with them three then.

Cl. of Arr. Here is a second Indictment against them, wherein they stand Indicted by the Name of *William Kidd*, late of *London*, Mariner, &c. (as in the former Charge.) What must I say now ?

Mr J. Turton. Ask them three, Whether they stand to their Plea to this Indictment, or retract it ?

Cl. of Arr. Nicholas Churchill, Do you confess this Indictment ?

Churchill. Yes, my Lord.

Cl. of Arr. James Howe, What say you ?

Howe. Guilty of that, and all the other.

Cl. of Arr. Abel Owens, What do you say ?

Owens. Guilty of that, and all the other.

Cl. of Arr. Set them three by. Gentlemen of the Jury, Here is *William Kidd*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, and *Darby Mullins*, have been Indicted upon two several Indictments that have been read; and for Trial have put themselves on God and their Country, which Country you are.

Mr Knapp. My Lord, and Gentlemen of the Jury, These are two several Indictments of Piracy, against *William Kidd*, and the six other Prisoners at the Bar. The first sets forth, That these Prisoners, the 28th of *December*, in the Eighth Year of his Majesty's Reign, about four Leagues from *Calicut*, did Piratically enter a certain Ship, called a *Moorish* Ship; and that they took her, with the Apparel and Tackle, and took out of her several Goods that have been read to you in this Indictment. To this Indictment they have pleaded, Not Guilty. If we prove them Guilty, you must find them so. The other Indictment sets forth, That on the 9th of *January*, &c. that they took another Ship, a *Portuguese* Ship; and to this also they have pleaded, Not Guilty. If we prove them Guilty, you must find accordingly. Call *Robert Bradinham*, and *Joseph Palmer*, (who appeared, and were sworn.)

Mr Soll. Gen. My Lord, and Gentlemen of the Jury, I am Council for the King against the Prisoners at the Bar. They stand Indicted for several Piracies committed on two Ships, and our Evidence against them will be to this Purpose: Captain *Kidd* had two Commissions, one was to take Pirates, the other was to take *French* Ships. *William Kidd*, in his Ship the *Adventure Galley*, went out of *England* in the Year 1696. He afterwards went to *New-York*, and there he increased the Number of his Men. And from thence went away with a Resolution to commit the Piracies, some of which he has been Convicted of already. Then he went to *Babs-Key*, and laid in wait to intercept the *Moro* Fleet; but was disappointed of that, they being well guarded. He went afterwards to other Places, and took two Ships; which were not the Ships here mentioned. After that he seized a Ship, called a *Moorish* Ship, ten Leagues from *Calicut*, and there seizes one of the Ships for which he is now Indicted, a *Moorish* Ship, and takes out of her Sugar-Candy, and other Goods, to the Value of about five and twenty Pounds. In *January* following, he meets another Ship, and seizes her too, and takes out of her to the Value of sixty Pounds. These Goods he disposes of, and divides the Proceed of it between himself and the Crew of the Ship. And this is the Piracy for which he is now Indicted. The Matter you are to inquire

inquire into, is, Whether they be Guilty of Piracy on these two Ships, or no. We will call our Witnesses, and, if we prove them Guilty, I doubt not but you will do right to your Country and them. Mr. Bradinham, These Gentlemen have not been upon the Jury before, therefore you must give an Account of the whole Matter from the beginning, from your going out of Plymouth.

Bradinham. In the Year 1696, the beginning of May, we went from Plymouth to New-York.

Mr Soll. Gen. What Ship did you go in ?

Bradinham. The *Adventure Galley*. And by the way he took a French Ship, which he condemned when he came to New-York. At New-York he put up his Articles, to get Men aboard his Ship, and they were to have a Share of what was taken. About the sixth of September we sailed.

Mr J. Gould. What Number of Men had you when you went from England ?

Bradinham. About seventy Men.

Mr J. Gould. How many had you when you went from New-York ?

Bradinham. About an hundred and fifty. The sixth of September we sailed from New-York, and went to Maderas, then to Bonavis, then to St. Fauzer, then to Madagascar, then to Joanna, then to Mahala, then to Joanna again, then to Meta in the Red-Sea, and then to Babs-Key.

Mr Soll. Gen. What did you do there ?

Bradinham. He lay there about a Fortnight or three Weeks, to wait for the *Moco Fleet*, and sent out his Boat three times to make Discovery ; the two first times they made no Discovery, but the third time they brought Information that they were ready to Sail.

Mr B. Hatfell. What was the *Moco Fleet* ?

Bradinham. They were *Moorish* Ships.

Mr B. Hatfell. To what end did he wait for them ?

Bradinham. He said he would make a Voyage out of them.

Mr Soll. Gen. What happened on that ?

Bradinham. He ordered some Men to look out for them on the *High Lands* ; and when they saw them coming they were to give Notice, and he was to fetch them off in the Boat. This Fleet came, and he fell in with them, and fired at them ; but they being under Convoy, he was forced to quit them. And then going to *Carramar*, he met with one *Parker's* Ship ; he took this *Parker's* Ship, and took him for a Pilot, and the *Portuguese* for a Linguister.

Mr Soll. Gen. How did he use the Men there ?

Bradinham. Two of them were brought on board the *Adventure-Galley*, and they were hoisted up, and drubb'd with a naked Cutlass.

Mr Soll. Gen. Why did he do that ?

Bradinham. That they might make Discovery of their Riches ?

Mr Soll. Gen. What did they take out of that Ship ?

Bradinham. Some Coffee, Pepper, &c.

Mr Soll. Gen. What did he do with the two Men ?

Bradinham. He carried them with him to *Carramar* ; and when he came there they were demanded by the *English* Factory there, and he denied them, and said he had no such Men aboard.

Mr Soll. Gen. Where had he put them ?

Bradinham. He confined them aboard in the Hold.

Mr Soll. Gen. Where did he go then ?

Bradinham. He put to Sea, and the next Day

he met with a *Portuguese* Man of War, and fought her.

Kidd. He tells nothing but meer Lies.

Bradinham. Then he went to the *Malabar* Islands, and Watered and Wooded, and caused his Men to burn several Houses, and plunder several Boats, and afterwards burnt them.

Mr J. Turton. Did you see them burnt ?

Bradinham. I was not ashore, but I saw the Smoke.

Kidd. It is a fine Trade, that you must take away so many of the King's Subjects Lives, and know nothing at all of the Matter.

Mr Soll. Gen. What did you do with that Ship ?

Bradinham. He took her, and disposed of the Goods, and carried her to *Madagascar*.

Mr Soll. Gen. What did he do after that ?

Bradinham. We went to the *Malabar* Islands some time in December, and he took a *Moorish* Ketch.

Kidd. How came you to keep this Account, when for five or six Months together you were under Deck ?

Mr Soll. Gen. Go on, Mr Bradinham, and give an Account of your further Proceedings.

Kidd. I hope the King's Council will not put him in the way. It is hard that a couple of Rascals should take away the King's Subjects Lives. They are a couple of Rogues and Rascals.

Bradinham. This Ketch was taken by the Ship's Crew, about December, 1697. and one of the Boat's Crew was wounded at the taking of this Ketch.

Mr Soll. Gen. What was there in this Ship ?

Bradinham. Some Tubs of Sugar-Candy, Tobacco, &c.

Mr Soll. Gen. What did he do with these Goods ?

Bradinham. They were carried aboard, and shared into Messes, two Tubs and a half of Sugar-Candy to a Mess.

Mr Soll. Gen. Had the Prisoners at the Bar any Share ?

Bradinham. Yes ; and then he set the Ship on fire.

Cl. of Arr. Had Captain Kidd himself any Share

Bradinham. Yes.

Cl. of Arr. How much had he ?

Bradinham. He had 40 Shares.

Mr B. Hatfell. You should tell this Jury how many Shares the whole was divided into.

Bradinham. It was divided into 160 Shares, and Captain Kidd was to have 40 Shares, let them be as many as they would, and the rest were to be divided among the Men.

Cl. of Arr. Had Robert Lamley any Share ?

Bradinham. Yes.

Cl. of Arr. Had William Jenkins a Share ?

Bradinham. Yes.

Cl. of Arr. Had Gabriel Loffe any Share ?

Bradinham. Yes.

Cl. of Arr. Had Hugh Parrot any Share ?

Bradinham. Yes.

Cl. of Arr. Had Richard Barlicorn any Share ?

Bradinham. Yes.

Cl. of Arr. Had Darby Mullins any Share ?

Bradinham. Yes.

Mr Soll. Gen. What was done afterwards ?

Bradinham. After they had done these things they burnt the Ketch.

Knapp. What did they do then ?

Bradinham. The *Moors* were driven ashore by the Ship's Crew.

Kidd.

Kidd. How did you know they were *Moor*s?

Bradinham. By Information of the Ship's Crew.

Kidd. He was not within five Leagues of the Place.

Knapp. What did you meet with afterwards?

Bradinham. A Portuguese Ship. Some time in January, 1693, we met with a Portuguese Ship on the Coast of Malabar, and he took her; and he took out of her some Opium, some East-India Goods, some Powder, and sixty or seventy Bags of Rice.

Mr Soll. Gen. My Lord, this is the other Ship for which they are Indicted. What was the Value of these Goods?

Bradinham. There were some East-India Goods, Opium, Powder and Rice.

Kidd. Did you see them brought aboard?

Bradinham. I am answering the Bench.

Mr Soll. Gen. Were there any other Goods?

Bradinham. Yes, there was Bees-wax, and thirty Jarrs of Butter.

Mr Soll. Gen. What was the Value of these Goods?

Bradinham. About four or five hundred Pounds.

Kidd. It is a fine Trade indeed, that he must be instructed what to say.

Bradinham. After he had plunder'd this Ship, he was pursued by some Dutch Ships; several Ships gave him chase, and he was forced to leave this Ship.

Mr Soll. Gen. What did they do with the Goods?

Bradinham. He sold the Opium on the Coast, and the rest he kept for Provision.

Mr Soll. Gen. What became of the Money?

Bradinham. Captain Kidd shared it.

Mr Soll. Gen. Who had their Shares? Give an account of that.

Bradinham. The Prisoners at the Bar.

Cl. of Arr. Had Captain Kidd any Shares?

Bradinham. Yes.

Cl. of Arr. Had Robert Lamley any Share?

Bradinham. He had half a Share.

Cl. of Arr. Had William Jenkins any Share?

Bradinham. He had half a Share.

Cl. of Arr. Had Gabriel Loffe any Share?

Bradinham. He had half a Share.

Loffe. How do you know that? Did you see me bring it out?

Bradinham. I did not see you take it, but you brought it out, and acknowledged it.

Kidd. Before you swore, I paid them first, and now you say they paid me first.

Bradinham. They had all a Share as before.

Mr Knapp. Now proceed in your Voyage, What did you do after this?

Bradinham. After this we went a Cruizing on that Coast, and we met with the *Queda* Merchant, and took her: And afterwards, about fifty Leagues from the Cape, we met with a *Moorish* Vessel; and Captain Kidd sent his Men aboard that Vessel, and they took out of her ten Jarrs of Butter, and a Main-sail; and he took out two of the Men (that he carried to *Madagascar*) because he wanted Men.

Mr Knapp. Can you tell of any thing else?

Bradinham. He took about a dozen Malabar Boats, and plundered them, and then let them go.

Mr Knapp. Go on.

Bradinham. Then we came to *Madagascar*.

Mr Knapp. What happened there?

Bradinham. There came a Canoe off, some of the Men in this Canoe belonged to the *Moco Fri-*

gate; they came off to Captain Kidd, and they told him, they heard he was come to take them; and hang them.

Mr Knapp. What were those Men?

Bradinham. They were supposed to be Pirates.

Mr Knapp. Who was the Commander of that Ship?

Bradinham. Captain Culliford.

Kidd. How came you to know this? He says any thing.

Mr Knapp. Go on with this Story, and give an Account what passed between them.

Bradinham. This Canoe came aboard Captain Kidd, and they told him, they heard he was come to take them, and hang them; but he assured them it was no such thing: And he went aboard the Frigate, and swore to be true to them, and that he would aid them in any thing he had; and Captain Culliford came aboard him, and they made Presents to one another.

Mr Knapp. What Presents did Captain Kidd make Culliford?

Bradinham. He gave him some shirting-stuff.

Kidd. What! Did I give him shirting-stuff?

Bradinham. Yes; and he gave him two great Guns.

Kidd. Did I go aboard him, you Rascal?

Mr Soll. Gen. Mr Kidd, Ask him what Questions you will.

Mr J. Turton. Captain Kidd, Will you ask this Witness any Questions?

Kidd. My Lord, What signifies it? Were there not ninety of the Men that Mutinied? I said, Let us take this Ship; and did they not all consult, and said, Where there is one that will fire against the Pirate, there are ten that will fire against you; and so they went, and took the Goods, and left me: I ask you whether this be not true?

Bradinham. My Lord, he never spoke any thing like it, that he would take Culliford, but he swore to be true to them.

Kidd. Did not I propose to my Men to take Captain Culliford? Did you never hear any body say so?

Bradinham. No.

Kidd. Did you not say yesterday that I was come to take them?

Bradinham. I said, they came and told you they heard so, and you assured them you intended no such thing.

Kidd. You swore I gave him four Guns yesterday, and now you say but two.

Mr Soll. Gen. It was Palmer that said four.

Bradinham. I said but two, and no more.

Cl. of Arr. Captain Kidd, Have you any thing more to ask him?

Kidd. It signifies nothing to ask him any thing.

Cl. of Arr. Robert Lamley, Will you ask this Witness any thing?

Lamley. I only ask him whether I was not an Apprentice?

Mr J. Turton. Answer that Question.

Bradinham. My Lord, he was a Servant.

Mr J. Turton. To whom?

Bradinham. To Mr Owens.

Mr J. Turton. Was his Master aboard then?

Bradinham. Yes, my Lord.

Cl. of Arr. William Jenkins, Will you ask the Witness any thing?

Jenkins. I desire him to say whether I was a Servant, or not.

Bradinham. Yes, my Lord, he was Servant to the Mate.

Mr J. Turton. Was his Master aboard then?

Bradinham. He was aboard then.

Cl. of Arr. Gabriel Loffe, Will you ask him any Questions?

Loffe. No, Sir.

Cl. of Arr. Hugh Parrot, Will you ask him any Thing?

Parrot. No.

Cl. of Arr. R. Barlicorn, Will you ask this Witness any Thing?

Barlicorn. I have nothing to ask him, but to desire him to speak the Truth, whether I was not the Captain's Servant.

Bradinham. He was, my Lord.

Cl. of Arr. Darby Mullins, Will you ask him any Thing?

Mullins. I have nothing to say but what I said before. I submit my self to the King's gracious Proclamation.

Kidd. He has Perjured himself in many Things.

Mr J. Turton. In what? Give an instance.

Kidd. In a great many Instances: About the Guns, that is one thing; and then he says the Ship went from *Plymouth* the beginning of *May*, and before he said it was in *April*, that is another thing; and, my Lord, the Mariners came and took Anchors, and Cables, and what they would, and, he says, I gave them to them, and this is false; and now he says contrary to what he did before, for then he said we went out in *April*, and now the beginning of *May*.

Mr J. Turton. He did not confine himself to a Day, he said about the beginning of *May*.

Mr Soll. Gen. Call *Joseph Palmer*, (who appeared.) *Mr Palmer*, pray give my Lord, and the Jury, an account of Captain *Kidd* and his Crew, where they went, and what they did.

Palmer. We went from *Plymouth* to *New-York*, in the Year 1696, and in the way took a *French* Ship, and carried her to *New-York*, and sold her: And there he put up Articles to invite Men aboard his Ship, and what they took was to be divided into so many Shares, whereof Captain *Kidd* was to have forty, the rest to be divided among the Men; and in *September* following, we went from thence, and we had then about 160 Men: From thence we went to *Maderas*, from thence to *Bonavis*, then to *St. Jauger*, then to *Joanna*, then to *Mahala*, then to *Joanna* again, and then to *Meta* in the *Red-Sea*, where he watered and wood-ed his Ship, and then to *Babs-Key*, a small Island in the *Red-Sea*: And when he came there, he ordered his Men to look out on the *High Lands* for the *Moco Fleet*, and expected the Fleet to come that way; and he sent some Men in his Boat, with Orders either to take a Prisoner, or to bring word what Ships were there: He sent his Boat twice and they made no Discovery, but the third time they went they came within sight of the Ships, and brought word that there were 14 or 15 sail lying there, with *Dutch*, and *English*, and *Moorish* Colours, and a great Ship with red Colours ready to sail: And then Captain *Kidd* ordered his Men to look out on the other side the *High Lands*, for fear the Ships should pass him; and at last the Ships came down.

Kidd. There is no great occasion for this.

Palmer. There were *Moors* and *Turks* belonging

to these Ships: And about the 15th of *August* the Fleet came down; and Captain *Kidd* fell in with them; his Quarter-master and some of his Men were saying, Let us go aboard them to Night; No, says he, we will take our choice of them in the Morning; and in the Morning he went among them, and fired at them, but took none of them; he found they were too strong for him, and went away. And after this going to *Carramar*, he took a Ship called the *Mayden*; it was between *Carramar* and this Place, they reckoned they were not far from the Island of *St. John*: He took this Ship, and took out of her some Pepper, a Bail of Coffee, and some more Bails of Coffee came on board, but he retained only one Bail and the Pepper, and said he would not cumber his Ship with such Stuff; and *Parker* and a *Portuguese* he took out, one for a Pilot, the other for a Linguister: And two of the Men he ordered to be hoisted up, and whipt with a naked Cutlass.

Kidd. I ask this one Thing, Did the *Moco Fleet* fire first at me, or I at them?

Palmer. No, they fired first.

Kidd. And just now the other said I fired first; Is not he Perjured.

Mr J. Turton. Mr *Bradinham*, Did he fire first, or no?

Bradinham. He fired at them. I only said you fired at them, I did not say first or last.

Palmer. After this he went to *Carramar*, to an *English* Factory, and Wooded and Watered his Ship; and one *Harvey* came and demanded these two Men; and Captain *Kidd* denied that he had any such Men on board, and kept them in the Hold.

Mr Soll. Gen. Is that an *English* Factory?

Palmer. Yes. Several of Captain *Kidd's* Men left him there, and several more would have left him, if they could have conveniently gone ashore: And the same Evening he put to Sea, he met a *Portuguese* Ship, and fought her.

Kidd. Who fired there first?

Palmer. The *Portuguese* fired first.

Kidd. You do not tell that Story right.

Palmer. After he left this *Portuguese* Ship he went to the Island of *Malabar*, and robbed the Natives, and set their Houses on fire, and took one of the Natives, and bound him to a Tree, and shot him to Death.

Mr Soll. Gen. Did you see the Houses on fire?

Palmer. Yes: And afterwards we went to *Calicut*, and met with a *Moorish* Ship in *November*, *Schipper Mitchel* was Commander; and there were taken out of her two Horses, and Cotton, and Quilts; and this Ship he carried to *Madagascar*: Some time in *December* following we came to the Coast of *Malabar*.

Mr Knapp. Can you tell what Year it was?

Palmer. It was in *December*, 1697.

Mr Knapp. Where was this?

Palmer. About twelve Leagues from *Calicut*.

Mr Knapp. What sort of Ship was it?

Palmer. A *Moorish* Ketch.

Mr Knapp. What Burden was she?

Palmer. About fifty Tun.

Mr Knapp. What did you do there?

Palmer. Captain *Kidd* was lying at Anchor, and this Ketch came between him and the Shore, and he sent the Boat, and they brought the Ketch to the Ship, and took out of her thirty Bails of Sugar-Candy, Tobacco, Sugar and Myrrh.

Mr Knapp. What did they do with these Goods?

Palmer.

Palmer. When they had taken them out, they were shared between the Men in Messes, seven Men to a Mess, for their own spending.

Mr Knapp. Had the Prisoners at the Bar any Share?

Palmer. All the Men had.

Mr Knapp. What Share had Captain Kidd?

Palmer. I cannot tell whether he had his 40 Shares of that, or no.

Mr Knapp. What did they do with the Ship?

Palmer. They burnt her.

Mr Soll. Gen. Pray now go on: What did they do next?

Palmer. Some time in January they met with a Portuguese Ship.

Mr Soll. Gen. Where?

Palmer. Off of Anjingo, an English Factory: It was a pretty way off Shore.

Mr Soll. Gen. What Ship was it?

Palmer. A Portuguese Ship.

Kidd. You said it was just by Calicut yesterday.

Mr Soll. Gen. Whereabouts was it?

Palmer. On the Coast of Malabar; it might be about ten or twelve Leagues from Calicut.

Mr Soll. Gen. What Goods were in the Ship when she was taken?

Palmer. There were two Chests of Indian Goods, two Chests of Opium, some Rice, Butter, Wax, and Iron.

Mr Soll. Gen. What was the Value of those Goods?

Palmer. Truly I cannot tell the Value of them.

Mr Soll. Gen. What did they do with those Goods?

Palmer. The Wax and Iron he put aboard the November, and some aboard his own Ship.

Mr Soll. Gen. Did he sell any of these Goods?

Palmer. No, but he sold the Opium on the Coast.

Mr Soll. Gen. Did he keep the Ship?

Palmer. No, but seven or eight Days, and then he quitted her; there were some Dutchmen coming, and he sunk that Ship: The Produce of the Ship was shared.

Mr Soll. Gen. Had the Prisoners at the Bar any Share?

Palmer. Yes.

Cl. of Arr. Had William Kidd any Share?

Palmer. Yes.

Cl. of Arr. Had Robert Lamley any Share?

Palmer. Yes.

Cl. of Arr. Had William Jenkins any Share?

Palmer. Yes.

Cl. of Arr. Had Gabriel Loffe any Share?

Palmer. Yes.

Cl. of Arr. Had Hugh Parrot any Share?

Palmer. Yes.

Cl. of Arr. Had Richard Barlicorn any Share?

Palmer. Yes.

Cl. of Arr. Had Darby Mullins any Share?

Palmer. Yes; these Goods were shared, and we bought Provision with them.

Kidd. You say this Ship was taken off of Anjingo, and that it was twelve Leagues from Calicut, and this Anjingo is fifty Leagues from Calicut.

Palmer. It is all upon one Coast.

Mr Soll. Gen. Give an Account of your coming to Madagascar, and what followed.

Palmer. They found a Ship called the Resolution, Captain Culliford was Commander; and several of the Men came off to Captain Kidd, that were formerly acquainted with him; and they

said, We hear you are come to hang us; says he; It is no such Thing: And afterwards they went aboard each other, and Captain Kidd made Protections to be true to them. There were four Guns in the Ship, and he presented these Guns to Culliford.

Kidd. Did I present him with my Guns? Because I would not turn Pirate, you Rogues, you would make me one.

Mr Baron Hatsell. What did Captain Kidd say to Culliford, when they were drinking together?

Palmer. They made a Tub of Bomboo, as they call it (it is made of Water and Limes, and Sugar) and there they drank to one another; and says Captain Kidd, before I would do you any Damage, I had rather my Soul should broil in Hell-fire.

Mr Soll. Gen. Was you there then?

Palmer. This was on the Quarter-deck of the Moco Frigate.

Mr Soll. Gen. What were those Men in that Ship? What did you apprehend them to be?

Palmer. They were Pirates.

Mr Soll. Gen. Did Captain Kidd or his Men offer to take them?

Palmer. He did never propose any such Thing.

Mr Soll. Gen. Now you may ask him what Questions you will.

Kidd. There went twenty of them aboard, and left me.

Palmer. Captain Kidd and Culliford were as great Friends as could be.

Mr Soll. Gen. Ask him what Questions you please.

Will. Kidd. It signifies nothing to ask any Questions, a couple of Rogues will swear any Thing.

Mr Soll. Gen. Will you ask him any Questions?

Kidd. No.

Cl. of Arr. R. Lamley, will you ask him any Questions?

Robert Lamley. No.

Cl. of Arr. William Jenkins, will you ask him any Questions?

William Jenkins. No; I have no more to say, but what I said before.

Cl. of Arr. Gabriel Loffe, have you any Thing to ask him?

Gabriel Loffe. No.

Cl. of Arr. Hugh Parrot, will you ask the Witnesses any Questions?

Hugh Parrot. No.

Cl. of Arr. Richard Barlicorn, will you ask him any Thing?

Richard Barlicorn. No.

Cl. of Arr. Darby Mullins, will you ask him any Thing?

Darby Mullins. No; but only I say I came home upon his Majesty's Proclamation; I came voluntarily, expecting to have the Benefit of it with the Evidence.

Mr J. Turton. That does not fall under the Jury's Consideration.

Cl. of Arr. You, the Prisoners at the Bar, will you say any Thing for your selves upon these two Indictments?

Kidd. I will not trouble the Court any more, for it is a Folly.

Cl. of Arr. Robert Lamley, What have you to say for your self?

Robert Lamley, Nothing, but that I was a Servant.

Cl. of Arr. *W. Jenkins*, what have you to say?

W. Jenkins. I was a Servant, my Lord.

Cl. of Arr. *Gabriel Loffe*, have you any Thing to say?

G. Loffe. My Lord, I ask him whether I ever acted any Thing in taking these Ships, but only under my Captain's Command.

Palmer. He acted as other Men did.

Cl. of Arr. *Hugh Parrot*, have you any Thing to say?

Hugh Parrot. I can say no more than I have said.

Cl. of Arr. *Richard Barlicorn*, have you any Thing to say?

R. Barlicorn. My Lord, I am a Servant.

Cl. of Arr. *Darby Mullins*, what have you to say?

Darby Mullins. Did not Captain *Kidd* often say his Commission would bear him out in what he did?

Palmer. Yes, I have heard him often say that.

Mr J. Turton. But how came you to go aboard *Culliford*?

Darby Mullins. For Want, my Lord.

Mr J. Turton. Gentlemen of the Jury, Here are several Persons, viz. *William Kidd*, *Rob. Lamley*, *Will. Jenkins*, *Gab. Loffe*, *Hugh Parrot*, *Richard Barlicorn*, and *Darby Mullins*; They all stand Indicted for Piracy: Indeed there are three more Indicted with them, viz. *Nicholas Churchill*, *James Howe*, and *Abel Owens*; but they have confessed themselves guilty, and you are now eased of any inquiry concerning them, and are only to consider of the other Seven, who are indicted upon two several Indictments: One is, for the Piratical and Felonious taking away a *Moorish Ketch*, to the Value of fifty Pounds, and the Goods therein to the Value of one Hundred Pounds; this was in *December*, 1697. And the Other is, for Piratically seizing and taking away Goods to the Value of seventy Pounds from the *Portugal Ship*, twelve Leagues from *Calicut* in the *East-Indies*. Now to these two Indictments these Prisoners at the Bar have pleaded, Not guilty; and whether they are so or no, you are to determine, upon the Evidence given you. There have been two Witnesses produced for the King, *Robert Bradinham*, and *Joseph Palmer*, I will not trouble you with the Repetition of their distinct Evidence, because they agree in all Things, and if I mention what one has said, it is in effect what the other said also.

Gentlemen, It appears that Captain *Kidd*, with seventy Persons aboard his Ship called the *Adventure Galley*, went from *England* in the Year 1696, having a Commission of Mart and Reprisal, to take the Vessels, Ships and Goods of the *French King*, or any of his Subjects, he being then at War with the King of *England*; and another Commission for seizing Pirates. He has not indeed produced these Commissions to you now, though he did on another Trial. But he went out on a very honest Design, and in pursuance of it he took a *French Ship* in his Passage to *New-York*, and brought her thither, and had her legally condemned. But while he was there, it appears that he had other Thoughts possessed him, and wicked Intentions to turn Pirate, and not to take them; and that he might be well Manned he makes Proclamation amongst the Mariners there, that such of them as would come aboard his Ship, and assist him in his Enterprises, should have their Shares of what Prizes or Booties could be taken; and he proposed that he would have

forty Shares for himself, and the rest should be equally distributed amongst the Mariners according to agreement, the whole being divided into 160 Shares as I remember; by this means his Number was increased from 70 to 150. They set sail from *New-York*, and (after many other Places mentioned by the Witnesses) they came to a Place called *Babs-Key*, which it seems is in the *Red-Sea*; and there they stayed a considerable Time, I think about three Weeks, and this was in expectation to meet with the *Moco Fleet*, which he intended to make a Prize; and during his Stay at *Babs-Key* he sent his Boat three several times to get Intelligence of this Fleet; the two first Times there was no Account of any Thing, but the third Time there was notice brought that they were ready to sail, and that they had *English*, *Dutch*, and *Moorish* Colours. And when he had this Intelligence, to prevent their escaping him, he sends Men ashore, to go on the *High-Lands* to observe when they did actually sail; and when he had notice that they were under sail, he likewise failed, and went through the Fleet, and made some Shots at some of the Ships; but it appearing that they had a Convoy, and that they were too strong for him, he quitted the Prize there, of which he had so great Expectation. But afterwards he went on, and took his Course towards *Carawar*, and there he takes a *Moorish Ship*; and *Parker* an *Englishman* the Commander of her, and a *Portuguese* also were taken out of her. From thence they went to *Malabar*, and there he sent some Men ashore, and there they burnt some Houses; and after that took a *Moorish Ship* for which they have been tried. Afterwards, in *December* 1697, (now I come to the first Indictment) upon that very Coast, some Leagues from *Calicut*, they took a *Moorish Ketch*, and this Ketch and the Goods aboard it, which were some Quantities of Sugar-Candy, Sugar, and Tobacco: It seems these Goods were shared between them aboard the Ship; the Witness is not confident what Share the Captain then had, but what the Captain had not, was divided amongst them. The Witnesses say they burnt this Ketch, because she was not useful to them, and the Men that went on Board were put ashore. Now this is the Matter of the first Indictment, the Piratically seizing and plundering this Ketch, and taking the Goods out of her, and dividing them amongst the Prisoners; both the Witnesses prove there was a Distribution of them.

They then come to the next Month, and that is *January*; and this is the Matter of the second Indictment, for piratically taking several Goods, to the Value of seventy Pounds, from the Mariners of the Ship called the *Portugal Ship*: And these Witnesses prove the taking of this Ship on the Coast of *Calicut*; and there were aboard this Ship several sorts of Goods, Opium, Rice, Beeswax, Butter, and other sorts of Goods, which they judge might be worth four or five hundred Pounds. Now after this, there were some *Dutch Ships* that gave chase to the Captain, and he was forced to leave the Ship; but he took some of the Goods into his own Ship, and the rest were sold, and the Money divided among the Men: The Captain called them one by one into his Cabin, and so they had their several Shares according to the Proposals at *New-York*. It is not possible for them to say they saw every Man's Share paid, but they say that they were all called by Name to receive their Shares, and they went into the Cabin

Cabbin for that Purpose, and they believe they had all their Shares according to Agreement, because none complained that they had it not.

Gentlemen, There is but one Thing more that I will mention to you. When they came to *Madagascar*, there was one *Culliford* who was a Pirate; and he sent some of his Crew aboard, to know whether Captain *Kidd* was not come with a Design to seize them, and hang them; and he declared he had no such Design: And he and *Culliford* were extremely kind to one another, and made Visits and Presents to each other: And Captain *Kidd* gave two Guns to *Culliford*, as one of the Witnesses says; but the other Witness says there were four Guns that he gave to *Culliford*, who was engaged in the same Design of Piracy, and *Culliford* presented other Things to *Kidd*.

But now, Gentlemen, the Business you are to inquire into is, the piratical taking of these Ships: And the Witnesses have positively and directly proved not only the taking the Ships but the seizing the Goods, and selling them, and sharing the Money. And if these Witnesses say true, as nothing appears to the contrary, by the Prisoners cross-examining them, or otherwise; they are not at all contradicted, or their Credibility made questionable: And they are such as are most likely to know what was done, being with them in the whole Voyage, and engaged with them in these Enterprises. And if you can give entire Credit to the Witnesses, you will probably find these Persons guilty of the Piracy they are charged with; which I leave to your Consideration.

Now indeed there are three of them that are Servants, and perhaps you may think their Case is different from the rest; *Robert Lamley*, who was a Servant to *Owens* the Cook; *William Jenkins*, who was Servant to the Mate; and *R. Barlicorn*, who was Servant to Captain *Kidd*. And though the Witnesses do prove that they had their several Shares of the Goods and Money; yet, notwithstanding that, they being Servants, their Masters might be entitled to their Shares. So that if you believe they were Servants, and commanded to serve and assist their Masters in what they did, I must leave it to you whether you will think fit to distinguish their Case from the rest. I do not find that the others say any Thing material in their own Defence, they have called no Witnesses at all. The Captain lays the Blame on the Men, and the Men seem to lay the Blame on him. He went out on a good Design, to take Pirates, had he pursued it; but instead of that, it appears that he turned Pirate himself, and took the Ships and Goods of Friends instead of Enemies, which was a notorious Breach of Trust, as well as a manifest Violation of Law. The Evidence seems strong against them, which I leave to you to consider of.

Then the Jury withdrew, and after a short Space brought in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names.

Jo. Watson.

Jo. Watson. Here, &c.

Cl. of Arr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who shall speak for you?

Omnes. Foreman.

Cl. of Arr. *William Kidd*, hold up thy Hand, (which he did.) Look upon the Prisoner. How say you? Is *William Kidd* guilty of the Piracy and

Robbery whereof he stands indicted in the first Indictment, or not guilty?

Foreman. Guilty.

Cl. of Arr. Is *Robert Lamley* guilty, or not guilty?

Foreman. Not guilty.

Cl. of Arr. Is *William Jenkins* guilty, or not guilty?

Foreman. Not guilty.

Cl. of Arr. Is *Gabriel Loffe* guilty, or not guilty?

Foreman. Guilty.

Cl. of Arr. Is *Hugh Parrot* guilty, or not guilty?

Foreman. Guilty.

Cl. of Arr. Is *Richard Barlicorn* guilty, or not guilty?

Foreman. Not guilty.

Cl. of Arr. Is *Darby Mullins* guilty, or not guilty?

Foreman. Guilty.

The same Verdict was given as to all the Prisoners upon the other Indictment.

Robert Culliford, Nicholas Churchill, Darby Mullins, and John Eldrige, were arraigned for taking the Ship called the Great Mahomet, and seizing the Goods to a considerable Value, to which they pleaded not guilty.

Robert Culliford, Churchill, Howe, and Mullins, were again indicted for another Ship taken piratically by them, to which they pleaded not guilty.

Robert Culliford and Robert Hickman were again arraigned for piratically seizing another Ship called the Satisfaction, to which they pleaded not guilty.

Robert Culliford and Rob. Hickman were again indicted for Piracy committed on a Moorish Ship, to which they pleaded not guilty.

Then the Court proceeding to the Trials of the Persons forementioned, Rob. Culliford retracted his Plea, and pleaded guilty, and argued his coming in upon his Majesty's Proclamation; and his Case being particular, was argued by his Council, for the Benefit of his Majesty's Pardon. And Churchill, Howe, Mullins, and Hickman, likewise pleading guilty; John Eldrige was tried by himself, and found guilty.

After the Trials were over, Judgment against Culliford was respited, and he set aside; the other Prisoners were called to the Bar in order to receive their Sentence as follows:

Cl. of Arr. *William Kidd*, Hold up thy Hand, (which he did) What canst thou say for thy self? Thou hast been indicted for several Piracies and Robberies, and Murder, and hereupon hast been convicted; What hast thou to say for thy self, why thou shouldst not die according to Law?

Will. Kidd. I have nothing to say, but that I have been sworn against by perjured and wicked People.

Cl. of Arr. *Nich. Churchill*, hold up thy Hand, What hast thou to say, &c?

N. Churchill. I came in upon his Majesty's Proclamation.

Cl. of Arr. *James Howe*, What hast thou to say, &c?

Cl. of Arr.

J. Howe. I came in upon the King's gracious Proclamation, and hope I shall receive the Benefit thereof.

Cl. of Arr. *Gabriel Loffe,* What hast thou to say, &c?

Cl. of Arr. *Hugh Parrot,* What hast thou to say, &c?

Hugh Parrot. I came and surrendred my self to my Lord Bellamont.

Cl. of Arr. *Gabriel Owens,* what hast thou to say?

Gabriel Owens. I came in upon his Majesty's Proclamation, and desire the Benefit of it.

Cl. of Arr. *Darby Mullins,* What hast thou to say?

Darby Mullins. I came home upon the King's gracious Proclamation.

Cl. of Arr. *John Eldrige,* What hast thou to say? &c.

J. Eldrige. I have but little to say, I am accused but for one Thing, and that is all, and I have been falsely accused; I cast my self on your Lordships and the Honourable Bench.

Cl. of Arr. *Robert Hickman,* What hast thou to say? &c.

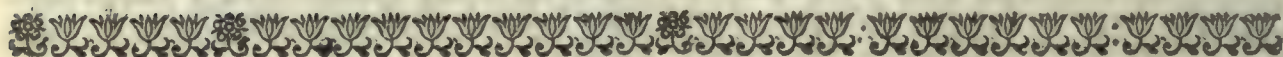
Robert Hickman. I came in according to the King's Proclamation, I came in within the Time limited.

Then Proclamation for Silence was made, while Sentence was pronouncing.

Dr Oxenden. You the Prisoners at the Bar, *Will. Kidd, N. Churchill, J. Howe, Gabriel Loffe, Hugh Parrot, Abel Owens, Darby Mullins, Robert Hickman,* and *J. Eldridge*; you have been severally indicted for several Piracies and Robberies, and you *William Kidd* of Murder. You have been tryed by the Law of the Land, and convicted; and nothing now remains, but that Sentence be passed according to the Law. And the Sentence of the Law is this.

You shall be taken from the Place where you are, and be carried to the Place from whence you came, and from thence to the Place of Execution, and there be severally hanged by your Necks untill you be dead. And the Lord have Mercy on your Souls.

William Kidd. My Lord, It is a very hard Sentence. For my Part, I am the innocentest Person of them all, only I have been sworn against by Perjured Persons.



The End of the Fourth VOLUME.



The several Proceedings and Resolutions of the House of Peers, in Relation to the LORDS Impeached or Charged, Anno 1701. viz. William Earl of Portland, John Lord Sommers, Edward Earl of Orford, and Charles Lord Halifax: as also John Lord Haverſham. Publish'd by Authority.

Die Martis 1^o Aprilis, 1701.

*Earl Portland
Impeached.*



A Message was brought from the House of Commons by Sir John Leveson Gower, and others, who at the Bar of this House, in the Name of the House

of Commons, and all the Commons of England, Impeached William Earl of Portland of High Crimes and Misdemeanors; and acquainted this House, That the House of Commons will in due time Exhibit particular Articles against him, and make good the same.

A Committee appointed to inspect the Journals of this House, in relation to the Proceedings of this House in Cases of Impeachments for Misdemeanors, and to report to the House.

Die Martis 15^o Aprilis, 1701.

*Lord Sommers
Impeached.* A Message was brought from the House of Commons by Mr. Harcourt, and others, who at the Bar of this

House, in the Name of the House of Commons, and all the Commons of England, Impeached John Lord Sommers of High Crimes and Misdemeanors; and acquainted this House, That the House of Commons will in due time Exhibit particular Articles against the said Lord, and make good the same.

*Earl Orford
Impeached.* A Message was brought from the House of Commons by Colonel Bierly, and others, who at the Bar of this House, in the Name of the House of Commons, and all the Commons of England, Impeached Edward Earl of Orford of High Crimes and Misdemeanors; and acquainted this House, That the House of Commons will in due time Exhibit particular Articles against the said Lord, and make good the same.

*Lord Halifax
Impeached.* A Message was brought from the House of Commons by Mr. Bruges, and others, who at the Bar of this House, in the Name of the House of Commons, and all the Commons of England, Impeached Charles Lord Halifax of High Crimes and Misdemeanors; and acquainted this House, That the House of Commons will in due time Exhibit particular Articles against the said Lord, and make good the same.

Die Mercurij 16^o Aprilis, 1701.

The House being moved, That an Address be made to his Majesty, that he will be pleased to pass no Censure or Punishment upon the Lords Impeached, during the Dependence of the Impeachment in this House:

After Debate, the Question was put, That a Committee shall be immediately appointed to draw up an Address to his Majesty, That his Majesty will be pleased not to pass any Censure or Punishment against the Four Noble Lords, who stand Impeached

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of High Crimes and Misdemeanors, until the Impeachments depending against them in this House shall be tried. It was resolved in the Affirmative.

A Committee appointed immediately to draw up an Address to his Majesty, That his Majesty will be pleased not to pass any Censure or Punishment against the Four Noble Lords, who stand Impeached of High Crimes and Misdemeanors, until the Impeachments depending against them in this House shall be tried.

The House was Adjourned during Pleasure, and the Lords went to the Committee.

After some Time, the House was resumed, and the Lord Steward reported, That the Committee had drawn an Address, as ordered, which was read and agreed to, as followeth, viz.

WE Your Majesty's most Loyal and Dutiful Subjects, the Lords Spiritual and Temporal in Parliament assembled, beg Leave to represent to your Majesty, That the House of Commons have severally Impeached, at the Bar of our House, William Earl of Portland, John Lord Sommers, Edward Earl of Orford, and Charles Lord Halifax, of High Crimes and Misdemeanors. And they having acquainted us, That they will in due time Exhibit particular Articles against the said Lords, and make good the same: We do most humbly beseech your Majesty, That your Majesty will be pleased not to pass any Censure upon them, until they are tried upon the said Impeachments, and Judgment be given according to the Usage of Parliament, and the Laws of the Land.

Ordered, That the Lord Steward and Earl of Romney do attend his Majesty with the Address.

Die Lune 5^o Maij, 1701.

A Committee appointed to draw a Message to be sent to the House of Commons, to put them in mind of the Impeachments brought up by them against the Earl of Portland, the Earl of Orford, the Lord Sommers, and the Lord Halifax, and report to the House.

Then the House was adjourned during Pleasure. After some time, the House was resumed, and the Lord Steward reported the Message, which was read and agreed to, as followeth, viz.

A Message was sent to the House of Commons by Sir Robert Legard, and Sir Richard Holford, to acquaint them, That they having on the First Day of April last sent up to their Lordships an Impeachment against William Earl of Portland, of High Crimes and Misdemeanors: And having also, on the Fifteenth Day of the same Month, severally Impeached John Lord Sommers, Edward Earl of Orford, and Charles Lord Halifax, of High Crimes and Misdemeanors; their Lordships think themselves obliged to put them in mind, that as yet no particular Articles have been Exhibited against the said Lords; which, after Impeachments have been so

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long depending, is due in Justice to the Persons concerned, and agreeable to the Methods of Parliament in such Cases.

Die Veneris 9^o Maij, 1701.

A Message was brought from the House of Commons by Colonel Bierly, and others, with the Articles of Impeachment against Edward Earl of Orford; and to acquaint this House, That the Matter of the Charge was contained in the Articles; and also, that he was commanded to pray and demand, That the Earl of Orford do give sufficient Security to abide the Judgment of the House of Lords.

A Committee appointed to consider of the Man-

ARTICLES Exhibited by the Knights, Citizens and Burgeses in Parliament assembled, in the Name of themselves, and of all the Commons of England, against Edward Earl of Orford, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

THAT whereas for many Years past there hath been a long and expensive War, both by Sea and Land, carried on by his Majesty and his Allies against the *French King*, for the preserving the Balance of *Europe*, and for preventing the Growth of the immoderate Power of the said *French King*; towards the Prosecution of which War, great Sums of Money have been given and levied by Authority of Parliament, and many Debts have been contracted, which remain a very heavy Burden upon the People of *England*; the said Earl being then of his Majesty's most Honourable Privy-Council, but always preferring his private Interest to the Good of the Publick, and taking Advantage of the ready Access he had to his Majesty's Person, during the Continuance of the said War, in Violation of his Duty and Trust, hath procured from his Majesty one or more Grant or Grants of several Manors, Messuages, Lands, Tenements and Hereditaments, within the Kingdoms of *England* or *Ireland*, or elsewhere within his Majesty's Dominions, of a great Yearly Value; and also of exorbitant Sums of Money to be made to him, or others in Trust for him, but to his Use, the Profits whereof he now enjoys; whereby the Standing Revenues of the Crown of *England*, which ought to be applied to the Service of the Publick, are greatly diminished, and the People of *England* thereby burthened with Debts, and subjected to grievous Taxes.

II. That in Breach of the Trust reposed in him, whilst he was Commander in Chief of the Navy Royal of *England*, in or near the *Streights of Gibraltar*, and within the Time aforesaid, he the said Earl did receive great Sums of the Publick Money, issued out to him for the Service of the Navy, which he hath converted to his own private Use, and unlawfully and unjustly procured a Privy-Seal, or Privy-Seals, to discharge him from accounting to the Publick for the same; and also hath received other great Sums of Money from his Majesty's *Exchequer*, as Pay-Master or Receiver-General of the Navy,

ner of the Commons delivering Articles of Impeachment, and demanding Security to abide the Judgment of this House, and report to the House.

The House was Adjourned during Pleasure, for the Committee to meet presently. After some Time, the House was resumed, and the Earl of *Stamford* reported, That the Committee had met, and inspected the Journals: That they do not find any mention of the Commons reading the Articles at the Bar; and as for giving Security, they find none.

Then the Articles were read by the Clerk, as follows, *viz.*

The ANSWER of Edward Earl of Orford, to the Articles Exhibited against him by the Knights, Citizens and Burgeses in Parliament assembled, in the Name of themselves, and of all the Commons of England, in Maintenance of their Impeachment against the said Earl, for High Crimes and Misdemeanors, supposed to be committed by him. Deliver'd in 14^o May, 1701.

THE said Earl, saving to himself all Advantages of Exception to the said Articles, and of not being prejudiced by any Words or Want of Form in this his Answer, and saving to him all Privileges and Rights belonging to him as one of the Peers of this Realm, for Answer to the said Articles, humbly saith,

I. To the First Article, That he having for several Years rendred his Majesty his utmost Service and Duty, as a Good and Loyal Subject ought to do; his Royal Majesty was graciously pleased, upon several Occasions, to take notice of the same, and out of his wonted Bounty, and of his free Will, was pleased to give the said Earl Two Grants, one whereof was a Reversionary Grant for Years, of some Houses depending upon a then precedent Estate for about Nine and Twenty Years; which being a Reversionary Interest at so great a Distance, although the said Earl thankfully received the same from his Majesty as his Grace and Bounty, yet the same was of no great Value; and the other of them was a Grant of the Remainder of a gross Sum amounting to about Two Thousand Pounds a Year for Five Years; which are the only Grants of any Manors, Messuages, Lands, Tenements, Hereditaments, or Sums of Money whatsoever, which he, or any in Trust for him, hath had from his Majesty; and which said Two Grants his Majesty was graciously pleased, after many Years Service, freely to bestow upon him the said Earl, without any Surprise, sinister or indirect Means of the said Earl in obtaining the same, and which Grants he humbly conceives were not unusual in like Cases, the accepting whereof he humbly hopes was not any Violation of his Duty, or of any Trust in him the said Earl reposed.

II. To the Second Article the said Earl answereth and denieth, That he at any time converted to his own private Use, any Publick Money issued to him for the Service of the Navy; or that he the said Earl ever procured, or had any Privy Seal or Privy-Seals, to discharge him from accounting for the same; but saith, That he the said Earl did make up, and upon Oath pass his Accounts for the Money's Impress'd to him for the Service, in this Article mentioned: Which Account was legally declared and passed, upon very strict and great Examination, by the Lords Commissioners of the Treasury; and he

the

Navy, without giving a due and legal Account thereof, whereby he hath occasion'd great Clamours and Discontents among the Seamen, and others belonging to his Majesty's Navy, who are thereby reduc'd to great Miseries and Necessities for want of their just Dues, to the great Discouragement and Discredit of the Publick Service.

Objections in like Cases had not been made or stood upon, nor could be reasonably expected; his Majesty was pleas'd to direct and order a Privy-Seal to dispense with the Form in that Particular; but the said Earl did make no Advantage to himself thereby, nor was his Majesty or the Government in the least defrauded therein; it appearing, upon a very strict Examination, that less Rates were allowed for the said Provisions than had been allowed before in like Cases; or, as the said Earl is inform'd, hath been since allowed. And to the latter Part of the said Article saith, That for the Moneys by him received as Treasurer or Receiver-General of the Navy, he hath already delivered in his Accounts, and is ready to perfect the same, according to the ordinary Method, some of them lying ready with the Auditors to be declared, and the rest of them being made up and deliver'd in to be examin'd, in order to be pass'd; and saith, after just Allowances had, he does not believe he shall appear to be indebted upon the said Accounts: And also denies, that any Persons are Sufferers for want of their Dues, in respect of the said Accounts; or that the Publick Service is, or hath been any ways discouraged or discredited thereby, as in the said Article is alledg'd.

III. That he the said Earl, while he was in several Ports belonging to the King of *Spain's* Dominions, did receive from the said King of *Spain* and others, considerable Sums of Money, and great Quantities of Wine, Oil, and other Provisions for the Fleet, to a very great Value; for all which he ought to have accounted. But the said Earl did convert the same to his own Use, and did either embezzle those Provisions, or reckon them as bought with the Money allowed for furnishing the Navy with fresh Provisions; and that for the advancing his own private Interest, and securing himself from rendering any Account to the Publick, he the said Earl, during the said War, procured, enjoyed, and possessed divers great Offices, which were inconsistent, and in their Nature improper to be executed by one and the same Person; and which ought to be, and by the Laws and Usages of this Realm, were and are appointed and designed as Checks one upon the other; in Breach of the said Laws, to the Dishonour of his Majesty, and Prejudice of his People.

IV. That he the said Earl, within the Time aforesaid, hath clandestinely, contrary to the Law of Nations, sold and disposed of several Vessels, with their Ladings and Cargo, taken under Pretence of Prize by his Majesty's Ships of War, without Condemnation or judicial Proceedings, and converted the Money to his own Use; well knowing if they had been condemned, as by Law they ought to have been, one Tenth, (after Customs allowed) and one Third part of the Value thereof, the Customs and the said Tenth being deducted, are by Act of Parliament appropriated to especial Uses. By which Proceedings the Publick has been greatly endamag'd and defrauded, and the Debts of the Nation increased.

V. And whereas Complaints were made to the Commissioners for executing the Office of Lord High Admiral of *England*, (where the said Earl at that Time presided) by the Company Trading to the *East-Indies*, of divers Piracies committed in the South-East Seas, to the Destruction of their Trade, desiring they might have Letters of Marque granted to them, whereby to be empower'd (tho' at their own Charge) to suppress such Pirates. But the said

the said Earl hath his *Quietus est* in due Course of Law upon the same. But the Commissioners of the Victualing-Office making some unusual Objections to part of the said Account, concerning some Provisions furnished to the Fleet by the said Earl in the King of *Spain's* Dominions, altho' the same were truly and really had and spent by the Seamen in the Fleet, and paid for by him the said Earl; and which

III. To the Third Article the said Earl answereth and denies, That he receiv'd any Moneys whatsoever from the King of *Spain*, or any other Person, as in the Article is alledged; and saith, that what Wine, Oil, or other Provisions were received from the King of *Spain*, or any others, for the Fleet, were duly delivered and distributed amongst the Officers and Seamen thereof; and denies he did convert the same to his own Use, or did imbezzle any of the Provisions, or reckoned them, or any Part of them, as bought with the Moneys allowed for furnishing the Navy with fresh Provisions: And does also deny, That he the said Earl did enjoy any Offices inconsistent in their Nature (as he is advis'd) one with the other, or which were or ought to be Checks one upon the other; or that he any ways secured, or pretended to secure himself from rendering any Account to the Publick, by any Office or Offices whatsoever; or that he is guilty of the Breach of any Laws to his Knowledge, by executing any Office or Offices, or ever executed the same to the Dishonour of his Majesty, or to the Prejudice of his People, as in the said Article is alledged.

IV. To the Fourth Article the said Earl answereth and saith, he believes, That the Prizes taken in the late War, were appropriated as by the Act of Parliament in that behalf is provided; but denies that he did at any time sell or dispose of any Vessel or Vessels, or their Ladings or Cargo, taken as or under the Pretence of Prize, by any of his Majesty's Ships of War, without Condemnation or judicial Proceedings, or converted the Moneys arising by Sale of any Vessel or Vessels, or their Lading or Cargo, taken as or under Pretence of Prize, by any of his Majesty's Ships of War, to his own Use; but on the contrary, did from time to time, in his Station, give Orders, that the Prizes taken should be carefully preserved without Imbezzlement, and duly proceeded against, and the Produce answered as the Law directs: And therefore humbly insisteth, that the Publick hath been no ways endamag'd, or the Debts of the Nation increas'd by any Neglect or Default of the said Earl.

V. To the Fifth Article, the said Earl saith, That the *East-India* Company about the beginning of *March*, One thousand six hundred ninety and six, did apply to the Admiralty Board, of which the said Earl was one, to empower their Ships and Officers to seize and take all Pirates, infesting the Seas within the Limits of their Charter; and likewise to erect a Court of Admiralty in those Parts, to try and condemn such Pirates as they should

Earl preferring his own Interest, discouraged and rejected their Request and Proposal; and in some short Time after, jointly with others, did procure a Commission for one *William Kidd*; as likewise a Grant under the Great Seal of *England*, to and for the Use of him the said Earl and others, of the Ships and Goods of certain Persons therein nam'd, and also of all Goods found on Board the said Ships. And the said Company having Intimation of a Commission granted to the said *Kidd*, being apprehensive of the ill Consequences of the same, did apply themselves to the said Board of Admiralty, desiring to know what Powers and Instructions were given: But such their reasonable Request was denied; and *Kidd*, who was known to be a Person of ill Fame and Reputation, ordered to pursue the intended Voyage; in which he did commit divers Piracies and Depredations on the High Seas, being thereto encouraged through the Hopes of being protected by the high Station and Interest of the said Earl, in Violation of the Law of Nations, and the Interruption and Discouragement of the Trade of *England*.

VI. That the said Earl, within the Time aforesaid, when an horrid Conspiracy was discovered against his Majesty's sacred Person, and the Kingdom was under an Apprehension of an immediate Invasion from *France*; and divers Ships of War (particularly the Ship *Dutchess*) were Arm'd out, Equipp'd and Mann'd in Defence of the Realm, to oppose the intended Invasion, did his utmost Endeavour to prejudice and weaken the Navy Royal of *England*; for that he the said Earl, by Colour of his Office, (being then First Commissioner for executing the Office of Lord High Admiral of *England*) without the Privy of the other Commissioners, contrary to his Oath and Duty, and preferring his Hopes of Gain to himself, to the Safety of the Publick, did order Captain *Steward*, Commander of the Ship *Dutchess*, to deliver over and put on Board the said *Kidd*, mention'd in the foregoing Article, out of the said Ship the *Dutchess*, a great Number of able Seamen, levied and provided at the Expence of the Publick, and then discharging their Duty in Defence of their Country, and against their own Consent, to the Prejudice of the Publick Security, and to the endangering of the said Ship the *Dutchess*, if it had been attack'd by the Enemy.

VII. That the said Earl, during the said War, and at a Time of the greatest Exigency and Necessity, when Ships, Men, and Money were wanting to guard the Seas, and protect our Trade, did by Misrepresentation, and contrary to his bounden Duty, and the Trust reposed in him, procure a Grant or Order for his Majesty's Ship the *Dolphin*, then fitted out, mann'd and equip'd for the Service of the Publick, to be employ'd in a private Voyage and Undertaking, for the Advantage of himself and others concerned with him. In Pursuance whereof, and for their private Gain, the Ship was, at the Publick Expence, continued in Foreign Parts for several Months, to the Destruction and Loss of his Majesty's Subjects on Board the same, to the weakening the Navy, by rendering the said Ship un-

take. Upon which Application, the Board of Admiralty did take Advice, and were inform'd they had no Authority to grant the same; and denies he the said Earl ever discouraged or rejected the Companies Request therein, unless it were by telling them, that the Admiralty by Law could not grant the same. And denies that the Company was ever denied Letters of Marque in common Form, to the Knowledge of the said Earl. And saith, as to the Matter of *Kidd* in this Article mention'd, he was gone upon his Expedition about Twelve Months before that Time. And as to his Commission, and the Grant in the said Article mention'd, the said Earl humbly conceives, and is advised, the same were not contrary to Law; but sure he is, the said Expedition was intended for the Publick Good and Service; and saith, the said *Kidd* had no Powers or Instructions from the Board of Admiralty, other than the ordinary and common Letters of Marque, the Contents whereof are common, and well known to Merchants. And the said Earl doth deny that he knew the said *Kidd* to be of ill Fame and Reputation; but in case the said *Kidd* hath committed any Piracies, he the said *Kidd* is answerable, and ought to answer for the same, he never being ordered by the said Earl so to do; nor had he ever any the least Encouragement given him by the said Earl, or any other, to his Knowledge, to expect or hope for any Protection therein, or in any illegal Action done or committed by him.

VI. To the Sixth Article the said Earl saith, he believes it to be true, that there was a horrid and barbarous Plot and Conspiracy against his Majesty's sacred Person; and that there was an Apprehension of an immediate Invasion; but the said Earl hopes, no Neglect of Duty in his Station can be imputed to him to prevent the same. And as for the Ship *Dutchess*, which was, amongst many others, arm'd and equip'd in Defence of the Realm, the said Earl saith, that the Men in the said Article mention'd to be taken from on Board her, were but some of the very Persons that were just before taken from on Board Captain *Kidd*, and returned by their own Consent on Board Captain *Kidd* again, not being above twenty in Number; and saith, all Fears of the Invasion were then over and at an end: And denies that the same was intended to weaken, or did weaken the said Ship, or the Navy Royal; or that the said Seamen so returning on Board the said *Kidd*, were levied or provided at the Expence of the Publick, or did return or were put on Board the said *Kidd*, against their own Consent, or to the Prejudice of the Publick Security; or that the Ship *Dutchess* was thereby endanger'd, if she had been attack'd, as in the said Article is alledg'd.

VII. To the Seventh Article the said Earl answereth and denies, That he did by Misrepresentation, or otherwise, obtain or procure a Grant or Order for his Majesty's Ship *Dolphin*, to be employ'd in a private Voyage or Undertaking; but what was done therein, was done after the Peace concluded, and by his Majesty's Command, at the Instance and Request of other Persons, and not of the said Earl, but contrary to his Opinion. Nor was the said Earl any way concerned in Interest therein, till after his Majesty's Orders were given about the said Ship; and then, and not before, some of the Persons concerned in the said Adventure, desired the said Earl to take some Shares therein, (the Number whereof he doth not remember) which the said Earl accordingly did; but humbly insists that his Actings therein were not

contrary

serviceable, and the increasing the Debts of the Publick.

VIII. That the said Earl, during the Time of his Commanding the Navy Royal of *England*, did, through Neglect, and in Contempt of Orders, unnecessarily hazard and expose to imminent Danger the said Navy; and that during the Time aforesaid, having had many Opportunities of taking or destroying the Ships belonging to the *French King*, the said Earl, contrary to Advice, in Disobedience to Orders, and in Neglect of his Duty, did suffer and permit the said Ships to return safe into their own Harbours.

IX. That the said Earl, well knowing our Sovereign Lord the King to have been engaged in several Alliances with the Emperor of *Germany*, and other Princes and States, particularly in a Treaty concluded with his Imperial Majesty, in the Year of our Lord One Thousand Six Hundred Eighty Nine, the End and Intention of all which Leagues and Treaties were to prevent the Growth of the Power of the *French King*, and to secure *England*, and the ancient Allies of *England*, against the same, did notwithstanding in concert with other False and Evil Councillors, advise our said Sovereign Lord the King, in the Year One Thousand Six Hundred Ninety Eight, to enter into one Treaty for dividing the Monarchy and Dominions of *Spain*; in pursuance whereof, in the Year One Thousand Six Hundred Ninety Nine, one other Treaty was entred into to the like Purpose; by which Treaties great Injustice was done to the Emperor, an ancient Ally of our said Sovereign Lord the King, and a large Part of the said *Spanish* Dominions were to be added to the Crown of *France*; both which Treaties were prejudicial to the Interest of the Protestant Religion all over *Europe*, Ruinous to the Trade of *England*, and Dishonourable to our Sovereign Lord the King, and the People of these Kingdoms.

All which Crimes and Misdemeanors, were committed and done by him the said Earl, against our Sovereign Lord the King, his Crown and Dignity, the Peace and Interest of this Kingdom, and in Breach of the several Trusts reposed in him the said Earl.

X. And he the said Earl of *Orford* was one of the Lords Justices, during his Majesties Absence beyond the Seas, the First Commissioner for Executing the Office of Lord High Admiral of *England*, Commander in Chief of his Majesties Navy-Royal, one of his Majesties Privy-Council, and Treasurer of his Majesty's Navy, or in some or one of the said Stations, during the time that all and every the Crimes before set forth were done and committed.

That the said Commons by Protestation, saving to themselves the Liberty of Exhibiting, at any time hereafter, any other Accusation or Impeachment against the said Earl, and also of Replying to his Answers or to any of them, and of offering Proofs to all the said Premises or any of them, or any other Impeachment or Accusation that shall be Exhibited by them, as the Case shall according to the Course of Parliament Require; do Pray and Demand, That the said Earl may be put to Answer for all and every of the Premises, and that such Proceedings, Examinations, Tryals and Judgments, may be upon every of them had and used, as is agreeable to Law and Justice.

contrary to his Duty, or the Trust in him reposed, or the Debts of the Nation thereby increas'd.

VIII. To the Eighth the said Earl answereth and denies, That at any Time while he commanded the Navy Royal, he did through Neglect or Contempt of Orders, unnecessarily hazard or expose to Danger the said Navy; and also denies, that upon any Opportunity of taking or destroying the Ships of the *French King*, he did, contrary to Advice, or in Disobedience to Orders, neglect to do the same: And also denies that he did suffer or permit any of the *French King's* Ships to return into their own Harbours, when he had Opportunity to prevent the same; and humbly insists he is not guilty of any Neglect or Omission of his Duty herein, nor did expect in this Particular, to be charged therewith, considering his faithful Services rendred against the *French Fleet*.

IX. To the Ninth Article the said Earl saith, He believes it to be true, that his Majesty hath been engaged in several Alliances with several Princes, and particularly with the Emperor, in the Year One Thousand Six Hundred Eighty Nine; and that the End of those Alliances was to prevent the Growth and Power of *France*, and to secure this Kingdom and its Allies: But the said Earl does deny, that he did advise his Majesty to enter into the Treaty of Partition, charged upon the said Earl in this Article, and so far as the said Earl was any ways acquainted therewith, he objected to, and gave his Opinion against the same.

X. To the Tenth Article the said Earl answereth and saith, That true it is, his Majesty was pleased to Employ and Intrust him in the several Offices and Stations in this Article mentioned, for several Years, as his Majesties Occasions required, although not for all the Time in the said Article mentioned; and hopes and humbly insisteth upon it, that he the said Earl did from time to time, according to his Duty, and the Trusts in him reposed, discharge the said Offices and Employments with Loyalty, Faithfulness and Zeal to his Majesty, and his People.

And having thus laid his Case before your Lordships, he the said Earl does humbly insist and Answer to the said Impeachment, and all and every the Articles aforesaid, exhibited against him, that he is not guilty of all or any of them, or of all or any the Matters or Things by the said Articles charged, in Manner and Form as the same are therein, and thereby alledged against him; and that the Matters by him before set forth to be done and transacted, or any of them, were not done or committed by him the said Earl, against our Sovereign Lord the King, his Crown and Dignity, or the Peace or Interest of this Kingdom, or in Breach of the Trust reposed in him the said Earl, and humbly submits himself herein to your Lordship's Judgment.

O R F O R D.

After

After Reading in the House the Articles of Impeachment brought up against *Edward Earl of Orford*, for High Crimes and Misdemeanors, his Lordship humbly desired to have a Copy of the said Articles, and that he would put in his Answer to them in as short a Time as the House should think fit; it is thereupon Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *Edward Earl of Orford* may have a Copy of the said Articles.

A Message was sent to the House of Commons by *Sir Richard Holford*, and *Mr. Pitt*, to acquaint them, that upon Search of the Journals of this House, they do not find any Precedent of Security given to abide the Judgment of this House by any Peer, upon an Impeachment of High Crimes and Misdemeanors.

Die Mercurij 14^o Maij, 1701.

This Day *Edward Earl of Orford* delivered his Answer to the Articles of Impeachment of the House of Commons against him, which was read by the Clerk.

The Committee appointed to consider of the manner in delivering Articles of Impeachments by the Commons being Revived, the House was adjourned during Pleasure; and the Lords went to the Committee. After some Time the House was resumed, and the Earl of *Stamford* reported, that they had inspected the Journals, and find the first Step, after Answers to Impeachments are delivered, is, to send a Copy thereof to the House of Commons. Whereupon it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Answer of *Edward Earl of Orford*, delivered this Day to the Articles of Impeachment depending against him, be Copied, in order to be sent to the House of Commons to Morrow Morning, by two Masters of Chancery.

The Earl of *Orford* having this Day delivered in his Answer to the Articles of Impeachment against him, desired that *Mr. Dodd*, and *Mr. Pooley* might be assigned Council for him upon his Tryal: It is

Ordered by the Lords Spiritual and Temporal in Parliament assembled, that *Mr. Dodd* and *Mr. Pooley* shall, and they are hereby assigned Council for the Earl of *Orford*, as desired.

Die Jovis 15^o Maij, 1701.

A Message was sent to the House of Commons, by *Sir Richard Holford* and *Mr. Pitt*, to carry down a Copy of the Earl of *Orford*'s Answer to the Articles of Impeachment against him.

A Message was sent to the House of Commons by *Sir Richard Holford* and *Mr. Pitt*, to acquaint them, That they having on the First Day of *April* last, sent up to their Lordships an Impeachment against *William Earl of Portland*, for High Crimes and Misdemeanors: And having also on the Fifteenth Day of the same Month severally Impeached *John Lord Sommers*, and *Charles Lord Halifax*, of High Crimes and Misdemeanors; their Lordships think themselves obliged to put them in Mind, that as yet no particular Articles have been exhibited against the said Lords; which after Impeachments have been so long depending, is due in Justice to the Persons concerned, and agreeable to the Methods of Parliament in such Cases.

The Messengers sent to the House of Commons return Answer, viz. That the Articles against *William Earl of Portland*, *John Lord Sommers*, and *Charles Lord Halifax*, are preparing, and in a short time their House will send them up to the House of Lords.

Die Lune 19^o Maij, 1701.

A Message was brought from the House of Commons by *Mr. Harcourt*, and others, with the Articles of Impeachment against *John Lord Sommers*; and to acquaint this House, that the Matter of the Charge was contained in the Articles; and also that he was commanded to Pray and Demand, that the Lord *Sommers* do give sufficient Security to abide the Judgment of the House of Lords.

The Articles were read by the Clerk, as follows, viz.

ARTICLES Exhibited by the Knights, Citizens, and Burgeses, in Parliament Assembled, in the Name of themselves, and of all the Commons of England, against *John Lord Sommers*, Baron of *Evelham*, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

The ANSWER of *John Lord Sommers*, Baron of *Evelham*, to the Articles Exhibited by the Knights, Citizens and Burgeses in Parliament Assembled, in the Name of themselves, and of all the Commons of England, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors, supposed to be by him committed. Delivered in 24^o May, 1701.

I. THAT a Treaty and Alliance between *Leopold* the Emperor of *Germany*, and the *States-General* of the *United Provinces*, was made and concluded in the Year of our Lord One Thousand Six Hundred Eighty Nine, upon their consideration of the greatness of the Common Danger, which then threatned all *Christendom* from the excessive Power of *France*, and the unconstant Faith of the *French* in the Observance of Treaties; whereby it was agreed, that there should be, and remain for ever, a Constant, Perpetual, and Inviolable Friendship, and good Correspondence between his Imperial Majesty and the *States-General*, that each of them should be obliged to promote the others Interest, and as much as in them lay, prevent all Damages and Inconveniencies to each other.

That during the continuance of the War, there should be not only a Defensive but also an Offensive Alliance between the said Parties, by Virtue whereof they should both of them Act in an Hostile manner, with all their Forces by Sea and Land, against the

French

THE said Lord *Sommers*, saving to himself all Advantages of Exception to the said Articles, and of not being prejudiced by any Words or want of Form in this his Answer, and also saving to himself all Rights and Privileges belonging to him as one of the Peers of this Realm; for Answer to the said Articles humbly saith;

I. To the First Article, That he believes the now Emperor of *Germany*, and the *States-General* of the *United-Provinces*, being in the Year One Thousand Six Hundred Eighty and Nine, engaged in a War with *France*, a Treaty and Alliance was concluded between them, and a Separate Article then made, to the Effect in this Article mentioned; and that his Sacred Majesty did afterwards Enter into, Ratify and Approve the same; to which Treaty, Separate Article, and Ratification, (for Certainty thereof) he referreth himself; and further saith, That in the Year One Thousand Six Hundred Ninety and Eight, his Majesty before he left *England*, was

pleased

French King, and such of his Allies as should refuse to separate themselves from him. That after the War should be ended, and a Peace concluded, there should remain between his Imperial Majesty, his Heirs and Successors, and the *States-General*, a perpetual Defensive Alliance against the Crown of *France*, and its Adherents.

That if the Crown of *France* should again Attack either of the said Confederate Parties, at what time soever the same should be done, they should faithfully assist each other.

That his Imperial Majesty, and the *States-General* should at all times, by all means, with all their Forces, Protect and Defend all the Rights of each other against the Crown of *France*, and its Adherents.

And other Provisions were thereby made for their mutual Security, as well during the Continuance of the War, as after the Conclusion of a Peace.

That certain separate Articles were also at or about that time made, whereby the *States General* maturely considering that *France* had openly declared in several Courts, that (notwithstanding the most solemn Renunciation) they continued their Pretensions by Force of Arms to assert for the *Dauphin* the Succession of the *Spanish* Monarchy, in case the King of *Spain* should die without Issue; and also considering what a Blow their State would receive, and what a Prejudice might happen thereby to the publick Affairs, and Quiet, did promise, That in case his said Catholick Majesty should die without lawful Issue, they would with all their Forces assist his said Imperial Majesty, or his Heirs, in taking the Succession of the *Spanish* Monarchy, lawfully belonging to that House, together with its Kingdoms, Provinces, Dominions and Rights, and in their obtaining and securing the quiet Possession thereof, against the *French*, and their Adherents, who should directly or indirectly oppose that Succession, and with Force repel the Force that should be brought against them.

That at the Instance of the *States General*, in Pursuance of the said Treaty and separate Articles, our most Gracious Lord and Sovereign his most Excellent Majesty King *William* III. was invited to enter into an Alliance of the aforesaid Treaty, and into the Agreement of the said separate Articles; and thereupon for restoring and preserving the publick Peace and Quiet, did afterwards in the said Year of our Lord One thousand six hundred and eighty nine, enter into, and under the Great Seal of *England* accept, approve and ratify, and in the most solemn Manner, engage and promise religiously and inviolably to observe the same, without violating the said Treaty or separate Articles in any Article, or suffering the same to the utmost of his Power to be violated.

That in the Year of our Lord 1698: a Treaty was projected and contrived in *France*, to be set on Foot between his Majesty, the *French* King, and the *States General*, for a Partition of the *Spanish* Monarchy, whereby many large Territories thereunto belonging were to be allotted and delivered up to *France*.

That the Tenor and Design of the said last mentioned Treaty, whilst the same was in Negotiation, was communicated to the said *John* Lord *Sommers*, then one of the Lords Justices of *England*, Lord Chancellor of *England*, and one of his Majesty's most Honourable Privy Council.

That the said Lord *Sommers*, well knowing the most apparent evil Consequences, as well as the Injustice of the said Partition, did not, according to the Trust

pleased to tell him, that some Intimation had been given to the Earl of *Portland*, when in *France*, that the *French* King inclined to come to an Agreement with his Majesty, concerning the Succession to the Crown of *Spain*. And afterwards in *August*, One Thousand Six Hundred Ninety and Eight, (his Majesty being then in *Holland*, and the said Lord *Sommers* at *Tunbridge Wells*, by his Majesty's Permission, for Recovery of his Health) Mr. Secretary *Vernon* communicated to him a Letter he had then received, written by the Earl of *Portland*, by his Majesty's Order, wherein it was mentioned, that Count *Tallard* (who was then Ambassador from the *French* King to his Majesty) had declared an Accommodation might be found out in relation to the Succession of *Spain*, in Case of that King's Death; and that his Majesty had founded *France* upon what Terms an Agreement might be made, and the Conditions were near of this Nature, (*viz.*) That the Electoral Prince of *Bavaria* should have the Kingdom of *Spain*, the *Indies*, the *Low Countries*, and all that depends upon the *Spanish* Dominions (except the Kingdoms of *Naples* and *Sicily*, *Sardinia*, the Province of *Guyuscoa* on this side of the *Pyreneans*, *Fontarabia* and *St. Sebastian*, *Final*, and the Places in *Tuscany*, of which *Spain* then stood possessed;) in Consideration of which, *France* was absolutely to renounce the Right it pretended to the Succession of *Spain*, and *Milan* was to be given to the Arch-Duke, Second Son to the Emperor: And that his Majesty commanded the said Mr. Secretary to speak to him the said Lord *Sommers* touching that Matter; and that his Lordship should discourse it with those he thought he might trust with that Secret, which to keep with the utmost Care was by the said Letters mentioned to be of the highest Importance; and at the same Time, the said Lord *Sommers* received a Letter from his Majesty, signed by himself, intimating that Count *Tallard* had made some Propositions touching an Agreement with his Majesty concerning the Succession of the Kingdom of *Spain*, the which the said Earl of *Portland* would write to Mr. Secretary *Vernon*, to the End his Majesty might have some Opinions upon that Affair, which required the greatest Secrecy, and in which no Time was to be lost, if that Negotiation were to be carried on; and for that End his Majesty thereby commanded the said Lord *Sommers* to send full Powers to him under the Great Seal of *England*, with Blanks for the Names of Commissioners to treat with Count *Tallard*; which his Majesty by his said Letter was pleased to say, he believed might be done secretly: That none but the said Lord *Sommers* and Mr. Secretary *Vernon*, and those to whom the said Lord *Sommers* and Mr. Secretary should communicate it, might have knowledge thereof; and that the Clerks who were to write the full Powers might not know what they were, or to the like Effect; and the said Lord *Sommers* did immediately return the Earl of *Portland*'s said Letter to Mr. Secretary *Vernon*, and desired him to communicate the Contents thereof to the Earl of *Orford* and the now Lord *Halifax* (Two of the then Lords Justices, who as he was assured were then in Town) and also to such others as they and Mr. Secretary *Vernon* should think fit; who in regard of the King's Command to have that Affair kept a Secret, thought fit to impart it to the Duke of *Shrewsbury* only (as the said Mr. Secretary afterwards acquainted the said Lord *Sommers*;) and some Time afterwards the said Lord *Halifax* came down to the said Wells, and Mr. Secretary *Vernon* coming thither also about the same Time, they and the said Lord *Sommers* had Discourse together concerning the said Proposal; and the

and Duty of his said several Offices, dissuade or endeavour to obstruct its taking Effect; but on the contrary, having neither Regard to his Majesty's Honour engaged by the said Treaty with the Emperor and *States General*, as aforesaid; to the Trade and known Interest of this Kingdom, or the Peace of *Europe*; did advise his Majesty to enter into the said Treaty, and did so far encourage and promote the same, that the said Treaty was concluded and ratified under the Great Seal of *England*, then in the Custody of the said Lord *Sommers*; and thereby the Kingdoms of *Naples* and *Sicily*, the Places depending on the Monarchy of *Spain*, situate on the Coast of *Tuscany*, or the adjacent Islands, comprehended under the Name of *Santo Stephano*, *Porto Hercole*, *Orbitello*, *Telamone*, *Porto Longone*, *Piombino*, the Town and Marquisate of *Final*, the Province of *Guypuscoa*, particularly the Towns of *Fontarabia*, and *St. Sebastian*, situate in that Province, and especially the Port of the Passage which is therein comprised, with several other Parts and Things, of or belonging to the said Kingdom of *Spain*, were allotted to the *Dauphin* for his Share; and the Crown of *Spain*, and the other Kingdoms, Islands, States, Countries and Places depending thereon, (except such Part, as aforesaid which was thereby allotted to the *Dauphin* for his Share, and the Dutchy of *Milan* herein after mentioned) was given and assigned to the Electoral Prince, eldest Son to the Elector of *Bavaria*, for his Share, to enjoy the same to him, his Heirs and Successors for ever, never to be molested therein on any Pretence of Right or Claim on the Part of the *French King*, or the *Dauphin*, or his Issue, Heirs or Successors; nor of the Part of the Emperor, the King of the *Romans*, the Arch-Duke *Charles* his Second Son, and other Children, or his Heirs or Successors; and the Dutchy of *Milan* was thereby agreed to be given to the said Arch-Duke for his Share, and in Extinction of all Pretensions and Rights which the said Emperor, the King of the *Romans*, the said Arch-Duke *Charles*, all his other Children, Successors, and Heirs, might have to the said Succession of *Spain*. By which Treaty it was also further agreed, That if any Prince whatsoever should oppose the taking Possession of the Shares thereby agreed on, as aforesaid, his Majesty, the *French King*, and the *States General*, should assist one another against such Opposition, and hinder the same with all their Power.

That by a secret Article of the said Treaty, in like Manner ratified under the Great Seal of *England*, 'twas provided, That if the King of *Spain* should die without Issue, and the Electoral Prince, of *Bavaria* should afterwards die without Issue, his Electoral Highness of *Bavaria* his Father should succeed him in all the Kingdoms, Islands, States, Countries, and Places assigned to the Electoral Prince, as aforesaid, and enjoy the same to him and his Children, Successors, and Heirs, then born, or to be born; so as neither the Emperor, his Children, nor any other Person, should or might, under any Pretext, form the least Pretension to that Succession; his Majesty, the *French King*, and *States General*, thereby engaging themselves to employ all their Power by Land and by Sea, for maintaining the Order established by the said secret Article, relating to the Succession of the Monarchy of *Spain*.

That the said Treaty was ratified under the Great Seal of *England*, (then in the Custody of the said Lord *Sommers*) as an Agreement between his Majesty, the *French King*, and *States General*, notwithstanding the said Lord *Sommers* well knew that the same had been concluded between his Majesty's Commissioners and

said Lord *Sommers* by Letter dated the Twenty eighth of *August*, Onethousand six hundred ninety and eight, did (as his own Thoughts, and as what he apprehended to be the Result of their Consideration) humbly represent to his Majesty, First, That the entertaining of such a Proposal, as was mentioned by Count *Tallard*, seemed to be attended with very many ill Consequences, if the *French* did not act a sincere Part; but that they were soon at Ease, as to any Apprehension of that Sort, being fully assured his Majesty would not act but with the utmost Niceness in an Affair, wherein his Glory, and the Safety of *Europe* was so highly concerned. That the second Thing they considered, was the very ill Prospect of what was like to happen upon the Death of the King of *Spain*, in case nothing was done previously towards the providing against that Accident, which seems probably to be very near; the King of *France* then having so great a Force in such a Readiness, that he was in a Condition to take Possession of *Spain* before any other Prince could be ready to make a Stand; That his Majesty was the best Judge whether that was the Case, who was so perfectly informed of the Circumstances of all Parts abroad. But so far as related to *England*, it would be the want of Duty not to give his Majesty this clear Account, That there was a Deadness and want of Spirit in the Nation universally, so as not at all to be disposed to the Thoughts of entering into a new War; and that they seemed to be tired out with Taxes to a Degree beyond what was discerned, until it appeared upon the Occasion of the then late Elections: That that was the Truth of the Fact; upon which his Majesty would determine what Resolutions were proper to be taken. The remaining Consideration was, what would be the Condition of *Europe*, if the Proposal took Place; but of that they thought themselves little capable of judging; but it seemed that if *Sicily* was in the *French* Hands, they would be entirely Masters of the *Levant* Trade; That if they were possessed of *Final*, and those other Sea-Ports on that side (whereby *Milan* would be entirely shut out from Relief by Sea, or any Commerce) that Dutchy would be of little Signification in the Hands of any Prince; and that if the King of *France* had Possession of that Part of *Guypuscoa* which is mentioned in the Proposal, besides the Ports he would have in the Ocean, it did seem he would have as easy a way of invading *Spain* on that side, as he then had on the side of *Catalonia*. But it was not to be hoped that *France* should quit its Pretensions to so great a Succession, without considerable Advantages; and they were assured his Majesty would reduce the Terms as low as could be done, and make them (as far as was possible in the then present Circumstances of Things) such as might be some Foundation for the future Quiet of *Christendom*, which all his Majesty's Subjects could not but be convinced was his true Aim. And if it could be brought to pass, that *England* might be some way a Gainer by that Transaction whether it was by the Elector of *Bavaria* (who was the Gainer by his Majesty's Interposition in that Treaty) his coming to an Agreement to let the *English* into some Trade to the *Spanish* Plantations, or in any other Manner, it would wonderfully endear his Majesty to his *English* Subjects; That it did not appear, in Case the Negotiation should proceed, what was to be done on his Majesty's Part, in order to make it take place; whether any more was required than that the *English* and *Dutch* should sit still, and *France* it self was to see it executed; and if that were so, what Security ought to be expected, that if by their being Neuters, the *French* should be successful, they

and the *French* Ambassador, or the Commissioner of the *French* King only; and that the Purport thereof had never been communicated to the *States General* at the Time of the Ratification thereof under the Great Seal of *England*, notwithstanding the Negotiation thereof in *Holland*.

latter End of *September* following; when he was acquainted by Mr. Secretary *Vernon*, that he had receiv'd an Account, that a Treaty relating to the Succession of the Crown of *Spain* had been adjust'd, concluded and sign'd by the Commissioners named by his Majesty for that Purpose, and the Ambassador and Plenipotentiary of the *French* King. And the said Lord *Sommers* doth deny, that the said Treaty of Partition, or any Proposition for such Treaty, or the Transaction thereof, was communicated to him the said Lord *Sommers*, nor was he acquainted with the same, or the Design thereof, or any other Matter relating thereto, at any other Time, or in any other Manner, before he was told of the Concluding and Signing thereof, as aforesaid, than as is herein before-mentioned to be done by his Majesty, as aforesaid, and by his and the said Earl of *Portland*'s Letter, herein before-mentioned. And the said Lord *Sommers* doth deny he did, at any Time whatsoever, advise his Majesty to enter into the said Treaty, or any way encourage or promote the same; but having made the Objections before-mentioned in his said Letter to his Majesty, against the Propositions so communicated to him, as aforesaid, and clearly laid open such Thoughts and Observations as occurred to him upon the said Matter; he did thereby (as he conceived) fully and faithfully discharge his Trust, and the Duty incumbent on him. And the said Lord *Sommers* further saith, That afterwards Mr. Secretary *Vernon* did acquaint him, that he had received, by his Majesty's Command, a Copy of the Treaty relating to the Succession of the Crown of *Spain*, and of Two Secret Articles relating to the Matter of that Treaty; and that he had likewise his Majesty's Command to prepare the Instruments for the Ratification of the same, and to leave Blanks therein for the Names of the Commissioners of the *States General*. And accordingly the said Mr. Secretary did prepare the said several Instruments, and did bring the same, so prepared, to the said Lord *Sommers*, to pass the same under the Great Seal; which was done accordingly, the said Lord *Sommers* having a good and lawful Warrant so to do; and the said Ratification was transmitted to his Majesty, to have the same perfected in his Presence: Which Treaty and Secret Articles were to such or the like Effect, as in this Article is set forth; but for more Certainty, he refers himself to the said Treaty and Articles. And the said Lord *Sommers* not being privy in any other manner, than as aforesaid, to the said Treaty, or the Transaction thereof, doth not know when or in what manner the same was communicated to the *States General*.

II. That for the more effectual carrying on the said Treaty, one or more Commission or Commissions was or were prepared, amended, enlarged or altered by the said Lord *Sommers*, without any lawful Warrant for his so doing; whereunto the said Lord *Sommers*, contrary to the Duty of his said several Offices, and in Violation of the great Trust reposed in him, in or about the Month of *September*, 1698. without communicating the same to the rest of the then Lords Justices of *England*, or advising in Council with his Majesty's Privy-Council thereupon, did presume to affix the Great Seal of *England*.

That no certain Persons of known Honour, Fidelity and Experience were therein nominated Commissioners, at the Time of the affixing the Great Seal of *England* thereto, but a Blank or empty Space was left in the said Commission or Commissions at the Time of the Sealing thereof, wherein the Commissioners Names were to be afterwards inserted beyond the Seas; notwithstanding which, an Unlimited Power was thereby granted to the Commissioners, whose Names were therein afterwards to be inserted, as aforesaid, or to either of them, without any Written Instructions whatsoever to restrain, guide, or direct them in the Exercise thereof; in his Majesty's Name, to confer and treat with the Commissioner or Deputy, or Commissioners or Deputies of the *French* King, and also with the Commissioners or Deputies of the *States General*, for preserving the publick Peace, and touching the Succession to the Crown of *Spain*; and his Majesty did thereby engage himself to Approve, Ratify, and Confirm whatsoever should be thereupon concluded by them, or either of them.

III. That the said Lord *Sommers*, contrary to the Duty of his said Office of Lord Chancellor, did affix the Great Seal of *England* to the said Commission or Commissions, not having first received any

they would confine themselves to the Terms of the Treaty, and not attempt to make further Advantages of their Success. And the said Lord *Sommers* saith, That after the Writing of his said Letter, he had no Account whatsoever; nor heard any thing of the said Treaty, or knew or heard whether the same was proceeded upon or not, until towards the

II, and III. To the Second and Third Articles the said Lord *Sommers* saith, That he having received his Majesty's express Commands, by his Letter mentioned in his Answer to the First Article, to send to his Majesty full Powers, under the Great Seal of *England*, for negotiating the said Treaty, with Blanks for his Majesty's Commissioners Names, which he humbly conceives, and is advised, was a sufficient Warrant for him to pass a Commission under the Great Seal for that Purpose; and the same being prepared in usual Form of Commissions of full Powers, with Blanks for Commissioners Names, according to his Majesty's Directions, he did affix the Great Seal to the same; and the said Commission was sent to his Majesty then in *Holland*, to be perfected in his Presence, by inserting the Names of such Persons as his Majesty should think fit to commissionate therein (as he conceives might legally be done); which Commissioners were to receive their Instructions from his Majesty, for the Execution of their said Power, together with the said Commission, in usual manner: But what Instructions, or whether any Instructions in Writing were given to the Commissioners, in relation to the Executing the said Power (the same no ways concerning the said Lord *Sommers*) he knows not. And the said Lord *Sommers* saith, he did desire his Majesty, that a particular Warrant for the said Commission (which had been before sent by Mr. Secretary *Vernon* to his Majesty (as he informed the said Lord *Sommers*) for his Signing) might be Signed and returned: Not that he doubted his Majesty's said Letter to be a sufficient Warrant, but for that such Warrant might be more proper to be produced, if Occasion should require, than his Majesty's said Letter; which, by Reason of other Matters therein contained, ought not to be produced without his Majesty's Permission, and which is now made use of by his Majesty's gracious Leave. And the said Lord *Sommers*

lawful Warrant for that purpose. In hopes of concealing which evil and most dangerous Practice, the said Lord *Sommers*, after he had Sealed the said Commission or Commissions, used his Endeavours to procure a Warrant to be transmitted to him for affixing the Great Seal to the said Commission or Commissions, and that it might not be known but that he had it in due time.

IV. That the said Lord *Sommers*, contrary to the Duty of his said several Offices, affixed the Great Seal of *England* to the Ratification of the said Treaty, made in the Year of our Lord 1698. not having first communicated the same to the rest of the then Lords Justices of *England*, or advised in Council with his Majesty's Privy-Council thereupon; and at the Time of his affixing the Great Seal thereto, one entire Blank Sheet, and many other Blanks were left in the said Ratification, with an Intent to be afterwards filled up by other Persons beyond the Seas, as should be thought fit.

V. That in the Year of our Lord 1699, another Treaty was entred into, in pursuance of the said Treaty made in the Year 1698, and concluded by and between his Majesty, the *French King*, and the *States-General*, and also ratified under the Great Seal of *England*, then in the Custody of the said Lord *Sommers*; whereby the Kingdom of *Spain* (in case his Catholick Majesty should die without Issue) was agreed to be divided, and many large Territories thereof were allotted to the *Dauphin* for his Share: Which Treaties were evidently destructive of the Trade of this Realm, dishonourable to his Majesty, highly injurious to the Interest of the Protestant Religion, and manifestly tended to disturb the General Peace of *Europe*, by altering the Balance of Power therein, and strengthening *France* against the Good Friends and Ancient Allies of our Sovereign Lord the King.

VI. That whereas by the Laws and Usages of this Realm, all Commissions under the Great Seal of *England*, for the making any Treaties or Alliances with any Foreign Princes, States or Potentates, and all Ratifications under the Great Seal of all such Treaties or Alliances, ought to be Enrolled and entred of Record in the Court of *Chancery*; with or by the Prothonotary of the said Court; for a perpetual Memorial thereof; and that the Merchants and other Subjects of *England*, having Commerce or Correspondence in Foreign Parts, may not, through Ignorance of the same, incur the Pains and Penalties by the Law due to those who shall any ways Infringe, Break, or Act contrary to such Treaties; He the said Lord *Sommers*, not minding the Duty of his Office, did not in any manner Enrol, or Enter of Record, or cause to be Enrolled or Entred of Record, any of the said Commissions or Ratifications in the foregoing Articles mentioned, as by the Duty of his Place he should and ought to have done; but so to do did totally neglect and omit, in Breach of his Duty, and in Violation of the Laws of this Realm.

VII. That the said Lord *Sommers*, when the Custody of the Great Seal of *England* was committed to him, did swear well and truly to serve our Sovereign Lord the King, and his People, Poor and Rich, after the Laws and Usages of this Realm, and truly to counsel the King, and his Counsel to keep, and not to know, nor suffer the Hurt or Dishonouring of the King, or that the Rights of the Crown should be decreased, as far forth as he might Let it, and if he could not Let it, that

further faith, That his Majesty having by his own, and the Earl of *Portland*'s Letter before-mentioned, directed, That his Majesty's said Commands should be kept secret; he did not communicate the making of the said Commission, otherwise than to the Persons mentioned in his Answer to the said First Article.

IV. To the Fourth Article he saith, That Mr. Secretary *Vernon* having prepared, by his Majesty's Command, the Instruments for Ratification of the said Treaty, with Blanks therein, as is before set forth; he did affix the Great Seal to the said Ratification with such Blanks (which he conceives, and is advised, he might lawfully do); and having also his Majesty's Command that the said Treaty should be kept secret, he did not communicate the same to the rest of the then Lords Justices, or his Majesty's Privy-Council; which besides he conceived was unnecessary to be done, in regard his Majesty had then by his Commissioners, perfected the said Treaty, so that the same could not be altered.

V. To the Fifth Article the said Lord *Sommers* saith, He believes that in the Year One Thousand Six Hundred Ninety and Nine, another Treaty was entred into and concluded between his Majesty, the *States-General*, and the *French King*, to such or such like Effect, as in this Article is mentioned; to which Treaty, for more Certainty thereof, he referreth himself: And denieth that he had any Knowledge of such Treaty, or any Transaction in order thereunto; save only that a Draught of the said Treaty was read over in the Presence of divers of the Lords of his Majesty's Privy-Council (whereof the said Lord *Sommers* was one) to which Draught the said Lord *Sommers*, as well as others then present, did make several Objections; but they were informed by his Majesty's Plenipotentiaries for transacting the said Treaty, who were then also present, That the said Treaty was so far perfected, that nothing could then be altered therein; and his Majesty afterwards, by his Warrant, requiring the Ratifying of the said Treaty under the Great Seal, he did affix the Great Seal to such Ratification, being (as he conceives) obliged so to do.

VI. To the Sixth Article he saith, He conceives it was not incumbent upon him, as Lord Chancellor, to see the Commissions or Ratifications, in this Article mentioned, Enrolled; the same being prepared and brought to the Great Seal by the Secretaries of State ready Ingrossed; and when Sealed, taken away by them, and the Original Treaties remaining in their Custody: But the Care of Enrolling the same, if necessary, doth (as he conceives) belong to the Prothonotary of the Court of *Chancery*.

VII. To the Seventh Article he saith, That when the Great Seal was committed to his Custody, he took the Oath of Office to the Effect in that Article set forth; and during the time he had the Custody thereof, he did carefully, diligently and honestly endeavour to keep the said Oath, and hopes and believes he hath duly observed the same; and doth acknowledge, that during the time he was Lord-Keeper and Lord-Chancellor, he did pass several Grants to divers Persons, of several Lands, Tene-

he would make it clearly and expressly to be known unto the King, with his true Advice and Counsel; and that he should do and purchase the King's Profit in all he reasonably might, or to that Effect; and the said Lord *Sommers* afterwards took the said Oath as Lord Chancellor of *England*.

That the said Lord *Sommers*, being Lord Keeper of the Great Seal, or Lord Chancellor of *England*, and one of his Majesty's most Honourable Privy-Council, whilst this Nation was engaged in a tedious and most expensive War against the *French King*, for preserving the Balance and Liberties of *Europe*, and almost exhausted with Supplies and Taxes for carrying on the same, and under such heavy Debts, as without the utmost Frugality, or laying insupportable Taxes on the Commons of *England*, were impossible to be satisfied; contrary to his said Oath, did pass many great, unreasonable, and exorbitant Grants under the Great Seal of *England*, of divers Manors, Lordships, Lands, Tenements, Hereditaments, Revenues, and Interests belonging to the Crown of *England*, amounting to a most prodigious and excessive Value; and did Advise, Promote, and Procure, divers great, unreasonable, and exorbitant Grants to be made of several of the late Forfeited Estates in *Ireland*, in contempt of the Advice of his Majesties most Dutiful and Loyal Subjects the Commons of *England* in Parliament assembled, and without any regard to his Majesties most gracious Assurance thereupon to both his Houses of Parliament; and engaged to procure, and accordingly did procure divers Acts, prepared for confirming the said Grants in Parliament in *Ireland*, to be approved in Council in *England*, and afterwards remitted the same, under the Great Seal of *England*, to be passed into Laws in *Ireland*.

VIII. That the said Lord *Sommers*, during the time of his being Lord-Keeper of the Great Seal, and Lord-Chancellor of *England*, did not only receive and enjoy the Fees, Profits, and Perquisites, of, or belonging to the Great Seal, established by Law, as a sufficient and ample Recompence and Reward for the faithful Discharge of that high Station; but also as a further Encouragement, through his Majesty's most abundant Grace and Bounty, received an Annual Pension or Allowance from the Crown of Four Thousand Pounds, and many other Profits and Advantages; notwithstanding which, the said Lord *Sommers*, not being contented therewith, contrary to his said Oath, begged and procured, for his own Benefit, many great, unreasonable and exorbitant Grants of several Manors, Lands, Tenements, Rents, Hereditaments, and Revenues belonging to the Crown of *England*.

That in, or about the Month of *April*, 1697, the said Lord *Sommers*, being then Lord Chancellor of *England*, and one of his Majesty's most Honourable Privy-Council, contrary to his said Oath, did procure and pass a Grant under the Great Seal of *England*, without any real Consideration whatsoever, to *Joseph Fekyll*, Esq; and his Heirs for ever, of the Manor or Manors of *Rygate* and *Howleigh*, with all and singular their Rights, Members, and Appurtenances, situate, and being in the Parish of *Rygate*, or elsewhere, within the County of *Surry*; and of all Quit-Rents, Rents of Assize, Free-Rents, Conventional-Rents, Copyhold and Customary-Rents, and all other Rents whatsoever, to the said Manor or Manors belonging, or appertaining, with the Site of the ruined Castle, and of all other Demesne Lands of the said Manor or Manors, with the Rents reserved on any Leases then in being, of

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Tenements, and Hereditaments, belonging to his Majesty, in Right of his Crown of *England*; but saith, that before any of them came to the Great Seal, the same were regularly passed through the proper Offices, and brought with sufficient Warrants for the Great Seal; and believes more considerable Grants have passed in the like Number of Years, in most of his Predecessors Times; and Conceives and is Advised, That being required by his Majesty, by Warrant, to pass the same, he ought so to do; and denies that he did ever Advise, Promote or Procure any Grant to be made to any Person whatsoever, of any Forfeited Estate in *Ireland*, or did procure any Act or Bill prepared for confirming any such Grant in the Parliament in *Ireland*, to be approved in the Privy-Council in *England*; and saith, That what Bills of this Nature were remitted under the Great Seal of *England*, to be passed into Laws in *Ireland*, the same were first Approved and Passed in the Privy-Council in *England*, according to the usual Form in such Cases; and being so Approved, were, by Order of Council, sent to the said Lord *Sommers*, who was by the said Order required to Affix the Great Seal thereto.

VIII. To the Eighth Article he saith, He did, during the time he had the Custody of the Great Seal, receive the Profits and Perquisites thereto belonging, which before his time were become very inconsiderable; and did also receive an Annual Pension or Allowance from His Majesty, of Four Thousand Pounds, being the like Pension that had been allowed to several of his Predecessors; but denies that he did ever beg, or use any means to procure any Grant whatsoever from His Majesty, for his own Benefit: But saith, That what his Majesty was pleased to give him proceeded from his Majesties own Motion, and of his meer Bounty; and (as his Majesty was pleased to declare upon that Occasion) as an Evidence of his Gracious Acceptation of the said Lord *Sommers*'s Zealous Endeavours for his Service; and the same was done without any previous Solicitation by him the said Lord *Sommers*, or any other to his Knowledge or Belief. And that in the Year One Thousand Six Hundred, Ninety-Seven, his Majesty of his own Motion did grant, for the Benefit of the said Lord *Sommers*, the Manor or Manors of *Rygate* and *Howley*, as in the said Article is mentioned; but the same was, and is far short of the Value thereby suggested: And the said Lord *Sommers* further saith, He never pretended to purchase in his own Name, or in the Name or Names of any other Person or Persons in Trust for him, any of the Fee-farm Rents, or other Rents vested in Trustees for Sale. But his Majesty taking Notice, that several of the said Fee-farm Rents and other Rents, so vested in Trustees, were unfold, and the said Trustees being, by the Acts of Parliament vesting in them the said Rents, declared to hold the same for the Benefit of his Majesty, his Heirs and Successors, his Majesty did in the Year

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any Parts thereof, and of all other Lands, Meadows, Feedings, Pastures, Messuages, Houses, Edifices, Buildings, Barns, Stables, Dove-Houses, Tolls of Markets or Fairs, with the Market-house there; and also of all Warrens, Chases, Parks, Commons, Woods, Underwoods, Wood-lands, Waste-grounds, Courts-Leet, Courts-Baron, and other Court-Services, Franchises, Heriots, Fines, Issues, Amerciaments, and all other Profits and Perquisites of the said Courts, Rights, Royalties, Jurisdictions, and of divers other Matters, Hereditaments, and Appurtenances to the said Manor or Manors, or either of them, or to the Royalties thereof belonging, or in any wise appertaining, which Premises were Parcel of the Demesnes and Revenues of the Crown, and of the Value of Twelve Thousand Pounds and upwards.

That under Pretence of purchasing divers Fee-Farm Rents, and other Rents, vested in Trustees for Sale thereof, in pursuance of several Acts of Parliament, made in the Reign of his late Majesty King *Charles* the Second, the said Lord *Sommers*, in the Year of our Lord 1697, procured a Warrant from his Majesty, under his Sign Manual, to the Commissioners of the Treasury then in Being, to contract or give Warrant to the Trustees for Sale of Fee-Farm Rents, to contract with *Humphry Hetherington*, Esq; or such as he should nominate, for as many Fee-Farm, and other Rents, then remaining unfold (except such Rents as were set apart for Payment of Pensions in the Pension-Deed) as should amount unto Eight Hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that upon such Contract, the said Commissioners of the Treasury should give Warrant for conveying the said Rents to the said *Humphry Hetherington*, or such as he should appoint, and his Heirs.

That under the like Pretence, and at or about the same time, the said Lord *Sommers* procured another Warrant from his Majesty, under his Sign Manual, to the said Commissioners of the Treasury, to Contract, or give Warrant to the said Trustees, to Contract with *Richard Adney*, Esq; or such as he should Nominate, for as many Fee-Farm, and other Rents, then remaining unfold (except as aforesaid) as should amount to Seven Hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that upon the said Contract the said Commissioners should give Warrant for conveying the said Rents unto the said *Richard Adney*, or such as he should Nominate, and his Heirs.

That under the like Pretence, and at or about the same Time, the said Lord *Sommers* procured another Warrant from his Majesty, under his Sign Manual to the said Commissioners of the Treasury, to contract, or give Warrant to the said Trustees to contract with *Samuel Newton*, Esq; or such as he should nominate, for as many Fee-Farm, and other Rents, then remaining unfold, (except as aforesaid) as should amount to Six hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that upon such Contract, the said Commissioners should give Warrant for conveying the said Rents unto the said *Samuel Newton*, or such as he should nominate, and his Heirs.

That in pursuance of Warrants of the said Commissioners of the Treasury thereupon, certain Contracts were made, or pretended to be made, with the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, for the real Sale of divers Fee-Farm Rents, and other Rents, of the several and respective yearly Values aforesaid; by virtue whereof the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, became obliged to pay into the Receipt of his Majesty's *Exchequer* at *Westminster*, for the Purchase of the several and respective Rents to them respectively to be conveyed as aforesaid, the Sums herein after mention'd; (that is to say) the said *Humphry Hetherington* Twelve thousand eight hundred Pounds, the said *Richard Adney* Eleven thousand two hundred Pounds, and the said *Samuel Newton* Nine thousand six hundred Pounds.

That in pursuance of such Contracts, or pretended Contracts, thro' the Power of the said Lord *Sommers*, and by his Means and Procurement, divers Fee-Farm Rents, and other Rents, were by certain Indentures Tripartite of Bargain and Sale, bearing Date on or about the Sixth Day of *January*, 1697. in Consideration of Three thousand two hundred Pounds, therein mention'd to have been paid by the said *Humphry Hetherington* unto his Majesty, at the Receipt of his *Exchequer* at *Westminster*, or by other Assurance in the Law, granted and conveyed by the said Trustees, by the Appointment of the said *Humphry Hetherington*, to *Leonard Hancock* of *Cheshunt*, in the County of *Hertford*, Esq; and *John Warner*, of the Parish of *St. Clements Danes* in the County of *Middlesex*, Goldsmith, and their Heirs.

And by other Indentures of Bargain and Sale, of the same Date, or other Assurance in the Law, divers other Fee-Farm Rents, and other Rents therein mention'd, in Consideration of Nine thousand six hundred Pounds, therein mention'd to have been paid by the said *Humphry Hetherington* to his Majesty, at the Receipt of his *Exchequer* at *Westminster*, (being the Residue of the said Sum of Twelve thousand eight

One Thousand Six Hundred Ninety Seven, of his own Motion, without any Solicitation, Procurement or Means used by the said Lord *Sommers*, acquaint the then Lords Commissioners of the Treasury, or some or one of them, that it was his Majesties Pleasure that Two Thousand one Hundred Pounds *per Annum* of those Rents should be granted to or for the Benefit of the said Lord *Sommers*, and his Heirs; and that all proper Methods should be used for vesting the same for his Benefit, as of his Majesties Free Gift: And the said Acts of Parliament having directed, that the said Trustees, on Sales, should convey the said Rents, pursuant to Contracts to be Signed by the Lord Treasurer, or Lords Commissioners of the Treasury for the time being, or any Two of them, for the Satisfaction of the said Trustees only, and according to the Method that had been used from the time of making the said Acts, in passing Grants of any of the said Rents, even such as were meerly of the Bounty of his Majesties Predecessors, and of his Majesty; such Warrants were made by his Majesty to the Lords Commissioners of the Treasury, to Contract or Give Warrants to the Trustees to Contract for the said Rents; and such Contracts were, pursuant thereunto made, and such Grants of the said Rents were passed, as in the said Article is mentioned; and the Money mentioned in such Contracts was for the perfecting of his Majesties said intended Free Gift, discharged by Tallies struck for that Purpose: And the said Lord *Sommers* saith, the said Contracts were not intended or designed to make the Grantees of the said Rents appear to be Purchasers; but the said Lord *Sommers* always acknowledged he received the said Grants of his Majesties Bounty; and he humbly conceives it was lawful for him so to accept the same.

eight hundred Pounds) were by the said Trustees granted and conveyed to the said *Humphry Hetherington*, and his Heirs; which Fee-Farm, and other Rents, so conveyed unto or by the Appointment of the said *Humphry Hetherington*, amount to the full Yearly Value of Eight hundred Pounds.

And by other Indentures of Bargain and Sale of the same Date, or other Assurance in the Law, and in Consideration of Two thousand four hundred Pounds, therein mention'd to have been paid by the said *Richard Adney* unto his Majesty, at the Receipt of his *Exchequer* at *Westminster*, other Fee-Farm Rents, and other Rents were by the Appointment of the said *Richard Adney*, granted and conveyed by the said Trustees to the said *Leonard Hancock*, and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale of the same Date, or other Assurance in the Law, in Consideration of Eight thousand eight hundred Pounds, in the same Indentures mention'd to have been paid by the said *Richard Adney* to his Majesty, at the Receipt of his *Exchequer* at *Westminster*, (being the Residue of the said Sum of Eleven thousand two hundred Pounds) divers other Fee-Farm Rents, and other Rents therein mention'd, were granted and conveyed by the said Trustees, to the said *Richard Adney* and his Heirs; which Fee-Farm, and other Rents so conveyed to, or by the Appointment of the said *Richard Adney*, amount to the full Yearly Value of Seven hundred Pounds *per Annum*.

And by other Indentures of Bargain and Sale, bearing Date on or about the 25th Day of *April*, 1698. or other Assurance in the Law, in Consideration of Two thousand four hundred Pounds, therein mention'd to have been paid by the said *Samuel Newton* to his Majesty at the Receipt of his *Exchequer* at *Westminster*, other Fee-Farm Rents, and other Rents therein mention'd, were by the Appointment of the said *Samuel Newton*, granted and conveyed by the said Trustees to the said *Leonard Hancock*, and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale of the same Date, or other Assurance in Law, in Consideration of Seven thousand two hundred Pounds, therein mention'd to have been paid by the said *Samuel Newton* to his Majesty at the Receipt of his *Exchequer* at *Westminster*, (being the Residue of the said Sum of Nine thousand six hundred Pounds) divers other Fee-Farm Rents, and other Rents therein mention'd, were granted and conveyed by the said Trustees to the said *Samuel Newton*, and his Heirs; which said several Rents so conveyed unto, or by the Appointment of the said *Samuel Newton*, amount to the Yearly Value of Six hundred Pounds.

That the said several Manors and Rents aforesaid, were granted to the said *Joseph Jekyl*, *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and their Heirs respectively, as aforesaid, in Trust for the said Lord *Sommers*, and his Heirs.

IX. That the said Lord *Sommers*, in order to procure a Grant of the said Fee-Farm Rents for his own Benefit, whilst he was Lord Chancellor of *England*, and one of his Majesty's most Honourable Privy-Council, whilst his Majesty was engaged in the said War, and the Nation under such heavy Debts, as aforesaid, did enter into several Treaties, and had many Communications with divers Persons entrusted with the Care and Management of the said Fee-Farm Rents; and particularly with *Reginald Marriott* of the Parish of *St. Clement Danes*, in the County of *Middlesex*, Auditor of the Rates, or acting as Auditor, and with *John Digby* of the Parish of *St. Brides*, *London*, Clerk of the Trustees for Sale of the said Fee-Farm Rents, and other evil-dispos'd Persons; and for encouraging the said *Marriott*, *Digby*, and others, to discover to him such particular Fee-Farm, and other Rents, as then remained undispos'd of, to the Intent the said Lord *Sommers* might beg the same, he the said Lord *Sommers* contracted and agreed with the said *Marriott*, to give the said *Marriott* for himself and his Accomplices, as a Reward for the said Discovery, one full Fourth Part of all such Rents so discover'd, whereof the said Lord *Sommers* should procure a Grant from the Crown: And accordingly the said several Grants from the said Trustees to the said *Hancock* and *Warner*, being together of the Yearly Value of Five hundred Pounds *per Annum*, and upwards, were so made by the Direction of the said Lord *Sommers*, in Trust for the said *Marriott*, *Digby*, or others.

X. That notwithstanding the said pretended Contracts and Payments, there was not any Sum of Money whatsoever really and *bona fide* paid, as the Consideration of the Conveyances of the said Rents from the said Trustees; but such Contracts and Payments of the said several Considerations (amounting in the whole to Thirty three thousand and six hundred Pounds) were colourably and fraudulently contrived and made by Direction of

IX. and X. To the Ninth and Tenth Articles the said Lord *Sommers* saith, That after his Majesty had given such Directions to the Lords of the Treasury for granting Fee-Farm Rents, and other Rents, to the Yearly Value aforesaid, for the Benefit of the said Lord *Sommers*, and his Heirs; and after Warrants were signed by the Lords of the Treasury to the said Trustees, for making Contracts for conveying Rents of the said Yearly Value, for the Benefit of the said Lord *Sommers*, it did appear, that the said intended Contracts and Grants could not be perfected; for that neither the Lords of the Treasury, nor the said Trustees, were sufficiently informed what Fee-Farm Rents, or other Rents, remain'd undispos'd of; so that the whole Benefit of his Majesty's intended Bounty would have been lost, without Information could be gained of such particular Rents. And the said Lord *Sommers* being inform'd, that *Reginald Marriott* and *John Digby*, in this Article named, were the most likely, if not the only Persons capable to give Information therein, Application was made to them for that Purpose; and the said *Marriott* and *Digby* being so applied to, after the said Warrants of his Majesty and the said Lords of the Treasury were executed, as aforesaid, did refuse to give any Account of such Rents, unless they might have, as a Reward for their so doing, Rents amounting to near a Fourth Part of such Rents whereof they should give such Account, conveyed in Trust for them in such manner as in the said Article is mention'd; which the said Lord *Sommers* did (as he conceives he lawfully might, it being only to his own Loss and Prejudice) comply with; not in order to any such End as is suggested in the said Article; but that he might perfect the Grant before designed and appointed to be made to him by his Majesty, of his own Free Will, and not at the said Lord *Sommers*'s Solicitation; the Discovery of any of the said Rents not being made by the said *Marriott* and *Digby*, or any other Person, till after the said Warrants of his Majesty and

of the said Lord *Sommers*, contrary to his said Oath, in Deceit of his Majesty, and Elusion of the said Acts of Parliament.

XI. That many Quit-Rents, and Copy-hold Rents, standing in Charge as Parcel of, or belonging to several Manors, or reputed Manors, Rents reserved upon Leases or Estates, the Reversion whereof was in his said Majesty King *Charles* the Second, at the making the said Acts, Rents conveyed before in Lease, or granted to other Persons, Rents appropriated by, or in pursuance of Act or Acts of Parliament, for Payment of Pensions, Stipends, Salaries, Annuities, Alms and Allowances for the maintenance of Grammar-Schools or Scholars; or for, or towards the Reparation of Churches, Chapels, Highways, Causeys, Bridges, Schools, Almshouses, Castles, or other Uses, and many Quit-Rents of Manors, and other Rents by Act of Parliament united and annexed to the Castle of *Windsor*, with intent to support and maintain the Yearly Reparations and Charges of the said Castle, and Discharge and Pay the Fees and Wages of the Officers, Servants, and Attendants in the same Castle, and the Forests, Chases and Parks to the same belonging, and for many Years applied, according to the intention of long to divers ancient Manors, heretofore and Crown, as if the same had been entire Fee-Farm Rents, conveyed by the said Trustees for Sale of Fee-Farm Rents, to the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and to the said of them, contrary to the true intent and meaning of the said Acts of Parliament, to the great Vexation and Oppression of many of his Majesty's good Subjects, and creating many new and unreasonable Charges on other Revenues of the Crown.

XII. That by the Direction of the said Lord *Sommers*, the said *Humphrey Hetherington*, *Richard Adney*, *Samuel Newton*, *Leonard Hancock*, and *John Warner*, surrendred several of the said Rents to them granted as aforesaid, amounting to the yearly Value of Three hundred forty seven Pounds eleven Shillings and five Pence Farthing, on Suggestion that the same were either conveyed before in Lease set apart for Payment of Pensions, old Supers bad or illeivable, or part thereof bad or illeivable, or wrong conveyed; and the said Lord *Sommers*, in the Year of our Lord 1699, being then Lord Chancellor of *England*, and one of his Majesty's most Honourable Privy Council, in Breach of his Duty, and contrary to the Laws and Statutes of this Realm, procured other Rents of the yearly value of Three hundred ninety one Pounds three Pence half-penny, to be allowed by way of Reprise, and to be conveyed to the said *Richard Adney*, and his Heirs, in Trust for the said Lord *Sommers* and his Heirs, as if the said yearly Rents of Three hundred forty seven Pounds eleven Shillings and five Pence Farthing, so surrendred, had been really and *bona fide* purchased, in pursuance of the said Acts for Sale of Fee-Farm Rents.

and the Lords of the Treasury, as aforesaid. And accordingly the several Grants in this Article mentioned, were made to *Hancock* and *Warner*, in Trust for the said *Marriott* and *Digby* (as was affirmed to the said Lord *Sommers*); and the said Lord *Sommers* saith, There was not any Sum of Money paid as the Consideration of the Grants of the said Rents; but the Contracts were made, and the Payment of the several Considerations thereof were discharged, in the Manner and for the Reasons herein before set forth, and were not colourably or fraudulently contriv'd, in Deceit of his Majesty, or Elusion of the said Acts of Parliament.

XI. To the Eleventh Article the said Lord *Sommers* saith, He believeth, that several of the Rents mentioned to be granted in Trust for him, as aforesaid, had been before granted to other Persons by the said Trustees, and that others of them were not in the Power of the said Trustees to Grant, which was and is very much to his Prejudice; and believes the same were inserted by mistaken Informations given touching the same, and not out of any Design; and the like Mistakes have frequently happened in other Grants of other of the said Rents; and denies that to his Knowledge or Belief, any of the said Rents so granted for his Benefit, were ever united or annexed to the Castle of *Windsor*, for any Purpose whatsoever, or that any Oppression or Vexation hath happen'd to any of his Majesty's Subjects, by reason of the granting of any of the said Rents, and, as he believes, little or no new Charge to the Crown.

the said Act; and also many Quit-Rents of or be- yet Parcel of the Demesnes or Possessions of the Rents issuing out of those Manors; were by the through the Direction and Power of the said Lord Fee-Farm Rents, to the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and to the said of the said Acts of Parliament, to the great Vexation and Oppression of many of his Majesty's good Subjects, and creating many new and unreasonable

XII. To the Twelfth Article the said Lord *Sommers* saith, That his Majesty having designed of his Bounty to him the said Lord *Sommers* and his Heirs, Fee-Farm and other Rents, to the annual Value in the said Grants mentioned; and the said Trustees having covenanted, as was usual for them to do, that they had not made any former or other Grant, or Conveyance of the said Rents, or any of them; and Three hundred forty seven Pounds eleven Shillings and Three Pence Farthing *per Annum*, of the said Rents so granted, as aforesaid, having appeared to be granted before, or not to be grantable by the said Trustees, or not leviable on Surrender of such Rents, the said Trustees by Warrant of the Lords Commissioners of his Majesty's Treasury (who were thereunto sufficiently authorized) in Lieu and Satisfaction of the said Rents and Arrears thereof, and in discharge of the Covenants of the said Trustees, did, the Twenty first Day of *October*, One thousand six hundred ninety and nine, grant divers other Rents, amounting to the yearly value of Three hundred ninety one Pounds and three Pence half-penny, to *Richard Adney* and his Heirs, as in the said Article is mentioned; which were not so granted as if the said yearly Rents of Three hundred forty seven Pounds eleven Shillings and three Pence Farthing, had been *bona fide* purchased; but was in Lieu and Reprise for the same as granted of his Majesty's Bounty, for the Benefit of the said Lord *Sommers*, and his Heirs

XIII. That in the Year of our Lord 1695. the said Lord *Sommers*, being then Lord Keeper of the Great Seal of *England*, and also one of his Majesty's most Honourable Privy Council, together with *Edward Earl of Orford*, then first Commissioner for executing the Office of Lord High Admiral of *England*, and Commander in chief of his Majesty's Navy Royal, and one of his Majesty's most Honourable Privy Council, *Richard Earl of Bellamont* in the Kingdom of *Ireland*, Governor of *New-York*, *New-England*, and others then in High Stations, and in great Power and Authority, procured a Commission to be granted unto one *William Kidd*, a Person of evil Fame and Reputation, and since that Time convicted of Piracy, to apprehend and take into his Custody divers Persons therein named, and all such Pirates as the said *Kidd* should meet with upon the Coasts or Seas of *America*, or in any other Seas or Parts, with their Ships and Vessels, and also such Merchandizes, Goods, and Wares as should be found on board or with them. And afterwards the said Lord *Sommers*, in the Year of our Lord 1697, with the Assistance of the said *Earl of Orford*, and other Persons aforesaid, procured a Grant from his Majesty, and the said Lord *Sommers* passed the same under the Great Seal of *England*; whereby all and whatsoever Ships, Vessels, Goods, Merchandizes, Treasure, and other Things whatsoever, which since the Thirtieth Day of *April*, One thousand six hundred ninety six, had been taken or seized upon or with, or did belong to, or which should be taken or seized upon or with, or did, or should belong to *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, (in the said Letters Patents mentioned to have been complained of, and informed against for committing many Robberies, Piracies, and Depredations upon the Seas in the Parts of *America*, and other Places, but never convicted or attainted for the same) or which since the said Thirtieth Day of *April* One thousand six hundred ninety six, had been taken or seized upon, or which did, or should belong to any of the Adherents of the said *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, or any other Pirates, Free-Booters, and Sea-Rovers, by the said *William Kidd*, or other Commander of the *Adventure-Galley*, or which by, or by means of the said Ship or Galley, should be taken or forced on shore in any of his Majesty's Plantations of *America*, were granted unto the said *Richard Earl of Bellamont*, and unto *Edmund Harrison* Merchant, *Samuel Newton* Gent. *William Rowland* Gent. *George Watson* Gent. and *Thomas Reynolds* of *St. Martins*, their Executors, Administrators, and Assigns, to their own sole Use and Benefit, and as their own proper Goods and Chattels, without any Account thereof, or therefore to be made; in which Grant the Name of the said *Samuel Newton* was used in Trust, and for the only Benefit and Advantage of the said Lord *Sommers*; which said Grant under the Great Seal of *England* manifestly tended to the Obstruction and Discouragement of Trade and Navigation, the great Loss and Prejudice of Merchants, and others being his Majesty's Subjects, or Subjects of the Friends and Allies of his Majesty, and the Dishonour of the King and Kingdom; and the said Lord *Sommers* was, by procuring and passing the said Grant, guilty of a notorious Breach of his Duty.

as aforesaid; which he conceives might be, and was lawfully done.

XIII. To the Thirteenth Article the said Lord *Sommers* doth admit, That in the Year One thousand six hundred ninety five, he being then Lord Keeper of the Great Seal of *England*, his Majesty being informed, as the Truth was, That *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and several other of his Majesty's Subjects in his Plantations of *America*, had associated themselves, and did frequently commit great Piracies, Robberies, and Depredations on the Seas in the Parts of *America*, and other Parts, to the Hindrance and Discouragement of Trade and Navigation, for preventing the said Mischiefs, did grant a Commission, as in this Article is mentioned, unto *William Kidd*, in this Article named (who was then Commander of the Ship called, *The Adventure-Galley*, and was not then, to the Knowledge or Belief of the said Lord *Sommers*, esteemed a Person of ill Fame or Reputation) to apprehend, seize and take into his Custody, the said *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and all such other Pirates as he should meet with in the Seas of *America*, or any other Seas, with their Ships and Vessels, and such Merchandizes, Moneys and Wares as should be found on Board or with them, and to cause such Pirates to be brought to a legal Tryal; the granting of which Commission was then apprehended to be necessary for the Preservation of Trade and Navigation. And the said Lord *Sommers* doth also admit, That a Grant dated the Seven and twentieth Day of *May*, One thousand six hundred ninety seven, did pass under the Great Seal of *England*, as in this Article is mentioned, whereby reciting the said Commission so granted to the said *William Kidd*, and that the said *Adventure-Galley*, was with his Majesty's Knowledge, and Royal Encouragement bought and fitted out to Sea for the Execution of the said Commission, at the Charge of the *Earl of Bellamont*, *Edmund Harrison*, *Samuel Newton*, *William Rowley*, *George Watson*, and *Thomas Reynolds*, in this Article named; his Majesty, for encouraging and rewarding the said Undertaking, did grant unto the said *Earl of Bellamont*, *Edmund Harrison*, *William Rowley*, *George Watson*, *Thomas Reynolds* and *Samuel Newton* (who was named by, and in Trust for the said Lord *Sommers*) their Executors and Administrators, all and whatsoever Ships, Vessels, Goods, Merchandizes, Treasure, and other Things whatsoever, which since the Thirtieth Day of *April*, One thousand six hundred ninety six, had been taken or seized upon or with, or did belong to, or should happen to be taken or seized upon or with, or which did, or should belong to the said *Thomas Too*, *John Ireland*, *Thomas Wake* and *William Maze*, or their Adherents, or any other Pirates, by the said *William Kidd*, or other Commanders of the said *Adventure Galley*, or which by or by Means of the said Ship or Galley, should be taken, or forced on shore on any of his Majesty's Plantations in *America*, so far as the said Premises, or any of them, did, should or might belong to his Majesty, or could or might be granted or grantable by him, or was or were in his Power to dispose of; which Grant was not intended to be without an Account: For the said Lord *Sommers* saith, That by Indenture, bearing date the Two and twentieth Day of *May*, one thousand six hundred ninety seven, made (after the Warrant for the said Grant was signed, and before it was passed) between his Majesty, of the One Part, and the said *Earl of Bellamont*, *Edmund Harrison*,

William Rowley, *George Watson*, *Thomas Reynolds*, and *Samuel Newton* of the other Part; They the said *Earl of Bellamont*, *Edmund Harrison*, *William Rowley*, *George Watson*, *Thomas Reynolds*, and *Samuel*

Newton, did Covenant, Promise and Agree with his Majesty, his Heirs and Successors, well and truly to account for, and deliver upon Oath, to the Use of his Majesty, his Heirs and Successors, or the Commissioners of his or their Treasury, or his or their High-Treasurer, a clear Tenth Part (the whole in Ten equal Parts to be divided) of all and every such Ships, Vessels, Goods, Merchandizes, and other Things whatsoever, which in and by the said Grant should be given, or which should from Time to Time be taken, or seized, or secured by them, or any of them, their, or any of their Executors or Administrators, Officers, Agents, Servants, or Assigns, by Virtue or Colour thereof: To which Grant and Indenture the said Lord *Sommers*, for more Certainty, referreth himself; and further saith, He conceives, and is advised, that the said Grant did not any way tend to the Obstruction or Discouragement of Trade or Navigation, or to the Loss or Prejudice of Merchants, or others his Majesty's Subjects, or the Subjects of his Friends or Allies, nor to the Dishonour of his Majesty or the Kingdom, nor was the Passing of the same any Breach of the Duty of the said Lord *Sommers*; but the said Grant was formed as a Recommence to the said Grantees, who, at their own Charge, had provided and fitted out the said Ship, to enable the said *William Kidd* to execute the Powers in the said Commission mention'd; whereby the Publick might have received great Benefit, had the said *William Kidd* faithfully discharged the Trust in him reposed by his Majesty, and the said Grantees: Which he failing to do, the Owners of the said Ship have lost their Expences, and have not received any Benefit of his Majesty's said Grant.

XIV. That the said *John Lord Sommers*, to the great Oppression of the Subject, and contrary to *Magna Charta*, and divers good Statutes of this Realm, and in manifest Breach and Violation of his Oath, as Lord High-Chancellor of *England*, hath, in several Causes depending before him, by many extraordinary Methods, and unwarrantable Practices for several Years, delayed Proceedings in the said Causes; and by Colour of his Office, hath made divers Arbitrary and Illegal Orders, in Subversion of the Laws and Statutes of this Realm; and hath, of his own Authority, reversed Judgments given in the Court of *Exchequer*, and without calling before him the Barons of the *Exchequer* to hear their Informations, and the Causes of their Judgments, as the Statute in those Cases expressly directs; assuming thereby to himself an Arbitrary and Illegal Power; and hath declared and affirmed in publick Places of Judicature, that particular Subjects might have Rights and Interests without any Remedy for Recovery of the same, unless by Petition to the Person of the King only, or to that Effect: Which Position was highly dangerous to the legal Constitution of this Kingdom, and absolutely destructive to the Property of the Subject.

And the said Knights, Citizens, and Burgeſſes, by Protestation, saving to themselves the Liberty of exhibiting at any Time hereafter, any further Articles or other Accusation or Impeachment against the said Lord *Sommers*; as also of replying to his Answers which he shall make unto the said Articles, or any of them; and of offering Proofs to all, and every the aforesaid Articles, and to all and every other Articles, Impeachment or Accusation which shall be exhibited by them, as the Cause shall, according to the Course of Parliament require; do pray, That the said *John Lord Sommers* may be put to answer the said Crimes and Misdemeanors; and that such Proceedings, Examinations, Tryals, and Judgments, may be thereupon had and given, as is agreeable to Law and Justice.

After reading this Day the Articles of Impeachment brought up from the House of Commons against *John Lord Sommers*, and hearing his Lordship thereupon, who desired a Copy of the said Articles, and said he would put in his Answer so soon as possibly he could; It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Sommers* may have a Copy of the said Articles against him.

Die Martis 20^o Majj, 1701.

The Earl of *Orford* desiring that a Day may be appointed for his Tryal, the House thereupon ordered, That the Committee appointed to consider

XIV. To the Fourteenth Article the said Lord *Sommers* saith, He did not delay any Proceedings in any Cause or Causes depending before him, as Chancellor of *England*, longer or otherwise than as the Circumstances and Justice of each Cause required; but did, to the very manifest impairing of his Health, constantly apply himself to the Dispatch of the Causes depending before him; and denies that he did ever make, by Colour of his Office, any Arbitrary or Illegal Order, to the Subversion of any Law or Statute of this Realm, or did ever assume to himself any Arbitrary or Illegal Power, or ever reverse any Judgment given in the Court of *Exchequer*, otherwise than as is warranted and allowed by the Law, and in the Presence of the Barons of the Court of *Exchequer*, who were always present in the Court of *Exchequer* Chamber, when their Judgments were examined, as the Statute in such Cases directs; nor did ever deliver in any Court of Judicature, or other Place whatsoever, any Position whatsoever, dangerous to the Legal Constitution of the Kingdom, or destructive to the Property of the Subject, as is charged by the said Articles.

And as to all other Matters and Things in the said Articles contained, and not herein before particularly answered unto, The said Lord *Sommers* saith, He is not guilty of them, or any of them, in Manner and Form as the same are charged upon him in and by the said Articles; and humbly submitterh himself to your Lordships Judgment.

SOMMERS.

of the Manner in delivering Articles of Impeachments by the Commons, be revived, to inspect the Books, and meet immediately.

Then the House was adjourn'd during Pleasure, and the Lords went to the Committee.

After some Time, the House was resumed, and the Earl of *Stamford* reported the Precedents following, viz.

' 21. Decemb. 1680. That Mr. *Seymour* was Impeached, and Articles delivered.

' 23. Decemb. 1680. He delivered in his Answer.

' 3. Jan.

‘ 3. Jan. That he petition’d for a Tryal; where-
‘ upon the same Day a Message was sent to the
‘ Commons, That the House finding no Issue joined
‘ by Replication from the Commons, thought fit
‘ to give them Notice thereof.

‘ Then Council were assigned him.

‘ 8. Jan. Saturday the 15th was appointed for
‘ his Tryal.

‘ 27. Apr. 1695. The Duke of Leeds was Impeached.

‘ 29. Apr. The Articles were brought up.

‘ 30. Apr. The Duke of Leeds put in his Answer,

‘ and a Copy thereof was sent to the Commons.

‘ 1. May. The Lords sent to the Commons to
‘ know when they should be ready to make good
‘ the same.

‘ 3. May. The Commons desired a Conference
‘ on the Lords Message; and at the Conference ac-
‘ quainted the Lords, That Mr. Robart, a material
‘ Witness was withdrawn. The Lords moved the
‘ King, that a Proclamation might be issued for his
‘ Apprehension. The same Day the Parliament
‘ was Prorogued.

A Message was sent to the House of Commons
by Sir Robert Legard and Mr. Gery, to acquaint
them, “ That the House having been desired by the
“ Earl of Orford, That a Day may be appointed
“ for his speedy Tryal, their Lordships finding no
“ Issue joined by Replication of the House of Com-
“ mons, think fit to give them Notice thereof.

A Message was also sent to the House of Com-
mons by Sir Robert Legard and Mr. Gery, to ac-
quaint them, “ That they having on the First Day
“ of April last, sent up to their Lordships an Im-
“ peachment against William Earl of Portland, for
“ High Crimes and Misdemeanors; and having also,
“ on the Fifteenth Day of the same Month, Im-
“ peached Charles Lord Halifax for High Crimes
“ and Misdemeanors; and there being as yet no
“ particular Articles exhibited against the said
“ Lords, their Lordships think themselves obliged
“ to put them in mind thereof; which, after Im-
“ peachments have so long depended, is a Hardship
“ to the Persons concerned, and not agreeable to
“ the usual Methods and Proceedings of Parliament
“ in such Cases.

A Message was brought from the House of Com-
mons by Mr. Bromley and others (the 31st of May)
to acquaint this House, “ That in Answer to the
“ Message of the One and Twentieth Instant, the
“ Commons have prepared a Replication to the Earl
“ of Orford’s Answer to the Articles of Impeach-
“ ment of High Crimes and Misdemeanors exhibi-
“ ted against him; and at present defer bringing it
“ up to your Lordships, because in the Tryals of
“ the several Impeachments now depending, the
“ Commons think it most proper, from the Nature
“ of the Evidence that will be given at the said
“ Tryals, to begin with the Tryal of the Impeach-
“ ment of John Lord Sommers of High Crimes
“ and Misdemeanors. And as to your Lordships
“ other Message, the Commons take it to be with-
“ out Precedent, and Unparliamentary; they, as
“ Prosecutors, having a Liberty to exhibit their Ar-
“ ticles of Impeachment in due time; of which
“ they who are to prepare them are the proper
“ Judges: And therefore, for your Lordships to
“ assert, That having not yet exhibited particular
“ Articles against William Earl of Portland, and
“ Charles Lord Halifax, is a Hardship to them, and
“ not agreeable to the usual Methods and Proceed-
“ ing in Parliament in such Cases, does, as they
“ conceive, tend to the Breach of that good Cor-
“ respondence betwixt the Two Houses, which
“ ought mutually to be preserved.

Die Mercurij 21^o Maij, 1701.

The Messengers sent Yesterday to the House of Commons return Answer, That the Commons will send
an Answer to the said Messages relating to the said Impeachments by Messengers of their own.

Die Sabbati 24^o Maij, 1701.

The Lord Sommers delivered his Answer to the Articles of Impeachment of the House of Commons
against him, which was read by the Clerk. See Page 518.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That a Copy of the Answer
of John Lord Sommers (delivered this Day to the Articles of Impeachment depending against him) be
sent to the House of Commons; and accordingly a Message was sent to the House of Commons, by Sir
Robert Legard and Sir John Hoskins, to carry down a Copy of the Lord Sommers’s Answer to the Articles
of Impeachment against him.

Die Veneris 30^o Maij, 1701.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That Monday the Ninth Day
of June next, shall be, and is hereby appointed for the Tryal of Edward Earl of Orford in Westminster-
Hall, upon the Articles brought up against him by the House of Commons, whereby he stands charged
with several High Crimes and Misdemeanors.

A Message was sent to the House of Commons
by Sir Robert Legard and Sir John Hoskins, to let
them know, “ That this House hath appointed
“ Monday the Ninth Day of June next, for the
“ Tryal of Edward Earl of Orford in Westminster-
“ Hall, upon the Articles sent up against him, and
“ that the Commons may reply if they think fit.

A Message was sent to the House of Commons by
Sir Robert Legard and Sir John Hoskins, to ac-
quaint them, “ That they having on the First Day
“ of April last, sent up to their Lordships an Im-
“ peachment against William Earl of Portland, for
“ High Crimes and Misdemeanors; and having al-
“ Vol. IV. “ so

A Message was brought from the House of Com-
mons by Mr. Harcourt, and others (the 5th of June)
to acquaint this House, “ That the Commons, on
“ Consideration of your Lordships Message to them
“ of the One and Thirtieth of May, concerning
“ the Earl of Orford, think it their Undoubted
“ Right, when several Persons stand Impeached be-
“ fore your Lordships, to bring to Tryal such of
“ them, in the first place, as the Commons appre-
“ hend, from the Nature of the Evidence, ought
“ first to be proceeded against; to the intent all
“ such Offenders may, in due time, be brought to
“ Justice: And that no Day ought to be appointed
“ by

“ so, on the Fifteenth Day of the same Month, Impeached *Charles Lord Halifax* for High Crimes and Misdemeanors; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put them in mind thereof; which after Impeachments have so long depended, is a Hardship to the Persons concerned, and not agreeable to the usual Methods and Proceedings of Parliament in such Cases.

“ your Lordships for the Tryal of the Earl of *Orford*.

“ As to your Lordships Message, at the same time, relating to the Earl of *Portland*, and *Charles Lord Halifax*, the Commons take the same to be without Precedent, and Unparliamentary; and conceive your Lordships frequent Repetition thereof, in so short a Time, after the Commons had transmitted to your Lordships their Articles against Two of the Impeached Lords, and were daily preparing their Articles against the others, manifestly tends to the Delay of Justice, in obstructing the Tryals of the Impeached Lords, by introducing Disputes, in Breach of that good Correspondence between the Two Houses, which ought inviolably to be preserved.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord Great Chamberlain do attend his Majesty, humbly to acquaint his Majesty, That this House hath appointed *Monday* the Ninth Day of *June* next, for the Tryal of *Edward Earl of Orford*, in *Westminster-Hall*, and humbly to move his Majesty, that he will be pleased to give Order for a Place to be prepared in *Westminster-Hall* against the said Time, for this House to proceed upon the said Tryal.

Die Sabbati 31^o Maij, 1701.

A Message was brought from the House of Commons by Mr. *Bromley*, and others. See Page 529.

The Messengers sent Yesterday to the House of Commons return Answer; That the Commons will send an Answer by Messengers of their own.

Die Lunæ 2^o Junij, 1701.

Ordered, That the Committee appointed to consider of the Manner in delivering Articles of Impeachments by the Commons, be revived, to meet on *Monday* next, to draw an Answer to be sent to the House of Commons to their Message received the 31st Instant.

The House was adjourned during Pleasure. After some Time, the House was resumed, and the Earl of *Stamford* reported from the Lords Committees, appointed to consider of the Manner in delivering Articles of Impeachments by the Commons, the Precedents following, (*viz.*)

“ 7. Feb. 25 H. 8. The Bishop of *London* Impeached by the Commons, for imprisoning *Tho. Phillips* on Suspicion of Heresy.

“ 9. Feb. The Articles were read.

“ 20. March, 1620. The Commons, at a Conference, accused the Lord Chancellor *St. Alban*, and the Bishop of *Landaffe*, of Bribery and Corruption.

“ 16. April, 1624. The Commons, at a Conference, accuse the Earl of *Middlesex*, Lord-Treasurer, of Bribery.

“ 19. May, 1624. The Commons accuse the Bishop of *Norwich* of several Matters by them then particularly mentioned at a Conference.

“ 29. Decemb. 1640. The Commons accuse Sir *George Radcliffe* of High-Treason.

“ 31. Decemb. They deliver the Articles at a Conference.

“ 22. Decemb. 1640. The Lord-Keeper *Finch* was Impeached.

“ 29. Jan. 1640. Report of what he was accused of at a Conference.

“ by your Lordships for the Tryal of any Impeachment by the Commons, without some previous Signification to your Lordships from the Commons, of their being ready to proceed thereon.

“ The Commons could not receive this Message from your Lordships, without the greatest Surprise; your Lordships Proceedings in this Case being neither warranted by Precedents, nor (as the Commons conceive) consistent with the Methods of Justice, or with Reason: Wherefore the Commons cannot agree to the Day appointed by

“ 18. Decemb. 1641 *Daniel Oneal* Impeached.

“ 30. August, 1641. The Earl of *Bridgwater* Impeached, and Articles read, but not entered.

“ 6. Decemb. 1660. *William Drake* Impeached, and Articles brought up.

“ 24. April, 1668. Sir *William Pen* was Impeached, and the Articles delivered at a Conference the same Day.

“ 29. Decemb. 1666. The Commons, at a Conference, Impeach the Lord Viscount *Mordaunt*.

“ 3. Jan. The Conference was reported, and the Articles read.

“ 23. Decemb. 1678. *Post Meridiem*, The Earl of *Danby* was Impeached, and Articles brought up against him at the same Time.

“ 5. Decemb. 1678. The Earl of *Powis*, Lord *A. Wardour*, Lord *Bellasyse*, Lord *Petre*, and Lord Viscount *Stafford*, were Impeached.

“ 30. Dec. The Parliament was prorogued to the 4th of *February*, and was dissolved the 24th of *January*.

“ 6. March. A New Parliament met.

“ 7. April, 1679. Articles were brought up against them.

“ 21. Decemb. 1680. Mr. *Edward Seymour* was Impeached, and Articles brought up at the same Time.

“ 7. Jan. 1680. Sir *William Scroggs* was Impeached, and Articles brought up at the same Time.

“ 7. Jan. 1680. The Earl of *Tyrone* was Impeached, but no Articles brought up.

“ 10. Jan. The Parliament was prorogued to the 20th. Dissolved the 18th.

“ 26. March, 1681. Mr. *Fitzharris* was Impeached: No Articles brought up.

“ 28. March. The Parliament was dissolved.

“ 26. June, 1689. *Blair*, *Vaughan*, *Nole*, *Elliot*, and *Grey*, were Impeached, and Articles brought up.

“ 26. Octob. The Earl of *Salisbury* and Earl of *Peterborow* were Impeached: Special Matter assigned the same Day.

“ 27. April, 1695. The Duke of *Leeds* was Impeached.

“ 29. April. Articles were brought up.

“ 10. May, 1698. *Goudet* and others were Impeached.

“ 17. May. Articles brought up.

“ 28. May, 1698. *John Auriol* and *John Du-maistre* were Impeached.

“ 8. June. Articles were brought up against them.

The Lord Great Chamberlain acquainted the House, That he had attended his Majesty with their Address for a Place to be prepared in *Westminster-Hall* for the Tryal of the Earl of *Orford*; and his Majesty was pleased to say, *He would give Order for the Place to be prepared, as desired.*

Ordered, That the Committee appointed on *Saturday* last, do meet presently, to draw an Answer

“ The Lords do think fit, upon Occasion of the
“ Message of the Commons of the 31st of *May*,
“ to acquaint that House, That having been desired
“ by the Lord *Sommers*, that a Day may be ap-
“ pointed for his speedy Tryal, and their Lordships
“ finding no Issue joined by Replication of the
“ House of Commons, judge it proper to give
“ them notice thereof, that the Commons may Re-
“ ply, if they think fit; and at the same Time their
“ Lordships let the Commons know, that they will
“ proceed to the Tryal of any of the Impeached
“ Lords, whom the Commons shall be first ready
“ to begin with, so as there may be no occasion
“ taken from thence for any unreasonable Delay in
“ the Prosecution of any of them: And further to
“ acquaint them, that having searched their own
“ Journals, they do not find, that after a general
“ Impeachment, there has ever been so long a Delay
“ of bringing up the particular Articles of Im-
“ peachment, fitting the Parliament: And therefore
“ the Lords do think they had Reason to assert,
“ that it was a Hardship to the Two Lords con-
“ cerned, (especially after this House had put the
“ House of Commons in mind of exhibiting such
“ Articles) and not agreeable to the usual Proceed-
“ ings in Parliament: And as the Lords do not
“ controvert what Right the Commons may have
“ the Lords, in whom the Judicature does entirely
“ Right of limiting a convenient Time for bringing
“ of Delay in Justice, is lodged in them.

“ The Lords hope the Commons, on their Part, will be as careful not to do any Thing that may tend
“ to the Interruption of the good Correspondence between the Two Houses, as the Lords shall ever be
“ on their Part: And the best way to preserve that, is, for neither of the Two Houses to exceed those Li-
“ mits which the Law and Custom of Parliament have already established.

The House went into Consideration of this Report, and after Debate, it was ordered, That the further Consideration thereof, and Debate thereupon, be adjourned till to-Morrow Twelve a Clock.

Die Martis 3^o Junii, 1701.

The House Resumed the Adjourned Debate Yesterday, in Relation to the Report of the Answer drawn by the Committee to be sent to the House of Commons, to their Message received the One and Thirtieth of *May* last.

The Report was read by Paragraphs, and agreed to, and sent to the House of Commons by Sir *Richard Holford* and Mr. *Pitt*.

Die Jovis, 5^o Junii, 1701.

A Message was brought from the House of Commons by Mr. *Harcourt*, and others. See Pag. 529.

Upon receiving a Message from the House of Commons, in Answer to a Message sent to them by this House the One and Thirtieth of *May* last, it is Ordered, That the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, do meet to-Morrow at Nine of the Clock in the Forenoon, to consider the said Message, inspect the Journals, and report to the House what they shall think proper in this Case.

Die Veneris, 6^o Junii, 1701.

A Message was brought from the House of Commons by Mr. *St. John*, and others, to desire a Con-
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to be sent to the House of Commons, to their Message received the One and Thirtieth of *May* last.

Then the House was Adjourned during Pleasure.

After some time, the House was resumed, and the Earl of *Stamford* reported the Answer drawn by the Committee, to be sent to the House of Commons, to their Message received the One and Thirtieth of *May* last, which was Read as follows, viz.

Mr. *Harcourt* at a Conference (the Sixth of *June*) delivered himself in the following manner:

“ The Commons have desired this Conference
“ upon your Lordship’s Message of the Fourth of
“ *June*, in order to preserve a good Correspondence
“ with your Lordships; which will always be the
“ Endeavour of the Commons, and is at this Time
“ particularly necessary, in order to bring the im-
“ peached Lords to a speedy Tryal. And because
“ the Messages which your Lordships have thought
“ fit to send to the Commons, and the Answers
“ thereunto, seem not to tend towards expediting
“ the Tryals, which the Commons so much desire,
“ but may rather furnish Matter of dispute between
“ the two Houses; the Commons therefore chuse
“ to follow the Methods formerly used with good
“ Success upon the like Occasions: And for the
“ more speedy and easy adjusting and preventing
“ any Differences which have already happened, or
“ may arise, previous to, or upon these Tryals
“ the Commons do propose to your Lordships, That
“ a Committee of both Houses be Nominated, to
“ consider of the most proper Ways and Methods
“ of Proceeding on Impeachment, according to the
“ Usage of Parliament.

of impeaching in general Terms, if they please; so reside, think themselves obliged to assert, That the particular Charge before them, for the avoiding

ference with this House, upon the Subject Matter of the Message of this House, of the Fourth Instant.

It being proposed to return Answer, That this House will send an Answer by Messengers of their own, and Debate thereupon:

The House agreed to a present Conference.

Then the Commons being called in, were told, That the Lords agree to a Conference as desired, and appoint it presently in the *Painted Chamber*.

Lords were named Managers of the Conference.

The Commons being come to the Conference, the House was adjourned during Pleasure, and the Lords went to the Conference; which being ended, the House was resumed, and the Lord Steward reported, That the Lords had attended the Conference, and that Mr. *Harcourt* managed the Conference and said, *As above.*

Ordered, That the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, do meet to-Morrow upon the Report of this Conference, and inspect the Journals, and Report to the House.

Die Sabbati, 7^o Junii, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, That they have Inspected the Journals, and Ordered him to report the Precedents following, viz.

16. April, 1624. Report is made of the Commons Complaint, and Charge at a Conference against the Earl of *Middlesex*, Lord Treasurer.

24. April, 1624. Ordered, That the Lord Treasurer shall appear on *Thursday* next at Nine a Clock, to answer his Charge at the Bar, and that if he hath any Witnesses to be Examined, they may in the mean time be Sworn and Examined.

27. April. The Lord Treasurer Petitioned, that his Witnesses might not be examined, till he hath answered; but the House did not think fit to alter the Day.

28. April. The Lord Treasurer desires the Interrogatories to his Witnesses may be respited till he hath answered; and that he may have Copies of the Depositions taken on both Sides.

His Lordship was answered, That his Desire is so unfit, as the Lords think him ill advised to make such a Request; and according to the former Order, expect his Appearance to-Morrow, and to hear such Answer as he shall make.

29. April. The Lord Treasurer Petitions, that in regard of his being indisposed, he may have a further Day for presenting his Answer. The House, in respect of his Indisposition is pleased to respite his Appearance this Day, but enjoin that *Saturday* next he brings in his Answer, according to former Orders; and the Lords do peremptorily Assign *Friday* the Seventh of *May* for his Appearance in Person, and for the Final Hearing and Determining of the Cause.

7. May. The Lord Treasurer was accordingly brought to the Bar, and the Tryal proceeded.

30. Aug. 1641. The Earl of *Bridgwater* was Impeached by the Commons.

6. Sept. 1641. Ordered, To answer the Second *Tuesday* in *November*.

27. Octob. 1641. Ordered, To be heard on the Ninth of *December*.

2. Novemb. 1641. Ordered, That the Earl of *Bridgwater* may answer on the Ninth of *November*.

31. March, 1642. At a Conference desired by the Commons, they delivered Articles of Impeachment against *George Benyon*. *Benyon* was Ordered to Answer in Four Days, and to have Liberty, with his Keeper, to go any where, and had Council assigned.

4. April, 1642. *Benyon* put in his Answer; and then it was Ordered, That this Cause against *George Benyon* upon the Impeachment of the House of Commons, shall be proceeded in on *Wednesday* next at this Bar.

5. April, 1642. A Message was sent to the House of Commons, to acquaint them, that the Lords have appointed to proceed in the Cause against *Benyon* to-Morrow.

The House of Commons return Answer, That they will send a Committee of their House to manage their Evidence against *Benyon*, to-Morrow.

6. April, 1642. The Committee of the House of Commons being come to manage the Evidence against him, had the Articles read, &c. and the Tryal proceeded.

5. July, 1642. Sir *Richard Gurney*, Lord-Mayor, was Impeached at a Conference, and brought to the Bar, and heard the Articles Read, had Council allowed him, and was ordered to answer on *Friday* next.

8. July, He delivered in his Answer which was Read, and the Cause was Ordered to be heard on

Monday next, and the Commons were acquainted therewith by Message.

11 July, The Commons at a Conference deliver in a further Impeachment against him, and the Articles were read to him at the Bar, and he desired Council, which was allowed, and he had Time given him to answer till to-Morrow Seven-night.

19. July, Sir *Richard Gurney* put in his Answer; and the same Day it was Ordered, That this House will proceed against him on *Friday* next, on both the Impeachments, and the House of Commons are then to produce all their Proofs to prove the said Impeachments: And a Message was sent to the Commons to acquaint them with the said Order.

22. July, The Committee of Commons being come to manage the Evidence, the Tryal was proceeded in.

17. July, 1645. The Earl of *Stamford* desiring Time to put in his Answer to the Impeachment of the House of Commons against him, it was Ordered, he put in his Answer on *Monday* next.

21. July, The Earl of *Stamford* delivered in his Answer, which was Read, and Ordered to be Heard at the Bar on *Friday* next, and the Commons were acquainted therewith by Message.

25. July, A Message from the Commons to desire another Day for hearing of the Cause of the Earl of *Stamford*'s Impeachment, because they cannot be ready this Day.

Eodem Die, A Message to the Commons, that they have appointed *Monday* next; and in regard it concerns his Lordship so much, their Lordships have appointed so short a Day.

26. July, 1645. A Message from the Commons, to desire a further Day, in regard their Witnesses cannot be ready.

28. July, 1645. Ordered, That the Earl of *Stamford*'s Business shall be heard the first *Tuesday* after *Michaelmas*.

30. Septemb. The Cause of the Earl of *Stamford*, upon the Impeachment of the House of Commons was heard, a Committee of the Commons managing the Evidence against him.

21. Decemb. 1680. *Edward Seymour*, Esq; was Impeached of High Crimes, &c. the Articles were brought up against him, he had the Articles read to him, and ordered to answer.

23. Decemb. He delivered in his Answer.

3. January, Mr. *Seymour* Petitions for a speedy Tryal; whereupon a Message was sent to the House of Commons, that the House finding no Issue joined by Replication from the House of Commons, thought fit to give them Notice thereof.

8. January, Ordered, That *Saturday* the Fifteenth is appointed for the Tryal of Mr. *Seymour*.

Upon Consideration of the Precedents above-mentioned, it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords Committees appointed to consider of the manner of Proceedings on Impeachments, do meet on *Monday* next at Ten a Clock in the Forenoon, to draw an Answer to be sent to the House of Commons, to their Message received the Fifth Instant.

Die Lunæ, 9. Junij, 1701.

The Earl of *Stamford* reported from the Lords Committees (appointed to consider of the Manner of

of Proceedings on Impeachments) what was drawn by them, to be sent to the Commons in Answer to

their Message of the Fifth Instant, which was read, amended and agreed to, as follows, *viz.*

A Message was sent to the House of Commons by Sir Richard Holford and Mr. Gery, to acquaint them, "That in Answer to the Message of the House of Commons of the Fourth Instant, the Lords say "by their Message sent on the Third, wherein they "declare themselves ready to proceed to the Tryal "of any of the Impeached Lords, whom the Commons should be first ready to begin with, They "have given a full Proof of their Willingness to "comply with the Commons in any Thing which "may appear reasonable, in order to the speedy determining of the Impeachments now depending; "and therefore, (as the Lords conceive) the Commons had no Occasion to begin any Dispute on that Head; so their Lordships are careful to decline entering into a Controversy, which seems to them to be of no use at present.

"The Lords think themselves obliged to assert their undoubted Right to appoint a Day for the Tryal of any Impeachment depending before them, if they see good Cause for it, without any previous Signification from the Commons of their being ready to proceed; which Right is warranted by many Precedents, as well as consonant to Justice and Reason; and their Lordships, according to the Example of their Ancestors, will always use that Right, with a Regard to the equal and impartial Administration of Justice, and with a due Care to prevent unreasonable Delays.

"This being the Case, the Lords cannot but wonder, that the Commons, without any Foundation for it, should make use of Expressions, which as their Lordships conceive have never been used before by one House of Parliament to another, and which, if the like were returned, must necessarily destroy all good Correspondence between the Two Houses.

"The last Part of the Commons Message being in effect a Repetition only of their former of the One and thirtieth of May, to which the Lords have already returned a full Answer, their Lordships think it not requisite to say more, than that upon the House of Commons to send up Articles against Two Lords, whom the Commons have so long since impeached in general Terms, can be said to tend to the Delay of Justice; and therefore, as the Lords think the Commons ought to have forborn that Reflection, so their Lordships, in saying no more upon the Occasion of this Message of the Commons, think they have given a convincing Proof of their Moderation, and of their sincere Desire of preserving a good Correspondence between the Two Houses, which is so necessary for the Publick Security, as well as doing Right upon the Impeachments.

The Earl of Stamford also reported from the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, what Precedents they have found in pursuance of the Order of the Seventh Instant, which are as follow, *viz.*

21. May, 1614. A Message from the Commons to desire a Conference upon the Point of Impositions.

24. May, The Question being proposed, Whether this House shall meet with the Lower House, and give them hearing, touching the Point of Impositions: The greater Number of the Lords answered, *Not Content.*

26. May, A Message to the Commons, That the Lords are, and always will be ready and willing to hold a loving and mutual Correspondence with them; but their Lordships having entered into a grave and serious Consideration, as well of the Matter it self, as of divers incident and necessary

A Message was brought from the House of Commons by Mr. Harcourt, and others, (on the Tenth of June) to acquaint this House, "That the Commons, "in hopes of avoiding all Interruptions and Delays in "proceeding against the Impeached Lords, and the "many Inconveniencies which might arise thereby, "having proposed to your Lordships at a Conference, "that a Committee of both Houses might be nominated to consider of the most proper Ways and "Methods of Proceedings on Impeachments, Think "they might have justly expected your Lordships "Compliance with their said Proposition instead of "your Lordships Answer to their Message of the Fourth Instant; which they yesterday received: In which "Answer of your Lordships, though many Matters "of great Exception are contained, a suitable Reply "whereunto would inevitably destroy all good Correspondence between the Two Houses, yet the Commons, from an earnest Desire inviolably to preserve the same, as well as give the most convincing Proof of their Moderation, and to shew their Readiness to bring the Impeached Lords to speedy Justice, at present insist only on their Proposition, for a Committee of both Houses to settle and adjust the necessary Preliminaries to the Tryals; particularly, Whether the Impeached Lords shall appear on their Tryals at your Lordships Bar, as Criminals? Whether being under Accusations of the same Crimes, they are to sit as Judges on each others Tryals for those Crimes, or can Vote in their own Cases, as we find from your Lordships Journals, since their being Impeached, they have been admitted to do? Which Matters, and some others, being necessary to be adjusted, the Commons cannot but insist on a Committee of both Houses, to be appointed for that Purpose; their departing from which would be giving up the Rights of the Commons of England, known by unquestionable Precedents, and the Usages of Parliaments, and making all Impeachments, the greatest Bulwark of the Laws and Liberties of England, impracticable for the future.

they cannot apprehend with what Colour their calling into any Conference of this Cause, concerning the Point of Impositions at this Time.

1. February, 1666. A Message from the Commons to desire a Conference, touching the Manner of Proceedings upon the Impeachment against the Lord Viscount Mordant.

The Lords answer, That they will send Answer by Messengers of their own.

Then a Committee was appointed to consider, whether ever the Commons desired any Conferences concerning the Manner of Proceedings upon Judicature before their Lordships.

4. February, 1666. After Report of the Conference so had, the Lords resolved to let the Commons know at a Conference, That they are resolved, That their former Answer given them, the Eight and twentieth of January, and confirmed the One and thirtieth of the same Month, shall stand.

31. *January*, Which Answer was, That they judge it a Right inherent in every Court, to order and direct such Circumstances, and Matters of Form, that can have no Influence to the Prejudice of Justice, in such way as they shall judge fit, where the same are not settled otherwise by any positive Rule.

4. *February, Post Meridiem*, A Conference was accordingly had, at the Desire of the Lords.

5. *February*, A Message from the Commons to desire a free Conference upon the Subject matter of the last Conference.

The Answer returned was, That the Lords have already stated the Manner of Proceedings in the Impeachment of the Lord *Mordant*, and have declared it in their last Conference, and in that Conference gave the House of Commons notice, That they were ready to proceed this Morning in that Business.

They adhere to their former Resolution, and are ready to proceed in the Tryal.

6. *February*, A Message from the Commons to desire a Conference upon the last mentioned Answer.

7. *February*, The Lords gave the Conference desired; whereat the Commons acquainted their Lordships, that Conferences, and Free Conferences, when desired, are essential to the Proceedings of Parliament, the only Means to preserve the good Correspondence between the Two Houses, and the Denial thereof destructive to the Proceedings of Parliament, and unprecedented.

Eodem die. A free Conference was had at the Desire of the Lords, concerning the Subject Matter of the last Conference; whereat the Managers were to let the Commons know, That their Lordships desire not this Conference in reference to the free Conference lately desired by them, but in relation to the Assertion of the Commons in their last Conference, which their Lordships can no way allow; and therefore commanded the Lords that are to manage this Free Conference, as to justify the Proceedings of their Lordships, so to make it appear to the Commons, that what they have done is neither destructive to the Proceedings of Parliament, nor unprecedented.

27. *May, 1674*. The Lords did not agree to a Conference desired by the Commons on the One and twentieth, because it was desired upon the Answer sent by the Lords of the Seventeenth Instant, wherein the whole Matter concerns the Judicature of the Lords, on which they can admit no Debate, nor grant any Conference. But the Lords agree to a Conference desired concerning the Privileges of the Commons; always provided nothing be offered thereat, that may concern their Lordships Judicature.

6. *May, 1679*. A Message to the Commons to acquaint them, That the Lords have appointed to try the Five Lords on the Thirteenth Instant.

8. *May, Post Meridiem*, A Message from the Commons to desire a Conference, concerning the Matter of their Lordships Message concerning the Tryal of the Lords in the *Tower*; and a Conference was had thereupon.

At the Conference, the Commons proposed to have a Committee of both Houses nominated to consider the proper ways of Proceedings upon Impeachments; and upon the Question, it was carried, Not to agree with the Commons in this Proposal.

9. *May*, A Message to the Commons for a free Conference; upon the Subject Matter of the last Conference, which was had; and at the Conference the Lords told the Commons, That they did not agree to the nominating a Committee of both Houses, because they do not think it conformable to the Rules and Orders of Proceedings of this Court, which is, and ever must be, tender in Matters relating to Judicature.

10. *May*, A Message from the Commons for a Conference, &c. which was had; and the Commons told the Lords, That Things standing thus, they cannot proceed to the Tryals of the Lords, before the Method of Proceedings be adjusted between the Two Houses.

11. *May*, A Message to the Commons for a Conference, &c. which was had; and the Lords asked the Commons, what were the Methods of Proceedings they would confer about: The Commons answer, They had no Directions from their House concerning the same.

A Message from the Commons for a Free Conference, which was had; and upon the Report of it, the Lords appointed a Committee to meet with a Committee of the House of Commons, to consider of Propositions and Circumstances, in reference to the Tryals of the Five Lords in the *Tower*; and a Message sent to the Commons to let them know it.

12. *May*, A Report from the Committee of both Houses, That (*inter alia*) the Commons propose a longer Day for the Tryal of the Lords; whereupon the Lords order'd their Tryals to be put off till further Order.

16. *May*, The Lords appointed a Day for the Tryal of the Five Lords.

19. *May*. The Commons tell the Lords, That when the Methods of Proceedings are adjusted, their House will be ready to proceed upon the Tryal of the Earl of *Danby*, against whom they already demanded Judgment, and afterwards to the Tryal of the Five Lords; and proposed several Difficulties, in respect of the Bishops being present at the Tryal of the Earl of *Danby*. They say further, That the Lords seem to lay the Stop at the Commons Door, by naming a Day; which they conceive ought not to have been appointed before the Methods be considered; that the Lords may as well make the Judges Part of their Court, as the Bishops, in this Point. The Commons will give no disturbance to the ancient Judicature, and they conceive they have a Right to know before what Court they shall appear.

20. *May*. Upon Debate of the Report from the Committee of both Houses, the Lords appoint a Day, for the Tryal of the Five Lords.

22. *May*. The Lords sent a Message to the House of Commons to acquaint them, That the Lords have appointed a Day for the Tryal of the Five Lords.

Then it being moved to have a Conference with the Commons, to let them know, That the Lords do not agree to a Committee of both Houses in relation to the Tryals of the Impeached Lords: And Debate thereupon: The Question was put, Whether a Committee of this House shall be appointed to meet with a Committee of the House of Commons, in relation to the Proceedings upon the Impeachments.

It was resolved in the Negative.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Lords Committees appointed

appointed to consider of the Manner of Proceedings on Impeachments, do meet To-Morrow at Ten of the Clock in the Forenoon, and draw Reasons to be given at a Conference with the House of Commons, Why their Lordships cannot agree, that a Committee of both Houses be nominated to consider of the Methods of Proceedings on Impeachments.

It is ordered by the Lords Spiritual and Tempo-

ral in Parliament assembled, that *Friday* the Thirteenth Day of this Instant *June*, is hereby appointed for the Tryal of *John Lord Sommers* in *Westminster-Hall*, upon the Articles brought up against him by the House of Commons, whereby he stands charged with several High Crimes and Misdemeanors.

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Gery*, to let the Commons know, "That the Lords have appointed *Friday* next for the Tryal of *John Lord Sommers* upon the Impeachment against him.

"next, upon their Impeachment against him. In which, they observe, your Lordships have not nominated any Place for his Tryal, tho' your Lordships thought fit to make that Matter, on the last Impeachment for Misdemeanors, the Subject of a long Debate.

"And they cannot but take Notice, That your Lordships have taken as long a Time to give your Answer to the Commons Desire of a Committee of both Houses, deliver'd at a Conference on *Friday* last, as you are pleas'd to allow the Commons to have of the Day appointed by your Lordships for the said Tryal.

"Your Lordships appointing so short a Day, especially whilst the Proposition made to your Lordships for a Committee of both Houses was undetermin'd, the Commons take to be such a Hardship to them, and such an Indulgence to the Person accus'd, as is not to be parallel'd in any Parliamentary Proceeding.

"The Commons must likewise acquaint your Lordships, that their Experience of the Interruption of a former Tryal on an Impeachment for Misdemeanor, for want of settling the Preliminaries between the Two Houses, obliges them to insist on a Committee of both Houses, for preventing the like Interruption.

"And they conceive, 'twould be very preposterous for them to enter upon the Tryals of any of those Lords, till your Lordships discover some Inclination to make the Proceeding thereupon practicable; and therefore they think they have Reason to insist upon another Day to be appointed for the Tryal of the Lord *Sommers*. And the Commons doubt not but to satisfy your Lordships at a Free Conference, of the Necessity of having a Committee of both Houses, before they can proceed upon the said Tryal.

Die Martis 10 Junij, 1701.

The Earl of *Stamford* reported from the Lords Committees (appointed to consider of the manner of Proceedings on Impeachments) the Reasons drawn by them, to be given to the House of Commons, at a Conference upon the Subject-Matter of the last Conference. Which Report was read, and agreed to, as follows, *viz.*

"The Lords have desired this Conference, upon occasion of the last Conference, in order to preserve a good Correspondence with the House of Commons, which they shall always endeavour. As to the late Messages between the Two Houses, their Lordships are well assured, that on their part, nothing has passed, but what was agreeable to the Methods of Parliament, and proper to preserve that good Understanding between both Houses, which is necessary for the carrying on of the Publick Business.

"As to the Proposal of the Commons, That a Committee of both Houses should be appointed, to consider of the Ways and Methods of Proceeding on Impeachments, their Lordships cannot agree to it:

I. "Because they do not find that ever such a Committee was appointed, on occasion of Impeachments for Misdemeanors; and their Lordships think themselves obliged to be extremely cautious in admitting any thing new, in Matters relating to Judicature.

II. "That altho' a Committee of this Nature was agreed to, upon the Impeachments of the Earl of *Danby*, and the Five Popish Lords, for High-Treason, yet it was upon occasion of several considerable Questions and Difficulties which did

"then arise; and their Lordships do not find, that the Success in that Instance was such as should encourage the pursuing the same Methods again, tho' in the like Case; the Lords observing, that after much Time spent at that Committee, the Disputes were so far from being there adjusted, that they occasioned the abrupt Conclusion of a Session of Parliament.

III. "Their Lordships are of Opinion, That the Methods of Proceedings on Impeachments for Misdemeanors, are so well settled by the Usage of Parliament, that they do not foresee any Difficulties likely to happen, at least none have been yet stated to them; and all the Preliminaries in the Case of *Stephen Goudet*, and others, (which was the last Instance of Impeachments for Misdemeanors) were easily settled and agreed to, without any such Committee.

IV. "The Lords cannot but observe, that this Proposal of the Commons comes so very late, that their Lordships can expect no other Fruit of such a Committee, but the preventing of the Tryals during this Session.

"The Lords assure the Commons, that in case any Difficulties shall arise in the Progress of these Tryals, (which their Lordships do not foresee) they will be ready to comply with the Commons in removing them, as far as Justice and the Usage of Parliament will admit.

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Gery*, to desire a present Conference in the *Painted Chamber*, upon the Subject-Matter of the last Conference.

A Message was brought from the House of Commons by Mr. *Harcourt*, and others. See Page 533.

Ordered, That the Message received this Day from the House of Commons, shall be consider'd To-morrow at Twelve a-Clock.

The Messengers sent to the House of Commons, return Answer, that the Commons will give a Conference as desired.

Then the Commons being come to the Conference, the Managers Names of the last Conference were read, and the House adjourn'd during Pleasure, and the Lords went to the Conference; which being ended, the House was resumed, and the Lord Steward reported, that the Lords had been at the Conference, and delivered their Reasons as ordered.

Die Mercurij 11^o Junij.

The Message received Yesterday from the House of Commons was read; and after Debate of the several Particulars contained in it, this Question was proposed,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Tryal, be without the Bar.

Then the previous Question was put, Whether this Question shall be now put?

It was resolved in the Affirmative.

Then the main Question was put,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Tryal, shall, upon his Tryal, be without the Bar?

It was resolved in the Affirmative, *Nemine Contradicente*.

Resolved, By the Lords Spiritual and Temporal in Parliament assembled, *Nemine Contradicente*, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Tryal, shall, upon his Tryal, be without the Bar.

Then after further Debate, this Question was propos'd,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from

Voting, on any Occasion, except in his own Tryal.

Then the previous Question was put, Whether this Question shall be now put?

It was resolved in the Affirmative.

Then the main Question was put,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting, on any Occasion, except in his own Tryal?

It was resolved in the Affirmative.

Resolved by the Lords Spiritual and Temporal in Parliament assembled, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting, on any Occasion, except in his own Tryal.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Committee appointed to consider of the Method of Proceedings on Impeachments, do meet To-morrow at Ten of the Clock in the Forenoon, and do draw an Answer to the Message received yesterday from the House of Commons upon the Resolutions of the House this Day; and that the Committee do assert in their Answer, That by the Journals of this House, it doth not appear the Lords Impeached have voted, as is inserted in the Commons Message.

A Message was brought from the House of Commons by Mr. *Harcourt*, and others. See Page 535.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Debate which hath arose upon the Commons Message received this Day, shall be adjourned to To-morrow Eleven a-Clock, and no other Business to intervene, and all the Lords summoned to attend.

Die Jovis 12^o Junij, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, what was drawn by them in Answer to a Message from the House of Commons of the 10th Instant; which was read and agreed unto, as follows:

A Message was brought from the House of Commons by Mr. *St. John*, and others (the 13th of June) to acquaint this House, "That the House of Commons find greater Reasons to insist upon their Proposal of a Committee of both Houses, from the Two Messages received Yesterday from your Lordships; for their Ambiguity and Uncertainty do shew the Methods of former Parliaments to be the most proper Way for Dispatch of Business."

"The Commons have been obliged to employ that Time in considering and answering your Lordships Messages, which otherwise would have been spent in preparing for the Lord Sommers's Tryal; so that the Delay must be charged where the Occasion ariseth. And the Commons having desired a Committee of both Houses, to adjust the Preliminaries of the Tryals, cannot but think it strange your Lordships should come to Resolutions upon Two of those Points, while the Proposal of the House of Commons is under Debate at Conferences between the Two Houses; the Commons having other Difficulties to propose, which concern them as Prosecutors, and all future Impeachments."

"And though the Commons leave the Subject of your Lordships Resolutions, with other Things, to be debated at a Committee of both Houses; yet they cannot but observe, that your Lordships Second Resolution is no direct Answer to the"

"Com-

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, "That in Answer to the Message from the House of Commons of the Tenth Instant, the Lords say, That altho' they take it to be Unparliamentary in many Particulars, yet to shew their real Desire of avoiding Disputes, and removing all Pretence of delaying the Tryals of the Impeached Lords, they will only take notice of that Part of their Message, wherein the Commons propose some Things as Difficulties, in respect of the Tryals; which Matters relating wholly to their Judicature, and to their Rights and Privileges as Peers, they think fit to acquaint the Commons with the following Resolutions of the House of Lords."

"I. That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Tryal, shall, upon his Tryal, be without the Bar."

"II. That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting on any Occasion, except in his own Tryal."

"Their Lordships further take notice of a Mistake in Point of Fact alledged in the Message of the Commons; it no way appearing upon their Journals, that the Lords Impeached have voted in their Case."

"The

“ The Lords being well assured, that all the Steps
 “ that have been taken by them, in relation to these
 “ Impeachments, are warranted by the Practice of
 “ their Ancestors, and the Usage of Parliament,
 “ have Reason to expect the Tryals should proceed
 “ without Delay.

“ there is a Mistake, in Point of Fact, alledged by the Commons, this House may take notice of the
 “ Caution used by your Lordships, in wording that Part of your Message; for they know your Lordships
 “ are too well acquainted with the Truth of the Fact, to affirm that the Impeached Lords did not vote
 “ in their own Cases: And tho’ the appearing or not appearing upon your Lordships Journal does not
 “ make it more or less agreeable to the Rules of Justice, yet the Commons cannot but add this further
 “ Observation from your Lordships Journal, That the Impeached Lords Presence is not only recorded
 “ when those Votes passed, but they also find some of them appointed of Committees for preparing and
 “ drawing up the Messages and Answers to the House of Commons: Which they do not think has been
 “ the best Expedient for preserving a good Correspondence between the Two Houses, or adjusting what
 “ will be necessary upon these Tryals: And therefore the Commons cannot think it agreeable to the Rules
 “ of Parliament, for them to appear at a Tryal, till all necessary Preliminaries are first settled with your
 “ Lordships.

A Message was brought from the House of Commons by Mr. *Granvill* and others, to desire a Free Conference with this House, upon the Subject-Matter of the last Conference.

The Commons were called in, and told, That the Lords will return an Answer by Messengers of their own.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That *John Lord Sommers* shall be tried in *Westminster-Hall* upon the Articles of Impeachment against him, on *Tuesday* the Seventeenth Day of this Instant *June*, at Ten of the Clock in the Forenoon.

Ordered, That the Committee appointed to consider of the Manner of Proceeding upon Impeachments, do meet presently, and draw an Answer to the Message received Yesterday from the House of Commons.

The Earl of *Stamford* reported from the Lords Committees, appointed to consider of the Manner of Proceedings on Impeachments, what is drawn by them to be sent to the House of Commons, in Answer to their Message of the Eleventh Instant; which was read and agreed to, as follows:

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, “ That in Answer to the Message of the House of
 “ Commons Yesterday, the Lords say, That they
 “ cannot give a greater Evidence of their sincere
 “ and hearty Desires of avoiding all Differences
 “ with the House of Commons, and of proceeding
 “ on the Tryals of the Impeachments, than by not
 “ taking Notice of the several just Exceptions to
 “ which that Message is liable, both as to the Mat-
 “ ter and Expressions.

“ The Lords have nothing further from their
 “ Thoughts, than the going about to do any thing
 “ which might have the least Appearance of Hard-
 “ ship, in relation to the Commons.

“ But the Answer of the Lord *Sommers* to the
 “ Articles exhibited against him, having been sent
 “ down to the Commons on the Four and Twentieth
 “ of *May* last; and they having by their Message of
 “ the One and Thirtieth of *May*, signify’d to their
 “ Lordships their Intention of beginning with the
 “ Tryal of his Impeachment in the first place:

“ The Lords considering how far the Session is
 “ advanc’d, thought it reasonable to appoint the
 “ Thirteenth Instant for the said Tryal; their Lord-
 “ ships finding several Precedents of appointing
 “ Tryals on Impeachments within a shorter Time.

“ The Lords also think it incumbent upon them

“ Commons Proposal, which was, Whether Peers
 “ Impeached of the same Crimes, shall vote for
 “ each other upon their Tryal for the same Crimes:
 “ And the Commons cannot believe that any such
 “ Rule can be laid down in plain Words, where
 “ there is a due Regard to Justice.

“ And as to what your Lordships observe, That

“ to endeavour to dispatch the Tryals of all the Im-
 “ peach’d Lords before the Rising of the Parlia-
 “ ment. This is what Justice requires, and can-
 “ not be look’d upon as a Matter of Indulgence.
 “ Nevertheless, that the Commons may see how
 “ desirous their Lordships are to comply with them
 “ in any thing which may be consistent with Justice,
 “ they have appointed the Tryal of Impeachment
 “ against *John Lord Sommers*, on *Tuesday* the Se-
 “ venteenth Day of this Instant *June*, at Ten of
 “ the Clock in the Forenoon, in the House of
 “ Lords, which will be then sitting in *Westminster-
 “ Hall*.

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That the Lords agree to a Free Conference, as desired, and appoint the same to be To-morrow at One a-Clock in the *Painted Chamber*.

Die Veneris 13^o Junij, 1701.

A Message was brought from the House of Commons by Mr. *St. John* and others. See Page 536.

The Messengers were called in, and told, That the Lords will send an Answer to the Commons Message, by Messengers of their own.

The Commons being come to the Free Conference, the Managers Names were read; then the House was adjourn’d during Pleasure; and the Lords went to the Free Conference: Which being ended, the House was resumed, and the Lord Steward reported, That the Lords had attended the Free Conference, as commanded; and that Mr. *Harcourt* opened the Free Conference, and argued against the Reasons given by this House why they could not agree to a Committee of both Houses; and that the Lord *Haversham*, in Answer to some Part of the Arguments of Mr. *Harcourt* and Sir *Bartholomew Shower*, used some Expressions, at which the Commons taking Exceptions, abruptly broke up the Conference.

After Debate thereupon, a Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That the Lords having been informed by their Managers, that some Interruption happened at the Free Conference, which their Lordships are concern’d at, because they wish that nothing should interrupt the Publick Affairs, do desire the Commons would come again presently to the said Free Conference, which they do not doubt will prove the best Expedient to prevent the Inconvenience of a Misunderstanding upon what has pass’d.

The Messengers sent to the House of Commons, return Answer, That they have deliver'd their Message to the Commons, as order'd; and that the Commons say, they will return an Answer by Messengers of their own.

A Message was brought from the House of Commons by Sir Christopher Musgrave and others, to acquaint this House, That the Commons desiring to keep up a good Correspondence with your Lordships, do think it necessary to acquaint your Lordships with what has happen'd at the Free Conference.

"One Thing there is, tho' I can't speak to it, because I am bound up by the Orders of the House; yet it must have some Answer: That is, as to the Lords voting in their own Case; it requires an Answer, tho' I can't go into the Debate of it. The Commons themselves have made this Precedent; for in these Impeachments they have allowed Men guilty of the same Crimes to Vote in their own House; and therefore we have not made any Distinction in our House, that some should Vote, and some not. The Lords have so high an Opinion of the Justice of the House of Commons, that they hope Justice shall never be made use of as a Mask for any Design. And therefore give me Leave to say, (tho' I am not to argue it) 'tis a plain Demonstration, that the Commons think these Lords innocent: And I think the Proposition is undeniable; for there are several Lords in the same Crimes, in the same Facts, there is no Distinction; and the Commons leave some of these Men at the Head of Affairs, near the King's Person, to do any Mischief, if their

"Persons were inclined to it; and Impeach others, when they are both alike guilty, and concerned in the same Facts. This was a Thing I was in hopes I shou'd never have heard asserted, when the Beginning of it was from the House of Commons.

These were the Words spoken by John Lord Havertham; and the Commons have ordered me to communicate this Resolution to your Lordships:

Resolved, That John Lord Havertham be charged before the Lords, for the Words spoken by the said Lord this Day at the Free Conference; and that the Lords be desired to proceed in Justice against the said Lord Havertham, and to inflict such Punishment upon the said Lord, as so high an Offence against the House of Commons doth deserve.

Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords, who were at the Free Conference, do meet presently at a Committee, and draw up what was offered at the Free Conference, and report to the House Tomorrow at Eleven a-Clock.

Die Sabbati 14^o Junij, 1701.

A Message was brought from the House of Commons by Mr. Bruges and others, with the Articles of Impeachment against Charles Lord Halifax; and to acquaint this House, That the Matter of the Charge was contained in the Articles; and also that he was commanded to pray and demand, That Charles Lord Halifax do give sufficient Security to abide the Judgment of the House of Lords.

The Articles were read by the Clerk as follows, viz.

ARTICLES Exhibited by the Knights, Citizens, and Burgeses in Parliament assembled, in Maintenance of their Impeachment against Charles Lord Halifax, of High Crimes and Misdemeanors.

WHEREAS several Persons, contrary to their Duty and Allegiance to his Majesty, and his late Royal Consort, of ever Blessed Memory, traitorously adhering to their Majesties Enemies, did levy and maintain within their Majesties Realm of Ireland, a desperate and bloody War and Rebellion against their Majesties; and were, by his Majesty's Conduct and Courage, at the great Expence of his English Subjects, reduced to their due Obedience to the Crown of England.

And whereas upon the Fourth Day of April, in the Year of our Lord One Thousand Six Hundred and Ninety, 'twas resolved by the Commons of England in Parliament assembled, That a Bill shou'd be brought in to Attaint all Persons guilty of Rebellion in Ireland, or elsewhere, against their Majesties King William and Queen Mary, and to Enact and declare their Estates to be Forfeited, and to be Sold for the reducing of that Kingdom.

And whereas his Majesty, in his gracious Speech to both Houses of Parliament, did, upon the Fifth Day of January, One Thousand Six Hundred and Ninety, assure them, That he would not make any Grant of the Forfeited Lands in Ireland, till there should be another Opportunity of settling that Matter in Parliament, in such manner as should be thought most expedient.

And whereas the Commons of England in Parliament assembled, by their humble Address to his Majesty upon the Fourth Day of March, One

The ANSWER of Charles Lord Halifax, to the Articles exhibited against him by the Knights, Citizens, and Burgeses in Parliament assembled, in Maintenance of their Impeachment against the said Lord Halifax, for High Crimes and Misdemeanors, supposed to be committed by him.

THE said Lord Halifax, saving to himself all Advantages of Exceptions to the said Articles, and of not being prejudiced by any Words, or want of Form; and saving to himself all Privileges and Rights belonging to him, as one of the Peers of this Realm; for Answer to the said Articles, humbly saith,

I. To the First Article he saith, True it is, that several Persons did levy and maintain a desperate and bloody War and Rebellion in Ireland against their Majesties, and were by his Majesty's Courage and Conduct, at the great Expence of his English Subjects, suppress'd and reduc'd to their Obedience, as in this Article is alledged. And he further answereth and saith, He believes it to be true, That on the Fourth of April, 1690. such Vote or Resolve was made by the then House of Commons for that Purpose; and such Assurance was given by his Majesty, and such Addresses were made by the House of Commons in the Year 1690, and 1692, That no Grant should be made of the Forfeited Lands in Ireland, till there should be another Opportunity of settling that Matter in Parliament, in such manner as should be thought most expedient; and such Answers were given thereunto, as in this Article is and are set forth, as by the said several Votes, Resolves, Speeches, Addresses, and Answers, to which the said Lord craves Leave, for more Certainty, to refer himself, may appear.

That

Thousand Six Hundred Ninety Two, did humbly beseech his Majesty, That (according to the Assurance his Majesty had been pleased to give them) no Grant might be made of the Forfeited Estates in Ireland, till there should be an Opportunity of settling that Matter in Parliament, in such manner as should be thought most expedient: To which his Majesty was pleased to give a most gracious Answer. Whereby, and by many other Endeavours of the Commons in the following Sessions of Parliament, it appears, That what has since been declared by Act of Parliament, was the continued Sense of the Commons of England, That it was highly reasonable that the Forfeited Estates of Rebels and Traitors in Ireland, should be applied in Ease of his Majesty's Faithful Subjects of the Kingdom of England.

And whereas 'twas the apparent Duty of every Officer or Minister of State, to have had so much Regard to the Resolutions and Address of the House of Commons, to the Publick Good, and his Majesty's Honour, as to have dissuaded and prevented (as much as in them lay) the procuring or passing any Grant or Grants of the said Forfeited Estates in Ireland; yet Charles (now) Lord Halifax, then the Honourable Charles Montague, Esq; being a Member of the Honourable House of Commons, one of the Lords of the Treasury, Chancellor of the Exchequer, and one of his Majesty's most Honourable Privy-Council, hath, since the aforesaid Fourth Day of March, One Thousand Six Hundred Ninety Two, presumed to advise, pass, or direct the passing, a Grant to Thomas Railton, Esq; in Trust for himself, of several Debts, Interests, Sum and Sums of Money, amounting in the whole to the Sum of Thirteen Thousand Pounds, or thereabout, due, owing, and which ought to have accrued to his Majesty, by reason of the Attainders, Outlawries, or other Forfeitures of the respective Persons, for whom the same were entred on Record; whereby he hath much contributed to the contracting great Debts upon the Nation, the laying heavy Taxes upon the People, hath highly reflected on his Majesty's Honour, and failed in the Performance of his Trust and Duty.

II. Whereas by an Act of Parliament made in the Eleventh and Twelfth Years of his Majesty's Reign, Entituled, *An Act for granting an Aid to his Majesty by Sale of the Forfeited and other Estates and Interests in Ireland, and by a Land-Tax in England, for the several Purposes therein mentioned*; 'tis, amongst other Things, Enacted, That all and every Person or Persons whatsoever, who had by Virtue of any Grant or Disposition from his Majesty, or from his Majesty and the late Queen, received for his or their own Use or Benefit, any Debt or Debts, or Sum or Sums whatsoever, due from any Debt or Debts of any Forfeiting Person mentioned or described in the said Act, or from any Person or Persons subject or liable to the Payment of any Sum or Sums of Money whatsoever, to any of the said Forfeiting Persons, should be, and they are thereby declared to be respectively liable, and are required to repay every such Debt or Debts, Sum or Sums of Money whatsoever, so by him, her or them respectively received, into the Receipt of his Majesty's Exchequer in Ireland, on or before the Four and

That in the Years 1693, 1694, 1695, the Parliament of England did meet; and no Act was passed touching the Forfeited Estates, tho' by other Ways great Sums were raised for the carrying on and defraying the Charges of the War in those Years; and his Majesty did after, as Rewards to several Persons who had served him in Ireland and elsewhere, grant to them some of the Forfeited Estates in Ireland, and the Grantees did enjoy the same.

And the said Lord Halifax further saith, That his Majesty did never grant to him, or any in Trust for him, or to his Use, any of the said Forfeited Lands; but of his Grace and Favour, and as a Reward for his Faithful Services (which his Majesty was pleased to accept) did, by Letters Patents under the Great Seal of England, bearing Date on or about the Eleventh Day of May, 1697, grant to Thomas Railton, Esq; in Trust for the said Lord Halifax, (who was then one of the Commissioners of the Treasury, Chancellor of the Exchequer, and one of the Members of the House of Commons, as in this Article is set forth) several Debts, Interests, Sum or Sums of Money, amounting in the whole to the Sum of 11546 Pounds, Seventeen Shillings and Eight Pence, or thereabouts: Which Grant he conceives, and is advised, his Majesty might then lawfully make; and was lawful for him to accept, without Breach of his Duty, or the Trust reposed in him: and denies that he did ask for, or procure the said Grant; but confesseth, he accepted the same as a Mark of his Majesty's Grace and Favour: And saith, The said Grant hath since been taken away by Act of Parliament; and saith, That the said Grant made to Thomas Railton, is the same which is mentioned or intended by the said Article of Impeachment; and although the Debts therein mentioned to be granted, amount to 11546 Pounds, Seventeen Shillings and Eight Pence, and no more; yet the said Grant it self, at the Time of making thereof, or at any Time afterwards, would not be valued at near the said Sums, because a great Part of the said Debts were not recoverable; and he hath not made clear thereof, as yet, above 400*l*. And humbly hopes the said Grant hath very little, if at all, contributed to the contracting any Debts upon the Nation, or laying heavy Taxes upon the People, or any ways reflected upon his Majesty's Honour, or that he hath failed in the Performance of his Trust or Duty, as in the Article is suggested.

II. To the Second Article the said Lord Halifax saith, That he believes it to be true, that such Act was made, and such Clause therein, as in this Article is mentioned; and also in the said Act there is a further Clause, That the Grantees from the King of any of the Forfeited Estates thereby resumed, should not be accountable for the Rents, Issues, and Profits of the same, by them received before the Second Day of November, 1699. but might retain the same to their own Uses.

And the said Lord Halifax doth acknowledge, That after the making the said Grant before-mentioned to the said Thomas Railton, the Agents of the said Lord Halifax did receive some Moneys, not exceeding One Thousand Pounds (as he is informed) out of the Rents and Profits of the Forfeited Estate of the Earl of Clancarty; of which no more than the abovesaid Sum did come clear to him the said Lord Halifax, and no more, to his Knowledge or Belief, hath been received or recovered upon the aforesaid Grant. That the said Lord Halifax gave Direction, after the said Act passed, to his Agents

Twentieth Day of *August*, One Thousand Seven Hundred.

And whereas the said *Charles Lord Halifax* had, before the making of the aforesaid Act, procured for *Thomas Railton*, Esq; in Trust for himself, a Grant of several Debts by Judgments, and otherwise, to several of the said Forfeiting Persons, amounting to the Sum of Thirteen Thousand Pounds, or thereabouts, forfeited to his Majesty by the Attainder, Outlawries, or other Forfeitures of the respective Persons to whom such Debts were originally due; and by Virtue of the said Grant, the said Lord *Halifax* actually received to his own Use the Sum of One Thousand Pounds, Part of the before-mentioned Sum of Thirteen Thousand Pounds; which said Sum of One Thousand Pounds he the said *Charles Lord Halifax* ought to have repaid before the said Four and Twentieth Day of *August*, One Thousand Seven Hundred, into the Receipt of his Majesty's *Exchequer* in *Ireland*, as by the said Act he was required to have done; yet the said *Charles Lord Halifax* did not repay the said Sum of One Thousand Pounds, as by the said Act he was required to do; but has hitherto, in Contempt of the Act, refused or neglected to repay the same: Which Neglect or Refusal of him the said *Charles Lord Halifax*, to repay the said Sum of One Thousand Pounds, is a manifest Wrong to his Majesty and the Publick, and a Misapplication of that Sum to other Uses and Purposes than by the Act 'tis appropriated and ought to have been applied.

III. That the said *Charles Lord Halifax*, being a Member of the Honourable House of Commons, one of the Commissioners for Executing the Office of Lord-Treasurer of *England*, Chancellor of the *Exchequer*, and one of his Majesty's most Honourable Privy-Council; not contented with the many Employments and Places of Honour bestowed upon him by his Majesty, nor with the large and excessive Gains by him made, by the Incomes and Profits arising from such Offices and Preferments, did (in Opposition to what he well knew to be the true Interest of *England*, and contrary to his Oath as a Privy-Councillor, and his Duty as a Publick Minister, at a Time when the Nation was engaged in a tedious and expensive War against *France*, for preserving the Balance and Liberties of *Europe*, and under such heavy Debts as, without laying unsupportable Taxes on the People, were impossible to be satisfied) Advise, Procure and Assent, not only to the passing of divers Grants to others in *England* and *Ireland*, but did obtain and accept of several beneficial ones to or in Trust for himself: Which said Practices of him the said Lord *Halifax*, were a most notorious Abuse of his Majesty's Goodness, a great Breach of his Trust, and a very high Vexation and Oppression of his Majesty's other Subjects.

IV. Whereas by the Common Law, and by many Statutes and Ordinances of this Realm, it appears to have been the great Care of our Ancestors, that the Kings Forests should be preserved, and in particular the Timber therein growing, for the building and repairing the Navy Royal, which has ever been accounted (as it undoubtedly is) the great Security of

in *Ireland* to do, in relation to the Money received, as should be advised by Council there; by whom his Agents were advised (as they informed the said Lord, and which he believes to be true) that the said Moneys being received out of the mean Profits which were remitted by that Act, were not within the first mentioned Clause in the said Act: And therefore the said Lord does believe and admit the same were not paid into the Receipt of his Majesty's *Exchequer* in *Ireland*, nor ought to have been paid into the *Exchequer*, as he humbly insists and is advised: And he doth deny, that the Non-payment of the said Money into the said Receipt, is any Wrong to his Majesty or the Publick, or any Misapplication; and in Case the said Money ought to have been paid into the said Receipt, there are proper Methods and Remedies in the said Act prescribed, to compel the Payment of the same.

III. To the Third Article he saith, He was a Member of the House of Commons, one of the Commissioners of his Majesty's Treasury, Chancellor of the *Exchequer*, and Privy-Councillor, as in the Article is set forth; and served his Majesty faithfully, as he hopes and believes, in those Stations, and was contented with the Employments and Places of Honour bestowed upon him, and with the Incomes and Gains by him made, by the just and lawful Fees and Profits of the same; and his Majesty graciously accepted of such his Services; and as a Mark of his Royal Favour to him, did make, for his Benefit, the Grant in the Answer to the precedent Article, and the Grant in the Answer to the subsequent Article mentioned; which were all the profitable Grants he, or any in Trust for him, ever had from his Majesty. And the said Lord *Halifax* says, He conceives, and is advised, that his accepting such Grants were not any Abuse of his Majesty's Goodness, nor Breach of the Trust reposed in him, nor were any of his Majesty's Subjects thereby oppressed: And denies that he ever did, in Opposition to what he knew to be the true Interest of *England*, or contrary to his Oath or Duty, at any Time Advise, Procure, or Assent to the passing of any Grant or Grants to himself, or to any Person in Trust for him, or to any other Person or Persons whatsoever: But saith, He, as one of the Commissioners of the Treasury, in Conjunction with the other Commissioners, did Sign several Warrants and Dockets for such Grants as his Majesty was pleased to direct to be passed by them; and which he humbly conceives, and is advised, he was, by the Duty of his Place, obliged to do.

IV. To the Fourth Article, He saith he believes it to be true, that our Ancestors did take great Care to preserve the King's Forests, and the Timber therein growing, for the Building and Repairing the Navy-Royal, which the said Lord doth own hath ever been accounted (and as he believes very rightly) the great Security of the Realm: And saith, True it is,

of this Realm. And whereas *Charles Lord Halifax* was, in the Year of our Lord One Thousand Six Hundred Ninety Seven, one of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and of his Majesty's Privy-Council, and obliged as well by repeated Oaths, as by the Duty he owed to his Majesty and his Countrey, to have advised, consulted and promoted such Matters and Things as should, or at least were most likely to redound to his Majesty's Honour, and the Nations Safety: Yet the said *Charles Lord Halifax*, not regarding the Laws and Ordinances of this Realm, nor his said Duty to his Majesty and the Publick, but pursuing his private Interest, did, by Letters of Privy-Seal, bearing Date on or about the Sixth Day of May, which was in the Year of our Lord One Thousand Six Hundred Ninety Seven, (the Kingdom being then engaged in an expensive War, and the Debts of the Nation requiring the best and most frugal Management) procure from his Majesty a Grant to *Henry Segar*, Gent. in Trust for himself, of the Sum of Fourteen Thousand Pounds, of so much Scrub'd Beech, Birch, Holly, Hazle, Thorns and Orle, as should by Sale raise the said Sum of Fourteen Thousand Pounds, to be Fallen in his Majesty's Forest of *Dean*, in the County of *Gloucester*, within the Space of Seven Years Time, from the Five and Twentieth Day of December, One Thousand Six Hundred Ninety Seven: Under Colour of which Grant, Beech of a much greater Value, great Number of Sapling Oaks, which might and would have been serviceable to the Realm, and also many Tuns of well-grown Timber, fit for the present Use of the Navy, have been Cut and Fallen, and sold and disposed of for the Benefit of the said Lord *Halifax*.

V. Whereas there is not any Thing that so much conduceth to his Majesties, and the Nation's Honour and Safety, as the due Ordering and Managing of the King's Treasure and the Publick Revenues; for the Receiving and Issuing forth of which, the Wisdom and Policy of this Nation has provided and appointed several and distinct Officers with beneficial Salaries, in order that they may be a Check to each other, and that no Loss may accrue to his Majesty or the Publick, by the Corruption, Unskillfulness or Negligence of any particular Officer: Yet he the said *Charles Lord Halifax*, being one of the Lords of the Treasury, when by the Death of the Honourable Sir *Robert Howard*, the Office of the Auditor of the Receipts, and Writer of the Tallies, became Vacant; not regarding the ancient Constitution and approved Methods in ordering his Majesty's Treasury and the Publick Revenues, did Grant or procure to be Granted to *Christopher Montague*, Esq; the Brother of him the said *Charles Lord Halifax*, and then one of the Commissioners of the Excise, the said Place and Office of Auditor of the Receipts and Writer of the Tallies; which said Grant was so made and procured by the said Lord *Halifax*, in Trust as to the Profits thereof for himself; so that from and after the passing of the said Grant, he the said Lord *Halifax* was in effect at the same time one of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and Auditor of the Receipts, and Writer of the Tallies, and enjoyed the Profits of the said several Offices; which by the Constitution of the Treasury are manifestly inconsistent, and never were or ought to be trusted in the same Person: The making and procuring of which said Grant by him the said *Charles Lord Halifax*, as aforesaid, was a manifest Violation of the Established Course and Constitution of the *Exchequer*, a Breach of

is, he was in the Year 1697, one of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and one of his Majesties Privy-Council, and did from time to time Advise and Promote such Matters and Things, as were most likely to redound to his Majesty's Honour, and the Nations Safety; and denies that he at any time preferred his Private Interest to that of the Publick. But doth confess and admit, that his Majesty by his Letters of Privy-Seal, Dated the Sixth of May, 1697, did out of his Grace and Favour designed to the said Lord *Halifax*, Grant unto *Henry Segar* in the Article mentioned, and which was in Trust for the said Lord, the Sum of 2000*l. per Annum*, to be raised by the Fall of scrub'd Beech, Birch, Holly, Hazle, Thorns and Orle, in the Forest of *Dean* in the County of *Gloucester*, for the Space of Seven Years, from the 25th of December 1697, as by the said Letters of Privy-Seal, to which the said Lord for more certainty referreth himself, may appear; which Grant was not, nor could be prejudicial to any Timber growing in the said Forest; and believes no Sapling Oaks, or Timber, or Trees likely to be Timber, were cut down by colour of the said Grant; and if any Abuse were in cutting the Wood, he conceives he is not answerable for the same; such Cutting not having been by his Direction, nor he any ways concerning himself therein; the Setting out and Cutting whereof did belong to his Majesty's Surveyor-General, and other his Majesty's Officers, who (as the said Lord hath been informed and believes) faithfully discharged their Trust in the Execution thereof, and took particular Care to preserve the Timber there.

V. To the Fifth Article, the said Lord *Halifax* answereth and saith, He believes it to be true, that the due ordering and Management of the King's Treasure and Publick Revenues, conduceth very much to the Honour and Safety of his Majesty and the Nation, and that there are several distinct Officers with Salaries, for the better receiving and Issuing forth of the same, and that are Checks upon each other, to prevent any Loss to his Majesty, or the Publick; and the said Lord saith, True it is, he was one of the Commissioners of the Treasury, when by the Death of Sir *Robert Howard*, his Office of Writer of the Tallies and Counter-Tallies, commonly called Auditor of the Receipt of *Exchequer*, became vacant; and thereupon the then Commissioners of the Treasury did grant the said Office to *Christopher Montague*, then one of the Commissioners of Excise, and Brother to the said Lord; which the said Lord does own and admit was done at his Desire and Request; but humbly insisterh, the same was not Granted contrary to the ancient Constitution, or approved Methods in ordering his Majesty's Treasury or Publick Revenue: And saith, he the said Lord, did procure the said Office to be granted to his Brother, intending in a short time after, by his Majesty's Permission, when his Majesty's Affairs would permit thereof, to leave his the said Lord's Employments and Places in the Treasury, and to obtain a Surrender from his said Brother of the said Office, and procure a Grant thereof to himself; which he hopes and humbly insists was lawful for him to do. And saith, his said Brother duly executed the said Office, till after the said Lord had left or laid down, by his Majesty's Leave, his Places in the Treasury; and then, and not before, his said Brother surrendered the said Office; and the said Lord obtained a Grant of the same, as he conceives

of his Trust, of Evil Example, and tending very much to the Great Loss and Prejudice of his Majesty and the Publick, by opening a way to all manner of Corrupt Practices in the future Management of the Revenues.

VI. Whereas a Treaty and Alliance between *Leopold* the Emperor of *Germany*, and the *States-General* of the *United Provinces*, was made and concluded in the Year of our Lord One Thousand Six Hundred Eighty Nine, upon the Consideration of the Greatness of the Common Danger, which then threatened all *Christendom* from the excessive Power of *France*, and the unconstant Faith of the *French* in the Observance of Treaties; whereby it was agreed, that there should be and remain for ever a Constant, Perpetual and Inviolable Friendship and good Correspondence between his Imperial Majesty and the *States-General*, that each of them should be obliged to promote the others Interest, and, as much as in them lay, prevent all Damages and Inconveniencies to each other.

And whereas certain Separate Articles were also at or about that time made and annexed to the aforesaid Treaty; whereby the *States-General*, maturely considering, that *France* had openly declared in several Courts (that notwithstanding the most solemn Renunciation) they continued their Pretension by Force of Arms, to assert for the *Dauphin* the Succession of the *Spanish* Monarchy, in case the King of *Spain* should die without Issue; and also considering what a Blow their State would receive, and what Prejudice might happen thereby to the Publick Affairs and Quiet, did promise, that in case his said Catholick Majesty should die without Issue, they would, with all their Force, assist his said Imperial Majesty, or his Heirs, in taking the Succession of the *Spanish* Monarchy, lawfully belonging to that House, together with its Kingdoms, Dominions and Rights, and in their obtaining and securing the quiet Possession thereof, against the *French* and their Adherents, who should directly or indirectly oppose that Succession, and with Force repel the Force which should be brought against them.

That at the Instance of the *States-General*, in pursuance of the said Treaty and Separate Articles, our most Gracious Lord and Sovereign, his most Excellent Majesty King *William* the Third, was invited to enter into the Alliance of the aforesaid Treaty, and into the Agreement of the said Separate Articles; and thereupon for restoring and preserving the Publick Peace and Quiet, did afterwards in the said Year of our Lord One Thousand Six Hundred Eighty Nine, enter into, and under the Great Seal of *England*, Accept, Approve and Ratify, and in the most solemn manner, Engage and Promise, Religiously and Inviolably to observe the same, without Violating the said Treaty or Separate Articles in any Article, or suffering the same, to the utmost of his Power to be Violated.

That in the Year of our Lord, One thousand six hundred ninety eight, a Treaty was projected and contrived in *France*, to be set on foot between his Majesty, the *French* King, and the *States-General*, for a Partition of the *Spanish* Monarchy, whereby many large Territories thereunto belonging, in case of the Decease of the King of *Spain*, without Issue, were to be allotted and delivered up to *France*.

The Tenor and Design of which last mentioned Treaty, whilst the same was in Negotiation, was communicated to the said *Charles* Lord *Halifax*, then one of the Commissioners for executing the Office of Lord High Treasurer, Chancellor of the Exchequer, and one of his Majesty's most Honourable Privy Council:

was lawful for him to do. In all which Proceedings nothing was done by him the said Lord, as he is advised, in violation of the Established Course and Constitution of the *Exchequer*, or to the Loss or Prejudice of his Majesty or the Publick; and saith, he does not know or believe, that the said several Offices, as they were executed, were in their Nature inconsistent with one another; and is very sure his Majesty or the Publick were no Ways prejudiced by the Execution of the same.

VI. To the Sixth Article the said Lord *Halifax* saith, That he believes, that in the Year 1689, such Treaty and Alliance, and Separate Article, were made between the Emperor of *Germany* and the *States-General* of the *United-Provinces*, (into which his Majesty and the late Queen entred) and such Ratifications thereof were made, as in this Article is mentioned; and also saith, he hath heard and believes, that in the Year of our Lord 1698, a Treaty was made to such Effect as in this Article is mentioned; and saith, he never saw the said Treaty, or heard the same read, or does as yet know the Articles or Agreement it contains; and denies that he ever advised his Majesty to enter into or make the said Treaty, or was ever consulted upon any Clause or Article thereof, or ever encouraged or promoted the same. And the said Lord saith, That as he remembers, Mr. Secretary *Vernon* did at one time send for him, and discourse with him and others, upon an Intimation that was given by a Letter from the Earl of *Portland*, as he remembers, that the *French* King was disposed to commence a Negotiation upon some general Terms that were then mentioned, to prevent a War, in case of the King of *Spain's* Death, who was then reported to be very ill; and afterwards the said Matter was discoursed between the Secretary, the then Lord Chancellor, and the said Lord *Halifax* at *Tunbridge-Wells*, when and where the said Lord *Halifax* made several Objections to the same; and denies that he gave any Opinion to encourage or promote the said Treaty, or ever afterwards was informed of any one Particular relating to it, or was ever Consulted or Advised upon any Clause or Article of it, or was ever after told or informed that the said Negotiation or Treaty did go on or proceed; and saith, That not being advised with, or any ways knowing of the said Treaty or Negotiation (except as aforesaid) he could not dissuade or obstruct its taking Effect; and saith, As he cannot tell what the Effects of the Treaty might have been, if the said Treaty had been observed, so he conceives and insisteth, that he is not, nor ought to be answerable for the same.

And having thus laid his Case before your Lordships, he humbly saith and insisteth upon it, That he is not Guilty of all or any the Matters by the said Articles charged, or in them specified, in Manner and Form, as the same are therein and thereby charged against him.

HALIFAX.

That the said *Charles Lord Halifax*, well knowing the most apparent evil Consequences, as well as the Injustice of the said Partition, did not, according to the Trust and Duty of his said several Offices, dissuade, or endeavour to obstruct its taking Effect; but on the contrary, having neither Regard to his Majesty's Honour, engaged by the above-mentioned Treaty with the Emperor, and the *States-General*, to the Trade and known Interest of these Kingdoms, or the Peace of *Europe*, did advise his Majesty to enter into the said Treaty, and did so far encourage and promote the same, that the said Treaty was concluded and ratified under the Great Seal of *England*; which said Treaty was evidently destructive of the Trade of this Realm, a Breach of the former Treaty made with the Emperor, in One thousand six hundred eighty nine, dishonourable to his Majesty, highly injurious to the Interest of the *Protestant* Religion, and manifestly tended to disturb the general Peace of *Europe*, by altering the Balance of Power therein, and strengthening *France* against the good Friends and ancient Allies of our Sovereign Lord the King.

And the said Knights, Citizens and Burgesses, by Protestation, saving to themselves the Liberty of exhibiting at any Time hereafter, any further Articles or other Accusation or Impeachment against the said Lord *Halifax*; and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proofs to all, and every the aforesaid Articles, and to all and every other Articles, Impeachment or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, That the said *Charles Lord Halifax* may be put to answer the said Crimes and Misdemeanors, and that such Proceedings, Examinations, Tryals, and Judgments, may be thereupon had and given, as is agreeable to Law and Justice.

After reading this Day the Articles of Impeachment brought up from the House of Commons against *Charles Lord Halifax*, and hearing his Lordship thereupon, who desired a Copy of the said Articles, and said he would put in his Answer so soon as possibly he could: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Halifax* may have a Copy of the Articles against him.

Ordered, That the Lords Committes (appointed to draw what was offered at the Free Conference) do inspect the Journals, as to what hath happened upon any Occasion, in relation to what past at a free Conference yesterday, and what hath been done thereupon, and Report to the House.

A Message was sent to the House of Commons by Sir *John Hoskins* and Dr. *Newton*, to acquaint them, "That upon the Occasion of their last Message yesterday, in order to continue a good Correspondence between the Two Houses, their Lordships did immediately appoint a Committee to state the Matters of the Free Conference, and also to inspect Precedents of what has happened of the like Nature: And that the publick Business may receive no Interruption, the Time desired by their Lordships for renewing the Free Conference being elapsed, their Lordships desire a present free Conference, in the Painted Chamber, upon the Subject-Matter of the last Free Conference.

A Message was brought from the House of Commons by the Lord *Cheney*, and others, (*Eodem Die*) to acquaint this House, viz. "That the Commons are extremely desirous to preserve a good Correspondence between the Two Houses, and to expedite the Tryals of the Impeached Lords; but conceive it is not consistent with the Honour of the House of Commons to renew the Free Conference, until they have received Reparation by your Lordships doing Justice upon *John Lord Haversham*, for the Indignity he yesterday offered to the House of Commons.

The Lord Steward reported from the Committee appointed to draw up what was offered at the Free Conference, viz.

That Mr. *Harcourt* opened the Conference, and argued first against the Reasons given by this House why they could not agree to a Committee of both Houses; but afterwards entred into a Debate against the Two Resolutions of this House relating to Impeachments depending, viz.

Resolved by the Lords Spiritual and Temporal in Parliament assembled, *Nemine Contradicente*, That no Lord of Parliament Impeached of High Crimes and Misdemeanors, and coming to his Tryal, shall, upon his Tryal, be without the Bar.

Resolved by the Lords Spiritual and Temporal in Parliament assembled, That no Lord of Parliament Impeached of High Crimes and Misdemeanors, can be precluded from voting on any Occasion, except in his own Tryal.

And in his Arguments he used this Expression, That he wished their Lordships had sent their Reasons as well as their Resolutions.

Sir *Bartholomew Shower* spoke next, in Pursuance of the Argument begun by Mr. *Harcourt*, against the aforesaid Resolutions; and in giving Reasons against the latter of the said Resolutions, amongst

other things did affirm, That such a Proceeding would be abhorrent from Justice.

In Answer to those Gentlemen, the Lord *Haversham* used some Arguments and Expressions which the Managers for the House of Commons took Exceptions at; but what those were the Committee cannot so charge their Memories as to give the House a particular Account of them; and the Lord *Haversham* being desired by the Committee to recollect what he had said, did inform their Lordships, That observing in the Free Conference several Things said by Mr. *Harcourt* and Sir *Bartholomew Shower*, that reflected on the Honour and Justice of this House, as he apprehended, and that he took to be Foreign to the Subject-Matter of the Free Conference, he thought it his Duty to take notice thereof; but in what Expressions, he hoped their Lordships would excuse him from giving a particular Account; but denies that he said several things contained in the Paper sent up by the House of Commons; but says, that he desired to be heard out, and that the Words he had spoken might be writ down; but the Managers for the Commons broke up abruptly.

The Lord *Haversham* this Day moved, that he may have a Copy of the Commons Charge against him, and

and Time to answer: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Haversham* shall have a Copy of the Charge against him, and do Answer thereunto; and that he shall have Council allowed him, in order to answer the Charge against him.

The Messengers sent to the House of Commons, return Answer, That the Commons will send an Answer by Messengers of their own.

A Message was brought from the House of Commons by the Lord *Cheney*, and others, to acquaint this House ----- See Page 543.

The House being moved, to insist not to have a Committee of both Houses, touching the Tryal of the Impeached Lords: And Debate thereupon:

The Question was put, Whether this House shall insist upon their Resolution, of not allowing a Committee of both Houses?

It was resolved in the Affirmative.

A Message was sent to the House of Commons by Sir *Robert Legard* and Dr. *Newton*, to acquaint them, "That the Lord *Sommers* having informed this House, That Sir *Stephen Fox*, *John Smith*, Esq; *William Lowndes*, Esq; *Stephen Harvey*, Esq; and *William Gulston*, Esq; Members of their House, may be material Witnesses for him at his Tryal on Tuesday next in *Westminster-Hall*, this House desires, That they may have Leave to attend, and give their Testimonies at the said Tryal; and that a Letter which his Majesty was pleased to write to him in One thousand six hundred ninety eight, being now in their House, will be necessary for his Defence at his Tryal; this House desires that the said Letter may be produced at the said Tryal.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That an humble Address be made to his Majesty from this House, That he will be pleased to give Order that the Original Treaties of Partition, of One Thousand Six Hundred Ninety Eight, and One Thousand Six Hundred Ninety Nine, and the Earl of *Portland's*, and Mr. Secretary *Vernon's* Letters relating thereunto, or Authentick Copies of them, may be laid before this House on Monday next, at Eleven of the Clock; and that the Lords with White-Staves attend his Majesty with this Address.

Die Lune 16^o Junij, 1701.

The Messengers sent on Saturday last to the House of Commons, to desire some of their Members may give Evidence for the Lord *Sommers* at his Tryal in *Westminster-Hall*, return Answer that they will send an Answer by Messengers of their own.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords with White Staves do humbly attend his Majesty from this House, to desire, that the Lord *Haversham* may have Liberty to Inspect the Treasury-Books, in relation to several Commissions from time to time renewed, and Grants of the Forfeited Estates in *Ireland*, which are necessary for him towards his Defence.

The Earl Marshal reported from the Lords Committees appointed to consider of the Methods and Preliminaries, in order to the Tryals of the Lords Impeached, viz.

That the Serjeant at Arms be continued in the House, to make Proclamations, which are to be made in the King's Name.

That the whole Body of the House of Peers shall meet in the House.

That being so met they shall go to Prayers as a House, and after Prayers they shall adjourn into *Westminster-Hall*.

That from this House the Lords shall go in this manner:

First the Clerks, then the Masters of the Chancery, then the Judges, the Gentleman Usher of the Black Rod, then the Lords two and two, the youngest Barons to go first, and so in Order according to their Precedency, *Quarter King* at Arms calling them in their due Places by a Lift, and when they come into *Westminster-Hall*, the Lords are to place themselves according to their Precedency in the House there, till all the Peers are placed.

That the Serjeant at Arms do go before the Lord-Keeper.

That in *Westminster-Hall* (the House sitting there) the other Ceremonies to be observed by Officers necessary to manage the said Tryal, be left to be performed according to the usual Methods of such Tryals.

That the Lord-Keeper ask Leave of the House for the Judges to be covered.

That Proclamation be made for keeping Silence.

That at the Tryal of the Impeached Lord, the Lower Barons Bench shall be removed, and a Stool set near the Bar where the said Lord is to sit Uncovered, as a Peer, but not in the Capacity of a Judge; and that he shall be admitted Council for his Defence.

That the Lord Great Chamberlain be ordered to take care that the Places behind the Lords be kept for Peereffes and their Daughters; and that his Majesty's Surveyor be required to view the Court and Scaffold in *Westminster-Hall*, and see that they be strong and firm.

A Message was sent to the House of Commons by Sir *John Franklyn* and Sir *Richard Holford*, to acquaint them, "That the Lords taking into their Care the Ordering of the Tryal of *John Lord Sommers* on Tuesday the Seventeenth of June Instant, at Ten of the Clock in the Forenoon, in *Westminster-Hall*, have prepared some Notes and Rules to be observed at the said Tryal, which the Lords have thought fit to communicate to them, as follows, viz.

That the whole Impeachment is to be read, and then the Answer; which being done, the Lord Keeper is to tell the Commons, That now they may go on with their Evidence.

Then the Lord Keeper is to declare, That now the Court is proceeding to hear the Evidence, and desire the Peers to give Attention.

If any of the Peers, or the Members of the House of Commons that manage the Evidence, or the Lord Impeached, do desire to have any Question asked, they must desire the Lord Keeper to ask the same.

If any Doubt doth arise at the Tryal, no Debate is to be in the Court, but the Question suspended to be debated in this House.

The Members of the House of Commons to be there before the Peers come.

None to be covered at the Tryal but the Peers.

That such Peers at the Tryal of the impeached Lord, who at the Instance of the said Lord or of the Commons, shall be admitted Witnesses, are to be sworn at the Clerks Table, and the Lord Keeper to administer the Oath, and to deliver their Evidence in their own Places.

Those Witnesses that are Commoners are to be sworn at the Bar by the Clerk, and are to deliver their Evidence there.

The Oath to be: The Evidence which you shall give upon the Impeachment of

shall

shall be the Truth, the whole Truth, and nothing but the Truth; to help you God and the Contents of this Book.

The Impeached Lords may cross examine Witnesses, viva voce.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords with White Staves do humbly move his Majesty, from this House, that he will be pleased to give Order, that such Guards do attend at the Tryal of the Lord *Sommers* To-morrow in *Westminster-Hall*, as has been usual in such Cases.

Sir *Christopher Wren* being come, he was called in---says, The Court is made like this House, and a Place for the Commons: He was told, he must take away the lowest Form, and a Stool must be set within the Bar, for the Lord to be Tried.

Ordered by the Lords Spiritual and Temporal in Parliament assembled, That all the Lords be summoned to attend this House, in their Robes, To-morrow at Nine of the Clock, otherwise to incur the utmost Displeasure of this House.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord Great Chamberlain be desired to take Care, and give Order, That the Place for the House of Commons in *Westminster-Hall* be kept clear for the Commons only, and also that a Place be made for the Managers of the Commons.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Mr. Serjeant *Prat*, shall be, and he is hereby assigned Council for the Lord *Sommers* at his Tryal upon the Articles of Impeachment against him.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Sir *John Talbot*, Sir *Edmund Harrison*, *Robert Tard*, *John Ellis*, *John Tucker*, *Leonard Hancock*, Esqs; *John Tench*, and *William Popple Jun.* Gent. do, and they are hereby required to attend this House To-morrow at Ten

A Message was brought from the House of Commons by the Earl of *Dyset* and others, (the 17th of *June*;) to acquaint this House, "That the Commons, in this whole Proceeding against the Impeached Lords, have acted with all imaginable Zeal to bring them to a speedy Tryal; and they doubt not but 'twill appear, by comparing their Proceedings with all others upon the like Occasion, That the House of Commons have nothing to blame themselves for, but that they have not expressed the *Repentment* *THEIR ANCESTORS* have justly shewed upon much less Attempts which have been made upon their Power of Impeachments.

"The Commons on the 31st of *May*, acquainted your Lordships, that they thought it proper from the Nature of the Evidence, to proceed in the first Place upon the Tryal of the Lord *Sommers*. Upon the first Intimation from your Lordships some Days afterwards, That you would proceed to the Tryal of any of the Impeached Lords, whom the Commons should be first ready to begin with; notwithstanding your Lordships had before thought fit to appoint which Impeachment should be first tried, and affix a Day for such Tryal, without consulting the Commons, who are the Prosecutors:

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of the Clock in the Forenoon, as Witnesses on the behalf of *John Lord Sommers*.

The Messengers sent to the House of Commons, return Answer, That they have delivered their Message.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to acquaint them, That the Lords in Order to keep a good Correspondence between the Two Houses, and to put the Charge against *John Lord Haversham* in a Course of Justice, have Ordered (at his Lordship's Motion) his Lordship a Copy of the Charge against him, and that he do put in his Answer thereunto, in order to bring that Matter to a speedy Judgment.

The Lord *Halifax* delivered in his Answer to the Articles of Impeachment of the House of Commons against him, which was read by the Clerk. See Page 538.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to carry down a Copy of the said Answer; and to acquaint them, That they having on the First Day of April last sent up to their Lordships an Impeachment against *William Earl of Portland*, for High Crimes and Misdemeanors; and there being as yet no particular Articles exhibited against him, their Lordships think themselves oblig'd to put them in mind thereof.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *Henry Baldwyn*, *Samuel Baldwyn*, *Thomas Engeham*, *George Liddell*, *Charles Saunderson*, *Edward Hayman*, *John Mum*, *Benjamin Baldwyn*, *Reginald Marriot*, and *John Digby*, do, and they are hereby required to attend this House To-morrow at Ten of the Clock, as Witnesses on the behalf of *John Lord Sommers*.

Die Martis, 17^o Junij, 1701.

The Lord *Wharton* reported his Majesty's Answer to the Address in relation to the Original Treaties, viz.

That his Majesty would do what he could towards it; and that he had not the Original Papers.

As to the Address for Guards, his Majesty hath complied with it, and given Order for them accordingly.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Lacon William Child*, (on the 20th Instant) to acquaint them, "That the Lords in Answer to the Message of the Commons of the Seventeenth Instant, say, the only true way of determining which of the Two Houses has acted with the greatest Sincerity, in order to bring the Impeached Lords to their Tryals, is to look back upon the respective Proceedings.

"The Lords do not well understand what the Commons mean by that Repentment which they speak of in their Message. Their Lordships own the House of Commons have a Right of Impeaching: And the Lords have the undoubted Power of doing Justice upon those Impeachments, by bringing them to Tryal, and condemning or acquitting the Parties in a reasonable Time: This Power is derived to them from their Ancestors, which they will not suffer to be wrested from them by any Pretences whatsoever.

"Their Lordships cannot but wonder, that the Commons should not have proposed a Committee of both Houses much sooner, if they thought it so necessary for the bringing on the Tryals; no mention being made of such a Committee from the First of April to the Sixth of June, although during that Interval their

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" The Commons determining to expedite the Tryals to the utmost of their Power, in hopes of attaining that End, and for the more speedy and easy adjusting and preventing any Differences which had happened, or might arise, previous to or upon these Tryals, proposed to your Lordships at a Conference, the most Parliamentary and Effectual Method for that Purpose, and that which in no manner intrenched upon your Lordships Judicature, That a Committee of both Houses should be nominated to consider of the most proper Ways and Methods of Proceedings upon Impeachments according to the Usage of Parliament.

" In the next Message to the Commons upon Monday the 9th of June, your Lordships thought fit, without taking the least Notice of this Proposition, to appoint the Friday then following, for the Tryal of the said Lord *Sommers*; whereunto, as well as to many other Messages and Proceedings of your Lordships upon this Occasion, the House of Commons might have justly taken very great Exceptions; yet, as an Evidence of their Moderation, and to shew their Readiness to bring the Impeached Lords to speedy Justice, the Commons insisted only on their Proposition for a Committee of both Houses, to settle and Adjust the necessary Preliminaries to the Tryal; particularly, Whether the Impeached Lords should appear on their Tryal at your Lordships Bar as Criminals: Whether being under Accusations of the same Crimes, they should sit as Judges on each others Tryal for those Crimes, or should Vote in their own Cases, as 'tis notorious they have been permitted by your Lordships to do in many Instances which might be given: To which Particulars your Lordships have not yet given a direct Answer, though put in Mind thereof by the Commons.

" Your Lordships, at a Conference, having offered some Reasons why you could not agree to a Committee of both Houses, to adjust the necessary Preliminaries, the Commons thereupon desired a Free-Conference, and your Lordships agreed thereunto; at which 'tis well known to many of your Lordships, who were then present, what most scandalous Reproaches and false Expressions, highly reflecting upon the Honour and Justice of the House of Commons, were uttered by *John Lord Haverham*, whereby the Commons were under a necessity of withdrawing from the said Free-Conference: for which Offence the Commons have, with all due regard to your Lordships, prayed your Lordships Justice against the Lord *Haverham*, but have as yet received no manner of Satisfaction.

" The Commons restrain themselves from enumerating your Lordships very many Irregular and unparliamentary Proceedings upon this Occasion; but think it is what they owe to Publick Justice, and all the Commons of *England*, whom they represent, to declare some few of those Reasons, why they peremptorily refuse to proceed to the Tryal of the Lord *Sommers* on the 17th of June.

" First, Because your Lordships have not yet agreed, that a Committee of both Houses should be appointed for settling the necessary Preliminaries; a Method never until this time denied by the House of Lords, whensoever the Commons have thought it necessary to desire the same.

" Secondly, Should the Commons (which they never will do) be contented to give up those Rights which have been transmitted to them from THEIR ANCESTORS, and are of absolute necessity to their Proceedings on Impeachments; yet whilst they have any Regard to Publick Justice, they never can appear as Prosecutors before your Lordships, till your Lordships have first given them Satisfaction, that Lords Impeached of the same Crimes shall not sit as Judges on each others Tryals for those Crimes.

" Thirdly, Because the Commons have, as yet, received no Reparation for the great Indignity offered to them at the Free-Conference by the Lord *Haverham*. The Commons are far from any Inclination, and cannot be supposed to be under any necessity of delaying the Tryal of the Lord *Sommers*: There is not any Article exhibited by them in maintenance of their Impeachment against the Lord *Sommers*, for the Proof whereof they have not full and undeniable Evidence, which they will be ready to produce as soon as your Lordships shall have done Justice upon the Lord *Haverham*; and the necessary Preliminaries, in order to the said Tryal, shall be settled by a Committee of both Houses.

" The Commons think it unnecessary to observe to your Lordships, that most of the Articles whereof the Lord *Sommers* stands Impeached, will appear to your Lordships to be undoubtedly true, from Mat-
ters

" Delays were frequently complained of by the House of Lords.

" The Manner in which the Commons demand this Committee, the Lords look upon as a direct invading of their Judicature; and therefore, as there never was a Committee of both Houses yielded to by the Lords in case of any Impeachment for High Crimes and Misdemeanors; so their Lordships do insist, that they will make no new Precedent upon this Occasion. Many Impeachments for Misdemeanors have in all times been determined without such a Committee: And if now the Commons think fit, by an unprecedented Demand, to form an Excuse for not prosecuting their Impeachments, it is demonstrable where the Obstruction lies.

" As to the Preliminaries which the Commons mention in particular, as proper to be settled at such a Committee, they have received the Resolutions of the House of Lords therein by their Message of the Twelfth Instant; from which (being Matters relating entirely to their Judicature) their Lordships cannot depart.

" As to the last Pretence the Commons would make to shelter the delaying the Tryals, from some Expressions which fell from the Lord *Haverham* at the Free-Conference, at which Offence was taken; their Lordships will only observe,

" First, That they have omitted nothing which might give the Commons all reasonable Satisfaction, of their Purpose to do them Justice in that Matter, so far as is consistent with doing Justice to that Lord; and also to preserve all good Correspondence with them, as appears by the several Steps they have taken.

" Secondly, That this Business has no Relation to the Tryals of the Impeached Lords: And therefore their Lordships cannot imagine why the Commons should make Satisfaction and Reparation against the Lord *Haverham*, a necessary Condition for the going on with the Tryals, and at the same time find no Difficulty in proceeding on other Business.

ters of Record, as well as by the Confession of the said Lord *Sommers*, in his Answer to the said Articles; to which the Commons doubt not but your Lordships will have a due Regard when his Tryal shall regularly proceed.

The House being moved to go into *Westminster-Hall*, in order to the Tryal of the Lord *Sommers*:

After Debate this Question was put, Whether this House shall go this Day into the Court in *Westminster-Hall*, in order to proceed upon the Tryal of the Lord *Sommers*, according to the Order of the Day?

It was resolved in the Affirmative.

A Message was sent to the House of Commons by Mr. Baron *Tracy*, and Mr. Baron *Berry*, to acquaint them, that the Lords intend presently to proceed to the Tryal of *John Lord Sommers* in *Westminster-Hall*.

The Messengers being returned acquainted the House, that the Commons were adjourned.

Then this Question was proposed, Whether the Earl of *Orford*, and Lord *Halifax* may withdraw at the Tryal of the Lord *Sommers*?

Then this previous Question was put, Whether this Question shall be now put?

It was resolved in the Affirmative.

Then the Main Question was put, Whether the Earl of *Orford*, and Lord *Halifax* shall have Leave to withdraw at the Tryal of the Lord *Sommers*?

It was Resolved in the Affirmative.

Then the Lord-Keeper desired, that some further Directions be given to him in order to the Tryal in the Hall; and thereupon it was proposed that this Proclamation be made in the Hall, viz.

Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of Themselves, and all the Commons of England, against John Lord Sommers; all Persons concerned are to take notice, that he now stands upon his Tryal, and they may now come forth in order to make good the said Charge.

After Debate the Question was put, Whether this Proclamation shall be made.

It was resolved in the Affirmative.

Ordered, That the said Proclamation be made in the Hall before the reading the Articles of Impeachment, and the Lord *Sommers* Answer; and also after they are read.

Ordered, That the Court in *Westminster-Hall* be cleared for the Lords.

Then the House adjourned to *Westminster-Hall*, and the Lords were called by the Herald, and went as Ordered; and being Seated in the Hall the House was resumed.

Then Proclamation was made for Silence, as follows:

Our Sovereign Lord the King, strictly Charges and Commands all manner of Persons to keep Silence, upon pain of Imprisonment.

Then the Lord-Keeper asked Leave for the Judges to be Covered; which was agreed to.

Then Proclamation, as Ordered, was made.

After which, the Articles against *John Lord Sommers* were Read, and also his Lordship's Answer to them.

After which the same Proclamation was again made.

Then the Lord-Keeper declared the House was ready to hear the Evidence against *John Lord Sommers*, and therefore desired the Lords to give Attention.

The Lord *Sommers* moved to have his Council heard.

Whereupon the House adjourned to the House above, and went back in the same manner as they came down, and being there the House was resumed.

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The House being moved to acquit the Lord *Sommers*; and after long Debate, and hearing the Judges to several Questions asked them by the Lords; This Question was proposed,

That *John Lord Sommers* be acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all things therein contained, and that the said Impeachment be dismissed.

Then this Question was put, Whether the Question now Stated, shall be put in the Court below.

It was Resolved in the Affirmative.

Then it was agreed and ordered, That in *Westminster-Hall* the Lord Keeper shall read the Question, and then call the Junior Baron present first, and ask every Lord, Whether *Content*, or *Not Content*, and that every Lord stand up when called to, and give his Vote *Content*, or *Not Content*; and that the Lord-Keeper, having taken their Votes, declare the Majority; and if the Majority be for Acquitting the Lord *Sommers*, the Lord-Keeper is to declare it so, and particularly to the Lord *Sommers*.

Then the House adjourned again to *Westminster-Hall*, and the Lords went in the same manner as before; and being come there, the House was Resumed, and Proclamation was made for Silence.

The Lord-Keeper put the Question as follows,

That *John Lord Sommers* be Acquitted of the Articles of Impeachment against him, Exhibited by the House of Commons, and all Things therein contained, and that the said Impeachment be dismissed.

Then the Lord-Keeper asked every Lord, Whether *Content*, or *Not*.

Lord <i>Haversham</i>	Content.
Lord <i>Herbert</i>	Content.
Lord <i>Jeffreys</i>	Not Cont.
Lord <i>Godolphin</i>	Not Cont.
Lord <i>Guilford</i>	Not Cont.
Lord <i>Dartmouth</i>	Not Cont.
Lord <i>Ossulston</i>	Content.
Lord <i>Osborne</i>	Content.
Lord <i>Cornwallis</i>	Content.
Lord <i>Granville</i>	Content.
Lord <i>Berkely</i>	Content.
Lord <i>Lexington</i>	Not Cont.
Lord <i>Rockingham</i>	Content.
Lord <i>Lucas</i>	Content.
Lord <i>Colepeper</i>	Content.
Lord <i>Byron</i>	Content.
Lord <i>Fermyn</i>	Not Cont.
Lord <i>Mobun</i>	Content.
Lord <i>Howard Esc.</i>	Not Cont.
Lord <i>Lovelace</i>	Content.
Lord <i>Hunsdon</i>	Not Cont.
Lord <i>North</i>	Content.
Lord <i>Wharton</i>	Content.
Lord <i>Eure</i>	Content.
Lord <i>Fitzwalter</i>	Content.
Lord <i>Lawarn</i>	Not Cont.
Lord <i>Bergevenny</i>	Content.
Lord Bishop of <i>Chichester</i>	Content.
Lord Bishop of <i>Lincoln</i>	Content.
Lord Bishop of <i>St. Asaph</i>	Content.
Lord Bishop of <i>Bristol</i>	Content.
Lord Bishop of <i>Gloucester</i>	Content.
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Lord Bishop of <i>Peterborough</i>	Content.	Marquis of <i>Normanby</i>	Not Cont.
Lord Bishop of <i>Norwich</i>	Content.	Duke of <i>Newcastle</i>	Content.
Lord Bishop of <i>Coventry and Litchfield</i>	Content.	Duke of <i>Schomberg</i>	Content.
Lord Bishop of <i>Ely</i>	Content.	Duke of <i>Bolton</i>	Content.
Lord Bishop of <i>Bangor</i>	Content.	Duke of <i>St. Albans</i>	Content.
Lord Bishop of <i>Sarum</i>	Content.	Duke of <i>Northumberland</i>	Not Cont.
Lord Bishop of <i>Exeter</i>	Not Cont.	Duke of <i>Somerset</i>	Not Cont.
Lord Bishop of <i>Rochester</i>	Not Cont.	Lord Steward	Content.
Lord Bishop of <i>London</i>	Not Cont.	Lord Privy-Seal	Content.
Lord Visc. <i>Weymouth</i>	Not Cont.	Lord Archbishop of <i>Canterbury</i>	Content.
Lord Visc. <i>Say and Seale</i>	Content.		
Earl of <i>Rochford</i>	Content.		
Earl of <i>Romney</i>	Content.		
Earl of <i>Warrington</i>	Not Cont.		
Earl of <i>Scarborough</i>	Content.		
Earl of <i>Marlborough</i>	Not Cont.		
Earl of <i>Montague</i>	Content.		
Earl of <i>Portland</i>	Content.		
Earl of <i>Phymouth</i>	Not Cont.		
Earl of <i>Abingdon</i>	Not Cont.		
Earl of <i>Rochester</i>	Not Cont.		
Earl of <i>Nottingham</i>	Not Cont.		
Earl of <i>Berkley</i>	Content.		
Earl of <i>Radnor</i>	Content.		
Earl of <i>Maclesfield</i>	Content.		
Earl of <i>Feversham</i>	Not Cont.		
Earl of <i>Shaftsbury</i>	Content.		
Earl of <i>Burlington</i>	Content.		
Earl of <i>Bath</i>	Content.		
Earl of <i>Essex</i>	Content.		
Earl of <i>Scarfsdale</i>	Not Cont.		
Earl of <i>Thanet</i>	Not Cont.		
Earl of <i>Carnarvon</i>	Not Cont.		
Earl of <i>Kingston</i>	Content.		
Earl of <i>Stamford</i>	Content.		
Earl of <i>Peterborough</i>	Not Cont.		
Earl of <i>Rivers</i>	Content.		
Earl of <i>Denbigh</i>	Not Cont.		
Earl of <i>Dorset</i>	Content.		
Earl of <i>Suffolk</i>	Content.		
Earl of <i>Huntingdon</i>	Content.		
Earl of <i>Derby</i>	Not Cont.		
Earl of <i>Oxford</i>	Not Cont.		
Lord Chamberlain	Not Cont.		
Earl Marshal	Content.		
Lord Great Chamberlain	Not Cont.		

A Message was sent to the House of Commons by Sir John Francklyn, and Dr. Edisbury, to acquaint them, That this House hath appointed Monday, the Three and Twentieth Day of this Instant June, for the Tryal of Edward Earl of Orford, in Westminster-Hall, at Ten a-Clock.

Die Jovis 19^o Junij, 1701.

The House being moved, That an Answer be drawn to the Message received from the House of Commons the Seventeenth Instant, it is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Committee appointed to consider of the Manner of Proceeding on Impeachments, do withdraw presently, to draw an Answer to the said Message.

Then the House was adjourned during Pleasure.

The Lord-Keeper declared the Majority was for Acquitting; and then declared,

That John Lord Sommers was Acquitted of the Articles of Impeachment against him Exhibited by the House of Commons, and all Things therein contained, and that the said Impeachment was dismissed.

And also declared to the Lord Sommers, That he was Acquitted.

Then the House adjourned to the House above; and being come thither, the House was resumed, and the following Order made:

It is Considered, Ordered, and Adjudged by the Lords Spiritual and Temporal in Parliament assembled, That John Lord Sommers shall be, and he is hereby Acquitted of the Articles of Impeachment against him Exhibited by the House of Commons, and all Things therein contained; and that the said Impeachment shall be, and is hereby dismissed.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Proceedings in this House upon the Impeachments be printed; and that the Lords Committees appointed to consider of the Manner of Proceeding on Impeachments, do meet To-morrow at Ten a-Clock, and inspect the Journals, and draw up the Matter relating thereunto, in Order to be printed, and report to the House.

Die Mercurij 18^o Junij, 1701.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That this House will proceed to the Tryal of Edward Earl of Orford, on Monday the Three and Twentieth Day of this Instant June, at Ten of the Clock in the Forenoon, in Westminster-Hall.

A Message from the House of Commons by the Lord Mordant and others (on June the 20th) to acquaint this House, That in Answer to the Message of the Lords, appointing Monday next for the Tryal of the Earl of Orford, that the Lords have been acquainted, That the Commons would proceed, in the first place, against the Lord Sommers; and they are ready to go to that Lord's Tryal, as soon as ever the Commons have received Satisfaction for the Affront offer'd to the House of Commons by the Lord Haverham at the Free Conference, and that the necessary Preliminaries are adjusted by a Committee of both Houses.

and the Lords went to the Committee; which being ended,

The House was resumed, and the Earl of Stamford reported what they had drawn in Answer to the Message received from the House of Commons the Seventeenth Instant, which was read, and agreed to.

A Message was sent to the House of Commons by Sir John Francklyn, and Sir Lacon William Child.

See Page 545.

This.

This Day *John Lord Haversham* delivered his Answer to the Charge of the House of Commons Exhibited against him the Thirteenth Instant; which was read by the Clerk, as follows, *viz.*

The ANSWER of John Lord Haversham to the Charge Exhibited against him by the Commons, for Words spoken at a Free Conference, on the Thirteenth Day of this Instant June, One Thousand Seven Hundred and One.

THE said Lord *Haversham*, saving to himself all Advantages of Exception to the said Charge, and of not being prejudiced by any want of Form in this his Answer; and also saving to himself all Rights and Privileges belonging to him, as one of the Peers of this Realm; for Answer to the said Charge, saith, That on the Sixth Day of *June*, One Thousand Seven Hundred and One, the Commons, by a Message sent to the Lords, desired a Conference upon their Message to the Commons of the Fourth of *June*: In which Conference they proposed to the Lords, That a Committee of both Houses might be nominated, to consider of the most proper Ways and Methods of proceeding on the Impeachments of the Lords, according to the Usage of Parliament. That on the Tenth of *June*, the Lords desired another Conference with the Commons; in which they delivered them their Reasons, why they could not agree to the appointing of such Committee, (*viz.*) *First*, That they could not find that ever such a Committee was appointed on Occasion of Impeachments for Misdemeanors; and their Obligation to be cautious in admitting any Thing new in Matters relating to Judicature. *Secondly*, That although a Committee of this Nature was agreed to; upon the Impeachments of the Earl of *Danby*, and the Five Popish Lords for High-Treason; yet the Success, in that Instance, was not such as should encourage the pursuing the same Method, though in the like Case: And that after much Time spent at that Committee; the Disputes were so far from being there adjusted, that they occasioned the abrupt Conclusion of a Session of Parliament. *Thirdly*, That the Method of Proceedings on Impeachments for Misdemeanors, are so well settled by the Usage of Parliament, that no Difficulties were likely to happen, nor none had been stated to them: And that all the Preliminaries in the Case of *Stephen Goudett*, and others, (which was the last Instance of Impeachments for Misdemeanors) were easily settled and agreed to, without any such Committee. *Fourthly*, That the Proposal of the Commons came so very late, that no other Fruit could be expected of such a Committee, but the preventing of the Tryals during this Session: Whereupon the Commons, on the Twelfth of *June*, desired of the Lords a Free Conference, on the Subject-Matter of the last Conference. That the Lords, on the said Twelfth of *June*, came to Two Resolutions in relation to the Lords Impeached: *First*, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Tryal, shall, upon his Tryal, be without the Bar. *Secondly*, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting on any Occasion, except in his own Tryal. And by Messengers of their own, the Lords acquainted the Commons with the said Two Resolutions, and also that they agreed to a Free Conference with the Commons, and appointed the next Day. That upon the Thirteenth of *June*,

Mr. Harcourt, one of the Managers, began the Free Conference on the Part of the Commons, and argued upon the Four Reasons given by the Lords, why they could not agree to the appointing a Committee of both Houses; and principally relied upon the Instance in the Case of the Popish Lords; and insisted upon the Delay, that the not agreeing to the Nomination of such a Committee would necessarily occasion, whereby the Lords Tryals, and the Justice due to the Nation, would be retarded. And departing from the Subject-Matter of the said Conference, (which was, whether it were requisite to appoint or not appoint such a Committee) the said Manager discoursed upon the latter of the Two Resolutions of the Lords communicated to the Commons, and said, *That he wished the Lords had sent down their Reasons, as well as their Resolutions*: Which Words seemed to the said Lord *Haversham*, to carry therein an Implication as if the said Resolution could have no Reason to justify it. That *Sir Bartholomew Shower*, another Manager for the Commons, observed the same Method of Discourse: And having argued upon the Lords Reasons, departed from the Subject-Matter of the Free Conference; and inveighing against the Manner of the Lords Judicature asserted by their Resolutions, said, *That it was abhorrent to Justice*. Which Expressions being foreign (as the said Lord *Haversham* apprehended) to the Subject-Matter of the said Free Conference, which was, Whether such Committee of both Houses should be appointed or not? the said Lord being appointed by the Lords for one of the Managers of the said Free Conference on their Behalf, in Vindication of the Honour and Justice of the House of Peers, and of their Judicature and Resolutions, in Answer to what had been said by the Managers for the Commons, he spoke to the Effect following:

Gentlemen, I shall begin what I have to say, as that worthy Member who opened this Conference, That there is nothing the Lords more desire that to keep a good Correspondence, which is so necessary to the Safety of the Nation, and the Dispatch of publick Business; and nothing they have more carefully avoided, than what might create a Misunderstanding between the Two Houses. A greater Instance of which could not be given, than the Messages my Lords returned to some the Commons had sent them up; in which they took care to express themselves so cautiously, that no Heat might arise from any Expression of theirs. And as to what the worthy Members mentioned, in relation to Delay, the repeated Remembrances sent the Commons, with relation to the sending up the Articles against the Impeached Lords, are a sufficient Instance how desirous they are that these Matters should proceed. And the Lords have this Satisfaction, that it is not on their Part that the Tryals are not in a greater Forwardness; they cannot but look upon it as a great Hardship that any should lie under long Delays on Impeachments. Persons may be incapable; Facts may be forgotten; Evidences may be laid out of the way; Witnesses may dye; and many the like Accidents may happen. The Instance the worthy Members give of the Popish Lords, as it is a Crime of another Nature, and not fully to the Point, so it seems to make against what it was brought for: For the worthy Members say there was but One of the Lords brought to Justice, though Four more (as I take it) were Accused. And can any Man believe that the Commons have a Mind to bring

“ only

“ only One of these Lords to Tryal? It is inconsistent with the Opinion that every Body must have of their Justice. And as to the Point of Judicature, it were very hard upon the Lords, that no Person should be brought to Tryal, till the Judicature of the House be so first. The Judicature of the Lords is their Peculiar, and hath, in former Ages, been Sacred with the Commons themselves. And this House perhaps hath as much Reason to be jealous and careful of it, as any other House ever had; especially when one single Precedent is so urged and insisted upon. One Thing there is, which a Worthy Member mentioned, though I cannot speak to it at large, because I think my self bound up by the Resolutions of the House; yet it must have some Answer; (that is) As to the Lords Voting in their own Case; it requires an Answer, though I cannot enter into the Debate of it. The Commons themselves have made this Precedent; for in these Impeachments they have allowed Men, equally concerned in the same Facts, to Vote in their own House: And we have not made the Distinction in ours, that some should Vote, and some not. The Lords have so high an Opinion of the Justice of the House of Commons, that they believe Justice shall never be made use of as a Mask for any Design. And therefore give me Leave to say, though I am not to argue it, 'Tis to me a plain Demonstration, that the Commons think these Lords innocent; and I think the Proposition is undeniable: For when there are several Lords in the same Circumstances, in the same Facts, there is no Distinction; and the Commons leave some of these Men, at the Head of Affairs, near the King's Person, to do any Mischief, if they were inclinable to it; it looks as if they thought them all innocent. This is a Thing I was in hopes I should never have heard asserted, when the Beginning of it was from the House of Commons.

The said Lord being here interrupted, he desired to be heard out, and that his Words might be taken down in Writing. But the Managers for the Commons broke up, and departed, refusing to hear any Explanation. Now the said Lord, as to any implicit Charge of a Design to reflect on, or dishonour the House of Commons, denies any such Design or Intention, having for many Years had the Honour to sit in the House of Commons, and having ever had an honourable and respectful Sense thereof: But the said Lord was led to express himself in the manner aforesaid, for the Reasons aforesaid, and takes himself to be justified therein, by the Facts and Reasons following.

That the Nature of that Conference was, That it should be free: The Occasion of it, Because either House apprehended the other to be in an Error: And the End of it, That each Side may urge such Facts as are true, and such Reasons as are forcible to convince. That one Article of the Impeachment against *John Lord Sommers* was, That the Treaty of Partition, of One Thousand Six Hundred Ninety Nine, was ratified under the Great Seal, which then was in the Custody of the same Lord, then Lord Chancellor of *England*. That the Commons, on the First of *April*, One Thousand Seven Hundred and One, resolved, That the Earl of *Portland*, by negotiating and concluding the Treaty of Partition, was guilty of a High Crime and Misdemeanor, and pursuant thereto, lodged an Impeachment against him in the House of Peers: Which Vote and Impeachment could not have Reference to any Treaty, other

than the Treaty of Partition of One Thousand Six Hundred Ninety Nine; the Treaty of One Thousand Six Hundred Ninety Eight, not being before the House of Commons till after the Time of that Vote and Impeachment; and yet the Earl of *Fersey*, who then was Secretary of State, and a Privy-Counsellor, and actually Signed the said Treaty of One Thousand Six Hundred Ninety Nine, as a Plenipotentiary with the Lord *Portland*, stands Unimpeached, and continues at the Head of Affairs, being Lord-Chamberlain, near his Majesty's Person, and in his Presence and Councils (without Complaint.) That the Earl of *Orford*, and the Lords *Sommers* and *Halifax*, are severally Impeached for advising the Treaty of Partition of One Thousand Six Hundred Ninety Eight; and yet Mr. Secretary *Vernon*, who then was Secretary of State, and a Privy-Counsellor, and acted in the promoting of the Treaty of Partition of One Thousand Six Hundred Ninety Eight, stands Unimpeached, and still continues one of the Principal Secretaries of State: And Sir *Joseph Williamson*, who then was a Privy-Counsellor, and transacted and Signed the Treaty of Partition of One Thousand Six Hundred Ninety Eight, as a Plenipotentiary, stands Unimpeached. That the Lord *Halifax* is Impeached, for that he, being a Commissioner of the Treasury, assented to the passing of divers Grants from the Crown, to several Persons, of Lands in *Ireland*; and yet Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, who being severally Lords Commissioners of the Treasury, did severally assent to the passing of divers like Grants from his Majesty of Lands in *Ireland*, stand Unimpeached. That in the Impeachments against the Earl of *Orford* and Lord *Sommers*, one of the Articles against them is for procuring a Commission to Captain *William Kidd*; and likewise a Grant under the Great Seal, of the Ships and Goods of certain Persons therein named, to certain Persons in Trust for them; and yet other Lords, equally concerned in procuring the said Commission and Grant, stand Unimpeached. That the said Mr. Secretary *Vernon*, Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, notwithstanding their being Parties in the same Facts charged in the said respective Impeachments, have been permitted to Sit and Vote in the House of Commons touching the said Impeachments, and the Matters thereof. That these Facts being true and publicly known, the Consequences resulting therefrom (as the said Lord *Haversham* apprehended) are undeniable, (*viz.*) That the doing of the same Thing by Two Persons in equal Circumstances, cannot be a Crime in one, and not in the other. That the Commons had no Reason to insist, That the Lords should not permit that in their Members, which the Commons had first permitted, and continued to permit, and so begun the first Precedent in their own Members. That it must be thought, that the Impeached Lords (notwithstanding the Facts alledged in the Impeachments) are innocent of Danger to the King, when the Lord *Fersey* and Mr. Secretary *Vernon*, who are respectively concerned in the Partition-Treaties, are permitted, without Complaint, to be at the Head of Affairs, and in the King's Presence, and of his Councils, as not dangerous: That the Word *Innocent*, used in the Words spoken by the said Lord *Haversham*, can extend no farther than to such Matters as were done by the Impeached Lords, of the same Nature with what was done by those Unimpeached. All which Facts being true, and the Consequences obvious, the said Lord being ready to prove the same; he insists, That

That the Words spoken by him at the said Free Conference, were not scandalous or reproachful, nor false or reflecting on the Honour or Justice of the House of Commons, but were spoken upon a just occasion given, in answer to several Expressions that fell from the Managers for the Commons, remote (as he conceives) from the Matter in Question, and reflecting on the Honour and Justice of the House of Peers, and in Maintenance and Defence of the Lords Resolution and Judicature, and conformable to the Duty he owes to the said House. And the said Lord humbly demands the Judgment of this Honourable House therein. And the said Lord *Haversham* denies, That he spoke the Words specified in the said Charge, in such Manner and Form as the same are therein set down. And having thus given a true Account of this Matter, and it being true and indisputable, That some Lords in this House, equally concerned in Facts, for which other Lords are Impeached by the House of Commons, are still near the King's Person, in the greatest Places of Trust, and Honour, and unimpeached; and also, That several Members of the House of Commons, equally concerned in the same Facts, for which some of the Lords are Impeached, do however remain unimpeached: The said Lord thinks such a Truth could never have been more properly spoken, in the Maintenance and Defence of your Lordships Judicature and Resolutions. And insisteth, That what he said at the Free Conference was not any scandalous Reproach, or false Expression, or any ways tended to make a Breach in the good Correspondence between the Lords and Commons; or to the interrupting the Publick Justice of the Nation, by delaying the Proceedings on the Impeachments; as in the said Charge alledged, but agreeable to Truth, in Discharge of his Duty, and in the Defence of the undoubted Right and Judicature of this House.

H A V E R S H A M.

Ordered, That a Copy of the Lord *Haversham's* Answer be sent to the House of Commons.

Then a Message was sent to the House of Commons, by Sir *John Francklyn* and Sir *Lacon William Child*, to carry down a Copy of the above said Answer.

Die Veneris 20^o Junij. 1701.

A Message from the House of Commons by the Lord *Mordant* and others. See Page 548.

Ordered, That the Committee appointed to consider of the manner of Proceedings on Impeachments, do meet presently and draw an Answer to this Message.

The Earl of *Stamford* reported from the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, the Answer drawn by them, in Answer to the Commons Message this Day; which was read and agreed to as follows:

A Message was sent to the House of Commons by Mr. *Gery* and Dr. *Newton*, to acquaint them, That in Answer to the Message of the House of Commons of this Day, the Lords do acquaint the Commons, That they might have known by the Records of the House of Lords, That the Lords have proceeded to the Tryal of the Lord *Sommers*, on *Tuesday* last being the Day appointed; and the Commons not appearing to maintain their Articles against the said Lord, the Lords have by Judgment of their House acquitted him of the

Articles of Impeachments against him, exhibited by the House of Commons, and all things therein contained, and have dismissed the said Impeachment.

And the Lords have appointed *Monday* next for the Tryal of the Earl of *Orford*, on which Day they will proceed on the said Tryal.

The Commons still pressing for a Committee of both Houses, (which the Lords never can consent to, for the Reasons already given,) their Lordships can infer nothing from their persisting in that Demand, than that they never designed to bring any of their Impeachments to a Tryal.

As to the Lord *Haversham*, his Answer is now before the House of Commons, and the Lords resolve to do Justice in that Matter.

Die Sabbati 21^o Junij, 1701.

The House being moved to consider what is fit to be done, in Relation to the Charge of the House of Commons against *John Lord Haversham*, and after due Consideration thereof, and the Lord *Haversham* desiring to be prosecuted, it was proposed as follows,

That the Answer of *John Lord Haversham* to the Charge sent up against him by the House of Commons, having been sent down to that House, It is resolved by the Lords Spiritual and Temporal in Parliament assembled, That unless the said Charge shall be prosecuted against the said Lord *Haversham* with effect by the Commons, before the End of this Session of Parliament, the Lords will declare and adjudge him wholly innocent of the said Charge.

Then this Question was put, Whether this Resolution shall be agreed to?

It was resolved in the Affirmative.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Sir *David Mitchell*, Sir *Edmund Harrison*, *George Dorrington*, Esq; *Joseph Burchet*, Esq; Capt. *George Byrns*, *Brooke Bridges*, Esq; *George Cornwall*, Esq; Capt. . . . *Griffith*, . . . *Holmes*, *Edmund Hayman*, and . . . *Traverse*, Esq; his Majesty's Surveyor General, do, and they are hereby required to attend this House on *Monday* next at Ten of the Clock in the Forenoon, as Witnesses on the behalf of *Edward Earl of Orford*.

A Complaint being this Day made of certain Printed Votes of the House of Commons dated the 20th Instant, wherein there are several Things highly reflecting on the House of Peers; It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Consideration thereof shall be adjourned to *Monday* next, and all the Lords summoned to attend with special Notice of this Order.

Die Lunæ 22^o Junij 1701.

The Earl of *Stamford* acquainted the House from the Lords Committees appointed to draw, or extract out of the Books, what is to be Printed in Relation to the Lords impeached, and the Proceedings thereupon, what was transcribed in order thereto, and that there was more to be extracted, which as yet was not transcribed: Whereupon it was Ordered by the Lords Spiritual and Temporal in Parliament assembled, That any Three of the Lords of the said Committee do meet when they please, after the House is up, and give Order to the Clerk for what shall be further transcribed out of the Journals, in Order to the Printing thereof.

The House resumed the adjourned Debate upon the Printed Votes of the House of Commons of the Twentieth

tieth Instant. After Debate, It was proposed declare, That the Resolutions of the House of Commons in their Votes of the Twentieth Instant, contain most unjust Reflections on the Honour and Justice of the House of Peers, and are contrived to cover their affected, and unreasonable Delays in prosecuting the Impeached Lords.

The Question was put, Whether this shall be the Resolution of the House?

It was resolved in the Affirmative.

I. It is resolved by the Lords Spiritual and Temporal in Parliament assembled, That the Resolutions of the House of Commons in their Votes of the Twentieth Instant, contain most unjust Reflections on the Honour and Justice of the House of Peers, and are contrived to cover their affected and unreasonable Delays in prosecuting the Impeached Lords.

It being also proposed to declare, That the said Resolutions do manifestly tend to the Destruction of the Judicature of the Lords, to the rendring Tryals on Impeachments impracticable for the future, and to the subverting the Constitution of the English Government :

The Question was put, Whether this shall be the Resolution of the House?

It was resolved in the Affirmative.

II. It is resolved by the Lords Spiritual and Temporal in Parliament assembled, That the said Resolutions do manifestly tend to the Destruction of the Judicature of the Lords, to the rendring Tryals on Impeachments impracticable for the future, and to the subverting the Constitution of the English Government.

It being also proposed to declare, That whatever ill Consequences may arise from the so long deferring the Supplies for this Year's Service, are to be attributed to the fatal Council of putting off the Meeting of a Parliament so long, and to the unnecessary Delays of the House of Commons.

After Debate, The Question was put, Whether the last Words shall stand part of the Resolution? It was resolved in the Affirmative.

Then the whole Resolution was read, and the Question was put, Whether these Words shall be the Resolution of the House? It was resolved in the Affirmative.

III. It is resolved by the Lords Spiritual and Temporal in Parliament assembled, That whatever ill Consequences may arise from the so long deferring the Supplies for this Year's Service, are to be attributed to the fatal Council of putting off the Meeting of a Parliament so long, and to the unnecessary Delays of the House of Commons.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the several Resolutions made this Day be printed, with what was formerly Ordered to be printed out of the Journals relating to the Lords that were Impeached.

Then the House was adjourned during Pleasure to Robe.

The House was resumed.

The House was called over by the Clerk, and the Names of the Lords present set down by the Heralds.

Then the House was adjourned to Westminster-Hall, and the Lords went in the same Order as they did to the Lord Sommers's Tryal, and being come to the Hall and seated, the House was resumed.

Leave was given to the Judges to be covered.

Proclamation being made for Silence, the following Proclamation was made for Prosecution, viz.

Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of themselves, and all the Commons of England, against Edward Earl of Orford; all Persons concerned are to take Notice, that he now stands upon his Tryal, and that they may now come forth in order to make good the said Charge.

Then the Articles of Impeachment against Edward Earl of Orford were read, and also his Lordship's Answer to the said Articles.

Then the same Proclamation as before was made for Prosecution; and the Lord Keeper declared, That the Court is now ready to proceed upon the Tryal of Edward Earl of Orford, and therefore their Lordships are to give Attention.

The Earl of Orford said, his Council were ready to be heard, if the House pleased.

Then the House was moved, and did adjourn to the House above, and returned in the same manner as they went down.

Then the House was resumed, and Ordered, That the same Method be observed in giving Judgment in the Hall, as was at the Lord Sommers's Tryal, and the like Question put in the Hall.

The House being called over, and the Name of every Lord present writ down for the Lord-Keeper :

The House was again Adjourned to Westminster-Hall, where the House was Resumed, and Proclamation made for Silence.

Then the Lord-Keeper put this Question,

That Edward Earl of Orford be Acquitted of the Articles of Impeachment Exhibited against him by the House of Commons, and all Things therein contained, and that the said Impeachment be Dismissed.

The Lord-Keeper asked every Lord present, whether Content, or Not Content, beginning at the lowest Baron.

Lord Haversham	Content.
Lord Herbert	
Lord Ossulston	
Lord Cornwallis	
Lord Berkeley	
Lord Rockingham	
Lord Lucas	
Lord Colepeper	
Lord Mobun	
Lord Lovelace	
Lord North	
Lord Wharton	
Lord Eure	
Lord Fitzwalter	
Lord Bergevenny	
Lord Bishop of Chichester	
Lord Bishop of Peterborough	
Lord Bishop of Lincoln	
Lord Bishop of Norwich	
Lord Bishop of Coventry and Litchfield	
Lord Bishop of Ely	
Lord Bishop of Sarum	
Lord Viscount Say and Seale	
Earl of Rochford	
Earl of Scarborough	
Earl of Montague	
Earl of Portland	
Earl of Berkeley	
Earl of Radnor	
Earl of Macclesfield	
Earl of Shaftsbury	
Earl of Burlington	
Earl of Essex	

Earl of Kingston
 Earl of Stamford
 Earl Rivers
 Earl of Huntingdon
 Earl Marshal
 Duke of Newcastle
 Duke of Schonberg
 Duke of Bolton
 Lord Steward
 Lord A. B. of Canterbury

Content.

After which, the Lord-Keeper declared, that the Votes were Unanimous in the Affirmative.

Then the Lord-Keeper declared, That *Edward Earl of Orford* was Acquitted of the Articles of Impeachment against him, Exhibited by the House of Commons, and all Things therein contained, and that the said Impeachment be dismissed.

And his Lordship also declared to the Earl of *Orford*, That he was acquitted.

Then the House Adjourned to the House above; and being resumed, it is Considered, Ordered, and Adjudged, by the Lords Spiritual and Temporal in Parliament assembled, That *Edward Earl of Orford* shall be, and is hereby acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contained, and that the said Impeachment shall be, and is hereby dismissed.

Die Martis 24^o Junij, 1701.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That all the Articles of Impeachments, and Answers to them; the Lord *Haversham's* Charge and Answer; the Lord *Sommers*, and Earl of *Orford's* Tryal; and all other Things relating thereunto; and the Resolutions of *Monday* last, be Transcribed and Printed; and that the Duke of *Bolton*, the Earl of *Stamford*, the Lord *Wharton*, the Lord *North*, Lord *Haversham*, and Lord *Sommers*, or any Three of them, do Inspect the Journals, and take care, that what is or shall be

Transcribed, in Order for Printing, be perfect; and give order to the Clerk for Printing thereof.

Then the House taking into Consideration, that there were several Lords Charged and Impeached by the Commons, and no Prosecution against them, Ordered as follows, *viz.*

The House of Commons not having prosecuted their Charge, which they brought up against *John Lord Haversham*, for Words spoken by him at a Free-Conference the Thirteenth Instant; It is this Day Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Charge against *John Lord Haversham*, shall be, and is hereby Dismissed.

The Earl of *Portland* being Impeached by the House of Commons, of High Crimes and Misdemeanors, the first Day of *April* last: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Impeachment against *William Earl of Portland* shall be, and is hereby Dismissed, there being no Articles Exhibited against him.

The House of Commons having Impeached *Charles Lord Halifax* of High Crimes and Misdemeanors, on the Fifteenth Day of *April* last, and on the Fourteenth Day of this Instant *June* exhibited Articles against him; to which he having answered, and no further Prosecution thereupon: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Impeachment, and the Articles exhibited against him shall be, and they are hereby dismissed.

The House of Commons having Impeached *Thomas Duke of Leeds*, of High Crimes and Misdemeanors, on the Seven and Twentieth of *April*, One Thousand Six Hundred Ninety Five, and on the Nine and Twentieth of the said *April* exhibited Articles against him, to which he answered, but the Commons not Prosecuting: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Impeachment, and the Articles exhibited against him shall be, and they are hereby Dismissed.

The Prosecution and Tryal of Col. NICHOLAS BAYARD, in the Province of New-York, for High-Treason, Anno 170¹.



ON the 16th of *January*, 1701, Capt. *John Nanfan*, Lieut. Governor, and the Council, made the following Order, *viz.*

At a Council held at Fort William Henry, this 16th of *January*, 1701. Present the Honourable *John Nanfan*, Esq; &c.

“ IT is hereby ordered, That Alderman *John Hutchins* do appear before this Board to Morrow Morning, and then and there produce to the Board the Address to his Majesty, the Address to the Parliament, and the Address to the Lord *Cornbury*, which was Signed by several of the Inhabitants of this City, and Soldiers of the Garrison, in his House about three Weeks since, on the Penalty that shall thereon ensue.

Vol. IV.

By Order of Council, B. Cofens.

Whereupon Mr. *Hutchins* appeared, and for neglecting or refusing to deliver up the said Addresses, on the 19th of *January* was committed to the common Goal of the City of *New-York*, for the signing of Libels, said to be against the Administration of the Government.

On the 20th, Col. *Bayard*, Mr. *Rip van Dam*, Mr. *Philip French*, and Mr. *Thomas Wenham* addressed the Lieutenant-Governor and Council as followeth, *viz.*

To the Honourable *John Nanfan*, Esq; Lieut. Governor, and the Honourable Council of the Province of *New-York*.

The Humble Address of *Nicholas Bayard*, *Rip van Dam*, *Philip French*, and *Thomas Wenham*, on behalf of themselves, and some of the
 B b b b rest

rest of the Freeholders and Inhabitants of the Province of New York.

Humbly sheweth,

" **T**HAT whereas by a Mittimus, bearing Date the 19th of *January*, 1701. Alderman *Hutchins* stands committed for signing of Libels said to be against the Administration of the Government; which pretended Libels we understand to be an Address to his Majesty, another to the Parliament, and another to my Lord *Cornbury*, whom we understand by certain Advice we have received from *England*, to be nominated by his Majesty to succeed the late Earl of *Bellomont*, as our Governor; Copies of which (by said Mittimus) we find are expected from said *Hutchins*, and is Part of his Charge in the Commitment, the Copies of which Originals (being in our Hands or Custodies) he cannot deliver: If there be no further Crime to be alledged against him, we hope to make good the Legality of the said Addresses, and pray that the said *Hutchins* may be releas'd from his Imprisonment, or be admitted to Bail; and your Petitioners shall ever pray.

N. B. R. v. D. P. F. T. W.

Col. *Bayard*, and the other three Gentlemen, having personally delivered this Writing, and refusing to surrender the Copies of the said Addresses, had time given them, on their Parole, to appear next Day. And afterwards, the same Day, the Lieut. Governor did deliver the above Address to his Majesty's Attorney-General of this Province, for his Opinion in Law therein, which the said Attorney-General gave in Writing; and on the 21st Day came into the Council-Chamber, and there delivered it to the Lieut. Governor; which was read, and ordered to be entred in the Council-Book, *in hac verba*.

May it please your Honour,

" **I** Have well considered the humble Address of *Nicholas Bayard*, *Rip van Dam*, *Philip French*, and *Thomas Wenham*, for the Release of Alderman *Hutchins* from his Imprisonment, sent me by your Honour Yesterday; and have also weighed the several Matters sworn, and otherwise taken in Council before your Honour, which do in any respect relate thereto; and upon the whole, in obedience to your Honours Commands, I humbly present you with my Judgment and Opinion in Law, as follows:

" 1st, That neither the Address or Petition it self, or any Matter therein contained, is Criminal or Illegal.

" 2^{dy}, That the Refusal of the Petitioners at the Council-Board to produce the Copies (of certain Original Addresses mentioned in their Petition) owned by them to be in their Custody, and by their Petition also, is not such a Contempt to the Council, or other Offence against the Law, for which the Petitioners may legally be committed.

Jan. 21. 1701.

Sa. Sh. Broughton.

And afterwards the said Persons appeared, and continuing their Refusal to surrender the said Copies; notwithstanding the Opinion of the Attorney-General, the said Lieut. Governor and Council issued the following Warrant.

By the Honourable John Nanfan, Esq; his Majesty's Governor and Commander in Chief of the Province

of New-York, and Territories depending thereon in America, &c. and his Majesty's Honourable Council for this Province: To Isaac D' Reimer, Esq; High Sheriff of the City and County of New-York, Greeting.

" **W**Hereas by an Act of General Assembly of this Province, made in the Year 1691, Entituled, *An Act for the quieting and settling the Disorders that have lately happened within this Province, and for establishing and securing their Majesty's present Government against the like Disorders for the future*: It is among other Things Enacted, That whatsoever Person or Persons shall by any manner of Way, or upon any Pretence whatsoever, endeavour by Force of Arms, or otherways, to disturb the Peace, Good, and Quiet of this their Majesty's Government, as it is now established, shall be deemed and esteemed as Rebels and Traytors unto their Majesties, and incur the Pains, Penalties and Forfeitures, as the Laws of England have for such Offences made and provided. Notwithstanding which, Col. *Nicholas Bayard*, as has appeared by the Oaths of several Persons examined before Us in Council, by Conspiracy and Combination with *John Hutchins*, Esq; lately committed by us, together with several other Persons disaffected to this his Majesty's Government, to the manifest Disturbance of the Peace of the same, by divers indirect Practices hath drawn in Soldiers, and others, to sign scandalous Libels, whereby they have endeavoured to render the past and present Administration vile and cheap in the Eyes of the People; and the said Col. *Nicholas Bayard* hath incited the People to disown the present Authority, and cast off his Majesty's Government, as it is now established: The Council hath unanimously thought fit, and do resolve, That the said *N. Bayard* be committed for High-Treason. These are therefore in his Majesty's Name to require and command you, immediately on your Receipt hereof, to take into your Custody the Body of the said Col. *Nicholas Bayard*, and him in the Common Goal of this City in close Custody to keep and secure, until he shall be from thence delivered by due Course of Law; and for your so doing this shall be your sufficient Warrant. Given under our Hands and Seals at *Fort William Henry* in *New-York*, in Council this 21st of *January*, Anno Domini 1701, and in the 13th Year of the Reign of our Sovereign Lord *William III^d*. by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith.

John Nanfan, *R. Walters*, } True Copy, Examined by me,
A. D. Peytler, *T. Weaver*, }
S. Staats, *W. Atwood*. }
I. D. Reimer, Sheriff.

Which Act of Assembly, mentioned in the Warrant of Commitment, followeth in these Words, viz.

An Act for the quieting and settling the Disorders that have lately happened within this Province, and for the establishing and securing their Majesties present Government against the like Disorders for the future.

" **F**Orasmuch as the Good and Quiet, Ease, Profit, Benefit and Advantage of the Inhabitants within this Province, doth chiefly consist in and altogether

“altogether rely and depend upon their bearing true
 “Faith and Allegiance unto their Majesties Crown
 “of *England*, which is, and can only be the Sup-
 “port and Defence of this Province. And whereas
 “the late hasty and inconsiderate Violation of the
 “same, by the setting up a Power over their Ma-
 “jesty’s Subjects, without Authority from the
 “Crown of *England*, hath vitiated and debauched
 “the Minds of many People, &c. and hath also
 “brought great Warte, Trouble and Destruction
 “upon the good People of this Province, their Ma-
 “jesty’s Loyal Subjects: For the Prevention whereof
 “in Time to come, be it therefore Enacted and Or-
 “dained by the Governor and Council, and Repre-
 “sentatives met in General Assembly, and it is
 “hereby Published, Declared, Enacted and Or-
 “dained by the Authority of the same, That there
 “can be no Power and Authority held and exer-
 “cised over their Majesty’s Subjects in this their
 “Province and Dominion, but what must be de-
 “rived from their Majesties, their Heirs and Suc-
 “cessors. And we do hereby recognize and ac-
 “knowledge, That their Majesties *William* and
 “*Mary* are, and as of Right they ought to be by
 “the Laws of the Realm of *England*, our Liege
 “Lord and Lady, King and Queen of *England*,
 “*France*, and *Ireland*, and the Dominions there-
 “unto belonging, &c. That thereby their Princely
 “Persons are only invested with the Right to rule
 “this their Dominion and Province; and that none
 “ought or can have Power, upon any Pretence
 “whatsoever, to use or exercise any Power over
 “their Subjects in this Province, but by their im-
 “mediate Authority under their Broad Seal of their
 “Realm of *England*, as now establish’d.

“And be it further Enacted by the Authority
 “aforesaid, That whatsoever Person or Persons shall
 “by any manner of Way, or upon any Pretence
 “whatsoever, endeavour by Force of Arms or other-
 “wise, to disturb the Peace, Good, and Quiet of
 “this their Majesties Government, as it is now
 “established, shall be deemed and esteemed as Re-
 “bels and Traytors unto their Majesties, and incur
 “the Pains, Penalties, and Forfeitures, as the Laws
 “of *England* have, for such Offences, made and
 “provided.

Upon Col. Bayard’s Commitment, the City Mi-
 litia were by Beat of Drum called to Arms, and a
 whole Company daily appointed to guard the Pri-
 son for about a Week following, and Defaulters
 strictly punished; which was burdensome to the
 People, and occasioned great Clamour; whereupon
 it was taken off.

The Prisoners being informed, that a Special
 Commission was order’d for their speedy Tryal, pe-
 titioned the Lieutenant-Governor and Council, on
 the Sixth of *February*, in these Words.

To the Honourable John Nanfan, Esq; Lieutenant-
 Governor, &c. and the Honourable Council, &c.

The Humble Petition of Nic. Bayard and John
 Hutchins, Sheweth,

“THAT your Petitioners are very sensible of
 “the Favour intended them by your Ho-
 “nours, in appointing a Special Court for their
 “Tryal; that, in Consideration of their Age, they
 “might not be confin’d in a Prison till the ordinary
 “Time for meeting of the Supreme Court. But
 “the Papers being at present out of their Hands,
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“which they shall have Occasion for, in order to
 “make their Innocency appear, and not being like-
 “ly to get them in so short a Time as is prefix’d
 “for the said Tryal; your Petitioners humbly pray,
 “That they may not be obliged to come to Tryal
 “before the usual Sitting of the Supreme Court.
 “And your Petitioners shall ever pray, &c.

To which a verbal Answer was given to Col. Bay-
 ard’s Son, That out of mere Grace the Court shou’d
 be deferred for Five Days.

On the 19th of *February*, the Commissioners fate,
 and published their Commission in these Words, viz.

“WILLIAM the Third, by the Grace of
 “God, of *England*, &c. To our loving
 “Subjects *William Atwood*, Esq; *Abraham D’Peyster*,
 “Esq; and *Robert Walters*, Esq; sendeth Greeting.
 “Know ye, That we have assigned you, or any
 “Two or more of you, whereof you the said *Wil-*
 “*liam Atwood* we will to be one, our Justices, to
 “enquire by the Oaths of good and lawful Men of
 “the City of *New York*, and by such other Means,
 “Ways and Methods, which to you shall be the
 “better known, by whom the Truth of the Matter
 “may be the better known, on the 19th Day of
 “this Instant *February*, of whatsoever Treasons,
 “Misprisions of Treasons, Insurrections, Rebellions,
 “Murders, Felonies, Manslaughters, Homicides,
 “Rapes, Burglaries, Misprisions, Confederacies,
 “False Reports, Trespasses, Riots, Routs, Unlaw-
 “ful Assemblies, Contempts, Faults, Negligences,
 “Concealments, Oppressions, Champarties, Deceits,
 “Misdemeanors, and other Misdeeds, Offences and
 “Injuries whatsoever, committed by *Nicholas Bay-*
 “*ard* and *John Hutchins*, and also the Accessories
 “of them, in the Province of *New York* aforesaid;
 “and by who or by whom, to who or to whom,
 “how, when and in what manner, and of other
 “Articles and Circumstances in the Premises, either
 “or any of them concerning; and the same Trea-
 “sons, Offences, and other the Premises for this
 “Time, to hear and determine according to the
 “Laws and Customs of *England*, and of this our
 “Province of *New York* in *America*. And we com-
 “mand, That on the said Day, at the City-Hall of
 “the said City, you or any Two or more of you,
 “as is aforesaid, diligently make Enquiry upon the
 “Premises, and all and singular the Premises hear and
 “determine, and do and accomplish these Things in
 “Form aforesaid, which unto Justice appertains to be
 “done thereupon, according to the Laws and Customs
 “of our Kingdom of *England*, and of our said Pro-
 “vince; saving unto us our Amerciaments, and
 “other Things thereof unto us belonging. Also we
 “command our Sheriff of our said City, That on
 “the said Day, on the said Place, he cause to come
 “before you, or any such Two of you, as aforesaid,
 “or more, such and so many good and lawful Men
 “of his Bailiwick, by whom the Truth of the
 “Matter may be the better enquired into. In Testi-
 “mony whereof, We have caused the Great Seal of
 “our Province to be hereunto affixed. Witness
 “*John Nanfan*, Esq; Lieutenant-Governor and
 “Commander in Chief of the Province of *New*
 “*York*, &c. in Council at *Fort William Henry* the
 “12th Day of *February*, in the 13th Year of our
 “Reign, Anno 1701.

And Proclamation being made in the usual man-
 ner, the Pannel of the Grand Jury was called over;
 those who appeared and were sworn, were

Johan. D'Peyster, Forem. Aryen Hogelant,
 David Provoost, William Jackson,
 Martin Clock, John Corbitt,
 Leendert Huygen, Johannis van Cortland,
 Barent Reynders, Caleb Cooper,
 Johannis vander Spiegel, John van Hoorn,
 Johannis Outman, Burger Myndero,
 Hendrick Gillisen, Gerret van Hoorn,
 Peter van Tillburgh, Jacobus D'Key,
 Johannis van Giesen, Abraham Kipp,
 Abraham Keteltas, Johannes van Santa.
 Jacob Boelen and Johannes Hardenbrook did not
 then appear.

Before the Jurors were sworn, the Council for the Prisoner objected against some of them, for declaring before several Witnesses, then ready to be produc'd in Court, That if Bayard's Neck was made of Gold, he should be bang'd; at the same time boasting that they were of the Jury; and prayed, That since that Jury was summoned upon that Special Matter, such might not be sworn. Which the Court over-ruled.

Mr. Atwood, the first Commissioner, gave a long Charge to the Jury, aggravating the Facts suppos'd against the Prisoner, and positively asserting, That those Facts were Treason not only within the Words of this Act of Assembly, but also by the Common Law before the Statute of the 25. of Edm. 3.

The Jurors having received the Charge, the Court adjourn'd till next Day.

The Court being met the 20th, the Indictment against Col. Bayard was delivered by the Court to the Grand Jury; and Mr. Weaver (appointed Solicitor-General for this Service) attended them with the Proofs, and insisted to be present with the Grand Jury, and that no Person should be sent for, but whom he should name; and that no Question should be ask'd them, but such as he should approve of. On the other hand, John Corbitt, Caleb Cooper, John Cortland, and Jacob d'Key insisted, that the King's Council ought not be present with them at their private Debates, and that they had a Right to send for what Persons, and ask what Questions for their Information they should think needful. Whereupon Mr. Weaver did threaten them, and (to use his own Expression) would cause them to be trounced, taking down their Names. And the Grand Jury broke up without acting.

The Court, in the Afternoon, met according to Adjournment; and the Grand Jury being sent for, Mr. Weaver made Complaint, That he was obstructed by some of the Grand Jury, who would not acquiesce to his being present at the Examination of the King's Evidence, and would have other Evidences sent for than what were by him produced. And thereupon Mr. Atwood did discharge the abovesaid Four Persons from their further Service; and caused Jacob Boelen, who was absent when the others were sworn, to be sent for from his House, sworn and added to the Grand Jury; and the Court adjourn'd till Seven a-Clock that Evening, but did not meet till about Midnight, when sending to know if the Jury had found the Bill, and being informed they were separated, he adjourn'd the Court till next Morning at Eight a-Clock; and in the way from the Court, in Passion said, [If the Grand Jury will not find a Bill against Col. Bayard, I will bring an Information against him of High-Treason, and try him upon that.]

February 21. The Court met, and the Grand Jury appearing in Court, the Indictment was brought in by the Foreman, endorsed *Billa Vera*, and signed

with his Name. Upon which Mr. Atwood immediately discharged the Jury.

Whereupon the Council for the Prisoner informed the Court, that the Bill was not found by Twelve Jurors. And upon Examination it appeared to the Commissioners, that of such of the Jurors who remained in Court, Eight of the Nineteen were against finding the Bill; as appears by the Minutes of the Court entred by Order, viz.

Jacob Boelen,	Johannis Van Santa,
Abraham Kipp,	William Jackson,
John Van Hoorn,	Burger Myndero,
Gerret Van Hoorn,	Johannis Vanderspiegel.

Which Eight importuned the Court, that the Foreman might be brought upon his Oath, and the rest sent for to witness the Truth, That they only found the Signing the Addresses, and not the Treason. To which Mr. Atwood made Answer, They were no longer Jurors; they had presented the Bill, and the Court was possess'd of it; it was now a Record, and there is no Averment against a Record.

Ordered, The Prisoner come to Tryal on Monday next come Sevensnight; to which Day the Court adjourn'd accordingly.

On Monday the 2^d of March, the Commissioners met according to Adjournment.

Mr. Nicoll (Council assigned for Coll. Bayard) moved, that the Indictment might be qualsh'd, not being found by Twelve Men. And to prove the Matter of Law, offer'd to produce Authorities; and to prove the Matter of Fact, offer'd to produce Evidences in Court, if either were insisted on, the Grand Jury being then by *Subpena* in Court.

Mr. Solicitor-General. What is moved in Behalf of the Prisoner, is most improper; forasmuch as the Indictment is found, and signed by the Foreman *Billa Vera*, there can be no Averment allowed against a Record brought in by the Body of a Grand Jury; and therefore I desire the Prisoner may be sent for, and arraigned.

Mr. Nicoll. This is a Matter of great Weight and Moment; and concerns not only the Life and Fortune of the Prisoner and his Posterity, but the Right of every *Englishman* in the Province: It is not only lawful, but highly reasonable, that an Indictment for High-Treason should be found by Twelve Men at least. By the Statute 13 E. 1. W. 2. c. 13. reciting, that Sheriffs feigning many times certain Persons to be indicted of Felonies and other Trespases, take Men not culpable nor lawfully indicted, and imprison them.

"Whereas they were not lawfully indicted by Twelve Jurors, it is ordained, That Sheriffs, where they have Power to enquire of Trespases by the King's Precept or by Office, shall cause Inquests, &c. to be taken by lawful Men, and by Twelve at least, which shall put their Seals to such Inquisitions. [Here it is observable, that there is twice *legitimo modo* in a few Lines.]

Coke Inst. 2. Part 387. says, Two Things are provided, or rather declared by this Act:

1. *Per legales homines ad minus duodecim faciant Inquisitiones.*

Coke Inst. 1. fol. 126. The Indictment is defin'd an Accusation found by an Inquest of Twelve or more upon their Oath.

Poulton de pace, &c. An Indictment of Treason, Felony, Trespass, or any other Offence, is an Inquisition taken and made by Twelve Men at least.

Coke Inst. 3. fol. 20. No Peer of the Realm, or other Subject, shall be convicted by Verdict; but the said Offence must be found by above Four and Twenty, that is, by Twelve or above, at his Indictment, &c.

11 H. 4. 9. Inquests had been taken of Persons named to the Justices, without due Return of the Sheriff; of which some outlaw'd before the said Justices of Record, some fled to Sanctuary, &c. for Treason, some for Felony: Granted, that henceforth no Indictment be made by such Persons, but by Inquests of the King's lawful Liege People, in such manner as was used in the Time of his Noble Progenitors; and if any Indictment be made hereafter in any Point to the contrary, that the same Indictment be also void, revoked, and for ever holden for none.

Crook Eliz. 654. *Clyncard* was indicted on the 8th of H. 6. the Record was *ad Sessionem Pacis*, &c. *per Sacramentum A. B. C. D. & aliorum legalium hominum in Comitatu predicto presentatus existit*, &c. And it appeareth not that it was *per Sacramentum duodecim*; for if it were presented by a lesser Number, it was clearly ill, therefore it was revers'd.

Mr. Atwood. There can be no Averment against a Record: If you can produce any Authority that it was ever allowed to make an Averment against a Record, and speak to that Head, you shall be heard; but to go on upon this Head, Whether or no the Grand Jurors are or can be brought to reveal the Counsel which they are sworn to keep secret, cannot be allowed.

Mr. Nicoll. The Grand Jury consisted of Nineteen Persons, whereof Eight have openly in Court protested that they found no Treason.

Mr. Atwood. I have by me the Oaths of Two Men, That the Bills were found by Fourteen *Billa Vera*; they are so endors'd, have been publicly read in Court, and are of Record; for which Reason I nor no body else can enquire further of it.

Mr. Nicoll. This concerns the Subject's Life, and your Honour ought to be Council for the Prisoner; and if a Misunderstanding happens by the Ignorance of the Jurors, so that the Bill is returned contrary to their Intendment, the Prisoner ought to be assisted.

Mr. Sol. Gen. Pray shew us any Authority, where an Averment has been offered against a Record?

Mr. Emot. May it please your Honour, I am joined with Mr. Nicoll as Council for the Prisoner. The Question that now seems to lie before your Honour is, Whether there can be any Averment offer'd against a Record? There is an Act of Parliament of the 11th of H. 4. wherein it is enacted, That a Grand Jury shall consist *de bonis & legalibus hominibus*: And so likewise runs the Tenor of the Writ of *Venire*; for want of such Persons, the same Statute does declare the Indictment void. So that it is a good Exception to an Indictment, to aver that any one of the Grand Jury was an Alien; which is Matter of Fact. How shall this Averment be made, if so be there be no Averment against a Record? And what Benefit has the Prisoner of this Act, unless an Averment be allowed against the Record of this Indictment, if it should so happen that some of the Grand Jury are not so qualified as the Act requires? Which seems to me sufficient Reason, that an Averment in the Case at the Bar, is good against a Record.

Mr. Atwood. The Statute gives the Particulars that may be averred, and no others can be allowed.

Mr. Emot. 'Tis very hard upon the Subject: The Court appoints the Foreman of the Grand Jury, and he may chance to be a Person prejudiced against the Prisoner, who may sign and return the Bill *Billa Vera*, without the Consent of his Fellows, or a sufficient Number; and because it's Matter of Record, shall no Averment be allowed against the Bill?

Mr. Atwood. A Grand Jury, in a certain Case, on an Indictment for Words spoken, found *Billa Vera*; but as to the *malitiose*, *Ignoramus*; which made the Bill void: So in this Case, if the Jury, as to the Fact in the Indictment, had found *Billa Vera*, and as to Treason *Ignoramus*; the Bill had been void, and the Court must have taken notice of it. But to this Bill there is no Endorsement but *Billa Vera*: The Court has received and published the Verdict, and therefore will proceed.

Mr. Emot. But the Matter of Fact only appeared to the Jury; and when they understood the Bill to be laid treasonable, they immediately objected against it.

Mr. Atwood. The Bill is found, and appears to the Court Matter of Record; so that you need not insist any further upon that Head. A Grand Jury is an Inquest of Office, and an Inquest of Office may be found by a less Number than Twelve. Mr. Sheriff, bring your Prisoner to the Bar.

Mr. Nicoll. I have something else to offer.

Mr. Atwood. Sheriff, stay a little.

Mr. Nicoll. I have a Second Objection in Behalf of the Prisoner; and it is, That the Juries should have been returned by Precepts under the Hands and Seals of the Commissioners; which we understand was not.

This appears in *Hale's Pleas of the Crown*, pag. 134. Sir Edw. Coke's 4th Page of the *Institutes*, Title *Oyer and Terminer*, says the same. There is a special Clause in the Writ of *Oyer and Terminer*, which says, *We have commanded our Sheriff to summons, at such Days and Places as you shall appoint, such good and lawful Men, by whom the Truth may be the better known*. How shall the Sheriff know those Days and Places, but by the Commissioners Precept? And how shall the Truth be known, if the Grand Jury are permitted to have no other Evidence but what are brought *ex parte Regis*?

Mr. Sol. The Grand Jury are only to enquire for the King, and to receive or send for no other Evidence than what are brought for the King.

Mr. Nicoll. You may tell that to somebody else, not to me; that is contrary to their Oath, which is, That they shall diligently enquire, and true Presentment make.

Mr. Atwood. All the Books speak of the King's Evidence only, and agree that the Grand Jury may and ought to find upon probable Evidence, as appears in *Babbington*.

Mr. Emot. Sir Edw. Coke says, Part 4. of the *Institutes*, Title *Oyer and Terminer*, That the Juries ought to be returned by Precepts under the Hands and Seals of the Commissioners. There is no Distinction made between the Grand Jury and the Petty Jury; so that the *Venire's* as well for one as the other, ought to have been under the Hands and Seals of the Commissioners.

Mr. Sol. When you had the Government, Dr. *Staats* had a Bill found against him by Eight Men of a Jury of Fifteen.

N. B. A private Person opposed the Assertion, but he was commanded Silence.

Mr. Nicoll. I never heard of it, nor believe it to be true; but that is not to be taken for a Precedent, were it true.

Mr. Atwood. Gentlemen you seem to mistake the Lord Chief Justice *Coke*, where he says, There shall be 24 Peers upon the Arraignment of a Peer, &c. for if there be but 13 Peers, and the Majority agree to it, it is understood to be found by 12 of them.

There is something in that which you offer, of the Precept being under the Hands and Seals of the Commissioners in the Return of the Petty Jury; but this does not at all affect the Grand Jury: For which Reason, if you see Cause to move it, Time may be granted to mend that Mistake. Is there nothing else you have to offer?

Mr. Nicoll. Nothing at present.

Mr. Atwood. Mr. Sheriff, bring the Prisoner to the Bar.

Which was done accordingly.

Clerk of the Crown. *Nicholas Bayard*, hold up thy Hand. You stand indicted, &c.

City and County of New-York, in the Province of New-York in America. Anno Regni Regis *Gulielmi Tertii*, nunc *Anglie*, &c. Decimo Quarto.

“THE Jurors sworn, and charg’d to enquire
“for our Sovereign Lord the King upon
“our Oaths, do present *Nicholas Bayard* of the City
“of New-York in the Province of New-York in
“America, Esq; for that he the said *Nicholas Bayard*,
“the Fear of God in his Heart not having, nor
“the Duty of his Allegiance weighing, but being
“moved and seduced by the Instigation of the
“Devil, as a Rebel and Traytor against the most
“Serene, most Illustrious, most Clement and most
“excellent Prince, our Sovereign Lord *William* the
“Third, by the Grace of God, of *England, Scotland,*
“*France and Ireland*, and of this Province of *New-*
“*York* King, Defender of the Faith, &c. His, the
“said *Nicholas Bayard* supreme, true, lawful and
“undoubted Sovereign Lord; the cordial Love, and
“true and due Obedience, Fidelity and Allegiance,
“which every Subject of our Lord the King that
“now is, towards him our said Lord the King
“should bear, or of Right ought to bear, with-
“drawing and utterly to extinguish, intending and
“contriving, and with all his Strength purposing,
“designing, conspiring and endeavouring, with di-
“vers other Rebels and Traytors, to the Jurors un-
“known, the Government of this Province of *New-*
“*York*, under him our said Sovereign Lord the King
“that now is of Right happily and duly established,
“to defame, subvert, change and alter, and to
“disturb the Peace, Good and Quiet of this his
“said Majesty’s Government of this his said
“Province of *New-York*, as it is now, and hath
“been for several Years last past established; on the
“Tenth Day of *December* last past, and in the 13th
“Year of the Reign of our Sovereign Lord that now
“is, in the Dock Ward of the said City and County
“of *New-York*, and divers other Times and Days
“as well before as after, at the said Ward, and else-
“where in the City and County of *New-York* afore-
“said, falsely, maliciously, devilishly, rebelliously,
“and traiterously did compass, imagine, contrive,
“purpose, design, intend and endeavour to defame,
“subvert, change and alter, and to disturb the Peace
“Good and Quiet of this his Majesty’s Government
“of *New-York* as it now is, and hath for several
“Years last past been established. And the same
“most abominable, wicked and devilish, rebellious,

“treasonous and traiterous Contrivances, Intentions
“Purposes and Endeavours aforesaid, to fulfil, per-
“fect, and bring to effect, he the said *Nicholas*
“*Bayard*, by Conspiracy as aforesaid, afterwards,
“to wit the said Tenth Day of *December* last past,
“in the Year aforesaid, in the said City and County
“of *New-York* aforesaid, and divers other Days and
“Times as well before as after, falsely, maliciously,
“advisedly, clandestinely, rebelliously and traiter-
“ously, with Force of Arms, &c. did use divers
“indirect Practices and Endeavours, to procure
“Mutiny and Desertion among the Soldiers in Pay,
“belonging to his Majesty’s Fort and Garrison of
“Fort *William-Henry*, in or near the said City and
“County of *New-York* aforesaid, and did draw in
“Numbers of them the said Soldiers and others,
“to sign false and scandalous Libels against his
“Majesty’s said Government, as it is now, and
“hath for several Years last past been established in
“this Province: Which said Libels, by the Procure-
“ment of the said *Nicholas Bayard* as aforesaid, were
“signed by the said Soldiers, and others, and were like-
“wise signed by him the said *Nicholas Bayard*; in one
“or more of which said Libels, amongst other
“Things highly reflecting on the past and present
“Administration of the Government under his Ma-
“jesty in this Province, it is insinuated and declared,
“That his Majesty’s Subjects within this Province,
“are and have been for some Years last past, by
“Persons entrusted with the Administration of the
“said Government under his Majesty, oppressed;
“and that the said Government hath been and is
“rendred cheap and vile in the Eyes of the People,
“as also that the present General Assembly of this
“Province is not a lawful Assembly. By which,
“and divers other malicious Scandals in the said Li-
“bels contained, he the said *Nicholas Bayard* hath
“incited his Majesty’s Subjects of this Province to
“disown the present Authority, and Government
“thereof, and to cast off their Obedience to his
“Majesty’s said Government, as it now is, and
“hath for several Years last past been established,
“against the Duty of his the said *Nicholas Bayard*’s
“Allegiance, against the Peace of our Sovereign
“Lord the King that now is, his Crown and
“Dignity, as also against the Form and Effect of
“one Statute or Act of General Assembly of this
“Province, enacted in the Year of our Lord God
“1691. entituled, *An Act for quieting and settling*
“*the Disorders that have lately happened within*
“*this Province, and for establishing and securing*
“*their Majesty’s present Government against the*
“*like Disorders for the future.*

Clerk What say you, Are you Guilty, or Not Guilty of the Indictment?

Prisoner. Not Guilty. And puts himself upon God and the Country, &c.

Prisoner. I desire I may be allowed Two Clerks to take the Minutes of the Tryal.

Mr. Atwood. No, you have a Solicitor allowed, he may take Notes; any other will not be suffered to do it.

Prisoner. I find it was allowed my Lord *Russel* and others, to employ Clerks to take their Tryals: I pray the same Liberty.

Mr. Atwood. It was allowed my Lord *Russel*, but you would not be willing to meet with the Hardships of his Tryal.

Mr. Sol. Gen. Perhaps the Council will not insist upon the Mistake of the *Venire*.

Mr. Nicoll. We shall not insist on that.

Mr. Ar-

Mr. Atwood. But we will have it amended; and thereupon ordered a Precept to be directed to the Sheriff, under the Hands and Seals of the Commissioners, to return a Petty-Jury the 6th Instant; to which Day the Court adjourned.

March 6th. The Commissioners met. The Prisoner was brought to the Bar, and the Petty-Jury being called, consisting of Eighty, some of them did not appear. Whereupon it was ordered, that the Defaulters of the Petty-Jury be amerced Ten Pounds each, if they did not appear in the Afternoon, or shew a reasonable Cause; and the Court adjourned till Three in the Afternoon, when they met again.

Mr. Sol. Gen. moved, That the Court might be adjourned till To-morrow Morning, the King's Evidence being disguised with Drink, which was granted.

Mr. Nicoll moved, That it would be a Favour to the Prisoner to put off the Tryal till Monday.

Mr. Atwood. No, I will take care to do my Duty, whatever other People do. We shall not give Mr. Veasy the Opportunity of another Sermon against us.

Mr. Veasy was then Minister at New-York.

Mr. Atwood. I observe Mr. Jamison to have Pen and Ink. Mr. Jamison, you are not permitted to write.

Jamison. I only take Minutes for my private Satisfaction.

Mr. Atwood. 'Tis true, an Attorney or Practitioner of the Court may take Notes for his private use, but you are no longer an Attorney of this Court, nor shall you be permitted to practise, until you purge your self of having signed the Addresses. Put up your Pen and Ink.

March 7. The Commissioners met, and the Attorney-General was called, but did not appear.

Mr. Atwood. Mr. Secretary, let a Minute be made, That it appears to this Court that the Attorney-General hath neglected his Majesty's Service. It is no wonder the People here condemn his Majesty's Authority; since the Attorney-General, tho' commanded to prosecute by the Government, hath neglected to do the same, and hath given a Judgment and Opinion directly contrary to the Lieut. Governor and Council.

Mr. Atwood. Sheriff, fetch the Prisoner. Which was done.

Mr. Secretary. Before we proceed, read the Petition which was given me this Morning by Col. Bayard's Son. Which was read in *hec Verba*.

To the Honourable William Atwood, Esq; Abraham D' Peyster, Esq; and Robert Walters, Esq; Judges of this Special Court.

The Humble Petition of Nicholas Bayard, Sheweth,

THAT your Petitioner's Council have informed him, that on Yesterday they prayed, in the Petitioner's behalf, the Favour of this Court to prove before your Honours by the Oaths of the major Parts of the Grand Jury, there also *subpaned* in Court, that the Indictment brought in for High-Treason against your Petitioner by Capt. Johannes D' Peyster (as being Foreman of the said Grand Jury) was not found nor agreed to by any Twelve of that Jury, tho' the most Part of them (as is evidently known) are your Petitioner's mortal Enemies, for no other Cause, but on Account of the unhappy Divisions within this Province. Which said Prayer of your

Petitioner's Council (as he is also informed) your Honours have been pleased to over-rule, as not being practicable by the common Form of Court's Proceedings. But, *May it please your Honours*, This being a Matter of that moment, whereof hardly a Precedent is to be found, as that a Foreman shall so far impose upon a whole Grand Jury, as to bring in an Indictment *Billa Vers*, which the said Inquest did not find nor agree unto, neither in Matter nor Form: Your Petitioner therefore most humbly prays, that your Honours will be pleased to take the Premises into your Honours serious Consideration, and to grant your Petitioner that Favour, as to have all the said Nineteen of that Grand Inquest sworn before your Honours, to discover the Truth, and to afford your Petitioner such Relief therein, as to your Honours shall be thought most just and expedient. But if it should so happen (as your Petitioner does not hope) that your Honours do not think fit to grant this your Petitioner's most humble Request; your Petitioner further prays leave to acquaint your Honours with the excessive and almost unparallel'd Hardships your Petitioner, in this very Tryal, labours under. In the first Place, for that the Grand Jury, altho' your Petitioner had often prayed Mr. Sheriff that he might have the Favour and Justice of being tried by *Englishmen*, and of *English* Extraction, of the best Character for Knowledge, Integrity, Justice, Conscience and Estates; yet notwithstanding your Petitioner had not one allowed him of *English*, but all of them of *Dutch* Extraction and Education, and several of 'em ignorant to that degree, that they can neither write nor read, nor so much as understand the *English* Language; tho' sufficient Numbers of *Englishmen* of very good Ability, Understanding, Integrity, Conscience, and Estate, were to be had in the Bailiwick.

And for a second Instance of your Petitioner's Hardships, he finds now also a Petty Jury impanell'd to serve upon his Tryal, all of 'em except five or six, in like Manner of *Dutch* Extraction and Education, most of 'em handy-craft and labouring Men; very few that ever were of any Juries whatsoever, and extreme ignorant in the *English* Language.

Your Petitioner therefore most humbly prays, That your Honours will be pleased to take the Premises into your Honours favourable and serious Consideration, and to afford your Petitioner such Relief therein, as to your Honours in Justice and Equity shall think fit. And as in Duty bound, &c.

N. Bayard.

Mr. Atwood. Let a Minute be entred, that the Petition was read, and that it does appear to the Court that the Bill was found by more than Twelve of the Grand Jury.

Mr. Atwood. Col. Bayard, the Laws do indulge you with Council, did you advise with them concerning this Petition?

Bayard. No, I did not.

Mr. Atwood. 'Twere better you had; for you have acted very indiscreetly in this Matter; to arraign the Justice of the Grand Jury.

The Jury being called, appeared.

Timon van Bursfert. Prisoner accepts.

Mr. Sol. Gen. I challenge him for the King.

Mr. Emor.

Mr. Emot. You are not to challenge, Mr. Solicitor, without Cause, by the Statute 23 Ed. 1.

Mr. Sol. By the common Law the King could challenge without Cause, but by the Statute that was taken away; and in the late Tryal of *Peter Cook* it is said by Lord Chief Justice *Treby*, That the King should shew Cause, if not enough on the Pannel to serve, but not else.

Mr. Atwood. It is a Thing so plain, I wonder you will insist on it.

Mr. Nicoll. We say the King should shew Cause, but do not say when.

Gysber van Inbrough. Prisoner accepts.

Mr. Sol. Challenges for the King.

Gerryt Unckle. Prisoner accepts.

Mr. Sol. Challenges, &c.

William Janeway. Prisoner accepts.

Mr. Sol. Challenges, &c.

Isaac Stoutenburgh. Prisoner accepts.

Mr. Sol. I don't challenge him, but desire he may be sworn on a *Voire dire*, whether any Person hath been with him on behalf of the Prisoner, to desire him to be favourable to the Prisoner on this Tryal. [Who was sworn upon a *Voire dire*, and afterwards for the Tryal.]

Richard Sacket. Prisoner. I make no Challenge.

Mr. Sol. I desire to know whether I may not first have him sworn upon a *Voire dire*, and afterwards challenge him?

Mr. Atwood. No, you must challenge peremptorily first.

Prisoner. I pray the Solicitor may first make all his Challenges, and only leave me a Pannel of Forty-Eight Jurors.

Mr. Atwood. No, that must not be.

[Memorandum. The rest of the Eighty Jurors in the Pannel were in like manner challenged by the Prisoner or Solicitor, till the Number of Twelve were sworn, viz. one of them an Alien, two no Freeholders, and all the rest Dutchmen, or of Dutch Extraction born here, very ignorant of the English Language, and of mean Capacities to an extreme Degree.]

The Name of the Petty Jurors were as follows, viz.

<i>Isaac Stoutenburgh,</i>	<i>Barent Kool,</i>
<i>Jacobus Vander Spiegel,</i>	<i>Goert Olpherto,</i>
<i>Andries Marshalk,</i>	<i>Samuel Beekman,</i>
<i>Gerret Viele,</i>	<i>Cornelis Clopper,</i>
<i>Thomas Saunders,</i>	<i>Conrael Teneyck,</i>
<i>Jacob Cornelisse,</i>	<i>Jacobus Goelet.</i>

Mr. Solicitor made an Introductory Discourse and Harangue of about an Hour long, and had some Sheets of Paper in his Hand, out of which he read several scurrilous and false Reflections on the English Inhabitants of this Colony, with the French and principal Dutch, having Retrospection for many Years past, only designed to incense and inflame the Jury, charging the Prisoner to be the Head of a Faction, a malignant Party, who had endeavoured to introduce Popery and Slavery, Disturbers of our Israel; as they had been that of Capt. *Leyser's* Government, which (he said) was now justified at Home to be Legal; that the said Party was a Nest of Pirates, Betrayers of our Prince and his Laws, a Parcel of Banditti's, who had offered the late Earl of *Bellamont* a Reward of Ten Thousand Pounds to connive at Piracies, and One Thousand Pounds to himself to solicit it. That some mean and broken Merchants in London had made Complaints in their

Behalf to the Lords of Trade and Plantations, and to the Parliament against the said Earl, but that the said Earl's Proceedings were approved of: And used scandalous Reflections on Mr. *Veasy* the Minister of *Trinity-Church*, and against Col. *Smith* the first Member of Council, though nothing relating to this Tryal, and owned himself of the *Leyserian* Party, and that he would stand and fall by it, &c.

Then called his Witnesses, who gave their Evidences in the following Words, as they were taken in open Court, and since agreed unto by all of them respectively, as followeth:

Samuel Clows sworn, faith,

Gentlemen, When I come to speak of the Addresses, I must pray you to take notice, that I can speak positively to but very few Things that is in them; what I say is to the best of my Remembrance and Understanding; for I may be mistaken in both. 'Twas about a Fortnight or three Weeks before Col. *Bayard's* Commitment, that I happened to come to his House about some Business not at all relating to this Matter; concerning which, as we were talking, Col. *Bayard* ask'd me, if I had seen the Addresses? I answered, No. He then shewed me three Addresses, the first was to my Lord *Cornbury*, the Persons addressing in it called themselves Inhabitants of *New-York*, and others distant from it, and being some of them could not perhaps be present at his Lordship's Arrival here, did, by way of Address, congratulate his Lordship into this Government, wishing him all Health and Prosperity here, and that the Name of Party might be banish'd from among us. After I had read it, Col. *Bayard* ask'd me if I had any Thing to say against it? I answered no, and then signed it. The other two Addresses were one to the King, and the other to the House of Commons, or to the Parliament, (I am not positive which); as I had read them, I remember I made this Observation in my self, that they contained nearly both the same Things; and in them, or one of them, to the best of my Remembrance, were contained these Things. The Persons addressing called themselves *Englishmen*, and others, who though Foreigners, yet entituled to the Privileges of *Englishmen* here. It speaks concerning the late Revolution here, of which I have but a confus'd Idea, and can remember nothing particular; afterwards it speaks concerning my Lord *Bellamont's* Administration, in several Articles, of which I can remember but one, which is, that the *Hottest* and *Ignorantest* of the People were put into Places of Trust. Then it speaks concerning the late Assembly here, and tells you, That after this Assembly had chose a Speaker, some of the Representatives were informed that he was an Alien; upon which they made a Motion to the House, that that Matter might be enquired into; but that Motion being refused, one Half of the Representatives, or Ten of them, left the House; notwithstanding which, the remaining Part of the Representatives, with some others they took in, did proceed to make Acts; in one of which Acts they gave a Sum of Money to the Lieut. Governor, to tempt him to pass these Acts; and likewise a Sum to the Chief Justice of this Province, to find Law and Form for their Proceedings; and that these Things tended to the rendring the Government vile and cheap in the Eyes of the People.

Sol. What Names do you remember you saw to the Addresses?

Clows. I saw several Names there, but whether to all Three or to Two of them, or only to that of my Lord *Cornbury*, I cannot say; but I did, to the best

best of my remembrance, see the Names of *Rip van Dam*, *Matthew Ling*, *Charles Wooley*, *Robert Livingstone*, and *Mr. Anderson*; but I am not certain whether I saw *Mr. Jamison's* Name there or no. When I had read them, I told *Col. Bayard* they contain'd Things done before my time, and I did not therefore think it proper for me to sign them; upon which he replied, then don't sign them.

Mr. Sol. I shall read what you said before the Council.

Clows. Do so, if you please.

Mr. Sol. Don't you remember that it was said, that my Lord *Bellamont* had put the most ingenious and honestest Men of the Province out of all Places of Trust?

Clows. No, I cannot remember that.

Mr. Sol. I think you said so before the Council.

Clows. Perhaps I might say something like it when I was before the Council, though I don't believe there is any essential Difference between what I now say, and what I said to the Council; yet if there be, I hope what I then said will not be taken to my Prejudice: I was then sent for by the Governor's Letters, which seemed to import that he had Business with me of a far different Nature than to examine me about this Matter, so that I was then in a Surprise.

Mr. Sol. But you believe what you then spoke was true.

Clows. Without doubt; and I hope *Mr. Cofens* took care truly to write down what I then delivered; but whether he did express my Meaning right or no, I know not; for I did not look over his Notes till the Day I saw them at your Chamber.

Mr. Sol. Was not the Assembly called an Illegal Assembly? And that they had made Acts prejudicial to the Country.

Clows. No, I do not remember that.

Mr. Sol. Was it not said, that the Scum of the People were put into all Places of Trust?

Clows. Perhaps I might before the Council use the Word *Scum*, but I now think it was, that the *Hottest* and *Ignorantest* were put into Places of Trust.

Mr. Sol. *Mr. Clows*, Pray tell us what was the Reason you did not sign the other two Addresses?

Clows. I think I am not at this time obliged to tell that, being it does not at all affect the Matter.

Mr. Atwood. Yes but it does; you must tell us.

Clows. One of the chief Reasons was, because I then thought that the saying the Assembly had given a Gift to the Lieut. Governor to tempt him to pass their Acts, was a Reflection upon the Lieut. Governor; but it is my Judgment now that it was no Reflection at all upon him.

Mr. Sol. How! And don't you think so now?

Mr. Atwood. He only speaks it as his Judgment.

Mr. Sol. Don't you remember that the Assembly was called the *Pretended Assembly*?

Clows. No.

Mr. Sol. Don't you remember it was said, their *Illegal Proceedings*? Don't you remember the Word *Illegal*?

Clows. No, I cannot remember that; and I did desire you at your Chamber to put that Word out of the Clerk's Notes.

Col. Bayard. Did I ever ask you to sign them?

Clows. No, you did not, you was so far from doing that, that you rather persuaded me not to sign them, and so did *Madam Bayard* who was then in the Room.

Mr. Nicoll. Do you remember any Thing of the Word *Oppression* in the Address?

Clows. No, I do not remember that Word.

Mr. Sol. That the King's Subjects were oppressed here?

Mr. Nicoll. Was the Assembly called an *Unlawful Assembly*?

Clows. No. Gentlemen, I can speak positively to but few of these Things: What I say, is to the best of my Remembrance and Understanding.

Peter Odyre a Frenchman Sworn, and for that he could speak no English, Mr. Briefack Chaplain to the Garison was Sworn to be his Interpreter.

Mr. Sol. What do you know of the Papers that were at *Col. Bayard's*; and did you sign them, or who desired you so to do?

Odyre. Going by *Col. Bayard's* House, one *Mr. Bodinot* told me I must step into *Col. Bayard's*, and sign an Address to the King; and as I was a going in, I met *Col. Bayard* coming forth of his House; and going in I saw the Addresses lying on the Table.

Mr. Sol. Did *Col. Bayard* then persuade you to sign them, or did he tell you it was for your good to sign them?

Odyre. *Col. Bayard* then told me, I might sign if I would, or that I might not; and the *Col.* also told me it was for the good of the Country, and that if I was willing I might sign them, if not I might let them alone, and then went away.

Mr. Sol. I will now prove the Addresses signed at the Coffee-House, and that *Col. Bayard* attended there for that Purpose.

W. Richardson, Inhabitant and House-keeper in the City Sworn.

Mr. Sol. What do you know, *Mr. Richardson*, concerning the signing the Papers at the Coffee-House?

Richardson. One Day drinking at one *Spencers*, I was desired to go to the Coffee-House, which I did; and when there, I saw a great many People, I believe near a Hundred; and coming above Stairs, I saw Papers on the Table, which were called Addresses, which I signed with others; and I saw among others *Col. Bayard* there, but he seemed to be no more acting or concerned than any other.

Mr. Atwood. You are very forgetful of what you swore before the Governor and Council; but to put you in Mind somewhat of it; Did no Body tell you what Papers were to be signed?

Richardson. No Body at all.

Mr. Sol. How many Papers did you sign?

Richardson. I signed Three, but did not know what they were, but was told they were Addresses to the King and my Lord *Cornbury*, and the Parliament; but did not read any of them; but I think one of them complained that the People lay under some Hardships here.

Mr. Sol. You declared much more before the Council.

Richardson. I was then called suddenly before the Council, and was surprized.

John Bashford sworn.

Mr. Sol. *Mr. Bashford*, tell the Court and Jury what you know concerning the Papers at the Coffee-House.

Bashford. I was at the Coffee-House, where I saw the Papers or Addresses, but don't know what they were or contained; and I signed Four or Five Papers there, but did not stay half a Quarter of an Hour. When I was there, I saw *Col. Bayard* amongst many others in the Room, but did not

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see his Name as I remember, to any of the Papers.

[N. B. These five Papers were the three Addressee, and the two Duplicates.]

Mr. Atwood. These Witnesses are very unwilling or very forgetful, having given a much different Account of Things upon their Oaths before the Governor and Council.

Bushford. I have now had time to recollect myself, but was then under a Surprise, not knowing what I was sent for.

Mr. Michael Christian Sworn.

Mr. Atwood. Mr. Christian, What do you know concerning the Papers or Addressee signed at the Coffee-House?

Christian. I remember some time since, about Christmas I believe, I was at the Coffee-House, where I saw the Addressee with many other People, but can't tell how many.

Mr. Atwood. Do you believe there were more than Twenty?

Christian. No, I believe there were not. I found three Addressee there, and signed them all, but the Substance thereof I cannot now remember; it is a good while since, and therefore cannot speak positively to it. I remember a Question was asked me at the Council, Whether there was any Complaints in the Addressee that the Soldiers wanted their Pay? I believe I might then answer something about it, but I do not know any such Thing in the Addressee, either of the Soldiers or their Pay. I remember that Col. Bayard was then at the Coffee-House when I signed the Addressee, but don't remember that any Body desired me to sign.

Mr. Atwood. How many Hands, Mr. Christian, did you see to the Addressee?

Christian. I cannot tell how many, but remember Col. Bayard amongst others was there; but he never asked me to sign either of the Addressee, nor can I remember that there was any Thing concerning either the Soldiers or their Pay in the Addressee.

Mr. Atwood. Certainly these Gentlemen are very unwilling Evidences: Mr. Christian is a Gentleman of good Learning, and it's strange that he should be so forgetful, that he cannot remember what was given in on his Oath before the Governor and Council; he has either a weak or treacherous Memory.

Mr. Hugh Gray sworn.

Mr. Sol. Mr. Gray, What do you know concerning the signing of those Papers at the Coffee-House?

Gray. About December last being at the Coffee-House, I met there one Mr. Scot, who asked me to go up into the Upper Room, which I accordingly did; and when there, I saw on the Table some Papers, which afterwards I understood were Addressee to the King, Parliament, and Lord Cornbury: Some Body asked me to sign them, which I did accordingly, but don't know who it was. I remember Col. Bayard was there amongst others, smoking a Pipe of Tobacco; I believe there might then be about Ten Hands to the Papers, and about Five in the Room; that I read all the Addressee, but cannot now remember the Contents of them.

Mr. Atwood. Mr. Gray, Do you remember there was any Complaints against the Government in those Addressee?

Gray. No.

Mrs. Hannah Hutchins sworn.

Mr. Sol. Now, May it please your Honours, I will prove the Papers signed at another Place.

Mr. Atwood. Mrs. Hutchins, What do you know concerning these Papers brought to your House?

Mrs. Hutchins. About Christmas last Col. Bayard brought some Papers to my House, and left them with me, but did not stay at all, but bid me shew them to my Husband, who was then at Church; these Papers remained at my House about Three Days, and then I delivered them to a Negro, who was sent for them, but do not remember whose Negro it was: Col. Bayard was not at our House while the Papers lay there.

Mr. Sol. Now I shall proceed to prove what sort of People were drawn in to sign these Papers.

John Read sworn.

Mr. Atwood. What do you remember concerning any Addressee or Papers at the House of Alderman Hutchins.

Read. Being on the 26th of December at Mr. Hutchins's House, I there saw some Papers, which one Mr. Burroughs then present asked me to sign, telling me they were Addressee to the King, Parliament and Lord Cornbury, made for the good of the Country, and which were lying on the Bed there; and thereupon I signed them, but did not read them; I did not see Col. Bayard there, but believe I saw his Name to the Papers. I saw a great Number of Names subscribed to the Papers, as near as I can judge about Two Hundred.

Mr. Sol. Of what Age are you?

Read. About Seventeen Years of Age.

Edward Marshal sworn.

Mr. Atwood. Where did you see these Papers, and what do you know of them?

Marshal. Going one Day about Christmas to the House of Mr. Hutchins, to get a Witness to a Letter of Attorney, I saw there Five Addressee which I signed; one was to the King, another to the Parliament, and another to the Lord Cornbury, congratulating his Arrival. I read some of them, but found nothing in any of them that reflected upon the Governor; there was some Complaint of the Speaker of the Assembly being an Alien. Looking on the Names of the Subscribers, I saw the Name of Edward Marshal before I had signed, but I don't know but there may be more Edward Marshals than one in the Province. I did not see Col. Bayard at the House, nor his Name to the Papers.

John Buckley sworn.

Mr. Atwood. What do you know concerning any Papers at the House of Mr. Hutchins?

Buckley. Coming home from the Fort, and passing by Mr. Hutchins's House, I was asked to walk in by Mr. Hutchins, which I did; and being come into the Upper Room I saw some Papers there, which were called Addressee, but I did not read any of them, but that to my Lord Cornbury, which as I understood was a Compliment and Congratulation to him at his Arrival here. Mr. Hutchins then asked me to sign it, but I refused it, because being a Lieutenant in the Garison, I was unwilling to do any such Thing before any of my Elder Officers had done it. But I did not see Col. Bayard nor his Name there.

Francis Cherman sworn.

Mr. Atwood. Give an Account what you know concerning any Papers or Addressee at the House of Alderman Hutchins.

Cherman. Coming a while ago to Mr. Hutchins's House, and going up Stairs, I saw certain Papers there, and some People: Mr. Hutchins asked me to sign those Papers, telling me they were Addressee to the King and my Lord Cornbury; that they were for the Good of the Country and the English, and I expected by it to be made free of the City, and signed therefore;

therefore ; but did not see Col. Bayard there, nor don't remember the Contents of the Papers.

One Button Sworn.

Mr. Atwood. What do you know concerning these Papers, &c.

Button. Hearing by some of my Fellow-Soldiers that there were some Papers or Addresses at Capt.

i. e. The Three Addresses, and the Duplicates of two of them. Hutchins's, I was willing to go and see what they were; and coming to the House there I found Five Papers, and signed them all Five, but do not remember to whom they were directed.

Capt. Hutchins was there, but said nothing at all to me about the Papers or signing them; nor can I remember whether they were in Paper or Parchment. I believe there were then about Thirty Names subscribed, but saw neither Col. Bayard nor his Name there.

Robert Crannell Sworn.

Mr. Atwood. What do you know, &c.?

Crannell. Some time since I came to Mr. Hutchins's, and there found Five Addresses; I read that to my Lord Cornbury, and some of the Two others to the King and Parliament: In one of them, to the best of my remembrance, was contained a Complaint that the People of this Province lay under more Hardships than formerly, and that the Speaker of the Assembly of this Province was an Alien. I saw Col. Bayard's Name to that to my Lord Cornbury, but am not acquainted with his Hand-Writing at all. After I had read some Part, and been told what the rest of the Papers were, I signed them all Five, but no Body desired or perswaded me to do it.

Mr. Atwood. Your Evidence is not so full as when you gave in your Information on Oath before the Council.

Crannell. But it is, and I know nothing more.

One Griggs Sworn.

Mr. Atwood. What do you know, &c.

Griggs. I was desired by one Bovell a Soldier in the Garison, to go to Mr. Hutchins's House, and sign some Papers; I was told and believed it was to make me free of the City; thereupon I went to Mr. Hutchins's, and there signed them, but did not see Col. Bayard there.

One Garnet Sworn.

Mr. Atwood. Tell the Court what you know, &c.

Garnet. A great many of the Soldiers of the Garison signed, and they expected thereby to be made free of the City, many of them being Tradesmen.

One Fleming Sworn.

Mr. Atwood. What do you know, &c.?

Fleming. Coming some time since to the House of Mr. Hutchins, I there saw some Rolls opened, with a great many Names thereto, but did not see any other Writing, to this I put my Name, and also then put down two or three Names for others, at their Request, they having first put their Marks: I and the others expected by this to be made free of the City. I believe out of 160 Men now belonging to the Fort, or thereabouts, there may be about Thirty that signed.

One Bovell Sworn.

Mr. Atwood. What do you know, &c.?

Bovell. Coming to Capt. Hutchins's, I was shewn some Papers, which I was told were Addresses, to which I put my Mark, without being desired by any Body; I cannot Write nor Read. When I had set my Mark, Mr. Hutchins told me, that if any

of my Fellow Soldiers would come and sign also; they might; if not, they might let it alone. By this signing I expected to be made free of the City, but not from being a Soldier; but never heard Capt. Hutchins say so.

Mr. Sol. I have now no more Witnesses against the Prisoner. Here is a Paper signed by him, I desire the Clerk of the Council may be sworn to prove the same.

Mr. Cosens the Clerk of the Council Sworn.

Col. Bayard. I own that Paper, It is a Petition to the Lieut. Governor and Council in Behalf of Alderman Hutchins then in Prison; owning, with Mr. French, Mr. Wenham, and Mr. Van Dam, that the Copies of the three Addresses to the King, the Parliament, and the Lord Cornbury, were in our Hands.

Then the Petition was read, and was the same as is Enter'd in Pag. 554.

After this, the Act of Assembly on which the *Mittimus* is grounded, was read. And after that, the Commission to the Lord Bellamont at large, and the Lieut. Governor's Commission.

Mr. Sol. I desire Mr. Emot may be sworn, whether he did not give Advice to a certain Person about that Clause in the Address to the Lieut. Governor in Favour of Alderman Hutchins, viz. That the Lord Cornbury succeeded the Earl of Bellamont as Governor in New-York.

Mr. Emot was commanded by Mr. Atwood to be sworn; and being sworn, said, I told Mr. French these Words in the said Address did not run current, and might give ground of Exception to some who would be apt to strain every Word to the Prisoner's Disadvantage. To which Mr. French replied, They had drawn the Addresses themselves, and believed it was well enough.

Mr. Sol. I have now proved by the Witnesses those false and scandalous Libels set forth in the Indictment, whereby the Good, Peace and Quiet of the Government has been disturbed, which by this Act of Assembly is High-Treason. I have likewise proved that the Soldiers were drawn in to sign those scandalous Libels, and that some did sign blank Rolls, which was lifting of Soldiers, and is Treason. By these Words in the Petition to the Lieut. Governor and Council, viz. [Who we understand by certain Advice we have received from England, to be nominated by his Majesty to succeed the late Earl of Bellamont as our Governor] is a disowning and casting off the present Authority, and his Majesty's Government.

Mr. Nicoll. Your Honour and the Jury will please to take Notice that the Indictment consists of divers Heads, as, That the Prisoner did compass, imagine, contrive, purpose and design to defame, subvert, &c. the Peace, Good and Quiet of this his Majesty's Government.

That he used divers indirect Practices and Endeavours to procure Mutiny and Sedition amongst the Soldiers.

That he drew in Numbers of them the said Soldiers and others, to sign false and scandalous Libels; and that he had signed them himself.

That in these Libels it is declared, That the Subjects in this Province are and have been for many Years last past, by those entrusted in the Administration of the Government, oppress'd; and that the Government hath been and is rendred cheap and vile in the Eyes of the People; as also that the General Assembly of this Province is not a lawful Assembly:

By which means, &c. he hath incited his Majesty's Subjects to cast off their Obedience to his Majesty's said Government.

The Prisoner is not directly charged here with any Fact, except his own signing the said Libels, but for Endeavours; the rest are forc'd Conclusions and strain'd Inferences drawn from thence. It is not alledged, that the Peace of the Government hath been disturbed, or that any Mutiny or Sedition hath been amongst the Soldiers, or that any one of his Majesty's Subjects hath cast off his Obedience to his Majesty's said Government. By the Course of the Evidence, it appears there was an Address to the King, an Address to the House of Commons, and an Address to my Lord Cornbury, and a Petition or Address to the Lieutenant-Governor and Council; but all the Evidence is very lame and weak, as to the Three first. If we should admit the making or signing of them to be any Fault or Crime, more especially if the same should amount to Treason: For by none of the Evidence it does appear, that those Addressees signed at the Coffee-house were the same Addressees which were at Col. Bayard's, or that the Addressees at Alderman Hutchins's were the same which were at the Coffee-house, or the same which were at Col. Bayard's: There is no Proof that the Prisoner signed these Addressees: Here is not so much as the Likeness or Comparison of Hands produced, alledged, or proved; tho' if it were, that would not do. In the great Tryal of the Bishops, Mr. Pollexfen there affirms, *p. 60. That Comparison of Hands is not good in a criminal Case*; and offers the Lady Car's Case in Siderfin's Reports, *p. 418, 419.* where it is so adjudged.

But I shall not dwell upon the Evidence; it is certainly the Right of the Subject to petition the King, whenever he conceives himself aggrieved. In the Bishops Tryal, *p. 160.* Mr. Pollexfen says, *I never thought it, nor hath it since been thought by any body else, to be a Crime to petition the King.* *Pag. 121.* Serjeant Levinz affirms, *The Subjects have a Right of petitioning the King in all their Grievances.* So say all our Books of Law; so says the Statute of the 13th of Charles 2. *They may petition.* *Pag. 126.* Sir Thomas Powis, then Attorney-General, acknowledges Access to the King by Petition is open to every body; the most inferior Person is allowed to petition the King. *Pag. 135.* Mr. Justice Holloway says, *It's the Birthright of the Subject to petition the King.* If it's the Birthright of the Subject to petition the King, to procure or draw in Men to do what it's their Birthright to do, can never amount to a Crime.

Mr. Atwood. I do not say Petitioning the King is a Crime, but it may be to petition the House of Commons in the Plantations, where the King governs by his Prerogative.

Mr. Nicoll. I cannot think it a Crime, for the Subjects of the Plantations to petition the House of Commons; it's every Day's Practice: Consult the Votes in every Sessions, you'll find many Addressees, Petitions, and Complaints from the Subjects of the Plantations: It seems to be the Right of the Subjects to petition the House of Commons. The Statute of the 13th of Charles the 2d, *c. 5.* restrains the Common Law; by that it plainly appears to be the Right of the Subject to petition the House of Commons, or the King. The Proviso in that Act says, *That neither that Act, nor any thing therein contained, shall be construed to extend or hinder any Person or Persons, not exceeding the Number of Ten, to present any publick or private Grievance or Com-*

plaint to any Member of the House of Commons after his Election, or to the King's Majesty. The Act of Recognition of *primo William and Mary*, declaring the Rights and Liberties of the Subjects, and settling the Succession of the Crown, thereby it is enacted amongst other Things, *That it is the Right of the Subject to petition the King; and all Commitments and Prosecutions for such Petitioning are illegal.* And they do claim, demand, and insist upon all and singular the Premises, as their undoubted Rights and Liberties; and that no Declaration, Judgment, Doings or Proceedings to the Prejudice of the People, in any the said Premises, ought in any wise hereafter to be drawn into Consequence or Example. Here is no Grant of any new Privilege, but a Claim and Acknowledgment of an Ancient Right; and Petitions to the Parliament are as ancient as Parliaments themselves. If the Subjects of the Plantations may not petition and complain to their Prince, they are in a worse Condition than Slaves. The Cries of the Oppressions in the Plantations have gone up to Heaven, and are again come down upon the Earth, and have inspired and moved the King and Parliament of England, to make a Law to check the exorbitant Actions of Governors in the Plantations, and make them accountable in England for their Miscarriages abroad; which can never be discovered to the King but by Petition. The Statute is in these Words:

An Act to punish Governors of Plantations in this Kingdom, for Crimes by them committed in the Plantations.

Whereas a due Punishment is not provided for several Crimes and Offences committed out of this his Majesty's Realm of England; whereof divers Governors, Lieutenant-Governors, Deputy-Governors, or Commanders in Chief of Plantations and Colonies within his Majesty's Dominions beyond the Seas, have taken Advantage, and have not been deterred from oppressing his Majesty's Subjects within their respective Governments and Commands, nor from committing several other great Crimes and Offences, not deeming themselves punishable for the same here, nor accountable for such their Crimes and Offences to any Person within their respective Governments and Commands: For Remedy whereof, *Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by Authority of the same,* That if any Governor or Commander in Chief of any Plantation or Colony within his Majesty's Dominions beyond the Seas, shall, after the First Day of August, 1700, be guilty of oppressing any of his Majesty's Subjects beyond the Seas, within their respective Governments or Commands, or shall be guilty of any other Crime or Offence, contrary to the Laws of this Realm, or in force within their respective Governments and Commands, shall be enquired of, heard and determined in his Majesty's Court of Kings-Bench here in England, or before such Commissioners, and in such County of this Realm, as shall be assigned by his Majesty's Commission, and by good and lawful Men of the same County; and that such Punishments shall be inflicted on such Offenders, as are usually inflicted for Offences of the like Nature committed here in England.

This Prosecution seems to be made to frustrate and evade this Act of Parliament. The Subject is oppress'd, or conceives himself to be so, and complains of this Oppression; this complaining is made TREASON! Here is a strange and fatal Dilemma on the Subjects of the Plantations: They must either suffer their Oppressions, or be hang'd for Traytors if they complain!

What relates to the Act of Assembly of this Country, it can by no natural or legal Construction be extended to make the Prisoner culpable. It is plain by the whole Purport of the Act, that it has made no new Treason; it only recognizes the King and Queen; and enacts, That those who shall do any thing destructive to that Establishment, by Force of Arms or otherwise, shall be *Rebels and Traitors*; which they would be without this Act. If this Address and Petition had been to the *French King*, the Thing had been of another Nature. By the same Construction every petty Battery, or other little Trespass, may be a Treason.

The Petition of Col. Bayard, and the other Three, is so far from disowning the Government, that it is a direct acknowledging of the same. The Direction of the Petition is, *To the Lieutenant-Governor, and the Council*: The Expression (*That they have Advice that the Lord Cornbury is to succeed the Earl of Bellamont*) can with no Justice or common Sense be construed to be a disowning and casting off of the Government. I think it will hardly be affirmed, that the Council succeeded the Earl of Bellamont,

Some time after the E. of Bellamont's Death, Capt. Nufan, the Lieut. Governor, was at Barbadoes.

and Captain Nufan the Council; if so, after the Earl of Bellamont, who was Captain-General? We had Seven Captains-General; which is an Absurdity I suppose none will

alledge. A familiar Example will demonstrate the Weakness and Fallacy of this Construction: If a Captain of a Company be killed or absent, the Lieutenant or next Officer has the full Command of the Company, as the Captain had, or could have; but I think no Man will say he succeeds the Captain, or that when another Captain is appointed, he succeeds that Lieutenant or other Officer. So that I cannot think there is any Fact or Crime alledged or proved against the Prisoner, to charge him with this high Crime of Treason, or indeed with any other Crime whatsoever.

Mr. Emor. By your Honours Permission, I am of Council for Col. Bayard the Prisoner at the Bar: But by reason I am unwilling to spend too much of your Time, this Tryal already having been very long; and Mr. Nicoll, who is also of Council of the same Side, having amongst other things made it very evident, that for the Subject to petition his Majesty, is their ancient and undubitable Right;

I shall therefore make it my Business only, as near as I can, to demonstrate to this Court and Jury, That had the King's Council made ample Proof of all the Matters of Fact alledged in the Indictment, as the signing the Addressees, and other Things therein contained, to have been true; yet, in point of Law, they cannot amount to that Grand Crime of *High-Treason*.

In order to this, I shall, with as much Brevity as I can, examine into, and put your Honours in mind, and withal inform the Gentlemen of the Jury, what the Law of *England* (by which we are, or ought to be govern'd here) hath been, for near the Space of Four Hundred Years last past, relating to

this Grand Crime of *High-Treason*; whereby it will manifestly appear, how cautious the Parliaments of *England* have been in making and increasing the Laws to take away Mens Lives, and particularly for *High-Treason*. And I shall begin with the Statute of the 25th of *Edw. 3.* a Statute to which the greatest Regard has been paid of any Act of Parliament whatsoever, unless *Magna Charta*, as hereafter I shall briefly shew.

I must also observe to your Honours, that before the making of this Act of Parliament of the 25th of *Edw. 3.* which was in *Anno 1350*, and which was the very first Act relating to Treasons, so many Things were charged as *High-Treason* by the Common Law, and there were so many Ambiguities and Diversities of Opinions, that both History and our Books of the Law sufficiently inform us, scarce any Man knew how to behave himself. But now, by this Statute, the Particulars and Species of this Grand Crime are reckoned up, and all others excluded, till declared by Parliament. For tho' nothing can concern the King, his Crown and Dignity, more immediately than *High-Treason*, which our Law calls *Crimen lese Majestatis*, a Crime wronging Majesty; yet this good King *Edward III.* at the Request of the Lords and Commons of *England*, in a Parliamentary Way, and to make all After-Ages happy, makes a plain Declaration of such Offences as should for the future be deem'd for *High-Treason*, and none other, unless declared by Parliament.

This Act of Parliament is branch'd out by Sir *Edward Coke*, in the Third Part of his *Institutes*, into Six Classes or Heads; which I shall the rather take notice of, for that Tryals of this Nature are very rare in the Plantations; and they are these:

1. The Compassing or Imagining the Death of the King, Queen or Prince, and declaring the same by some Overt-Act.

The Killing or Murthering of the Chancellor, Treasurer, Justices, &c. in their Place doing their Office, &c.

2. To violate, or carnally to know the King's Consort or Queen, the King's Eldest Daughter unmarried, or Prince's Wife.

3. Levying of War against the King.

4. Adhering to the King's Enemies, and declaring the same by some Overt-Act; and this must not be *Inimicus, sed Hostis*.

5. Counterfeiting of the Great Seal, Privy Seal, or King's Coin, &c.

6. And Lastly, Bringing into the Realm Counterfeit Money, to the Likeness of the King's Coin, &c.

Now, if there is any other Offence which was not comprehended within one of these Classes, the same was thereby declared to be no Treason.

In a Clause of which Act of Parliament we find these Words; which I shall the rather read, because I apprehend it will very much concern this ensuing Tryal.

"And because that many other like Cases may happen in Time to come, which a Man cannot think or declare at this present Time, it is ordained, That if any other Case, supposed Treason, which is not above specify'd, do happen before any Justices, the Justices shall tarry, without any going to Judgment of the Treason, till the Cause be shewed and declared before the King and his Parliament, whether it be judged Treason or other Felony.

By this we may easily perceive, and it's very obvious, that this Clause was made to prevent the Judges from taking upon them to declare any things to be High-Treason, but such as are particularly express'd by this Statute of the 25th of *Edw. 3.* or by some other subsequent Act.

Again, in the Reign of *Richard II.* we find sundry other Things were declared by Parliament to be High-Treason, which were not comprehended within the Statute of 25 *Edw. 3.* But yet upon the coming in of *Hen. 4.* it was again enacted and declared, That nothing should for the future be adjudged High-Treason, but what was so ordained by the aforesaid Statute 25 *Edw. 3.* The Words are these:

1 *H. 4. c. 10.* "That whereas in Parliament, in the 21st Year of the late King *Richard*, divers Pains of Treason were ordained by Statute, inasmuch as there was no Man who knew how he ought to behave himself, to do, speak or say, for doubt of such Pains; it's accorded and assented by the King, Lords and Commons, That in no Time to come, any Treason be adjudged otherwile than it was ordained by the Statute, in the Time of his Noble Grandfather King *Edw. 3.*"

Now this Statute, I am humbly of Opinion, is directly in the Negative, which says, That for the future nothing shall be adjudged Treason, otherwise than it was ordained by the aforesaid Statute of the 25th of *Edw. 3.*

Yet nevertheless, this Indictment is grounded upon an Act of Assembly of this Province; which is, I am humbly of Opinion, not only contrary, but directly repugnant to the aforesaid Statute, (which appeareth to me to limit all new Species of Treason to be declared in Parliament, and not elsewhere) which, if it should admit of such a Construction as is now intended, I think I may modestly say, it will introduce Five Hundred several new Species of Treason: So that his Majesty's good Subjects of this Province would fall under much greater Hardships than whatever the People of *England* were sensible of before the making of this Act (which I cannot too often mention) the 25th of *Edw. 3.*

If we look further downward, upon the coming in of *Edw. 6.* which was in the Year 1546, sundry new Species of Treason having been again introduced by Act of Parliament, it was in the very first Year of his Reign enacted, That no Offence made Treason by any Statute, should be so deemed and adjudged for the future, but such as were made Treason by the aforesaid Statute of 25 *Edw. 3.* other than such as were by that present Statute ordained and declared.

But yet in Queen *Mary's* Time, in the first Year of her Reign, this grand Crime was brought to its Ancient Standard; and it was then declared in Parliament, *That no Act nor Offence whatsoever should be deemed Treason or Misprision of Treason, but such as were declared by the Statute 25 Edw. 3.* And the Substance of the Preamble is this, *That the State and Safety of the King standeth more assuredly by the Love of his Subjects, than Fear of his Laws.*

So that upon Examination, we find how careful and cautious the People and Parliament of *England* have been in introducing and increasing of Sanguinary Laws, and that through the Revolution of many Ages. And hereby it's very remarkable, what a great Regard has been in all Ages paid to this venerable Statute of 25 *Edw. 3.* which with great Care has been continued down to us to this very Time, and is now in its full Force. Sir *Edward Coke*, treat-

ing thereof, tells us, That the Parliament in which this Act was made, for many Years after was called, *Benedictum Parliamentum*, the Blessed Parliament.

If we look but into the Bill of Attainder of *Thomas Earl of Strafford*, in the Year 1640 and 41, even in those Times, what Regard was paid to this Statute, which I have so often mentioned, wherein it was provided, That the Judgment against the said Earl should never be drawn into Precedent: And the Words are these, "Provided, That no Judge or Judges, Justice or Justices whatsoever, shall adjudge or interpret any Act or Thing to be Treason, nor hear or determine any Treason in any other manner, than he or they should or ought to have done before the making of this Act."

Now, if we do but reflect upon the great Concern and Care that has been taken through all Ages, by the wise People of *England*, in preventing the Judges from interpreting any Act or Thing whatsoever to be Treason, but such only as are enumerated in the Statute 25 *Edw. 3.*

And at the same time give our selves leave to think, how industriously we labour to introduce an Act of Assembly of this Province, to make, as I said before, even Five Hundred new and never-heard-of Species of Treason: I say, if we do but consider this, 'tis Matter of great Amazement, and more especially in such an Age as this, and in so happy a Reign, where no Man ever questioned, or at least doubted of the true Enjoyment of our Laws and Liberties, tho' never so remote from the Fountain Head.

I am afraid, I have already trespassed upon your Honours Patience; I shall therefore conclude with some Observations upon the Act of Assembly, upon which this Indictment is laid.

Now both the Title, Preamble and Words of this Act of Assembly, and the Cause of making thereof, is very obvious, (however the same may be now interpreted) which were these Two:

1st, For the future, to prevent the setting up a Power over his Majesty's Subjects in this Province, without Authority from the Crown of *England*; which was found to be of fatal Consequence in the late unhappy Disorders in this Province.

2dly, To express the Love, Loyalty and hearty Affection of the People to their Majesties King *William* and Queen *Mary*; and as far as in them lay, to recognize them their Sovereign Liege Lord and Lady. I doubt not but your Honours will see Cause to recommend the same to the Jury, in delivering the Charge: And that no strain'd Construction of this Act of Assembly can ever affect the Prisoner *Col. Bayard*, or in the least blast his long-experienc'd Loyalty to the Crown of *England*, and in a special manner to his present Majesty King *William*.

I had almost forgot to beg Leave of the Court to apply my self to the Gentlemen of the Jury, to obviate some Objections, or rather a vulgar Error that usually hath crept in amongst them upon Tryals, and particularly upon Indictments; which is, they do believe,

That if the Matters of Fact alledged in the Indictment be but proved, they are to have no Regard to Matter of Law: Which I take to be a very great and dangerous Error in them.

For tho' it be true, and must be granted, that Matters of Fact are the most common and proper Object of a Jury's Determination, and Matters of Law that of the Judges; yet as Law ariseth out of, and is interwoven and complicated with Fact, it cannot but fall under the Jury's Consideration. For, should it

it be otherwise, if a Person should be indicted for doing any common, innocent or lawful Act, if it be but cloathed and disguised in the Indictment with the Name of Treason, or some other high Crime, and proved by Witnesses to be done, then the Jury would lie under a Necessity of finding the Prisoner Guilty. No:

Do we not find in most general Issues, upon *Not Guilty* pleaded, as upon Indictments of Trespasses, Breach of the Peace, Felony, and even in Cases of High-Treason; yet the Jury do not find the Fact of the Case by it self, leaving the Law to the Court, but find the Party Guilty, or Not Guilty:

And this will more evidently appear upon Indictments of Murder, that the Jury are Judges as well of Matter of Law as of Fact. For is it not every Day's Practice, where Persons are indicted of Murder? The Jury doth not only find them *Guilty* or *Not Guilty*; but many Times upon hearing and weighing of Circumstances, the Jury brings in the Prisoner not only *Guilty* or *Not Guilty* in general, but brings them in either *Guilty of Murder*, or *Manlaughter by Misadventure*, or *Se Defendendo*? &c.

So the Jury being well apprized of the true Matter of Fact, of which they are sole Judges, can better apply the Matter of Law; for, says my Lord Cook, *It is by fully applying Matters of Fact and Law together, that the Jury brings forth their Verdict*; which I hope you Gentlemen of the Jury will carefully do.

Prisoner. I desire some of my Evidences may be called to give an Account of my Life and Conversation. Which was granted.

Mr. Veasy, Minister of *Trinity-Church*, being sworn, said, I have been for six Years personally acquainted with Col. Bayard; during which Time his Life and Conversation recommended him in to World as an Exemplary *Christian*. And the frequent Expressions of his Zeal and Affection to his Majesty's Person and Government, convinced me that he was a good Subject.

Prisoner. Call Capt. John Kipp. Who being called, was absent.

Call Capt. Tudor.

Tudor sworn, said, I have known Col. Bayard 26 Years, a moderate, civil, good Man, has been employed in almost all Offices of the greatest Trust in the Government, never disaffected, but stood up for the *Protestant Religion* and King *William*.

Prisoner. To prove that I have upon sundry Emergencies, during the late War, advanced of my private Fortune upon Loan without Interest, several considerable Sums of Money, for the Preservation of his Majesty's Interest and Government in *New-York*, of which upwards of 200 *l.* Money in Specie lent, is still unpaid; I desire Mr. Jamison, who was then Clerk of the Council, may be sworn.

Jamison being called, appeared——

Mr. Atwood. Mr. Jamison has refused to purge himself of signing those Addresses, and is *Particeps Criminis*, for which Reason he cannot be allowed to be an Evidence.

The Evidence being sworn and examined; the Solicitor-General, without answering the Authorities offered by the Prisoner's Council, relating to the Treason, summ'd up the Evidence, as to Matter of Fact.

Mr. Atwood gave the Charge to the Jury, in a long Discourse; and among other Things insinuated, That the Indictment was not laid upon the Act of

25 E. 3. nor any Act of Parliament, but upon an Act of Assembly of this Province, confirmed by his Majesty, which had Power to make Acts for High-Treason, as well as the Parliament of *England*; and that the said Statute was confined to *England*, because by the said Statute it is enacted, That if any Doubt should arise, the same be adjourned unto Parliament, which must be understood of the Parliament of *England*.

That it is High-Treason by the Act of Assembly, by any Manner of Ways, or upon any Pretence whatsoever, by Force of Arms, or otherwise, to disturb the Peace, Good and Quiet of the Government, as it is now established; which he said was proved by Overt Acts laid in the Indictment; which were by signing of Libels against the Government, and thereby enticing the People to cast off and disown the same; and chiefly by the Soldiers signing Complaints against their chief Officers, which tended to Mutiny, and was Treason by the Common Law.

That by bringing the Papers to *Hutchins's* House, the Prisoner had made himself guilty of all that was done there, by the Soldiers and others signing those Papers.

That the Right of petitioning the King was not in Dispute, but the Manner of doing it made it criminal.

That it was plain the Address of the Prisoner and his Three Fellows, was a disowning of the present Authority, and casting off his Majesty's Government as it was then established; for Capt. *Nanfan* succeeded the Lord *Bellamont* (as by the Commission appeared) and not my Lord *Cornbury*; which was a plain Overt Act of Treason, by the Meaning and Words of the Act of Assembly.

That it appeared undeniable, that the Prisoner and his Son were always by the Papers, and that it was done with a great Number of People to affront the Government.

That the drawing in Soldiers to sign Petitions, is Mutiny and Sedition by the Law; and drawing of them in on false Pretences, in Hopes of Freedom in the City, and subscribing their Names on Blank Lists, is lifting of Soldiers, and may be applied to invite in any Foreign Power. And thereupon strenuously insisted on the Validity of the Evidence, That the Facts laid in the Indictment were undeniably proved, and that those Facts did amount to High-Treason, within the Words and Meaning of this Act of Assembly, and that therefore the Jury could not do otherwise than bring in the Prisoner Guilty.

The Constable being sworn to keep the Jury, the Court adjourned till Nine a Clock at Night: And the Jury then not being agreed, the Court did adjourn till Monday nine a Clock, the 9th of March.

On Monday the 9th, the Prisoner was brought to the Bar, and the Jury sent for. They were asked if they were agreed in their Verdict? They answered, They were not agreed, but desired some Direction of the Court. *Jacob Goellet* appeared as Foreman of the Jury, and read some Notes of what he said the Witnesses had sworn. Which were denied to have been sworn by the Council for the Prisoner, who prayed Mr. Atwood to satisfy the Jury of the Truth of the Evidence.

To this he answered, That he could not do it after the Charge given; but affirmed, ~~it was no~~ new Thing (as some pretended) after Charge given, to satisfy the Jury in some Matters of Law; and told, that he had received Letters from the Jury, and

and answered them, which Answers were only his private Opinion. That if they were under any Difficulty, whether the Matters of Fact alledged in the Indictment, and which were proved to them, were Treason or no, they might find the Prisoner Guilty; who had his Advantage in moving in Arrest of Judgment, and might be relieved as to Matter of Law.

Mr. Emot. This is not fair to give the Jury a Handle to find the Prisoner guilty, in Expectation of Relief in Arrest of Judgment; for they are Judges both of Law and Fact, as the Case is now circumstanced: If they will enslave themselves and their Posterity, and debar themselves of all Access to their Prince, they will be worse than Negroes.

Mr. Atwood. This is not to be suffered, to offer these Things to the Jury after they have received their Charge; therefore be silent. Then proceeding, he renewed his Charge to the Jury, aggravating the supposed Crimes for the Space of about half an Hour.

Mr. Emot. I pray your Honour to be heard one Word (*which he often repeated*, and at last was granted him.) The Facts laid in the Indictment were not proved, as to the disowning and casting off the Government, encouraging of Mutiny in the Soldiers, or disquieting the Peace of the Government: Addressing the King is the undoubted Right of the Subject, both by Common Law and Acts of Parliament. If the Subject for Complaints of Grievances, set forth by Petition, shall be attainted for High-Treason, we are in a worse Condition than Slaves.

Mr. Atwood check'd him, and commanded Silence.

Mr. Nicholl. The Act of Parliament to punish Governors in the Plantations for oppressing the Subject, is rendred usefess and of no Effect, if the Subjects are deprived of this Liberty to complain, and set forth their Grievances, by Petition to their King.

Prisoner. I crave that *Jacobus Goelet* may read over his Paper concerning the Evidence given, and Liberty to controul the Mistakes. *This was denied.*

Prisoner. I crave that Col. D' Peyster and Capt. Walters, who are joined in the Commission, will declare their Opinions singly, if they have agreed That to be Treason which Mr. Atwood has declared to be so, either by the Common Law, or Act of Assembly, if the Facts laid in the Indictment should be admitted to be proved, as indeed they are not.

To this he received no Answer.

After this, the Jury were sent out, and the Court adjourned till Three a Clock in the Afternoon.

At which Time the Commissioners meeting, the Prisoner was brought to the Bar; the Jury were sent for. And being come, were asked, if they were agreed of their Verdict? Which they answered in the Affirmative, and that they found the Prisoner Guilty.

Council. We pray Time to offer Reasons in Arrest of Judgment.

Mr. Atwood. Let these Reasons be offered Tomorrow Morning.

Court adjourned till Eleven a Clock next Morning.

March 10th. The Commissioners met, and the Prisoner being brought to the Bar, he offered the following Reasons in Arrest of Judgment, in these Words, *viz.*

Bayard. That no Overt Act, alledged in the Indictment, is proved by the Oaths and Testimo-

nies of Two lawful Witnesses, as by the Statute of 7 W. 3. is directed.

That if the Overt Act, as alledged in the Indictment, should be admitted to be so proved, yet neither by the Law of England, or by any legal genuine Construction of the Act of Assembly of this Country, on which the Indictment is grounded, any of the said Overt Acts can amount to High-Treason.

Mr. Atwood. Tho' the Reasons offer'd by the Prisoners Council, are properly and learnedly offered, I could off-hand answer and controul them all; yet I will not do it; let them be left with the Solicitor General. And adjourn'd the Court until Ten a Clock the next Morning; which accordingly was done.

March 11. The Commissioners met, and the Prisoner brought to the Bar.

Mr. Nicholl. It does not appear that any one Overt Act, alledged in the Indictment, has been proved by the Oaths of Two lawful Witnesses, as by the Statute of 7 W. 3. ought to be done.

Mr. Atwood. The Jury are the sole Judges of the Evidence, and if there has been any Omission in that, it is now help'd by the Verdict.

Mr. Nicoll. Tho' 'tis very plain to me, and I suppose to the Court, that what I have affirmed in this Matter is Truth, ; yet I shall not much insist upon it, because if the Acts themselves should be admitted to be true, they do not fall under any of the Heads or Species of Treason so made by the English Laws, or by any natural and reasonable Construction of the Act of Assembly of this Government; which being wholly Matter of Law, I shall leave to your Honours Consideration.

Mr. Emot. I very well remember that the Court was pleas'd to tell the Jury, after they had been together some Days, and not being agreed upon the Verdict, *That if they were under any Difficulty, whether the Overt Acts laid in the Indictment, if proved, were Treason; if they found the Prisoner guilty, he had his Remedy by moving the Matter of Law in Arrest of Judgment.*

I therefore humbly offer, in Arrest of Judgment, That if the Overt Acts laid in the Indictment were admitted to be proved, yet in Point of Law they cannot amount to High-Treason, within the meaning of the Act of Assembly upon which the Indictment is laid.

For I take it, that all Acts of Parliament, and consequently Acts of Assembly, are to be understood and taken by reasonable Construction, to be gathered and collected out of the Words of the Act only, and that according to the natural, grammatical, plain and legal Sense thereof, without any forced Interpretation.

Then if so, this Act of Assembly, both by the Title, Preamble, and the enacting Part thereof, plainly demonstrates the Meaning of the Law-makers, and what was thereby designed for the future to prevent. The Title of this Act is in these Words: *An Act for the quieting and settling the Disorders that have lately happened within this Province, and for establishing and securing their Majesties present Government against the like Disorders for the future.* Now what these Disorders were, we have great cause to remember, and they are very well known to this Court to have been occasioned by some Persons setting up an Arbitrary Power over the King's Subjects without the Authority from the Crown of England, as appears from the Preamble of the said Act, part whereof is in these Words:
And

And whereas the late hasty and inconsiderate Violation of the Good and Quiet of this Province, by the setting up a Power over their Majesties Subjects without Authority from the Crown of England, hath vitiated and debauched the Minds of many People, &c. For the Prevention whereof in Time to come, be it enacted, &c. That whatsoever Person or Persons shall by any Manner of Ways, or upon any Pretence whatsoever, endeavour by Force of Arms, or otherwise, to disturb the Peace, Good and Quiet of this their Majesties Government, as it is now established, shall be deemed and esteemed as Rebels and Traytors, &c.

From hence it plainly appears, that the Intention of the Law-makers was only to declare such Person or Persons Rebels and Traytors, as should for the future set up a Power over his Majesty's Subjects in this Province, without Authority from the Crown of England; which undoubtedly is Treason within the Statute of 25 E. 3.

But it can never be understood (without the greatest of Violence to the reasonable Construction of the said Act of Assembly, and the plain Intention of the Makers thereof) to be construed to extend to the signing the Addreses mentioned in the Indictment, which is the only Thing the Prisoner is positively charged withal; for all the rest are only presumptive, constructive and accumulative Crimes, drawn from thence.

But says Mr. Solicitor, the Words of this Act of Assembly are in generals, That if any Persons shall endeavour by Force of Arms, or otherwise, to disturb the Peace, Good and Quiet of the Government, shall be deemed and esteemed Rebels and Traitors.

Now from the Word [Otherwise] Mr. Solicitor would fain insinuate that the Prisoner is within the Meaning of the Act of Assembly: A very fine Explanation! For by such a Construction as this, every Breach of the Peace, sudden Quarrel, or small Battery, shall be deemed Treason. I shall not further add upon this Head, but only offer my humble Opinion, That here in the Plantations we are not capable in our Assemblies to make and declare any new Species of Treason, but such as are comprehended in the Statute of 25 E. 3. or some other subsequent Statute.

Tho' what already has been offered, I hope will be sufficient to stay and arrest Judgment, yet I have several other Things in behalf of the Prisoner (by your Honours Permission) to move in Arrest of Judgment, and which are not mentioned in the Reasons which were assigned in Writing; and I pray Liberty to offer them *Oré Tenuis*.

Mr. Atwood. Mr. Emot, you have Liberty granted you; go on.

Mr. Emot. I thank your Honour. And the Reasons that I shall now further assign why Judgment ought not to pass against the Prisoner, according to the Verdict of the Jury, are these Three.

1st. That *Andries Marshalk*, one of the Petty-Jury, is an *Alien*, and of Foreign Birth, born in *Zeland*, and came over into this Province in the Year 1684.; and that *Jacobus Goeler* the Foreman of the Jury, is also an *Alien*, and hath lately sent for *England* to procure a Denization.

2^{dly}. That the *Vifne* or *Venire* in the Precept to summon the Petty-Jury, under the Hands of the Commissioners, is wrong awarded, or rather, not awarded at all.

3^{dly}. That the said Precept is not returned by the Sheriff, or any Endorsement thereupon, and signed by him; against the known Laws of *England*, and more particularly the Statute of 12 E. 2. Cap. 5. called, *The Statute of York*.

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Mr. Atwood in a long Speech said, What the Solicitor has offer'd is sufficient to over-rule the Reasons exhibited in Arrest of Judgment; for 'tis evidently proved that the Prisoner has disturbed the Peace, Good and Quiet of the Government, as it is now established, viz.

1st. By enticing the People to sign scandalous Libels against the Government, at the Coffee-House, and at his own House, by the Oath of *Peter Odyre*, telling him, it was for the Good of the Country; and his bringing them to Alderman *Hutchins's*, makes him equally guilty to the Soldiers signing Complaints against their chief Officers; thereby enticing them for Mutiny; which Soldiers are part of the Seven Thousand Men raised by Act of Parliament for the Defence of the Kingdom; which is High-Treason by the Common Law, as well as by Act of Assembly.

2^{dly}. By the Prisoner's disowning the Assembly to be lawful.

3^{dly}. By charging the Lieut. Governor to be brib'd to pass their Acts of Assembly.

4^{thly}. By charging the Government to be in the Hands of hot and ignorant Men.

5^{thly}. By the Address to the Lieut. Governor, disowning and casting off the present Authority, declaring the Lord *Cornbury* to succeed the late Earl of *Bellamont* in the Government.

I hope the Prisoner by this Time is convinc'd of his Crime, as well as that Clergy-man who spoke so much in his Vindication; and that the Prisoner will now be duly penitent, and make a true Confession of it.

Col. Bayard. May it please your Honour, I ever abhor'd that heinous and abominable Crime of High-Treason, as much as Death it self: I call God and my own Conscience to witness, That I am as innocent of it as the Child unborn: I never spoke to any of the Soldiers to make any Complaint, or sign any Addreses, or other Paper whatsoever. I own I was present at the Coffee-House, at the signing of an Address to the King, another to the Parliament, and another to the Lord *Cornbury*; and I own the Two first contained some Complaints of Grievances we supposed to lie under, and the latter a Congratulation.

I had the best Council I could get for so doing, and that it was the Subjects Right to Petition the King, by the Act of the First of *W. & M.* and I think the Subjects should be worse than Slaves, if they shall be arraigned for High-Treason for complaining to their Prince.

I must further beg leave to say, Your Honour was much mistaken in summing up just now what the Witnesses had sworn; and the Jury (by that Paper the Foreman read in Court) had likewise a wrong Notion of it; which I desired then I might controul, but your Honour over-ruled it, as not to be allowed after the Charge was given. It was not proved by any of the Witnesses, that the Peace of the Government had been disturbed: None of 'em said I had enticed any Person whatsoever to sign the Addreses; nor that I was present at the Soldiers signing at *Hutchins's*, much less that I enticed them to Mutiny. I knew nothing of their signing, I was not at the House all that Time. Mr. Solicitor had Mrs. *Hutchins* sworn, who said the same. None of 'em say, that in the said Address the Assembly was called *Unlawful*, but only that the Speaker was an *Alien*; nor that the Lieut. Governor was bribed, but tempted: Nor that the Government was in the Hands of hot and ignorant Men, but that hot and ignorant Men were put in Offices, and that there-

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thereby the Government was like to be rendred Cheap and Vile. And as for the Address to the Lieut. Governor, it was only said, *We had received Advice from England that the Lord Cornbury was to succeed the Earl of Bellamont as our Governor*; which by no Colour can be construed to be a casting off, or disowning of the present Authority. And tho' all had been proved, as it is not, what your Honour, as above, has been pleased to say, I humbly conceive it cannot amount to a Misdemeanor, and much less to that heinous Crime of *High-Treason*.

Mr. Atwood. The Right of Petitioning the King is not in Dispute, but the Manner of doing it makes it *Criminal*; neither does that Liberty extend to the Parliament.

Mr. Emot. I humbly move, that we may have Liberty to offer other Reasons *Ore Tenuis*. Which the Court granted.

Mr. Atwood. Adjourn the Court till Friday Morning the 13th Instant. *Adjourn'd accordingly*.

On the 12th in the Morning, the Prisoner wrote a Letter to Col. De Peyster; some of the Contents whereof were by Mr. Atwood retorted upon the Prisoner in open Court; at the Time he passed Sentence against him; for which Reason the Prisoner has permitted it to be published, and it is as followeth:

Col. D' Peyster; Sir,

I Take leave to acquaint you, That tho' it has pleased God to suffer your self, and some of your Relations to be the likely chief Instruments of the total Destruction both of my self and all my Family and Posterity; that yet notwithstanding I have that Peace with my self (and I can but only thank God for his all-sufficient Grace of strengthening me in it) that I am reconciled to all Mankind whatsoever, and that I hope one of my last Prayers will be, That God out of his infinite Mercy will graciously pardon all those that have had a Hand to cut me off. Sir, Believe me, as you may give Credit to the Words of a dying Man (since I find the Job is to be done, and that it is now past your Power to stop the Current) that I shall also die with a clear and good Conscience, and as free of that horrid Crime laid to my Charge, as the Child yet unborn. And therefore I hope God's merciful Hand, who has never left nor forsaken me, will continue to support me to the very last, and that I may look Death in the Face, as a good Christian ought to do; humbly submitting my All to his most Wise, most Just, and most Merciful Dispensations: For I am sensible there is no more than one Death for me, and that in all Probability, considering my Age, it might have been very soon, tho' this Tribulation had not befallen me. I shall only add, That I hope in God's Mercy for the Pardon of all my manifold Sins and Transgressions, thro' the only Merits of my Saviour Jesus Christ; and that when I shall be no more, he will continue his Grace to my dear Wife, and my Posterity. And lastly, That my Blood, which is struck at (by your Brother's own Expressions to my self, and your Brother-in-Law's to others, both not long since) may be the last to be spilt on Account of our dismal and unhappy Divisions; tho' I fear out of my Ashes such farther Calamities may arise to this poor bleeding Province, that Posterity will have Cause long to lament: For it is not to be expected, that all the Plots, Contrivances and Intrigues used in this Matter (many of which I

assure you are already discovered) will have their Exit with my self. It had been more pardonable to have stabb'd me in my Sleep, or with Joab's Hand, under a Pretence of Friendship, than to do it with Abab under a Colour and Cloak of Justice; and of the Two, I leave others to consider if this latter exceeds not the former; since it's not to be suppos'd, that Abab's was so much out of Malice; but the Vineyard being denied him on his offering the Worth of it in Money, occasioned the Innocent to be arraigned and slain for a pretended Crime of *Blasphemy* and *High-Treason*.

Sir, These above Lines are the Sincerity of my Thoughts this Morning; assuring you, that I never had a Thought before late last Night to write to your self one Word about this Subject; so altogether unknown to all Mankind whatsoever, nor don't intend them any further; wherefore I desire you'll make such Use of them, for your own Consideration, as God may direct you. I am, Sir,

Your humble Servant,
N. Bayard.

March 13. The Court being met according to Adjournment, the Prisoner being brought up, moved, That so far as much as Mr. Nicoll was out of Town, by reason of the Indisposition of his Family, another Council might be assigned in his Stead. Which was granted, and the Court adjourned till Monday the 16th Instant, at Nine a Clock.

March 16. Before the sitting of the Court, the Prisoner sent a Petition to Mr. Atwood, and the rest of the Commissioners, viz.

To the Honourable William Atwood, Esq; Abraham D' Peyster, Esq; and Robert Walters, Esq; Judges of this Special Court.

The Humble Petition of Nicholas Bayard, Sheweth,

THAT your Petitioner being altogether unacquainted what is practicable and allowable in Law to be offered in Arrest of Judgment; yet since your Petitioner's Life, and all what is near and dear unto him is concerned, he humbly craves Leave (besides the Reasons already offer'd by your Petitioner's Council in Arrest of Judgment) to lay before your Honours, and to pray your Honours favourable Consideration thereupon.

First, That the Verdict of the Grand Inquest was not sufficiently found by any Twelve of that Inquest, as in his former Petition is set forth.

Secondly, That the Petty Jury (in a Manner) forc'd upon your Petitioner, were all of them Parties concerned against your Petitioner in the very Matter he was tried for, on Account of the unhappy Divisions within this Province; all of 'em extream ignorant of the English Language, to that Degree that scarcely one of them is able to say the Lord's Prayer in the English Tongue, and much less to comprehend the Matters of Law, and what has been offered in behalf of your Petitioner at his Trial.

Thirdly, That all what has been sworn against your Petitioner, was, First, That the Petitioner's Name was seen to the Address to the Lord Cornbury, but that they knew not whether it was his Hand-Writing. Secondly, That the Petitioner had been present at the Coffee-House, and

“ at his own House, when the Addressee to the
 “ King, another to the Parliament, and another to
 “ the Lord Cornbury, were signed by several of the
 “ Freeholders, Freemen, and Inhabitants of this
 “ City; but that he had desired none of them to
 “ sign the same. 3dly, That the Petitioner had
 “ brought some Papers, supposed to be the said Ad-
 “ dressee, to the House of Alderman Hutchins.
 “ 4thly, That the Address to the Lord Cornbury con-
 “ tain’d only a Congratulation at his safe Arrival,
 “ and a hearty Desire, that with it all our Divisions
 “ might be healed, and that the very Name of
 “ Party and Faction might vanish, and be extin-
 “ guish’d; and that in the Two former, or in one
 “ of them, either to the King or Parliament, some
 “ Complaints were made of Grievances, without
 “ remembring the Particulars: Only Mr. Clows
 “ swore, That to his best Remembrance, in both, or
 “ in one of the Addressee to the King or the Parlia-
 “ ment, mention was made, That some of the *hot-
 “ rest* and *ignorantest* of the People were put in Of-
 “ fices; That the Speaker of the Assembly was
 “ challenged to be an Alien; That the said Assem-
 “ bly had given a Gift to the Lieutenant-Governor,
 “ to tempt him to pass their Acts, and another to
 “ the Judge; and that thereby his Majesty’s Go-
 “ vernment was like to be render’d *Vile* and *Cheap*
 “ in the Eyes of the People. And swore further,
 “ That in none of them any Reflections were made
 “ (as he conceived) to the Prejudice of the Lieut.
 “ Governor; and that in none of them, the Words
 “ *Unlawful* or *Oppression* were mentioned.

“ *Fourthly*, That all the rest of the Evidences
 “ swore nothing (against your Petitioner,) but that
 “ they had signed the Addressee at Alderman
 “ Hutchins’s; that two or three of the Soldiers had
 “ a Glass of Wine given them, but not for signing,
 “ it being *Christmas-Time*; and that some of them
 “ expected to be made Free of the City, but not of
 “ the Garison.

“ *May it please your Honours*; Your Petitioner
 “ finds, by the Notes himself has taken at his
 “ Tryal, that nothing more has been sworn against
 “ him: Whereupon the Jury, being ignorant Peo-
 “ ple, found him guilty; because some Part of the
 “ Indictment was proved, as to the signing of the
 “ said Addressee, and what the Contents of them
 “ were, only by the Oath of one Witness.

Your Petitioner therefore humbly prays, That your
 Honours will be pleas’d to take the Premises
 into your serious Consideration. Whether by the
 Laws of England, or this Province, it can
 amount to the Crime of High-Treason, what has
 been sworn against him, as above express’d? And
 if not, that your Honours will favourably order
 an Arrest of Judgment for the Reasons above-
 mentioned, &c. what has been already offered
 to your Honour by the Petitioner’s Council. And
 as in Duty bound, &c.

N. BAYARD.

The Court being met, the Prisoner was brought
 to the Bar, and the Petition last mentioned read.

Mr. Atwood. Mr. Emot, we are ready to hear
 the Arguments you have to offer, for the last Three
 Reasons you have assigned in Arrest of Judgment.

Mr. Emot. I am ready: 1st, *Andries Marshalk*,
 one of the Petty Jury, is an Alien; we have Two
 Evidences to prove the same. And---

Mr. Atwood. We cannot admit you any such
 Proof; for tho’ this might have been a good Excep-
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tion for Cause before he or they had been sworn;
 but now it’s too late: therefore go on to the next.

Mr. Emot. This seems very hard; for we ought
 to have been tried by the King’s lawful Liege People,
 and we apprehend these are not such; but we came
 not to the Knowledge of this till after the Tryal.

Mr. Atwood. Pray, Mr. Emot, delay the Court
 no longer; but proceed to the second Reason
 assigned.

Mr. Emot. The 2d Reason is, that the *Visne* or
Venue in the Precept to summon the Petty Jury, is
 wrong awarded, or rather not awarded at all. Our
 happy Constitution of Government is, That all
 Tryals of this Nature must be by the Verdict of
 Twelve Men, and that as near as may be of the
 Neighbourhood where the Fact ariseth, or is alledged
 to arise in the Indictment. Yet nevertheless, the
 Precept to summon the Jury, we find is directed to
 the Sheriff, to return Eighty Men of his Bailiwick;
 whereas he is Sheriff as well of the County of
New-York, as of the City; and at the same time,
 the Matters of Fact alledged in the Indictment are
 said to be committed in the *Dock* and *Eastward* of
 this City. So that this is a Mis-Trial, upon which
 no Judgment can be given. And of this we have a
 Multitude of Authorities in our Books: And first,
 in *Arundel’s Case*, *Coke’s Rep. part 6. fol. 14. b.* It
 was for the Murder of one *Parker*; and the Case
 was thus: The Murder was alledged to be done at
 the City of *Westminster*, in a certain Street there,
 called *King-street*, in the Parish of *St. Margaret’s*:
 For the Tryal of the Issue a Jury was return’d, *De
 vicinitate Civitatis Westm.* *Arundel* being found
 guilty, moves in Arrest of Judgment; assigning for
 Cause, that the Jury ought to have been out of the
 Parish of *St. Margaret’s*, and not in general out of
 the Neighbourhood of the City of *Westminster*;
 and it was adjudged a Mis-Trial, and the Verdict
 was set aside: And this I find was done upon a Spe-
 cial Consult of the Judges at *Serjeants-Inn*.

So that we see how cautious the Laws of *Eng-
 land* are, and the Judges thereof, that all Tryals of
 this Nature shall follow the *Venue*, and that the
 Jury shall be summoned from the Neighbourhood
 where the Fact ariseth. And the Reason thereof is
 grounded upon this Supposition and Presumption,
 That the Neighbourhood are the best and most
 proper Judges of Matters of Fact; for indeed it’s
 the Rule in the Law, That *Vicinus facta vicini pre-
 sumitur scire*.

But let me observe to your Honours, That our
 Case at the Bar is much more uncertain, as to the
 awarding of the *Venire facias*, or Precept to sum-
 mon the Jury; for the Fact is alledged to be done
 at the *Dock* and *Eastward* of this City, and Issue
 joined thereupon. Yet the Precept is directed to
 the Sheriff, to summon the Jury of his Bailiwick,
 which, as I said before, contains both the City and
 County of *New-York*, and without mentioning any
 Neighbourhood, and therefore may come out of the
 County, as well as from the City; and therefore of
 Necessity must be esteemed a Mis-Trial.

To this it may be objected by such as are ignorant
 of our Laws, That notwithstanding the Jury was
 summoned from the Neighbourhood of the City of
New-York, and not from the County; for that they
 know the Persons to be such. But this not appearing
 to be so upon Record, avails nothing; for the Rule
 of the Law is, *What appears not, is not: Existenti-
 bus & non apparentibus eadem est ratio*.

Crook’s Rep. In *London*, the Parish and Ward is
 mentioned; and therefore it was adjudged, That it

was not good to alledge any thing done generally in London; but it must be laid to be done in some Parish, from which a *Venue* may be awarded.

In *Crook's Fac.* p. 399. *Tycos* against *Westcome*. In this Case, a *Venire fac'* was awarded from *T.* and not *de Viceneto de T.* Resolved to be ill, and not amendable: Yet in this Precept the *Visne* is not so much as of a Ward of the City of *New-York*, nor of any other Neighbourhood whatsoever, but in general from his Bailiwick. So that I humbly pray, that for this Reason the Jury's Verdict may be set aside, this being a Mis-Tryal, upon which no Judgment can be entred: And shall proceed to the *Third Reason* assigned.

3. That the Precept to summon the Jury is not returned by the Sheriff, or any Endorsement thereupon, and signed by him, against the known Laws of England, and more particularly the Stat. of 12 Edw. 2. c. 5. This Statute enjoins, that the Sheriff shall put his Name to every Return made by him; so that the Court may know of whom they took such Return, if need be. And I shall endeavour to prove, from sundry adjudged Cases since the making of this Statute, that this Precept to summon the Jury not being endorsed by the Sheriff, the Tryal is ill, and not amendable.

The Case of *Holdsworth* against *Sir Stephen Proctor*, in *Crook's Rep. Part 2.* p. 188. *Sir Stephen Proctor* moved in Arrest of Judgment, for that the Name of the Sheriff was not endorsed upon the Writ of *Distringas* with *Nisi prius*; and it was ruled, That the Tryal was ill, and not amendable by any the Statutes of *Jeofals*: For, say the Judges, it's all one with the Case of a *Venire facias*, where the Name of the Sheriff is not thereto; which hath been frequently over-ruled, as being no Return, nor helped by any Statute of *Jeofals*. For the Statute of 18 Eliz. as I shall shew hereafter, from adjudged Cases, and from the best Authorities in Law, doth only help imperfect and insufficient Returns, and that only in Cases Civil between Party and Party; but here is no Return at all.

In *Rowland's Case*, in *Lord Coke's Rep. Book 5.* p. 41. in Ejectment upon a Verdict for the Plaintiff, the Defendant moved in Arrest of Judgment, for the *Venire facias* was not returned or endorsed by the Sheriff, tho' the *Postea* made mention that the Jury was returned *per Mandatum Justiciorum*: Yet in this Case it was ruled, That that would not help it; for the Judges said, That where there is no Return, it cannot be help'd by the Statute of 18 Eliz. or any other of the Statutes of *Jeofals*; for that Statute only helps imperfect and insufficient Returns, and such as want Form, and not such as are not return'd at all.

Again, in *Sir Arthur Blackmore's Case*, in *Coke's 8th Rep. fol. 156.* in this Case it was adjudged, that the Statute of 18 Eliz. doth not help a Tryal, where no Return is made upon the Writ of *Venire fac'*; as was formerly, say they, adjudged in *Rowland's Case* before-cited. And our Books are full of Authorities of this Nature; but I shall not give you the Trouble to mention any more.

Mr. Solicitor. *Mr. Emot*, these Authorities which you have here cited, it's true, are grounded upon the Statute which you have mentioned of 12 Ed. 2; but this Statute has only relation to Writs; and in this Case the Sheriff summoned the Jury, not by Virtue of a Writ, but a Precept under the Hands of the Commissioners; which differs the Case.

Mr. Emot. *Mr. Solicitor*, then you say that the Case at the Bar is not within the Words of this

Statute of 12 Edw. 2. for that this is a Precept to summon the Jury, and not a Writ, and so consequently the Sheriff not obliged to sign and return the same. A very wise Distinction!

However, I shall endeavour to shew, that this Precept is within the Reason and Equity of the Statute, and that the same ought to be returned and signed by the Sheriff. In order thereto, I shall put this Court in mind, how Statutes have from Time to Time been taken by Equity in divers Manners; that those Things which are alike in Reason, are alike in Law; and that where an Act of Parliament hath been made to remedy some Mischiefs, that the same hath been extended to other Things, in like Degree, and that even in Penal Laws. As for Example:

Stat. of Gloucest. c. 5. By this Statute, an Action of Waste is given against one who holds for Years; yet by the Equity of this Statute, a Man shall have an Action against him who holds but for half an Year, notwithstanding the Act be Penal.

Westm. 2. c. 3. This Statute gives an Action of *cui in Vita*, after the Coverture dissolved by Death: Yet if the Coverture be dissolved by Divorce, the Wife shall have, by the Equity of this Statute, a Writ of *cui ante Divortium*.

And lastly, the Stat. 25 Edw. 3. *de prodicionibus*. This Statute expressly says, That no Case shall be taken by Equity, unless it be adjudged in Parliament; and yet by the Equity of the Words of that Statute, which are, *If the Servant kill the Master*, it is taken, *If the Maid kill the Mistress*; that this is Petty-Treason.

So that from hence I am humbly of Opinion, That we are fairly within the Equity of the Stat. 12 Edw. 2. Besides, a Writ and Precept in this Case are only Synonymous Terms, and signify one and the same Thing.

These Reasons were over-ruled.

And the Court ordered the Sheriff to make a Return upon the Precept to summon the Jury, conform to the above Stat. 12 Edw. 2. which the Court said they had Power to do, and to help that Defect.

Mr. Emot. I find your Honour has over-ruled all the Reasons that we have offered in Arrest of Judgment, in Behalf of the Prisoner *Col. Bayard*, why Judgment ought not to pass against him, according to the Verdict of the Jury; but have not as yet observed, that either *Col. D'Peyster* or *Captain Walters* have given their Opinion to all, or any of the Reasons we have offered. I humbly therefore pray, that we may have their Opinion, so that we may know by what Hands we fall.

Mr. Atwood. *Mr. Emot*; You which have been assigned Council for the Prisoner, have hitherto, in all the Course of the Tryal, carried your selves like Men of your own Profession, you must not now therefore begin to menace the Court. You shall have the Opinion of the rest of the Commissioners.

Whereupon *Mr. Atwood* turning himself to them, and whispering them, they severally did declare, That they were of Opinion with Justice *Atwood*, in that the Reasons offered were not sufficient to arrest the Judgment.

Mr. Atwood. *Col. Bayard*, have you any thing to say, why Sentence should not pass against you?

Prisoner. I have nothing more to offer, than what my Council have offered, and what is contained in my last Petition.

Mr. Atwood. I am sorry to find you so impenitent of your Crime, which is so heinous and abominable in the Sight of God and Man. You have lately

lately made Reflections upon the Proceedings of this Court against you, as if it had been a Design to do the Job; comparing your Case to that of Naboth's Vineyard: But I hope God will open your Eyes, that you may be convinced, and repent of the Crime. Then he pronounced Sentence in these Words:

It is considered by the Court here, that you be carried to the Place from whence you came; that from thence you be drawn upon a Hurdle to the Place of Execution; that there you be hanged by the Neck; and being alive you be cut down upon the Earth, and that your Bowels be taken out of your Belly, and your Privy-Members be cut off, and you being alive they be burnt before your Face; and that your Head be cut off, and that your Body be divided into Four

Quarters; and that your Head and Quarters be placed where our Lord the King shall assign. And the Lord have Mercy upon your Soul.

Prisoner. I desire to know whether I may have leave to answer to your Honour's Speech made before Sentence.

Mr. Atwood. No.

Prisoner. Then God's Will be done.

The Prisoner was remanded.

Alderman *Hutchins* of New-York was Tried, Convicted and Condemned of High-Treason, for the same Facts with which Col. *Bayard* was charg'd, and had the same Usage both before, in and after his Tryal.



The TRYAL of WILLIAM FULLER, on Wednesday, May the 20th, 1702.

Proclamation was made for all Persons concerned to attend.



HEN the Gentlemen that were of the Jury were Sworn.

*Peter White,
Ab. Burnett,
John Cooper,
Edward Pinfold,
James Dod,
Boden,*

*Axon,
Procter,
S. Stone,
Troughton,
Jo. Watson,
Dan. Carpenter.*

The Queen against William Fuller, upon an Information for Libels.

Mr. Montague. May it please your Lordship, and you Gentlemen of the Jury, The Information sets forth ——— “That the Defendant being an Impostor, and a common Lyar, and a Person of an ill Name and Reputation, falsely, maliciously, wickedly and seditiously contriving, practising, and intending the late King William and his Subjects, falsely and unlawfully to delude and deceive, and Discords between the said late King and the Peers, and the Noblemen of this Kingdom, and the great Officers and Ministers intrusted by the said late King, in Business relating to the Government of this Kingdom of England, and other Subjects of the said Kingdom, to move, excite, and stir up; and also to bring the Noblemen and Peers, and the great Officers and Ministers aforesaid, and other faithful Subjects, into Hatred and Contempt with the said late King; and to get and obtain several great Sums of Money fraudulently and deceitfully from the said late King: He, the said William Fuller, the first Day of January last at London, &c. (to perfect and bring to Effect his said wicked Practices and Intentions, and of and concerning a Correspondency between

“divers Officers and Subjects of the said late King and the late King James, while he resided at St. Germans in France, falsely pretended to be had, and of divers Sums of Money by the said late King James distributed amongst the Subjects of the late King William, falsely pretended to be sent here into England;) did falsely, wickedly, maliciously, and scandalously Write and Print, and cause to be Printed, a false, scandalous, and defamatory Libel, Entituled, *Original Letters of the late King's*, (meaning the late King James) and others, to his greatest Friends in England, with the Depositions of Thomas Jones and Thomas Widdrington, Esqs; proving the Corruption lately practised to ruin this Nation. “In which false, feigned, and scandalous Libel, among other Things are contained as follows: 1st Page. *Thomas Jones, Esq;* deposeth. That he being at St. Germans, the Court of the late King James in France, in January, 1692, the said late King being in his Closet, sent for this Deponent, and there commanded the said Deponent to begin his Journey for England, in Company with Colonel *Tho. Dallaval*, and Mr. *George Hayes*; and the said late King did then, and there, deliver to this Deponent several Letters and Papers, to divers Noblemen and others in England, to whom this Deponent had several times before and since brought Letters from the late King and his Queen, and pretended Secretaries of State, delivered according to Order. This Deponent further saith, by the Oath he hath taken, That the late King James, at the time aforesaid, in his Closet at St. Germans, did deliver to this Deponent a Paper, being an Order for this Deponent to receive Six Thousand Pounds; which Sum this Deponent was to pay to several Persons in Places in Trust then in England, to engage them more firmly to endeavour the invalidating the Evidence of William Fuller, (who, as the said late King expressed, had been by him, his Queen, and chief Servants, intrusted and employed in their most secret and weighty Concerns, for a considerable time after the late King

King and Queen's coming to *France*). (P. 7.) And this Deponent faith, He informed Mr. Fuller, that *Dallaval* and *Hayes* were come to Town, and lodged at an *Apothecary's* in *Holborn*, which House *Hayes* formerly lodged at; but that *Dallaval* not being well, they could not come to him; therefore this Deponent said to Fuller, that they desired him to come to them; but he urged his Condition rendred him unfit, begging of the Deponent, to intreat them not to fail to attend the House of Commons at the time appointed. All which this Deponent imparted the same Day to Coll. *Dallaval* and Mr. *Hayes*, and with them went the same Evening to three Gentlemen that were then Members of Parliament; and this Deponent had a Letter from one of those three Gentlemen, (that was a Member of Parliament) directed to one of the Secretaries to the then Secretary of State, which this Deponent was to carry to him the next Morning; which accordingly he did by Seven of the Clock. And this Deponent faith, He paid the said Under-Secretary 500 Guineas. And this Deponent faith, That when he left the Secretary, he went directly to the *Sun-Tavern* in *King-street Westminster*; where he found the three Members with *Dallaval* and *Hayes*, and an eminent Banker of the City of *London*: Then this Deponent desired the Banker to give his Bill to pay each of those three Gentlemen that had been Members 1000 Pounds, payable on sight; which being done, the said Banker delivered also to one of them his Bill for 1500 £ to be paid on Demand, for the use of a considerable Person, whose Station would not permit him to be present. And this Deponent faith, by the Oath he has taken, That the several Sums of Money before-mentioned, with several lesser Parcels, were so disposed of by him, according to the late King's especial Directions. And this Deponent faith, He has now by him the Receipts of each Person for the respective Bills and Moneys he disposed of, with the true Copies of his Original Bills, delivered to him by the late King's own Hand. This Deponent faith, He delivered to the late King a Letter he had for him, from the three Gentlemen that were Members, and also several others he brought from *England*. And so far as this Deponent faith, As he hath formerly been employed to bring Letters, and Bills, and Orders, from the late King *James*. and the *French K.* and their Ministers; this Deponent faith, That he has kept a Journal of the same; and is ready to lay it before either or both Houses of Parliament when required. And this Deponent faith also, by the Oath he hath taken, That he can produce his Original Orders, that he receiv'd from the late King's, and the *French King's* own Hands; for the distributing more than One Hundred Four-score Thousand Pounds *Sterling* for their Use to Persons that were in Places of Trust. And this Deponent faith, He can produce the Receipt of each Person to whom the Money was paid, and also the Persons from whom this Deponent received the said Sum or Sums by the Order aforesaid.

Tho. Jones.

(2d Book) "The Information further sets forth, "That the Defendant, the Day and Year aforesaid, " (to perfect and bring to effect his further most " wicked Practices and Intentions against divers " Officers, and other Subjects of the late King " *William*, upon a feigned and pretended Correspondence between them and the late King *James*; " whilst he resided in *France*, and of several Sums " of Money sent by the said King *James* out of

" *France* into *England*, to be distributed amongst " the Subjects of the late King *William*) another " most false and scandalous Libel, [Title Page] " (entitled, *Twenty Six Depositions of Persons of " Quality and Worth*) falsely, wickedly, and most " deceitfully, did write, print, and cause to be " printed; in which said false and scandalous Libel, " amongst other Things, are contained, viz. [5th " Page.] " Mr. Jones has also made Oath, That he paid 5000 £. more, by the late King's Order, to several Persons in Places of Trust, that they might complete my Ruin, and invalidate me for ever. Nor is this all; for the same Mr. Jones will prove by undeniable Witness and Demonstration, that he has distributed more than One hundred fourscore Thousand Pounds in Eight Years last past, by the French King's Order, to Persons in publick Trust in this Kingdom.

W. Fuller.

" And the said Defendant Fuller afterwards, the " said Day, &c. falsely, unlawfully, and wickedly " did publish, utter, and for Truth affirm, the " said several false and scandalous Libels, without " any lawful Authority. Whereas, in Truth, the " said *Thomas Jones* did not depose upon his Oath, " as is contain'd in the said false and scandalous Libel; but that the said scandalous Libels were and " are false and feigned, and altogether contrary to " Truth; to the great Scandal and Abuse of the " late King *William*, and his great Officers and " Ministers, and other the faithful Subjects of the " said late King, to the evil Example of others, " and against the Peace of the said late King, his " Crown and Dignity.

He pleaded not Guilty, and Issue joined thereupon.

The Case "The Defendant Fuller is so notorious a Cheat, and his Practices so publicly " known to all Men, that there need not much to " be said here to aggravate his Offences; for in the " Year 1691, he was censur'd by the House of " Commons, prosecuted, convicted, and punished " for those very Crimes he now stands to be tried; " and notwithstanding that Sentence and Punishment, he still persists in his villainous Practices " and Designs.

" About two Years since, he applied himself to " the chief Ministers at Court, and insinuated what " Discoveries he could make relating to the Cheat " of the Birth of the pretended Prince of *Wales*, " and of great Sums of Money received by several " Persons of Quality here, from the late King " *James* and the *French King*, and of several Correspondencies had between them, and the great " Officers of State here in *England*; but not meeting with that Encouragement he expected, he " then undertakes to write and publish the two " scandalous Libels mentioned in the Information, " and caused great Numbers of them to be printed " and sold about the Town; and then petitions " the House of Peers to be heard, to make out the " Truth of what he wrote and publish'd. The " House of Peers, by his Importunity, appointed " a Day for him to produce those Persons he mention'd, to make good his Accusations and Charge, " which he undertook to do; but failing from " time to time, their Lordships ordered him to be " committed, and prosecuted for an Impostor; but " the Defendant being an harden'd Rogue, was no " way humbled at this Order, but immediately " thereon

“thereon applies himself by Letters to the Speaker of the House of Commons, alledging the same Matters, as he had done before to the House of Lords. The House of Commons ordered him to be brought to their Bar, where he only desired Ten Days Time to produce those Persons mention'd in his Libels; and that House, (to leave him no Excuse) granted him a Fortnight; but having trifled with the House of Commons, as he had done before with the House of Lords, they voted him an incorrigible Rogue, and ordered him to be prosecuted. What the Reasons were for this unparallel'd Impudence, whether for the sake of Gain, or Malice to those Gentlemen he hints at in his Libels, are yet Secrets.

Mr. Att. Gen. My Lord, the Charge Sir Edward Northey. has been very fully opened, and I need not say much. His Crime is his publishing these two Books, (mention'd in

the Information.) He has been some Time setting up for an Evidence, pretending to discover a secret Correspondence between the late King James, and several Persons here in England. He made an Offer of some such Discovery about Ten Years ago, and he then applied himself to the House of Commons, and they gave him Time to produce his Witnesses; but after all, he could produce none, and the House ordered him to be prosecuted as a Cheat and Impostor; and he was prosecuted accordingly, convicted---, and set in the Pillory. Now some Time last Winter, he did apply himself to some of the late King's Ministers, and pretended he would produce Thomas Jones, and Tho. Witherington, to make considerable Discoveries. They heard him, but he could never produce these Men before them. And afterwards having no Encouragement from them, he took on him to publish these two Books, mention'd in the Information, whereof he stands now accused. And after he was before the Parliament, he first applied himself to the House of Lords, and they heard what he had to say, and gave him Time to produce his Witnesses; but he could not do it, and thereupon the Lords were pleased to direct this Prosecution. Then he applied himself to the House of Commons, and they gave him Time likewise to produce his Witnesses; but he could produce none; whereupon they Voted him a Cheat, a false Accuser, and an incorrigible Rogue. My Lord, these Books were published with a very malicious Design, and no doubt, he had other People, who do not now appear, to support him in it; and I doubt not but he would have set up Witnesses to have sworn whatever he would have them, if he had met with any Encouragement. He has the Impudence to put in the Frontispiece of his Books, *Published by Command*; but being ask'd in the House of Peers, by whose Command? He said it was by his own Command. And he has published in the Books, that he would produce Witnesses to prove the distributing of an Hundred and eighty thousand Pounds to Persons in Places of Trust, and to produce Receipts for the same, and he hath an Opportunity now of doing it. We will prove the Charge upon him.

Mr. Sol. Gen. My Lord, the Matter of the Information has been fully opened; but we are to consider the ill Consequences of it. This is a new Practice for a Man to publish Things of this Nature, and not be able to prove any thing: But he pretends to set up a second Witness to make out what he has said; that is, Jones, as if Jones were to relieve him. Now if that were true, it would be a

great Thing to corroborate what he did say; but he has never produced this Jones, but only has printed something that he calls Jones's. If it were only what depended on his private Knowledge, the Case were otherwise; but when he pretends to bring Jones to prove it, and does not produce him, he makes himself guilty of the Scandal; and it is very necessary that this Man should be brought to Punishment. I will not trouble your Lordship further, but call our Witnesses.

Mr. Serj. Darnel. The Matter has been opened so fully, that there is no need for me to say any thing; we will now call our Witnesses.

Mr. Att. Gen. My Lord, we will prove that Fuller carried this Book to the Press, and not Mr. Jones, therefore we may well presume it was his own.

Mr. Coniers. He could never produce Jones, but he could frame Depositions for him.

Then Fuller's Book was produced.

Mr. Serj. Darnel. Call Mr. Buck, [who appeared, and was sworn.] Mr. Buck, Who caused that Book to be publish'd?

Mr. Buck. Mr. Fuller.

Mr. Serj. Darnel, How do you know that?

Mr. Buck. He brought it to me in Manuscript, and he said he took these Depositions out of the Secretaries-Office.

Mr. Serj. Darnel. But what did he desire you to do?

Mr. Buck. He desired me to print it: And he said, Because it was not done sooner, it had done the King Ten thousand Pound Damage.

Mr. Coniers. Did he make any Alteration in them afterwards?

Mr. Buck. No, only alter'd the Mistakes of the Press?

Mr. Att. Gen. Was that Book printed by his Order?

Mr. Buck. Yes.

W. Fuller. My Lord, I will not give these Gentlemen the Trouble to prove it; I own it was writ by me.

Mr. Att. Gen. Do you own the other Book too?

Mr. Buck. Look on that Book, [then the other Book was shewn him] By whose Order was that Printed?

Mr. Buck. By Mr. Fuller's Order.

Mr. Fuller. My Lord, if it be the Book I publish'd, I will own it. [Then it was shewn him.] Yes, my Lord, it was printed by my Order.

L. C. J. Holt. Read the Title.

Clerk. *Original Letters from the late King James, &c. Published by Command.*

L. C. J. Holt. By whose Command was it publish'd?

Mr. Att. Gen. By Fuller's.

L. C. J. Holt. His Order is a Command, it seems.

Then some Paragraphs were read.

Mr. Att. Gen. If Mr. Fuller will produce this Jones, to make good what he says, he will do a great Piece of Service; otherwise, he deserves to be severely censur'd.

L. C. J. Holt. Read the other Part.

Then the Clerk read the Title.

W. Fuller.

W. Fuller. Pray read the whole Title:

L. C. J. Holt. He is in Love with it.

Clerk. [Reads the Title] *Twenty six Depositions of Persons of Quality and Worth, with Letters of the late Queen, Father Corker, and Mrs. Mary Grey, &c. Publish'd by Command.*

Mr. Att. Gen. Read the rest.

Clerk. *Mr. Fuller's Answer to the chief Objections made against him, &c----* *Mr. Jones made Oath, that he had paid 5000*l.* more to several Persons by the late King's Order, that he might compleat my Ruin, and invalidate my Evidence for ever, &c.*

Mr. Att. Gen. My Lord, we have proved his publishing of these Books. We will now hear what he can say for himself.

W. Fuller. My Lord, I humbly beg you will hear what I have to say?

L. C. J. Holt. Yes, yes. Have you any Council?

W. Fuller. No, my Lord, I have none; I have no Money to procure Council. I have put my Thoughts in Writing, and I beg Leave to read it.

L. C. J. Holt. But you must speak to the purpose. What do you say concerning the publishing these Books?

W. Fuller. That is what I have to offer.

L. C. J. Holt. But can you make it appear that they are true?

W. Fuller. My Lord, I hope I shall.

L. C. J. Holt. Have you any Witnesses?

W. Fuller. I have none here at present. But if your Lordship will please to hear the Terms upon which the Witnesses would have come in, I can produce them: If your Lordship will grant your Warrant for *Jones*, I will forfeit my Life if he appear not.

L. C. J. Holt. You might have had *Subpana's* for your Witnesses against this Day.

W. Fuller. My Lord, I did endeavour it; but I had not Money to bear their Charges.

L. C. J. Holt. You made the same Excuse before the House of Lords and Commons.

W. Fuller. If it can be made appear that I had any Assistance from the House of Lords, or the House of Commons, I own I am in the wrong.

L. C. J. Holt. What Assistance would you have had from them? Or what would you have from me?

W. Fuller. The House of Lords summoned me before them; and I desired----

L. C. J. Holt. If you take on you to write such Things as you are charged with, it lies upon you to prove it at your Peril.

Mr. Att. Gen. My Lord, he did appeal to the Lords; and they gave him from Time to Time to produce his Witnesses, and he could not do it.

L. C. J. Holt. If you have any Witnesses, I will hear them; but to hear you make a Speech, it is to no purpose.

W. Fuller. My Lord, I hope you will believe it to be to the purpose, if you please to hear me.

Mr. Coniers. What signifies your Belief?

W. Fuller. Why am I not to be believ'd?

L. C. J. Holt. What? Because you have stood in the Pillory for an Impostor heretofore.

Mr. S. Darnel. The whole Nation do not believe you; for the Lords and Commons did not, who represent the whole Nation.

W. Fuller. The Lords did not think fit to put it to the Tryal. These Gentlemen charge me to have abused several Persons; I would be glad to know who these Persons are.

Mr. Att. Gen. I cannot tell who they are; your Book promises to make that appear.

W. Fuller. If a Man of an ill Character abuse the Nation, I hope I shall not suffer for that.

L. C. J. Holt. How came you to write these Books, that are not true?

W. Fuller. My Lord, I believe they are all true.

Mr. Att. Gen. Produce the Original Affidavits made by *Jones*, which you caused to be printed.

Mr. Serj. Darnel. Produce the Receipts in for the Money, which you say you have; and then you will do something.

W. Fuller. Do I say it?

Mr. Serj. Darnel. Yes, if that Print be yours.

W. Fuller. I wonder a Man of your Gravity should assert such an Untruth in the Court.

L. C. J. Holt. If you have any Witnesses; produce them.

W. Fuller. My Lord, I presume you cannot but remember; that in *Crone's* Case I behaved my self honourably, and was owned to have done the Nation good Service.

L. C. J. Holt. That was formerly, and signifies nothing to what you do now.

W. Fuller. I ventur'd several times into *France*, and back again: Shew me a Man that ever did so besides?

Mr. Att. Gen. If you had made out the Discovery you pretended to make, I should have commended you.

W. Fuller. After I had made that Discovery, the Court at *St. Germain's* did what they could to ruine me. There have been a great many Books lately printed, to prove the Legitimacy of the Prince of *Wales*, and none of them taken notice of.

L. C. J. Holt. You charge a great many Persons with corresponding with *France*, and cannot prove it.

W. Fuller. I charge none, my Lord.

L. C. J. Holt. You charge all that are intimated in the Books. The same *Mr. Jones* will prove by undeniable Demonstration, that he distributed more than 180000*l.* by the *French King's* Order, to several Persons employed under the Government. Now these Persons are scandalized; for you produce no Proof of what you charge them with: And you say, I had the Original of this from *Mr. Jones*, &c. Where are they?

W. Fuller. If your Lordship will please to grant me your Warrant, I will produce them.

L. C. J. Holt. If you take on you to make good these Things, you cannot in Justice require my Warrant to fetch in others to prove what you say; you must prove it.

W. Fuller. By his own Confession, he has been guilty of High-Treason; and therefore will not appear without a Warrant.

L. C. J. Holt. You cannot pretend to have a Right to any Warrant.

W. Fuller. If your Lordship please to give me Leave to say something in my Defence----

L. C. J. Holt. Yes, if it be to any Purpose.

W. Fuller. I am unacquainted with the Laws, and have not----

L. C. J. Holt. What is that to the Purpose? You are not to make Libels, nor traduce Ministers of State. What have you to say to that?

W. Fuller. When I had printed this Book, I was summoned before the Lords; and after that was committed to the *Fleet*. My Friends were all called before the Lords; and by my Lord *Jeffreys* and other Lords; there were such Questions asked, as I believe were never ask'd before----

L. C. J. Holt.

L. C. J. Holt. This is not to be endured; you do but aggravate your Crime.

W. Fuller. This is not what I would offer.

L. C. J. Holt. If you can offer any Matter to prove what you have writ, let us hear it.

W. Fuller. Mr. Jones has confess'd himself guilty of High-Treason, and therefore cannot appear.

L. C. J. Holt. Where is he? Where did he make this Confession?

W. Fuller. In the Country.

L. C. J. Holt. Before whom?

W. Fuller. I do not know that; I was not with him when he did it.

L. C. J. Holt. Where is the Man?

W. Fuller. If your Lordship will please to give me your Warrant, I will produce him.

L. C. J. Holt. Shall I make a Bargain with you? Why have you not produced him all this while, before the House of Lords, and the House of Commons?

W. Fuller. Mr. Attorney did say I appealed to the Lords. I was called before them; I made no Application to them, but was called by the Order of the House.

Mr. At. Gen. But you was there.

W. Fuller. I was there; and there were Three

Letters read of mine in the House, and I desire they may be read here.

L. C. J. Holt. What is that to the purpose? Can you produce your Witnesses?

W. Fuller. Mr. Jones is now in Hampshire.

L. C. J. Holt. Have you not had Time enough to procure him?

W. Fuller. My Lord, I cannot force him. I was with the Secretary of State, and told him, Jones will not come in voluntarily; if the Lords will grant a Warrant, he may be brought. I offer'd this to the House of Commons too, but it was not granted. I could not force him.

Mr. Serj. Darnel. The Secretary of State sent one or two for him.

W. Fuller. He sent no body.

L. C. J. Holt. Gentlemen of the Jury, you hear what the Purpose of this Information is, and you hear how it is proved; and you hear the Witness say, He brought these two scandalous Books to the Press, and that he corrected them; and he owns, he was the Publisher of them: And if you believe he did do so, you are to find him Guilty.

The Jury brought him in Guilty, without going from the Bar.

The Tryals of Colonel RICHARD KIRKBY, Captain JOHN CONSTABLE, Captain COOPER WADE, Captain SAMUEL VINCENT, and Captain CHRISTOPHER FOGG. October 8, 9, 10, 12. 1702.



A Court-Martial held on Board her Majesty's Ship the *Breda*, in Port-Royal Harbour in Jamaica in America, the 8th, 9th, 10th, and 12th Days of October, 1702.

Present,

The Honourable William Whiston, Esq, Rear-Admiral of her Majesty's Ships for the West-India Squadron, President.

Samuel Vincent,
John Hartnoll,
Christopher Fogg,
John Smith,
John Redman,
George Walton,

William Russel,
Barrow Harris,
Hercules Mitchell,
Philip Boyce,
Charles Smith.

Arnold Browne, Esq, Judge-Advocate.

Who being all duly sworn, pursuant to the Act of Parliament;

Proceeded to the Tryal of John Arthur, Gunner of the *Defiance*, on a Complaint exhibited by Francis Knighton, Third Lieutenant of the *Defiance*, and George Foster, Gunner of the *Defiance*, for hiding and concealing Forty Three Barrels of Powder in the Wadd-Room, and covering them with Wadds and Coins, &c. when a Survey of her Majesty's Stores of Ammunition after an Engagement was ordered; and denying to the Surveyors, that there was any

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more Powder on Board, than was in the Powder-Room and Gun-Room, viz. One Hundred; which, upon a Second Survey, were discovered. It was proved also, That he had Two Keys to the Powder-Room; and that having lost or mislaid his own, he, without making any Application to the Commanding Officer then on Board, who kept the other Key, prevailed with William Baker, Carpenter of the said Ship, to break open the Door.

In Mitigation of his Offence, he alledged, That examining into the Powder-Room, he found Three Barrels that had received wet, which caused his Removal of the Forty Three Barrels; but had little to say for his concealing them from the Surveyors. Whereupon the Court adjudged, That the said Offence falling under the 33d Article of War, the said John Arthur should be carried from Ship to Ship in a Boat, with a Halter about his Neck, the Provost-Marshal declaring his Crimes; and all his Pay, as Gunner, to be mulct'd and forfeited to the Chest at Chattham; and be render'd incapable of serving her Majesty in any other Employment.

Colonel Richard Kirkby, Commander of the *Defiance*, was tryed before the aforesaid Court, (except Captain Samuel Vincent, and Captain Christopher Fogg, who appeared as Witnesses for the Queen,) on a Complaint exhibited by the Judge-Advocate on the Behalf of her Majesty, of Cowardice, Neglect of Duty, Breach of Orders, and other Crimes committed by him at a Fight at Sea, commenced the

E e e e

19th

19th of *August*, 1702: off of *St. Martha*, in the Latitude of Ten Degrees North, near the Main Land of *America*, between the Honourable *John Benbow*, Esq; Vice-Admiral of the Blue Squadron of her Majesty's Fleet, and Admiral and Commander in Chief, &c. on Board her Majesty's Ship *Breda*, *Christopher Fogg*, Commander, and Six other of her Majesty's Ships, viz: the *Defiance*, *Richard Kirkby* Commander; the *Falmouth*, *Samuel Vincent* Commander; *Windsor*, *John Constable* Commander; *Greenwich*, *Cooper Wade* Commander; *Ruby*, *George Walton* Commander; and the *Pendennis*, *Thomas Hudson* Commander: And Monsieur *Du Casse*, with Four *French* Ships of War: Which continued until the 24th of *August* inclusive.

The Witnesses that were sworn in Behalf of the Queen; viz,

The Honourable *John Benbow*, Esq; Admiral.

2 Captains.

8 Lieutenants.

5 Masters.

5 Inferior Officers.

21

Who deposed, That the said Colonel *Richard Kirkby*, the Van in the Line of Battel, the 19th of *August*, about Three in the Afternoon, the Signal of Battel being out, the Admiral was forc'd to send his Boat on Board of *Kirkby*, and command his making more Sail, and get a-breast of the Enemy's Van, for that he was resolv'd to fight them. About Four the Fight began; but the said *Kirkby* did not fire above Three Broadfides, then luff'd up out of the Line, and out of Gun-shot, leaving the Admiral engaged with Two *French* Ships till dark, and the said *Kirkby* receiving no Damage: That his Behaviour caus'd great Fear of his Desertion. At Night the said *Kirkby* fell a-stern, leaving the Admiral to pursue the Enemy.

That the 20th, at Day-light, the Admiral and *Ruby* were within Shot of all the Enemy's Ships; but Colonel *Kirkby* was near Three or Four Miles a-stern. The Admiral then made a new Line of Battel, and took the Van himself, and sent to each Ship, with a Command to the said *Kirkby* to keep his Line and Station; which he promis'd to do, but did not; keeping Two or Three Miles a-stern, tho' the Signal for Battel was out all Night. The *French* making a Running Fight, the Admiral and *Ruby* plied the Enemy with their Chase-Guns till Night. That the 21st Day, at Light, the Admiral was on the Quarter of the Second Ship of the Enemies Rear, and the *Ruby* on the Board-side, very near, who plied him warmly, and met the same Return; by which he was so much disabled, though the Admiral came in to his Assistance, that he was forc'd to be towed off: And this prevented the Admiral's Design of cutting off the Enemy's sternmost Ship. This Action lasted Two Hours; during which Time, the said *Kirkby* lay a Broad-side of the Sternmost Ship; as did also the *Windsor*, *John Constable* Commander. The Admiral then commanded the said *Kirkby* to ply his Broadfides on him. But this having no Effect, the second Time he commanded the same; but he fired not one Gun: Nay, his own Boatswain and Seamen repeated the Admiral's Command to him; but were severely us'd, and threatn'd that he would run his Sword through the Boatswain. And had the said *Kirkby* done his Duty, and Captain *Constable* his, they must have taken or

destroyed the said *French* Ships. The Admiral, tho' he received much Damage in his Sails, Rigging, Yards, &c. yet continued the Race all Night. That the 22d, in the Morning at Day-light, the *Greenwich* was Three Leagues a-stern; and the *Defiance*, Colonel *Kirkby*, with the rest of the Ships, Three or Four Miles, the *Falmouth* excepted; whose Station was in the Rear: That the said Captain *Samuel Vincent*, seeing the Behaviour of the said *Kirkby*, and the rest, came up with the Admiral, and sent his Lieutenant on Board, desiring Leave to assist him; which was accepted: The said *Kirkby* never coming up; and by his Example the rest did the same, as if they had a Design to sacrifice the Admiral and *Falmouth* to the Enemy, or desert. The Enemy were now about a Mile and an half a-head, standing in to the Shore with a small Breeze at *W.* fetched within *Sambeys*, the Admiral firing at the Sternmost till Night, and continued the Pursuit; and a *Flemish* Ship that was in Monsieur *Du Casse*'s Company, on Board of which was all the *French* and *Spanish* new Governors and other Officers, made her Escape. That the 23d, in the Morning, at Day-light, the Enemy bore North-West, distant about Four or Five Miles, the Admiral and *Falmouth* pursuing; but the said Colonel *Kirkby*, with the rest of the Ships, being Three or Four Miles a-stern; (tho' there was not a Ship but, before and after the Battel, sail'd better than the Admiral.) About Seven in the Evening, it having been some time calm, a Gale of Wind sprung up, the Admiral and *Falmouth* were about Two Miles from the Enemy; and at Eight, the said *Kirkby* and his separate Squadron was fair up with the Admiral: And this Day the Admiral sent away the disabled *Ruby*, *George Walton* Commander, to *Port-Royal*; and under his Convey the *Anna* Galley, retaken from the *French*.

That the 24th, in the Morning, about Two of the Clock, the Admiral came up with the Sternmost of the Enemy within Call, and the *Falmouth* pretty near; but the said Colonel *Kirkby*, with the rest of the Ships, according to Custom, were Three or Four Miles a-stern. The Admiral and *Falmouth* engaged the said Ship; and at Three the Admiral was wounded, his Right Leg being broke, but commanded the Fight to be vigorously maintained; and at Day-light the Enemy's Ship appeared like a Wreck, her Mizon Mast shot by the Board, her Main Yard in Three or Four Pieces, her Foretopfail Yard the same, her Stays and Rigging all shot to pieces. Soon after Day, the said *Kirkby*, with the rest of the Ships, being to windward of the said disabled Ship, he the said *Kirkby*, with the rest of his separate Squadron, fired about Twelve Guns at the said Ship; and fearing a smart Return from her, he lower'd his Mizon Yard, his Topfails on the Caps, set his Spritsail, Spritsail Topfail, and Foretopfail Stayfail, and having waired his Ship, set his Sail, and run away before the Wind from the poor disabled Ship, the rest following his said Example; though they had but Eight Men kill'd on Board them all (except the Admiral.) The other Three *French* Men of War were at this Time of Action about Four Miles distant from their maimed Ship; whereupon the Enemy seeing the Cowardice of the said Colonel *Kirkby*, and the rest of the *English* Ships, in a Squale bore down upon the Admiral, who lay close by the disabled Ship; and having got in their Spritsail Yard, gave him all their Fire; and running between him and the disabled Ship, remann'd her, and took her in: The Admiral's Rigging being very much shatter'd, was oblig'd to lie and refit till Ten a-Clock,

a-Clock, and then continued the Pursuit; and the rest of the Fleet following in the greatest Disorder imaginable, the Admiral commanded Captain Fogg to stand a-breast of the Enemies Van, and then to attack him, and having then a fine steady Gale, the like not happening during the whole Engagement; and further ordered that he should send to all the Captains to keep the Line of Battel, and behave themselves like *Englishmen*; and this Message was sent by Captain Wade then on Board the *Bredah*. That the said Colonel Kirkby on the Receipt of this Message, and seeing the Admiral's Resolution to engage, came on Board him, who then lay wounded in a Cradle; and without common Respect of enquiring after his Health, he the said Kirkby expressed these Words following, *viz.* That he wonder'd that the Admiral should offer to engage the French again, it being not necessary, safe, nor convenient, having had Six Days Trial of their Strength; and then magnified that of the French, and lessened that of the *English*. But the Admiral being surprized at his Speech, said it was but one Man's Opinion, and that he would have the rest of the Captains; and accordingly ordered the Signal to be made for all the Captains to come on Board; and at this Time the Admiral and the rest of the Ships were to Windward, and within Shot of the Enemy, and had the fairest Opportunity that in six Days presented, to chase, engage, and destroy the Enemy.

That the said Colonel Kirkby had endeavoured to poison the rest of the Captains; forming a Writing under his own Hand, which was cowardly and erroneous: The Substance of which was, Not to engage the Enemy any more. He the said Colonel Kirkby brought it to the Admiral, who reproved him for it, saying it would be the Ruin of all: Upon which he the said Colonel Kirkby went away, but writ another in the following Words.

At a Consultation held on board her Majesty's Ship Bredah, the 24th of August, 1702. off of Carthagea, on the main Continent of America.

It is the Opinion of us whose Names are under-written,

1. Of the great Want of Men in Number, Quality, and the Weakness of those they have.
2. The general Want of Ammunition of most Sorts.
3. Each Ship Masts, Yards, Sails and Rigging, being all in a great Measure disabled.
4. The Winds are so small and variable, that the Ships can't be govern'd by any Strength: Each Ship,
5. Having experienced the Enemy in Six Days Battel, following the Squadron consisting of Five Men of War and a Fireship, under the Command of Monsieur Du Casse; their Equipage consisting in Guns from 60 to 80, and having a great Number of Seamen and Soldiers on Board for the Service of Spain.

For which Reasons above-mentioned, we think it not fit to engage the Enemy at this Time, but to keep them Company this Night, and observe their Motion; and if a fair Opportunity shall happen of Wind and Weather, once more to try our Strength with them.

Richard Kirkby, Samuel Vincent, John Constable, Christopher Fogg, Cooper Wade, and Thomas Hudson.

That during the Six Days Engagement, he never encouraged his Men; but by his own Example of dodging behind the Mizon Malt, and falling down upon the Deck on the Noise of Shot, and denying them the Provisions of the Ship, the said Men were under great Discouragement. That he amended the Master of the Ship's Journal of the Transactions of the Fight, according to his own Inclination.

All which being proved aforesaid:

The said Colonel Richard Kirkby denied the whole excepting the pretended written Consultation: Which being shown to him, he own'd his own Hand and Name too. He brought several of his Men to give an Account of his Behaviour during the Fight; but their Testimonies were insignificant; and his Behaviour to the Court and Witnesses most unbecoming a Gentleman. And being particularly ask'd by the Court, why he did not fire at the Enemies Sternmost Ship, which lay point-blank with him the 21st of August? He replied, Because they did not fire at him, for that they had a Respect for him: Which Words upon several Occasions, during the Trial, he repeated Three several Times.

Where upon due Consideration of the Premises, of great Advantages the *English* had in Number, being Seven to Four, of Guns 122 more than the other; with his Acts and Behaviour as aforesaid, and more particularly his ill-timed Paper or Consultation as afore-recited, which obliged the Admiral for the Preservation of her Majesty's Fleet, to give over the Chase and Fight, to the irreparable Dishonour of the Queen, her Crown and Dignity, and came to Port-Royal, Jamaica: For which Reasons the Court was of Opinion, That he fell under the 11th, 12th, 14th and 20th Articles of War; and adjudged accordingly, That he be shot to Death: But further decreed, That the Execution of Col. Kirkby be deferred till her Majesty's Pleasure be known therein; but he continued a close Prisoner till that Time.

Captain John Constable, Commander of the *Windsor*, was Tryed before the aforesaid Court, on a Complaint exhibited by the Judge Advocate on the Behalf of the Queen, for Breach of Orders, Neglect of Duty, and other ill Practices committed during a Fight commenced the 19th of August, 1702. as aforesaid. (Refer to Colonel Kirkby's Tryal.)

The Witnesses sworn on the behalf of the Queen, were,

2 Captains,
7 Lieutenants,
5 Masters,
2 Other Officers,
The Honourable John Benbow, Esq;
Admiral.

17 Witnesses.

Who deposed, That Captain John Constable never kept his first nor second Line of Battel, but acted in all Things as Colonel Kirkby had done. That the Admiral had fired Two Guns to command him into the second Line of Battel. That he did set more sail in order to come into the Line, and his Station; but upon Colonel Kirkby's calling to him to keep his Line, he accordingly did. That the Admiral sent his Lieutenant Landgridge to command

mand him the said *Constable* to keep his Line of Battel within half a Cables Length of the Ship before him, which was twice verbally delivered. And that he signed the Paper, *Consultation*, as is in Colonel *Kirkby's* Tryal aforesaid; tending to the Hindrance and Disservice of her Majesty, &c. and was drunk during the Fight, &c.

All which being fully proved as aforesaid; the said Captain *John Constable*, denied his Breach of Orders, or Neglect of Duty; but owned the signing the Paper, or *Consultation* prepared by Colonel *Kirkby*, and did it at his Request, and for that he had received Damage in his Masts and Rigging; and own'd no other Article to be true, but that he had signed to. He called several Witnesses to his Behaviour during the Fight; who all declared he kept the Quarter-Deck during the Engagement, and encouraged his Men to fight; and that sometimes he gave them Drums of Rum; and that Verbal Message delivered by Lieutenant *Landgridge*, was delivered him in some Heat and Passion, and was understood to be, to keep the Line within half a Cable's Length, and to follow *Kirkby*, which he did. That he so understood it himself, and several of his Men: He prayed the Mercy of the Court, and so concluded, &c.

Where upon due Consideration of the Premises, the Court were of Opinion, that the said *John Constable*, Captain, fell under the 12th, 14th, and 20th Articles of War; and adjudged the said Captain *John Constable* to be immediately cashier'd, and render'd incapable of serving Her Majesty, and be imprisoned during her Majesty's Pleasure, and sent home to *England* a Prisoner in the first Ship the Admiral shall think fit; and be confined a Prisoner till then.

Oct. 10, 12.

Captain *Cooper Wade*, Commander of the *Greenwich*, was Tried before the aforesaid Court; on a Complaint exhibited by the Judge Advocate, on the Behalf of the Queen, of high Crimes and Misdemeanors, of Cowardise, Breach of Orders, and Neglect of Duty, and other ill Practices, committed during a Fight, commenc'd the 19th of *August*, 1702. as aforesaid. Refer to that Part of Colonel *Kirkby's* Tryal.

The Witnesses sworn on behalf of the Queen.

The Honourable *John Benbow*, Esq; Admiral,

9 Lieutenants,

3 Masters,

3 Inferior Officers.

16 Witnesses.

Who deposed, That during the Six Days Engagement, he never kept the Line of Battel, fired all his Shot in vain, not reaching half way to the Enemy; That he was often told the same by his Lieutenants and other Officers; but notwithstanding, he commanded them to fire, saying they must do so, or the Admiral would not believe they fought if they did not continue the Fire. That during the whole Fight the Admiral was engaged in, the said Captain *Wade* received but one Shot from the Enemy; That he was in Drink the greatest Part of the Time of Action; And that he signed the Paper or *Consultation* drawn up by Colonel *Kirkby*, as aforesaid; and in the Time of Fight arraigned the honourable Courage and Conduct of the Admiral.

All which being fully proved as aforesaid:

That the said Captain *Cooper Wade* denied the Arraignment of the honourable Courage and Conduct of the Admiral, during the whole Six Days Engagement; declaring the Bravery and good Management of the Admiral in this Time of Action, and that no Man living could do more or better, for the Honour of the Queen and Nation. He called some Persons to justify his Behaviour, who said little in his Favour. He begged the Mercy of the Court, and so concluded. Whereupon the Court was of Opinion, That the said *Cooper Wade* fell under the 11th, 12th, 14th and 20th Articles of War; and accordingly adjudged the said *Cooper Wade* to be shot to Death: But it is farther declared by the Court, That the Execution of the said *Cooper Wade* be deferred till her Majesty's Pleasure be known therein; but be continued a close Prisoner till that Time.

October 12.

Captain *Samuel Vincent*, Commander of the *Falmouth*, and Captain *Christopher Fogg*, Commander of the *Bredah*, were tried before the aforesaid Court, on a Complaint exhibited by the Judge Advocate, for high Crimes and Misdemeanors, and ill Practices in Time of Admiral *Benbow's* Fight with Monsieur *Du Casse* as aforesaid, in signing a Paper called a *Consultation* and Opinion held on Board the *Bredah*, the 24th of *August*, 1702. (Which is Verbatim recited in Colonel *Kirkby's* Tryal, to which refer.) It tending to the great Hindrance and Disservice of her Majesty's Fleet then in Fight: And the said Paper so written, being showed to each of them, they severally owned their Hands to the same. But the said Captain *Vincent* and Captain *Fogg*, for reason of signing the same, alledged, That being deserted during each Days Engagement by Colonel *Richard Kirkby* in the *Defiance*, Captain *John Constable* in the *Windsor*, Captain *Cooper Wade* in the *Greenwich*, and Captain *Thomas Hudson* in the *Pendennis*, and left as a Prey to Monsieur *Du Casse*, they had great reason to believe they should be Captives to the Enemy. And the Honourable *John Benbow*, Esq; Admiral, &c. coming into Court, declared, That during the Six Days Fight the said Captain *Fogg* behaved himself with great Courage, Bravery, and Conduct, like a true *Englishman*, and Lover of his Queen and Country: And that the said Captain *Samuel Vincent* valiantly and courageously behaved himself during the said Action, and desired Leave to come into his the said Admiral's Assistance, then engaged with the Enemy, and deserted by all the rest of the abovesaid Ships; which he did, to the Relief of the said Admiral, who otherwise had fallen into the Hands of Monsieur *Du Casse*.

Whereupon the Court being of Opinion, That the signing of the aforesaid Paper brought them under the Censure of the 20th Article of War, accordingly adjudged Captain *Samuel Vincent*, and Captain *Christopher Fogg*, to be suspended: But the Execution thereof is hereby respited, till his Royal Highness Prince *George* of *Denmark*, Lord High Admiral of *England*, &c. his further Pleasure be known therein.

Captain *Thomas Hudson*, Commander of the *Pendennis*, died on Board his said Ship, in the Harbour of *Port-Royal*, at *Jamaica*, the

At Five-a-Clock the 12th Day of *October*, 1702. the President, &c. having finished all the Business before the Court, dissolved the same.

T H E

The Tryals of HAAGEN SWENDSEN, SARAH BAYNTON, JOHN HARTWELL, and JOHN SPURR, at the Queen's-Bench Bar, November the 25th, 1702. Published by Authority.



ON Wednesday the 18th of November, the Grand-Jury of Westminster found the Bill of Indictment against the Defendants. On that Day an *Habeas Corpus* was moved for, and left at Newgate, and the Keeper refused to bring up the Prisoners on Thursday, but brought them on Friday Morning; and then they were Arraigned, and severally pleaded not Guilty; and the Court then appointed the Tryal to be on Wednesday the 25th, that being the last Day that they could be tried, to have Sentence given against Convicted Persons in that Term.

Mr. Swendsen moved for a longer Time, alledging, That a German, a material Witness for him, was gone into *Yorkshire*. The Court then told him, that if any Person would Swear that any of his Witnesses could not be at the Tryal on Wednesday, the Court would put off the Tryal; but no Oath thereof being made, the Tryal came on upon the Day appointed.

The Court being sat, at which were present the Right Honourable the Lord Chief Justice Holt, Sir John Powell, Sir Littleton Powis, and Sir Henry Gould:

Haagen Swendsen being brought to the Bar, Proclamation was made for Silence; and he being a Foreigner, claimed as his Right, the Benefit of a Party Jury; which was allowed him, and leave to Challenge whom he would. He Challenged some; and the Gentlemen sworn were, *viz.*

George Ford, Esq;	Francis Chapman,	} Gent.
Enoch Roope, Gent.	Erasmus Johnson,	
Timothy Thornbury, Esq;	Robert Bampton,	
Abraham Faulcon, Gent.	Matthew Boddin,	
John Pack, Esq;	Thomas Pitts,	
James Boyneth, Gent.	Henry Henderson,	

Cler. of Arr. Haagen Swendsen hold up thy Hand. Which he did.

Cl. of Arr. Gentlemen of the Jury look upon the Prisoner at the Bar. He stands Indicted by the Name of Haagen Swendsen, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Teoman; for that on the Sixth of November, 1702, one Pleasant Rawlins, Gentlewoman, and a Virgin, and Unmarried, Grand-daughter and Heir of William Rawlins, Sen. then deceased, and Daughter and Heir of William Rawlins, Jun. before then also deceased, was above the Age of Sixteen, and under the Age of Eighteen, and then had Substance and Estate in Moveables and in Lands and Tenements, viz. in Money, Goods and Chattels, to the Value of 2000 l. and in Lands and Tenements to the Value of 20 l. per Annum, to Her and the Heirs of her Body.

And that the several Persons, Swendsen, Baynton, Hartwell, Spurr and Tho. Holt, the said 6th

Day of November, with Force and Arms, the said Pleasant Rawlins, as aforesaid, being Unmarried, and Heir, and having Substance and Estate at the Parish of St. Giles in the Fields, in this County, for the Lucre of such Estate and Substance of the said Pleasant Rawlins, did unlawfully, feloniously, violently, and against the Will of the said Pleasant Rawlins, take, carry, and lead away, with intent to cause and procure the said Pleasant Rawlins, against her Will, in Matrimony to the said Haagen Swendsen to be joined, and to him to be Wedded and Married; and that the said Haagen Swendsen being a Man of a dishonest Conversation, and of none, or very little Estate or Substance, then, and there, by the Help and Procurement of the other Defendants, did feloniously marry the said Pleasant Rawlins, and was joined to her in Matrimony; and then, and there, her did carnally know; to the great Displeasure of God, against the Laws of the Queen, to the Disgrace and Disparagement of the said Pleasant Rawlins, and to the great Grief and Disconsolation of all her Friends, to the evil Example of all others, against the Form of the Statute, and against the Queen's Peace, her Crown and Dignity. And that the said Tho. Holt, after the said Pleasant Rawlins had been so unlawfully, violently, and feloniously taken, carried, and led away, and to the said Haagen Swendsen Married and Wedded as aforesaid; well knowing the said Pleasant Rawlins to have been so taken and led away against her Will, and to the said Haagen Swendsen to be Wedded and Married, afterwards, viz. the said Sixth Day of November, in the said first Year of the Reign of this Queen, at the Parish aforesaid, the same Pleasant Rawlins, and also the said Haagen Swendsen, did wilfully, knowingly and feloniously receive, abet, comfort, conceal and assist, the said Haagen Swendsen, with the said Pleasant Rawlins to lye, and her carnally to know, then and there did feloniously incite, abet, help, cause and procure, against the Form of the said Statute, and against the Queen's Peace, her Crown and Dignity.

Cler. of Arr. Upon which Indictment he hath been arraign'd, and pleaded not Guilty, put himself upon God and you the Jury at the Bar, being half Foreigners and half Natives.

Gryer. O yes! If any one will give Evidence on behalf of our Sovereign Lady the Queen, against the Prisoner at the Bar, let them come forth, and they shall be heard; the Prisoner stands at the Bar for his Deliverance.

Mr. Swendsf. Pray, my Lord, let me have Pen and Ink, I am not allowed Council; (which his Lordship granted.) My Lord, I would beg the Favour of your Lordship, that the Evidence may be examined apart.

Mr. Sol. Gen. Is it not your Lordship's Pleasure to call the other Jury, the Facts are so twisted together, and have such a Dependance one upon another, that there will be an Inconvenience to us, if it be otherwise? 3 Mr

Mr. *Serj. Darnel*. They may stand at the Bar by themselves.

Mr. *Montague*. Or else it will break our Evidence; they may stand on the other side.

L. C. J. *Holt*. He must be tried single.

Mr. *Sol. Gen.* May it please your Lordship, and Gentlemen of the Jury, I am of Council for the Queen: It was formerly reckon'd a less Crime to steal a Fortune of 10000 *l.* than to steal 12 *d.* of her Money or Goods; but in the Third Year of the Reign of King *Henry VII.* to cure this Defect in the Law, an Act of Parliament was made, whereby the taking away a Woman, having Goods or Lands, or being an Heir apparent, contrary to her Will, and afterwards Marrying her, is made Felony, and upon this Law the present Indictment is grounded.

Pleasant Rawlins was the Daughter of Mr. *William Rawlins*; he having left her a considerable Estate, appointed *George Bright* and *William Busby* to be her Guardians. Mr. *Bright* being dead, the other Guardian Mr. *Busby*, for the better Education of Mrs. *Rawlins*, placed her under the Care of his Sister *Sabina Busby*. Mrs. *Busby* and Mrs. *Rawlins* have lodged about Three Years last at the House of the Widow *Nightingale*. *Haagen Swendsen*, with Mrs. *Baynton*, lodged at Mrs. *Blake's* in *Holborn*, and there they first projected and contrived how they might make a Prey of this young Gentlewoman. The first Step they took towards executing this Design, was to get Lodgings at Mrs. *Nightingale's* House for Mrs. *Baynton*; for which Purpose she was to pass for a Country Gentlewoman of a plentiful Fortune. One Mrs. *St. John* was sent to Mrs. *Nightingale* to take Lodgings for Mrs. *Baynton*, commending her to be a very good Woman; and that having the Misfortune of a Law-Suit, and being obliged for that Reason to attend it in Town, 'twas her greatest Care to lodge in so reputable a House as Mrs. *Nightingale's* was. Under this Pretence, Lodgings were there taken for her. At her first coming, she was forced to put on a Disguise; she seem'd to live a virtuous Life, that she might ingratiate herself into the Favour of the Family, as often as she had an Opportunity of conversing with any of them: She pretended she had a Brother of a good Estate, one of the best Men in the World; and she hoped he would shortly come to Town, that she might see him. In a little Time after came this *Swendsen* (being nothing related to her) and appeared as her Brother, and frequently visited her under Pretence of that Relation. But Mrs. *Baynton* was too well known in Town to continue long undiscover'd; Notice was soon given to Mrs. *Busby* of the vicious Life Mrs. *Baynton* had led, and that she was not fit to be in the same House with her. Mrs. *Baynton* having discovered this, and finding she had no Time to bring about her Designs by Frauds and Wiles, and that no other Way was left but open Force, the Prisoner at the Bar and she took Measures accordingly; and in order thereto 'twas agreed, that a Writ should be taken out against Mrs. *Rawlins*. Mrs. *Baynton* contrives to get Mrs. *Rawlins* and Mrs. *Busby* into a Coach, and at a Place appointed a Signal was given, and the Writ executed; and Mrs. *Busby*, Mrs. *Rawlins*, and Mrs. *Baynton*, were all carried in the Coach to the *Star and Garter* Tavern in *Drury-Lane*, where particular Care was taken to separate Mrs. *Busby* and Mrs. *Rawlins*, because unless they did that, they could not hope to accomplish their Designs. Mrs. *Busby* was by Force kept at that Tavern, without any Process against her till the Marriage was over; but Mrs. *Rawlins* was forcibly carried to

Hartwell's the Bailiff's House. Mrs. *Baynton* pretended to be much concern'd for Mrs. *Rawlins*, and went in all Haste to call some of her Friends to be Bail for her. Some Time after Mrs. *Rawlins* was got to *Hartwell's*, in comes Mrs. *Baynton*, pretending that by mere Accident she had discover'd her being there, hearing her Name as she was passing by the Door; that she had been in Search, but could find no Help; and that her last Hopes was her dear Brother *Swendsen*, and she doubted not but he would Bail her: He by Agreement had been plac'd near the Bailiff's, and so was soon found, and brought thither, and was very ready to assist her. In order to her Discharge, the Prisoner, the Bailiff, and Mrs. *Baynton*, carry Mrs. *Rawlins* to another Tavern, where they had a Parson ready for the Purpose, and there this young Gentlewoman, thro' divers Artifices, of which you shall have a full Account, was constrain'd to Marry. These are the principal Circumstances, and they shall be plainly proved to you.

Mr. *Serj. Darnel*. My Lord, I think it necessary to open a little the Manner of getting this young Lady away, and the Contrivance of getting her into the Coach; for your Lordship knows, that if any are taken away without their Consent, tho' they do afterwards consent to be Married to such Taker, yet he is guilty within this Statute. They were resolv'd to take this Woman by Force, when they found they could not otherwise accomplish their End. And Mrs. *Baynton* knowing Mrs. *Busby* and Mrs. *Rawlins* were us'd every Friday Morning to go to a Chapel called *Oxendon Chapel*, Mrs. *Baynton* said, *I am going to Golden-Square, and if you are going to the Chapel, I'll set you down if you please*: They, glad of such a Convenience, thought no Harm, but went in the Coach. They had gone no further than *Dartmouth-Street*, but these Bailiffs come. *Hartwell* opens the Coach, and goes into it; they cry out to the People for Help; *Hartwell* pluck'd up the Glasses, and those Bayliffs about the Coach cryed, *It is an Arrest of a Cheat that owes Money to Tradesmen*. By this Means they carried her to the *Star and Garter* in *Drury-Lane*. When they had them there, the next Thing was to get her away from her Friend *Busby*, for unless that were done, they despair'd of getting her to marry *Swendsen*. Mrs. *Baynton* pretended to go find out Mrs. *Rawlins's* Friends to Bail her; but that was to meet with *Swendsen*: As soon as Mrs. *Baynton* was gone, the Bayliffs forced Mrs. *Rawlins* from Mrs. *Busby*, and Mrs. *Busby* was kept there by Force till Five a-Clock, till all was over. The Bayliffs as they carried Mrs. *Rawlins* away, called her Jade and Slut, and bid her pay her Debts; and said, *Put on your Mask you Jade, for we will have no Mob to rescue you*; she put on her Mask, and the rest of the Bayliffs followed her, and said, *She was a Cheat and was arrested*. Then it was Time to open the Scene. *Hartwell* carried her to his House, and Mrs. *Baynton* pretending to be coming by and hearing of her Name, open'd the Door, and by an extraordinary Manner burst into the House, and told her, *Madam, I went to all your Friends, but could find none at home; but I have been with my dear Brother Swendsen, who will come with another to Bail you, and 'twill not be long before they come*; for they were placed at the *Five Bells* very near *Hartwell's* House: Upon this she went out again, and brought in *Swendsen*, and one *Holt* who keeps the *Mitre* Tavern in *King-street, Westminster*. And truly when they were there, and talked of being Bail, then they would all go in a Coach to the *Vine* Tavern, the Place where they designed the Marriage;

Marriage; and they had got Two proper Instruments ready there for the Business, the Chaplain and the Clerk of the Fleet. When they had her there, my Lord, the Bailiff ask'd if she had any Bail? Mrs. Baynton said, that Mr. Swendsen and Mr. Holt would be her Bail; the Bailiff said, *I will not take Swendsen's Bail, he is a Man I know not, but Mr. Holt I know, I will take his.* The poor Woman begged upon her Knees, for Christ's Sake let me send for my Friends; and they pretended to send for abundance of them, but none came. Then she was threaten'd with Newgate; for that often came out; *If you cannot get Bail, to Newgate you must go, and there must lye.* This was often said by Hartwell. Then Mrs. Baynton cryed (as she could do at command) *O how I pity you Mrs. Rawlins, Is there no way in the Law to help you? I believe if you were married that would put an End to the Action.* Then speaking to the Bailiff said, *If this Gentlewoman were married, would it not put an End to it?* The Bailiff said, *I can't tell but it might, if such a Thing were.* Well, now her rich Brother Swendsen is propos'd, she must be married to him; the Bailiffs threatenng her feverely, that to Newgate she must go if she did not. Immediately they brought in the Chaplain and Clerk of the Fleet, and read the Form of Marriage, and after carried her to several Places, lest they might be followed and prevented, Beds being provided for the Purpose at those Places, as your Lordship shall hear. And, my Lord, this taking of this Woman thus away against her Will, is an Offence against the Act of 3 Hen. VII. and my Lord, we desire that the Statute may be read.

L. C. J. Holt. It shall be explain'd.

Mr. Broderick. My Lord, there was a whole Night compleated before the Prisoner was seized.

Then Mr. W. Busby is called for, and sworn.

He is asked, Do you know Mrs. Pleasant Rawlins?

Mr. Serj. Darnel. Give an Account of her.

Mr. Busby. She is the Daughter of William Rawlins Deceased, who left his Estate to Dr. Bright and my self, to be sold for Payment of his Debts and Legacies, and left the Surplusage to his Daughter, which is about 2000 l.

Mr. Serj. Darnel. What Lands has she?

Mr. Busby. She has 20 l. a Year.

Mr. Serj. Darnel. What Age is she of?

Mr. Busby. She is near Eighteen.

Mr. Montague. Was she ever married, or no?

Mr. Busby. She was unmarried.

Then Mrs. Sabina Busby was called and sworn, as also Mrs. Nightingale.

Mr. Swendsen. My Lord, I beg the favour that only one Witness be heard at a Time.

Mr. Sol. Gen. Mrs. Nightingale, Do you know Mrs. Pleasant Rawlins, and Mrs. Busby?

Mrs. Nightingale. Yes, I do.

Mr. Sol. Gen. Have they lodged at your House?

Mrs. Nightingale. Yes.

Mr. Sol. Gen. How long?

Mrs. Nightingale. Above Three Years.

Mr. Sol. Gen. Have you any Knowledge of Mrs. Baynton?

Mrs. Nightingale. Yes.

Mr. Sol. Gen. How came you acquainted with her?

Mrs. Nightingale. One Mrs. St. John came to me to know whether I took Boarders? I said, I had taken some, but would take no more, unless it were the same Ladies again.

L. C. J. Holt. Who was it came to you?

Nightingale. One Mrs. St. John.

Sol. Gen. Mrs. Nightingale, speak out, that my Lord may hear you.

L. C. J. Holt. Did Mrs. Busby lodge with you?

Nightingale. Yes, my Lord, we were very intimate before; and since it pleased God to take away her Husband, I was pleas'd with her, and very willing to take her into my House.

Sol. Gen. Acquaint his Lordship how Mrs. St. John came to you.

Nightingale. Yes, my Lord, as near as I can. She came to me, and ask'd me, If I took Boarders? I told her, No, I would take none, except it were those Ladies I had before: She told me, she had an Acquaintance that was a Widow Lady that came out of Wiltshire, about a Suit of Law, and would be in a very sober Family near a Church. But however, I denied her Lodgings, and did expect to hear no more of her. But about three Weeks or a Month after, she came to me again, and asked me whether I had altered my Resolution?

L. C. J. Holt. Go on.

Nightingale. My Lord, Mrs. St. John said, that the Lady was come to Town on the Saturday Night before, very much indispos'd in her Journey. I asked her whether she knew this Baynton or no? Mrs. St. John said, Yes; she was very intimate in the Family, and she said a great deal more of her, which I cannot remember. She said also, that she would have Boarded her her self, and would have been glad of her Company, if she had had Conveniences for her. Then she asked me, whether she should come her self and give her own Character? We thought no harm, she being a Woman, and not a Man. She further said, that Mrs. Baynton had seen a Maid whom I knew, and she believed she would take her. I enquired of another who lived in the Mews, if he knew Mrs. Baynton; he said, Yes, and that she came of a good Family. At length she came, and made a very modest Appearance in her Behaviour and Garb. She said to me, that I was very curious in taking in Boarders, and for that she liked me the better. I consented she should come. She asked me what I would have a Week? I told her Twelve Shillings for her self, and Ten Shillings for her Maid. She concluded to come on the Wednesday following; which she did with her Maid, a modest Girl, and a Neighbour, which gave me the more Encouragement. She carried her self very well till Michaelmas-Day at Night, when we heard of her new Brother; she seem'd elevated at the News, and fell into Convulsion-Fits, which I believed were real Fits. She said she had a dear Brother, a good Christian, and he would come on the Morrow. When he came, he brought two Gentlewomen with him, very modest, which I never saw before, nor since. Mrs. Baynton made a Pot of Coffee, and sent for a Bottle of Wine, and she told her Brother before me, what good Lodgings she had, and said she wish'd he would come and lodge near them; for she knew he had but a puny Stomach, and believed he would like her Viſuals. He said it was not convenient for him, because his Business called him every Day to the Change. She said also, there was a Bowling-Green near them, where he might divert himself. But all would not do. She asked me what I would have a Meal if her Brother should come at any Time; I said, when I had other Ladies, if any of their Friends came. I had Twelve-Pence a Meal of them. On Friday he came; I went to Church,

Church, and left them together at Cribbage, as I found them at my Return.

L. C. J. Holt. What Day of the Week was this?

Mrs. Nightingale. The Friday before the Sacrament. Mrs. Baynton said to Mr. Swendsen, before Mrs. Busby, You have an extraordinary Hand at making Punch; so they agreed to make a Bowl the Monday following; but Mrs. Rawlins hardly drank any, she not liking any strong Liquors. After this, she told me, her Brother was very ill of his Journey, being lately come out of the Country, tho' I don't understand he was in't. The Monday before Michaelmas-Day, we were at Dinner with two more than our Family, when Mrs. Baynton said, she had an Interest in a Norway Ship, and invited us all aboard; But he, viz. Mr. Swendsen, did not come to our House till Four Days after; but on Friday we concluded to go on Saturday; there were Eight of us in Company in all, Mrs. Rawlins, Mrs. Busby, I and my Daughter, and Mr. Ball another Lodger, belonging to the Exchequer. We went, and had much Discourse; after having drank a Glass of Wine, the Cloath was laid, and the Master offered a Bowl of Punch; says Mr. Swendsen, Ladies, I would please you all, and leave you all to your Liberties to drink what you please.

L. C. J. Holt. Is this Person Mrs. Baynton's Brother?

Mrs. Night. This is he that went for her Brother.

L. C. J. Holt. Whereabouts is your House?

Night. Near Tuttle-fields.

Mr. Sol. Gen. This Mrs. Baynton came to you under the Character of a Country Lady on a Law-Suit; do you understand that she was so?

Mrs. Night. My Lord, She said she came from the Bath.

Mr. Sol. Gen. You misapprehend the Question; Do you understand that her Pretence was true or not?

Night. I enquired of several Persons, who acquainted me that the Bayntons lived in Wiltshire; but it was not long before we began to suspect her, for there seemed to be an extraordinary Love between her and Swendsen, more than is usual between Brother and Sister. I said, Madam, I wonder you don't marry your Brother. She said, she thought that 'twas not lawful. I said there was such a Thing done in Westminster, of a Man's marrying Two Sisters.

Mr. Sol. Gen. Pray call to mind what Time it was that you first gave Notice to her that she should not continue in your Lodgings.

Night. When I first mistrusted her, I gave Notice of it in my Family. But we being all Women, and fearful of her, thought not fit to give her Warning till her Month was up. But before that, she came to me, and told me, and said, Mrs. Nightingale, I have received a Letter from my Sister Baynton in the Country, which informs me, that the Trustees will agree, and so I design to return when my Month is up, for this Town is very chargeable. Very well said I, for I expect some Ladies very shortly. I went down to my Family and express'd my Joy to them, and said, I was very glad Mrs. Baynton had prevented me, for if she had not given me Warning, I would have given her Warning, for I resolved she should not stay.

Mr. Sol. Gen. Mrs. Nightingale, it seems you had Notice of Mrs. Baynton's ill Carriage; did you take any Notice of it to her self?

Night. No; I did not, but I gave the Maid Notice as soon as I suspected any thing.

Mr. Sol. Gen. Do you know whether the Maid had told any Thing to her or not?

Night. The Maid said to her, Madam, don't you see a Strangeness in the Family? Yes, said she, I can see and bear a great deal; but when I am roused, I'll be like a Lion.

Mr. Sol. Gen. How long was this before Mrs. Rawlins was taken away?

Night. I can't prefix the Time, but it was before she gave me Warning.

L. C. J. Holt. Was she gone from your House before this Thing happen'd.

Night. No, my Lord she told me on Wednesday that her Time was out; but said, There is a Fellow in Town that I fear will cheat me, and I am taking out a Statute of Bankruptcy against him, which I think will cause me to stay in Town a Week longer; she also told me, she had taken a Place in the Coach to go on Thursday, but must lose her Earnest, for this Business would detain her a Week longer.

Mr. Raymond. Did you ever observe they were together in private?

Night. No, my Lord, we never had any Suspicion of Mr. Swendsen, but of the Woman; for she could put on all Manner of Disguises.

Mrs. Busby being called, she is sworn.

Mr. Sol. Gen. Mrs. Busby, pray do you know Mrs. Rawlins?

Mrs. Busby. Yes, I do.

Mr. Sol. Gen. How came you first acquainted with her?

Mrs. Busby. My Brother Busby was one of her Guardians, and put her under the Care of my Husband, while he was living, which was four Years ago this Christmas. She came to us by the Consent of her Guardian.

Mr. Sol. Gen. At what Place did you lodge?

Mrs. Busby. We lived in Stretton-Grounds, but since my Husband died, which is Three Years last July, I left House-keeping, and then we went and lodged at Mrs. Nightingale's.

Mr. Sol. Gen. How long have you continued at Mrs. Nightingale's?

Mrs. Busby. We have continued there ever since.

Mr. Sol. Gen. Do you know Mrs. Baynton?

Mrs. Busby. Yes, I do, she lodg'd at Mrs. Nightingale's.

Mr. Sol. Gen. Was there any body who used to come to her there?

Mrs. Busby. None except a Change-Woman.

Coun. Do you know any Thing of Mr. Swendsen?

Mrs. Busby. Sir, The first of his coming to Mrs. Nightingale's, was the Day after Michaelmas Day. Mrs. Baynton said, that she had a Brother that was to come to Town, which he did the Day after, with Two Gentlemen, which I never saw, either before or since; but Mr. Swendsen after this came several Times to her as her Brother, her Sister's Husband; and she desired that he might dine with her sometimes; for which she agreed with Mrs. Nightingale at 12 d. per Meal.

Mr. Sol. Gen. Was this Mrs. Rawlins at any Time in private with Swendsen?

Mrs. Busby. Never that I know of in all my Life; we were always in Company together when he dined there, and the Times that he dined there we computed to be 9 or 10; he was there sometimes when we were not at home.

Mr. Sol.

Mr. Sol. Gen. How did Mrs. Baynton behave her self when she was at Mrs. Nightingale's?

Busby. We thought very well of her, till at last we discerned too much Freedom between Mr. Swendsen and her self; we suspected her Virtue, and thought she would drink; and were informed she would Swear: She said she must stay in Town about a Month or Six Weeks about a Suit of Law. Her Maid told her of the Strangeness of the Family; she said they had best be civil, or else she would stay and plague them. She told Mrs. Nightingale at length, the Town was chargeable, and her Business done, and that she would return into the Country.

Mr. Sol. Gen. What do you know concerning Mrs. Rawlins being taken away?

Mrs. Busby. Mrs. Baynton knowing it was our Custom to go to Oxendon Chapel every Friday Morning, she came and told us she had occasion to go to Golden Square; and that being in the way, she invited us to go with her in the Coach, and she would set us down at or near the Chapel. When we came to Dartmouth-Street, somebody bid the Coachman stop: I expected she should set us down as she promised. On that side where I sat there were old Buildings, and as I was looking out, I heard Mrs. Baynton cry out to the Coachman, Drive on; and all of a sudden I saw a Man in the Coach, which was Hartwell the Bayliff. Mrs. Rawlins and I were in a very great Fright, knowing nothing. I said for God's sake let's come out, we are not concerned. Hartwell said we were the Persons that he came for. I begg'd of him to let us come out: Hartwell had his Arms about Mrs. Rawlins's Side, and said, 'tis this Lady and you that I am concerned about. I ask'd him what it was. Said he, let you and I have two or three Words together, and all will be well enough. I said, you don't think I will say any thing to you, unless I have my Friends by me; Mrs. Baynton in the Coach, said, No, Madam, be sure you don't. I could not tell what he would do with us; at length he carried us all to the Star and Garter Tavern in Drury-Lane. I press'd him to let us go to Fleetstreet, for I had Friends there. Hartwell was very angry, and would hear nothing of it. When we came to Drury-Lane, Mrs. Baynton would have had us put on our Masks; I said I had done nothing amiss, and I would not. When we were in the Room at the Tavern, Mrs. Baynton hastned out of the Room as fast as she could, pretending to go for my Friends. Mrs. Rawlins and I were in a great Consternation, wondering what they would do with us: I took hold of her Arm, and told her I would live and die with her. The Bailiffs came in, and said she was their Prisoner, and took her by Violence from me: They told me she must go with them, for they said she was arrested by a Writ out of one Court, and I by one out of another. When she was going, I put my Head out of the Window, and cry'd, Murder, Murder, several times: When I pull'd in my Head again, Spur said, What have you got by your Bawling? And said they were better known there than I. They brought a Man to me, who said he had Orders to keep me, and that he had only a Crown for his Pains; but he would not suffer me to send for any body. The Gentlewoman of the House came up, and said I had done a Diskindness to her House by crying out Murder: She said to me, Look and see whether your Name be spelt right, for it may be a false Arrest, &c. Wakeman that went away with Mrs. Rawlins, came back again, and said, the young Woman was well, and that he left her eating Fowl and

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Bacon; I said, I wish she was well. The Gentlewoman of the House bid the Bailiff shew me the Writ: He said he could not read well; but there was the Name of Sabina Busby, at the Suit of one Jones: But when he heard my Complaints a considerable while, he said he would go to my Friends, and would go as cheap as a Porter, and as soon. I sent him to Mr. Thornton and Mr. Nash: He pretended to go, but return'd no more till Night.

Mr. Sol. Gen. You say you cry'd out Murder, how did Mrs. Rawlins behave her self then?

Mrs. Busby. It was her great Fright and Crying that made me endeavour her Rescue; when we said we would dye together, then it was when they forc'd her from me; the Surprize was so great that made me cry out after that manner that I did: Upon which some Neighbours came in, but they told them it was an Arrest, and therefore they would not meddle in it.

Mr. Sol. Gen. Mrs. Busby, they kept you till Night, you say; did they take or require Bail for you before you was discharged?

Mrs. Busby. I'll tell you, Sir, if you please: I did not know what I was arrested for, it might be Murder or Treason, for ought I knew. There was a little Boy by, said, Madam, I know Mr. Unkle, your Friend in Newmarket, and I'll go for him: He went, but when he return'd again, he said he was not at home; which I thought was a Lye. There was a poor Man, a Labourer, working in the Chimney, he gave me a Wink, and said, Madam, I'll go for him; but I said to him, Pray don't leave me; I began to be afraid, for I did not know how my Life might be concern'd. Said the little Boy, I'll go any where for you. I sent him for Two Gentlemen, who came: The Bailiffs said they had an Action of 200*l.* against me; the Gentlemen told the Bailiffs they were come to bail me: The Bailiffs were very impudent, but shuffl'd about awhile, and left me, and took no further notice.

L. C. J. Holt. Did they take any Bail for you?

Mrs. Busby. No, they left me with these Gentlemen.

Mr. Mountague. When you went out in the Morning, did you design to go any where else but to Chapel.

Mrs. Busby. No where else.

Mr. Mountague. Was it your Invitation to Mrs. Baynton, or her Invitation to you to go in the Coach?

Mrs. Busby. It was Mrs. Baynton's Invitation to me; I had not a very good Opinion of Mrs. Baynton, for we suspected her Virtue in the Family, by reason of her too familiar Carriage to her Brother; but being to go shortly away, I apprehended no harm.

Mr. Mountague. Did Mrs. Rawlins go with you?

Mrs. Busby. She did.

Mr. Mountague. Mrs. Busby, do you know the Prisoner? Is this the Man that came to Mrs. Nightingale's House?

Mrs. Busby. Yes, Sir.

Judge Powel. How long was it from the Time that you were parted after Arresting, that you saw Mrs. Rawlins again.

Mrs. Busby. The first time after was on Saturday, when they were before the Recorder.

L. C. J. Holt. When did you find her?

Mrs. Busby. On Saturday in the Afternoon.

L. C. J. Holt. Was you at the finding?

Mrs. Busby. No, my Lord.

L. C. J. Holt. What Time was it?

Mrs. Busby. About Noon, I believe.

F f f f

Mr. Moun

Mr. Mountague. When you saw her put into the Coach, did you hear her cry out?

Mrs. Busby. No, Sir; it was I that cry'd out.

Mr. Mountague. Did Mr. Swendsen make any Entertainments, or no?

Mrs. Busby. But one, as I know of.

Prisoner speaks to Mrs. Busby, and said, Have you done?

Mrs. Busby. I think so.

Prisoner. If you have, I'll ask you a Question; Did you know of any Love between Mrs. Rawlins and me?

L. C. J. Holt. Did you know any thing of Love between Mrs. Rawlins and the Prisoner, or no?

Mrs. Busby. No, my Lord.

Mrs. Baynton's Maid called and sworn.

Mr. Sol. Gen. Pray, did you know Mrs. Baynton?

Maid. Yes.

Mr. Sol. Gen. Was you her Servant?

Maid. Yes, Sir.

Mr. Sol. Gen. Who recommended you to her?

Maid. Mrs. St. John.

Mr. Sol. Gen. Do you know one Mr. Swendsen?

Maid. Yes, my Lord; there he is; pointing to him.

Mr. Sol. Gen. Did you ever see him before you were hired to your Mistress.

Maid. No, my Lord; I never saw him before?

Mr. Sol. Gen. Did you see him when you was with your Mistress?

Maid. Yes, my Lord.

Mr. Sol. Gen. Do you know whether there was any Relation between them?

Maid. Yes, my Lord; they went for Brother and Sister.

Mr. Sol. Gen. How long was you with her?

Maid. About a Month.

Mr. Sol. Gen. How did she behave her self?

Maid. Till the last of her Time, very well; but the Family had a Mistrust of her long before she went away.

Mr. Sol. Gen. Do you know the Reason why they mistrusted her?

Maid. I do not know, my Lord.

Mr. Sol. Gen. Do you know what was the Cause the Family mistrusted her?

Maid. They thought her a loose sort of a Woman, and therefore they mistrusted her.

L. C. J. Holt. Did they discern any Familiarity betwixt them?

Maid. No more than as Brother and Sister.

Mr. Sol. Gen. After this Suspicion, do you know whether the Family express'd any Resentment?

Maid. No, my Lord.

Mr. Sol. Gen. Did you live with her when Mrs. Rawlins was taken away?

Maid. Yes, my Lord; but I went away the next Day.

Mrs. Berkley Sworn.

Mr. Sol. Gen. Mrs. Berkley, pray was you present when the Prisoner was taken up; and do you know whether he and Mrs. Baynton were Brother and Sister?

Mrs. Berkley. I went to Mr. Swendsen himself, and said, Is this wicked Woman your Sister? Says he, I cannot say she is; but I have made her my Tool, and she has done my Business, and I would get rid of her To-morrow, but that being Sunday I will not; but on Monday I'll give her a Reward for what she has done, and then I'll discharge her, and never see her more.

Mr. Mountague. Relate what Discourse you had with him, to the Gentlemen of the Jury.

Mrs. Berkley. I ask'd Mr. Swendsen, Whether Mrs. Baynton was his Sister? He said, No, she is not my Sister; but I have gained my End, in making her a Tool to my dear Wife: I'll gratify her for what she has done, and put her away on Monday, and never see her more.

Council. I think you lodged in the House with her?

Mrs. Berkley. No; but I was a Neighbour, and was very frequently there.

Council. Did you see any thing to cause you to mistrust that there was any thing more than ordinary betwixt them?

Mrs. Berkley. No Cause at all, that I know of?

Mr. Blake and his Wife Sworn.

Mr. Sol. Gen. Mr. Blake, pray do you know Mrs. Baynton?

Mr. Blake. Yes, Sir.

Mr. Sol. Gen. How long have you known her?

Mr. Blake. About Twelve Years.

Mr. Sol. Gen. Pray is she a Country Lady that has got a good Jointure?

Mr. Blake. I know nothing but that she works for her Living.

Mr. Sol. Gen. Hath she any Estate in the Country?

Mr. Blake. None, as I know of.

Council. Do you know the Prisoner at the Bar?

Mr. Blake. Yes, Sir.

Council. Where did he lodge at any Time?

Mr. Blake. He lodged at my House.

Council. How long?

Mr. Blake. About 6 or 7 Months.

L. C. J. Holt. Where is your House?

Mr. Blake. In Red-Lion-street.

L. C. J. Holt. What other Lodgers had you at the same Time?

Mr. Blake. I had a Parliament-Man lodged with me at the same Time.

L. C. J. Holt. Where did Mrs. Baynton lodge?

Mr. Blake. In the opposite Room against the Gentleman.

L. C. J. Holt. How long time?

Mr. Blake. About Seven Months.

Council. How long was Mrs. Baynton gone from your House before this Matter happened?

Mr. Blake. About Five or Six Weeks.

L. C. J. Holt. How long before Michaelmas?

Mr. Blake. I cannot certainly tell; but I believe much about that Time.

Council. When they were in your House, what did you see betwixt them?

Mr. Blake. Nothing of any harm, as I know of.

L. C. J. Holt. Mr. Blake, did you never see any harm by Mrs. Baynton?

Mr. Blake. Not as I know of.

Mr. Sol. Gen. Do you know whether she lay in at your House?

Mr. Blake. I know not; for ought I know she might: I know nothing of Womens lying in.

Mr. Wakeman called and Sworn.

Mr. Sol. Gen. Were you one of the Bayliffs that Arrested Mrs. Busby and Mrs. Rawlins?

Wakeman. I was the Man that executed the Marshal's-Court Writ, and Arrested them.

L. C. J. Holt. Who employed you?

Wakeman. Mr. Hartwell.

L. C. J. Holt. Were you at Mr. Hartwell's House?

Wakeman. My Lord, I'll tell you the Truth of the Matter: On Wednesday before they were Arrested,

rested, Mr. *Hartwell* was at my House to see for me; but being not at home, but in the Country, I came home about 11 at Night: My Daughter said to me, there was a Writ left by Mr. *Hartwell* for me to be served, and it must be done To-morrow Morning. On the Morning he came to me, and said, Mr. *Wakeman*, will you execute a Writ? He carried me to the *Mitre-Tavern*, and called for a Pot of Ale and a Bottle of White-Wine, and we had a Toast and some Cheese. While I was there, one Mr. *Holt* came in, a Man that I never saw in all my Life, and said, The Business cannot be done this Day.

L. C. J. *Holt*. What Day of the Week was this?

Wakeman. Thursday; he appointed me to call upon him at Nine next Morning. He said, if I came first we shou'd get what we had before: He came in before we had done, and the Man of the House was dressing himself in the Kitchen: We eat a Toast, and drank the Wine, and after that, we had another. Mr. *Holt* call'd Mr. *Hartwell* out, and said, It cannot be done; by and by he said it might be done: I don't know what it was, but they took me to *Stretton-street*; Mr. *Hartwell* and Mr. *Spurr* was with me: I was asham'd to stand in the Street, so I went into an Alehouse, and drank a single Pot of Drink.

Mr. *Sol. Gen.* Had you seen Mr. *Swendsen* before that Morning?

Wakeman. No: I never saw him before in all my Life. At that, if it please your Honour, Mr. *Hartwell* and Mr. *Spurr* went before, and bid me follow the Coach. I did so as near as I could, but could not keep pace with the Coach, being lame; but at *Dartmouth-Ground* Mr. *Spurr* stopp'd the Horses, and then I came up to the Coach; and Mr. *Hartwell*, I suppose, gave the Word of Arrest, and into the Coach he went; but I did not go in because there was no room, but rid behind it. The Coach was order'd to go to the *Star and Garter-Tavern* in *Drury-Lane*. When we came there, we went into a Back-Room; and the Gentlewoman that had a Band-box said to Mrs. *Rawlins*, I will go to some of your Friends.

L. C. J. *Holt*. What did they do in *Stretton-Grounds*?

Wakeman. They were Arrested there: The Gentlewoman was carry'd by Mr. *Hartwell* to his House, and I follow'd them; but meeting with a Gentlewoman of my Acquaintance, she stopp'd me. When I came to *Hartwell's* House, Where is she, said I? They told me she was below Stairs. I said, I had a little Business elsewhere, that will detain me about an Hour: He gave me Leave to go. When I went out, Mr. *Holt* call'd me over the way, and ask'd me, If Mr. *Hartwell* was at home? I said, Yes. And is the young Gentlewoman there too? I likewise said, Yes. He led me to the *Five Bells* in *Witch-street*, into a Room where there were Three Boxes, and carry'd me to the middlemost Box, and there was a Gentleman.

Council. Was it the Prisoner at the Bar?

Wakeman. Yes, I think so. At that Mr. *Holt* fill'd me a full Glass, which I drank off; and I told him, I was going to do some Business in *St. Martin's*. And when I had done that, I went to *Hartwell's* House again: I enquir'd for the Gentlewoman. Mrs. *Hartwell* said, her Husband was gone along with the Gentlewoman to *Holborn* to make an end of the Matter. I ask'd her, Whereabout? She said, At the *Vine Tavern*. I went thither, and ask'd for Mr. *Hartwell*. There was he, and Mr. *Butler*, and a Tallow-

Chandler going to eat Stakes: They invited me to eat some with them; which I did. Mr. *Holt* came into the room two or three times: Then Mr. *Holt* told me, I was discharged of my Prisoner; so away I went.

L. C. J. *Holt*. You were eating Stakes, you say, at the *Vine Tavern*; was she there then?

Wakeman. There is a Court against the Tavern, and I saw the Gentlewoman looking out of the *Vine Tavern*, where there were new Sash-Windows; as I came over the way, thro' the Court, this Gentlewoman look'd out of the Window.

L. C. J. *Holt*. What, before you went in?

Wakeman. Yes, my Lord; but I went in and saw him alone. but knew not whom he was.

L. C. J. *Holt*. Did you see Mrs. *Rawlins* there?

Wakeman. No, not at the Tavern.

Mr. *Sol. Gen.* When *Hartwell* took away this Gentlewoman, did she go away quietly, or did Mrs. *Busby* and she make an Outcry?

Wakeman. She was a little frightened.

L. C. J. *Holt*. Where was it you first saw Mr. *Swendsen*?

Wakeman. At the *Five-Bell Tavern*.

L. C. J. *Holt*. When was it you saw him there?

Wakeman. About Twelve a-Clock.

L. C. J. *Holt*. Where was it he gave you the Pot of Drink?

Wakeman. At the *Five Bells*; but it was Mr. *Holt* that gave it me.

L. C. J. *Holt*. How many were there in Company there?

Wakeman. Only Mr. *Holt*, and Mr. *Swendsen*.

Council. What was the Occasion of your going?

Wakeman. Mr. *Holt* call'd me.

Council. When was it you saw him out of the Window?

Wakeman. About an Hour and a Quarter after.

Council. What Answer did you give, when they ask'd you where the Gentlewoman was?

Wakeman. I said, she was at Mr. *Hartwell's*.

Council. You said you serv'd a Writ on Mrs. *Rawlins*, had you no Process against Mrs. *Busby*?

Wakeman. No, none at all.

L. C. J. *Holt*. On what Account did you keep Mrs. *Busby*?

Wakeman. I did not keep her; but one *Spurr* was employed to do it.

Council. You came back to Mrs. *Busby's*; did not you say that you had been with the young Gentlewoman, who was eating Fowls and Bacon?

Wakeman. Mr. *Hartwell* ask'd me to eat some.

Coun. Did not you shew Mrs. *Busby* a Writ, and read it to her?

Wakeman. I cou'd never read a *King's-Bench* Writ.

L. C. J. *Holt*. Can you read a *Marshal's-Court* Writ?

Wakeman. Yes, but not the *Latin* of it.

Coun. When you went to *Hartwell* at the *Vine-Tavern*, did you ask for Mrs. *Rawlins*?

Wakeman. Yes, yes; I ask'd where she was? They told me they were making an end of it. My Lord, I had like to have forgot; I asked where was the Prisoner? And Mr. *Holt* told me, they had just made an end of the Business.

Mrs. *Pleasant Rawlins Sworn.*

Mr. *Sol. Gen.* Give an Account to his Lordship, after what manner you were Arrested, and carried from Tavern to Tavern.

Mrs. *Rawlins*. My Lord, I was Arrested with Madam *Busby*, and carried to the *Star and Garter Tavern* in *Drury-Lane*.

L. C. J. Holt. How were you carried thither?

Mrs. Rawlins. I was in a Coach going to *Oxendon Chapel*, when Three Bailiffs were about the Coach.

Mr. Sol. Gen. Where did they carry you?

Mrs. Rawlins. They carried us to the *Star* and *Garter* in *Drury-Lane*.

Mr. Sol. Gen. Who did they carry with you?

Mrs. Rawlins. There was Mrs. *Busby*, Mrs. *Baynton* and I, and *Hartwell* the Bailiff; when we came to the *Star* and *Garter*, they forced me up Stairs into a Back Room, but we got into a forward Room; but we had not been there long till they parted Mrs. *Busby* and I; Mrs. *Baynton* was gone, for our Friends as she pretended. I was in a very great Fright, but Mrs. *Busby* saying we will dye together, they took me by Force from her; *Hartwell* swore a great Oath, and thrust me down Stairs and forced me out of a Back-Door into an Alley. When he went to put me into a Coach, I cry'd out Murder; then he threaten'd to put me into *Newgate*. He carry'd me to his own House, and no body came to help me a great while; but Mrs. *Baynton* said, that as she was going by the Door she heard my Name, and came in in a mighty Fright; she said to me, Madam, I pity you, will no body Bail you? She told me I will send to my Brother who shall be Bail for you. She sent for him, he came into the Room, and he said what is the Matter with you, I said, Enough is the Matter when I am arrested for 200 *l.* and owe no Man a Penny. Said he in a Jocosse way, what makes you affrighted at that, I have a good mind to arrest you my self. Then they took me thence to the *Vine Tavern* in *Holborn*, where I was an Hour or Two before I heard any Thing of Marrying or any such Thing.

Coun. What did they do with you all that Time?

Mrs. Rawlins. They got a Dinner ready, and after we had dined, she begged of me to have her Brother, and said, that if I did not marry him, I should be ruined. I told her I would do nothing without the Advice of my Friends. I desired my Friends to be sent for, but they would not admit it. She looked on my Ring on my Finger, and said let me see your Ring from your Finger. I said, No, you shall not. She said I will force it off. I said I'll try that: But she forced it from me.

Prisoner. Remember you are upon your Oath.

Mrs. Rawlins. I know I am. When she took my Ring away, I asked her what she would do with it; she said she would go and get a Wedding Ring made by it. I told her I would not marry without the Advice of my Friends. Away she went and bought a Ring, and came up again, and said to her Brother, she had a Ring; well said I, give me my Ring and do what you will with the other; she said, If I did not marry her Brother I should be ruined for ever.

There was a Minister in the House, whom they said had been there about a Quarter of an Hour, but I supposed longer; they brought him with the Clerk up Stairs; the Parson saying I hear there is a Couple to be married, he asked no Questions, but told me if I did not marry this Gentleman, I should be sent to *Newgate* and ruined for ever.

Coun. Give an Account of what was after the buying the Ring.

Mrs. Rawlins. When they brought the Ring, they said to me, will you be married or no? I answered, I will not, there are none of my Friends here, and I will not marry without the Consent

of my Friends; They said, If I did not I should be ruined for ever. So with many Threats and Persuasions, they at last prevail'd with me to marry. I was forced to marry him out of Fear, not of going to *Newgate*, but of being murdered.

Coun. Where did they carry you?

Mrs. Rawlins. To *Blake's House* in *Red-Lyon-street*, *Holborn*.

L. C. J. Holt. What Time of the Day was it?

Mrs. Rawlins. I cannot give an exact Account; but I think it was Candle-light.

Prisoner. It was about Twelve a-Clock at Noon.

L. C. J. Holt. What Time was it that you were marry'd?

Mrs. Rawlins. My Lord, it was about Three a-Clock.

L. C. J. Holt. When you went to *Blake's House*, who was with you there?

Mrs. Rawlins. None but Mr. *Swendsen*, Mrs. *Baynton* and I.

L. C. J. Holt. Was there any Force or Threats us'd when you were at *Blake's House*?

Mrs. Rawlins. Yes, there was my Lord.

L. C. J. Holt. Give an Account of it.

Mrs. Rawlins. They thrust me up Stairs, and ordered to have a Bed sheeted. Mrs. *Baynton* said to me, Undress and go to Bed. I said I wou'd not. She said she wou'd pluck my Cloaths off my Back. I said she should not. She said she would pluck off my Cloaths and make me go to Bed.

Coun. What did she do with you?

Mrs. Rawlins. She put me to Bed.

Coun. Did she use any Violence with you?

Mrs. Rawlins. Such Violence that made me go to Bed.

L. C. J. Holt. How came you to be released?

Mrs. Rawlins. It was *Saturday Morning* before I was released; there was some of my Friends came to the Place where I was.

L. C. J. Holt. Then you were with him all Night?

Mrs. Rawlins. Yes, my Lord.

L. C. J. Holt. Mr. *Swendsen*, will you ask her any Questions?

Prisoner. She must be my chiefest Evidence my Lord, when the Witnesses come; she must be the chiefest of them.

L. C. J. Holt. You will not ask her any Questions now, but when the Witnesses are call'd.

Prisoner. My Lord, I presume she does not go out of the Court. Orders given for her to sit down.

Mr. Sol. Gen. We have done with our Evidence at present.

L. C. J. Holt. Mr. *Swendsen*, What do you answer to the Evidence?

Prisoner. My Lord I am very much unprepar'd for a Tryal at present.

L. C. J. Holt. Why so?

Prisoner. Because I had but little Time for Preparation, and I am not prepar'd, I desire that I may be allow'd Council.

L. C. J. Holt. No, no, it cannot be allow'd you; and as for the Time of your Tryal you were told, if you would shew good Cause to have it put off yet, the Court would have done it.

Prisoner. Then I hope if I speak any Thing that may be prejudicial to my Cause, that the Court will not take Advantage from it.

The first Time I was at Mrs. *Nightingale's*, I was desired by Mrs. *Busby* and Mrs. *Baynton* to make a Bowl of Punch, which I did; and we were very merry over it; then I invited them to go on Board a Ship

Ship, which they all did, and we in a short Time came very well acquainted. My Lord, I desire my Wife might stand by her self, and none of them near her.

L. C. J. Holt. There is none near her that will hurt her.

Prisoner. My Lord, I beg she may stand by her self, that I may have a fair Tryal; I pray your Lordship to grant me this Favour. My Lord, will you please to grant it?

L. C. J. Holt. Must I grant it only for your Humour?

Prisoner. 'Tis not a Humour, my Lord, but of a great Consequence to me: Will your Lordship grant me it? I beg it, my Lord, for 'tis the most material Thing I have to ask; I beg all those People may be removed from her, 'tis the greatest and most material Thing I have to say.

L. C. J. Holt. I'm sorry for it?

Prisoner. It is so, good my Lord grant me that.

L. C. J. Holt. There's no body near her that concerns you at all.

Prisoner. There are those by her that will do me no Kindness. *Then she is ordered to be removed.*

Mr. Sol. Gen. My Lord, her standing there is enough to disorder her.

Prisoner. My Lord, she is very well.

L. C. J. Holt. Remove her a little further.

Coun. My Lord, he does it on purpose to fright her.

Prisoner. We went (as I was telling your Lordship) aboard a Ship, and they invited me to come the Week following to partake of a Treat; accordingly I went, and there was one Mr. Pugh, and he and I made a Bowl of Punch. Mr. Pugh at that Time courted Mrs. Rawlins, and that little Time I was acquainted with her, I discerned she had a Kindness for me, as I had for her; and I told her I could not be easy while she suffered Mr. Pugh to kiss her; she desired me to be easy, and it should be remedied.

L. C. J. Holt. Mrs. Rawlins, do you remember any such Thing?

Mrs. Rawlins. My Lord, I do not remember any such Thing, or that any such Words ever came out of my Mouth.

Prisoner. Did not you say this, Mrs. Rawlins, Mrs. Swendsen I should say, did not you say, if I would not sit by you you would not eat a Bit or a Crumb; when I sat by you and profered my Place to another, can you say you were not offended?

Mrs. Rawlins. No, I was not.

Prisoner. Are not you upon your Oath, did not you give me some Encouragement?

Mrs. Rawlins. I do not know how I could shew it you, I know not of any such Thing.

L. C. J. Holt. You ought to speak the Truth, because his Life depends upon it. Did you in the first Place ever admit of his Courtship, in order to marry you?

Mrs. Rawlins. No, my Lord, I don't remember any such Thing.

L. C. J. Holt. Did you ever shew any Kindness to him upon any such Account?

Mrs. Rawlins. No, I don't know I shew'd him any more Kindness than all the rest of the Family shewed him.

L. C. J. Holt. Was you ever in his Company alone?

Mrs. Rawlins. No, my Lord.

Prisoner. To give me more Ease and Satisfaction

after Dinner we had our Bowl and Walnuts; Mrs. Swendsen pilled the Kernels and gave them to me; she gave them faster than I could eat; she heaped my Plate with them, every one at the Table took notice of it, and she jogged me with her Knee, that I should take them, and gave some to Mrs. Baynton, and bid her take them and give to me.

L. C. J. Holt. Mrs. Busby, Were you there?

Mrs. Busby. Yes, my Lord.

L. C. J. Holt. Did you see any Thing of this kind?

Mrs. Busby. No, my Lord.

Prisoner. Will your Lordship be pleased to ask her your self?

L. C. J. Holt. Mrs. Rawlins, did you e'er give pilled Walnuts to him, or send them to him in particular?

Mrs. Rawlins. No, my Lord, I do not know that I was more kind to him than the rest of the Company.

Prisoner. Every Body took notice of it, and Mr. Pugh in particular.

L. C. J. Holt. What do you say, Mr. Swendsen?

Prisoner. My Lord, Mr. Pugh, if he were here, would say the same as I do. He was afraid I should get away his Lady.

L. C. J. Holt. Where is he?

Court. He is in the Court.

L. C. J. Holt. You may have him for a Witness if you will.

Prisoner. More than this, before he went away she told him she did not care for him; this she spoke to make me more easy still. This I believe Mr. Pugh can witness, in as much as Madam Busby complain'd to her about it, at Mr. Scoreman's the Picture-Drawers, who is one of my Evidences; I desire he may be called.

L. C. J. Holt. Well, let him be called.

So he was call'd and came.

L. C. J. Holt. Hear ye, he calls you to be a Witness, you are not to be upon your Oath, but are under the highest Obligation to tell the Truth.

Mr. Scoreman. While I was drawing a Gentlewoman's Picture, Mrs. Baynton's, there was a Fire, it began to be Cold, they fell into Discourse about Mr. Swendsen and Mrs. Rawlins, Mrs. Busby was there at the same Time, they fell into Discourse about Mr. Swendsen and the young Lady.

L. C. J. Holt. Was she there?

Mr. Scoreman. Yes.

L. C. J. Holt. Where was it?

Mr. Scoreman. At my Lodgings; there were Mrs. Busby, the young Lady, and Mrs. Baynton.

L. C. J. Holt. Whose Picture were you drawing?

Mr. Scoreman. Mrs. Baynton's. They fell into Discourse relating to a Matter of Love, between Mr. Swendsen and the young Lady. She said the young Lady had a Love for Mr. Swendsen more than the other.

L. C. J. Holt. You heard her say so?

Mr. Scoreman. No, but I can say Mrs. Baynton said so.

L. C. J. Holt. But tell us what you heard.

Mr. Scoreman. She should have said so, I did not hear her my self, but afterwards upon a Discourse she said afterwards, what she had said she would stand to.

L. C. J. Holt. What did she say?

Mr. Scoreman. I do not know that she said so or not.

Prisoner. My Lord, may I speak it as well as I can, he cannot speak *English* right, I'll speak it to him, my Lord.

L. C. J.

L. C. J. *Holt*. No, no. Did you hear Mrs. *Busby* say any Thing? What did she say?

Mr. *Scoreman*. In way of Discourse she said so.

L. C. J. *Holt*. What, in way of Discourse, did she say nothing?

Mr. *Scoreman*. I heard the Lady only say that Word, that all she had said she would stand to.

L. C. J. *Holt*. What did you hear them talk about?

Mr. *Scoreman*. They were playing at Cards, and she took up the Tricks of Mr. *Swendsen*, which discovered Love.

L. C. J. *Holt*. The Question is, Whether you did hear them speak any Thing of Love, or not?

Prisoner. My Lord, he would speak better with an Interpreter,

L. C. J. *Holt*. Let an Interpreter be called for?

L. C. J. *Holt*. What Countryman are you?

Prisoner. My Lord, he is a Dane.

The Interpreter, a *Fury-man*, was sworn, and beginning to talk with Mr. *Scoreman*; and then he said, he's none of my Country, he is a Dutchman, I don't understand him.

L. C. J. *Holt*. He speaks *English* well enough.

Prisoner. Very well; but he knows not where he begins: He would say what Mrs. *Busby* and Mrs. *Baynton* were speaking, but knows not how to utter himself.

L. C. J. *Holt*. He cannot say any thing for you.

Scoreman. I heard but a few Words, and cannot say much of it.

L. C. J. *Holt*. You must have a better Witness, or you are in a dangerous Condition.

Prisoner. My Lord, Mr. *Pugh* complained to Madam *Busby*, that she slighted him very much.

L. C. J. *Holt*. What, for Love of you?

Prisoner. Yes, my Lord; I could tell you of divers things that pass between Lovers, that would be impertinent for me to relate to wise Men.

L. C. J. *Holt*. Let us hear some of them?

Prisoner. When we were by our selves, she kissed me; and squeezed me by the Hand, when we walked privately in the Garden.

L. C. J. *Holt*. Did she kiss you?

Prisoner. Yes, my Lord, and squeez'd me often.

L. C. J. *Holt*. Did you not think her very coming?

Prisoner. Yes, I did; and when we talk'd of Marriage, she seem'd to be very well pleased.

L. C. J. *Holt*. Mrs. *Rawlins*, you hear what he says: Did you squeeze him by the Hand, and kiss him? Is it true?

Mrs. *Rawlins*. No, my Lord, I did no such Trick, not I; and as for walking in the Garden, I did not walk in the Garden alone with him.

Prisoner. I could mention a great many of these little Things; but if she denies them I cannot help it.

My Lord, the last time I was at the House we had a Barrel of Oysters. I stood with my Hands behind me, and as she passed by at any time, she gave me Squeezes by the Hand.

L. C. J. *Holt*. What say you to this Mrs. *Rawlins*?

Mrs. *Rawlins*. My Lord, I did not do so upon my Oath.

L. C. J. *Holt*. She says she did not do it, upon her Oath.

Prisoner. Now for the Matter of Fact; as for the Arrest, I never knew any Thing of it directly or indirectly, till I saw her at the Bayliff's House.

L. C. J. *Holt*. If she did know any Thing of, or was consenting to the Arrest, why did you force her to the Tavern, and Marry her with a Parson you had provided for that Purpose?

Prisoner. She Married me with as much Freedom as could be in a Woman.

L. C. J. *Holt*. What say you to that Mrs.?

Prisoner. Will your Lordship please to ask her, whether I offered any Violence to her either by Word or Deed.

L. C. J. *Holt*. Mrs. *Rawlins*, give an Account how you were carried from the Bayliff's House.

Mrs. *Rawlins*. My Lord, when I was at *Hartwell's* the Bayliff's House, Mrs. *Baynton* pretended to come accidentally by, and that she heard my Voice, and came in and said, *How do you do, Mrs. Rawlins?* You know how I do, said I. She pretended to help me, and proposed to go to her Brother to Bail me; and he came, and I was carried from thence in a Coach to the *Vine Tavern*. — *She was asked whether he came into the Coach to her?*

Mrs. *Rawlins*. Yes, he did.

L. C. J. *Holt*. Did you cry out when they put you into the Coach?

Mrs. *Rawl*. No, my Lord, I did not cry out then, I made no Noise then.

L. C. J. *Holt*. What did he do then?

Mrs. *Rawl*. They carry'd me to the *Vine-Tavern* a *Prisoner*.

Sol. Gen. She went willingly enough from *Hartwell's* House to the *Vine-Tavern*, because she thought that there she should be Bailed.

L. C. J. *Holt*. Mrs. What was the Pretence of your being carried from *Hartwell's* House?

Mrs. *Rawl*. My Lord, they would not tell me before they carry'd me to the Place.

L. C. J. *Holt*. Mr. *Swendsen*, Will you ask any other Questions?

Prisoner. Not yet, my Lord. I desire the Parson may be called that Marry'd us. *Which was done.*

L. C. J. *Holt*. Come Dr. you are not upon your Oath; How come you to be concern'd in this Match?

Parson. My Lord, it was at the *Vine-Tavern* where I saw them in *Holborn*.

L. C. J. *Holt*. Was it the *Mitre*, or the *Vine*?

Parson. The *Vine*, I believe, my Lord.

L. C. J. *Holt*. How came you there?

Parson. There was a Gentleman fetch'd me and the Clerk from the *Fleet*.

L. C. J. *Holt*. What to do?

Parson. He said there was a Gentleman there to speak with us. When we came there, the Clerk and I went up one Pair of Stairs and Drank a Pint of Wine. Then we were led into another Room; I asked him what I was to do. He told me for to Marry him to that Young Gentlewoman.

L. C. J. *Holt*. Was there a License?

Parson. Yes; When I saw the License I read it, and saw it a true License; Then I asked the Gentlewoman her Name, to know whether it was the same that was in the License; and found it was the same.

L. C. J. *Holt*. Was it written in the License, that the Marriage was to be performed at the *Vine-Tavern*?

Parson. No my Lord. But a Blank was left.

L. C. J. *Holt*. Did you take the Queen's Duty?

Parson. No, my Lord, but returned their Names to the Supervisor: My Lord, when I asked her Name, I also asked her whether she was willing to be Married. She said she was willing. And another Gentlewoman was with her, that said she was her Sister: I said to her; Madam, if you consent, and your Sister is willing, here is a License, for I believe there is no Danger to Marry you.

L. C. J. *Holt*. Did you ask her any other Way than in your Form, *Will you have this Man to your Wedded Husband*.

Parson. I ask'd her whether she was willing to Marry, she said, Yes, she was willing.

L. C. J. *Holt*. But did you ask her before you did the Office?

Parson. Yes, my Lord, I did, and she consented to it.

Counsel. Pray who was the Person that came to the Fleet to you, to carry you to the Tavern; was it the Gentleman at the Bar?

Parson. No, 'twas not him.

Mr. *Mountague*. How long was it before you went to him, after you went into the Tavern?

Parson. My Clerk and I went in, and sat the Drinking a Pint of Wine, about a Quarter of an Hour; then we went to the Gentleman.

L. C. J. *Holt*. Do you think that they should grant Licenses to Marry in a Tavern, and out of Canonical Hours?

Parson. I never did it in all my Life before, and never will do it again.

Sol. Gen. What was the Reason why you were conducted into another Room, and not where they were?

Parson. I know not the Reason.

Sol. Gen. How long were you in the Room where they were?

Parson. I cannot well tell.

L. C. J. *Holt*. Did you Marry them as soon as you came in?

Parson. Almost as soon.

Mr. *Mountague*. Did you ever Marry any at a Tavern before?

Parson. No, my Lord.

Sol. Gen. Will your Lordship be pleased to hear the License read.

L. C. J. *Holt*. It may be read. You may see the Date and the Names. The License is Dated Oct. 14. 1702. The Names *Haagen Swendsen* in the Parish of St. Paul's Shadwell; and *Pleasant Rawlins* in the Parish of St. Mary White-Chappel.

Counsel. Is there any Blank left?

Parson. Yes, there is a Blank left: that the Marriage may be in the Parish Church of St. Mary White-Chappel, vel a Blank.

Mr. *Mountague*. Were you Entertained there?

Parson. Before the Marriage, the Clerk and I drank a Pint of Wine in the first Room.

Mr. *Mountague*. Had you any Victuals then?

Parson. Not before they Married; but after.

Sol. Gen. Pray Sir, did you bespeak a Dinner before the Marriage?

Parson. No, Sir, the Gentleman bespoke a Fowl.

Mr. *Dan. Corbett*, was called.

Prisoner. My Lord, I desire he may be asked whether he heard any Noise, or whether any Violence was offered to the Young Woman?

L. C. J. *Holt*. Did you hear any Noise, or perceive any Violence offered to the Young Woman?

Mr. *Corbett*. No, my Lord.

Prisoner. Ask Mrs. *Corbett*, whether any Noise or Violence was offer'd to the Young Lady?

L. C. J. *Holt*. I'll ask her that Question; Was there any Noise, or Violence used to the Young Lady?

Mrs. *Corbett*. No, my Lord, there was no Noise; they came in and asked for a Room, and I shewed them a lower Room, but they would not have that, but went up. Soon after Mr. *Holt* the Vintner came down and went out, and Mr. *Hartwell* call'd for a

Pint of Wine for the Coachman, but the Drawer grumbled at it, and said he did not know who'd pay for't. Then Mr. *Hartwell* the Bayliff told me it was an Arrest, and that the Parson was to be Bail for the Lady, and at that I very much wondred; and afterwards they told me there was a Wedding above, which we admired at, that there should be a Wedding, and Bayliffs; And after all was over, the Gentleman and the Lady went out at the Back-Door, and took Coach.

Prisoner. Did you see Mrs. *Swendsen* discontented when she went out?

Mrs. *Corbett*. No, my Lord, she seemed not Discontented; what I know I'll speak, and no more.

Sarah Walker called.

L. C. J. *Holt*. Do you live at the Vine-Tavern?

Walker. Yes, my Lord.

L. C. J. *Holt*. What Place?

Walker. Cook, my Lord.

L. C. J. *Holt*. Was you in the House when that Young Gentlewoman was carried Prisoner there? Where were you then?

Walker. In the Bar, my Lord.

L. C. J. *Holt*. Did you keep the Bar?

Walker. No, my Lord; but I was washing the Bar at that time.

L. C. J. *Holt*. Did you hear any Noise?

Walker. No, my Lord.

L. C. J. *Holt*. Did you hear of a Wedding?

Walker. Yes, my Lord.

Prisoner. My Lord, Will you be pleas'd to ask her, if she was not had before the Recorder, and promis'd a Reward if she would say any thing for their Service?

L. C. J. *Holt*. What do you say to this?

Walker. My Lord, only this, That if I knew any Thing, and discover'd it, I should be satisfied for my Trouble.

L. C. J. *Holt*. Were you sent up Stairs to the Gentlesfolks to receive Directions for the Supper?

Walk. Yes.

Sol. Gen. When you came up into the Room, what Condition was the Young Gentlewoman in?

Walker. She sat at one end of the Room, and seemed to be very Melancholly.

Sol. Gen. How did she look when she went away?

Walker. Not Melancholly then. When Orders were given about the Supper, I asked her what Sauce she would have, she said she would eat nothing at all.

Mr. *Blake's Daughter* being called,

Prisoner. Ask what she knew of my Wife?

Blake. My Lord, She carried it very well; the Lady was pleas'd to say that I should wait upon her, I offered to pluck off her Shoes and Stockings when she went to Bed, she held out her Legs, and I pull'd off her Shoes and Stockings.

Sol. Gen. Were you present at the beginning before she began undressing?

Mrs. *Blake*. Yes.

Sol. Gen. When she was come in, were you there all the time?

Mrs. *Blake*. No, I run to and fro.

Sol. Gen. Do you know Mrs. *Baynton*?

Mrs. *Blake*. Yes, Sir.

Sol. Gen. Pray did she ever lie in at your House?

Blake. Yes, Sir.

Sol. Gen. Hath she a Husband?

Blake. I cannot tell.

L. C. J. *Holt*. Did you make the Bed in Mr. *Swendsen's* Chamber?

Blake.

Blake. Yes my Lord, I made it where he lay, I saw nothing.

L. C. J. Holt. How long was it after from the time they came, to the time they went to Bed?

Blake. I know not, they came into the House just about Dinner.

L. C. J. Holt. What time was it?

Blake. About three or four a Clock in the Afternoon.

L. C. J. Holt. How long was it after they came before they went to Bed?

Blake. About two Hours or thereabout.

L. C. J. Holt. Do you think that 5 or 6 a Clock was a fit time to go to Bed?

Blake. I knew not what was betwixt them.

Sol. Gen. Is it usual to go to Bed at that time at your House?

Blake. No; I did not know what was betwixt them.

Mr. Mountague. What time did they rise again?

Blake. About 7 a Clock.

Mr. Mountague. Did they lie at your House that Night?

Blake. No; they did not.

L. C. J. Holt. When did they go away?

Blake. They went away as soon as Supper was done.

Prisoner. My Lord, I desire she may be asked whether my Wife was Sorrowful or Discontented, or Unwilling to go to Bed.

L. C. J. Holt. What time was it they went to Bed?

Blake. About Four a Clock.

L. C. J. Holt. Did you know what the Design was?

Blake. No, my Lord, I did not know any otherwife, than as *Mr. Swendsen* told me the Young Lady was his Wife.

L. C. J. Holt. What time did they rise again?

Blake. About two Hours, they rose up and got to Supper.

Judge Powis. What time did they go from your House?

Blake. Between Eight and Nine a Clock.

L. C. J. Holt. Where did they go? Do you know where they went?

Blake. Indeed my Lord, I cannot tell.

Mr. Blake Sworn.

Sol. Gen. *Mr. Blake*, How long have you known *Mrs. Baynton*?

Blake. About 12 Years.

Sol. Gen. Did you ever know that *Mrs. Baynton* had a Husband?

Blake. I cannot tell, it was reported that she had one.

Mr. Sol. Gen. Did you ever see *Mr. Baynton*? Did he own her to be his Wife?

Blake. My Lord, They did not live with me while he was living.

Mr. Sol. Gen. How long has he been dead?

Blake. I don't certainly remember; about 3 or 4 Years.

Mr. Sol. Gen. How long is it since *Mrs. Baynton* lay in at your House?

Blake. About 4 Months ago.

Mr. Sol. Gen. When she was such a Woman as this, and brought a Gentlewoman to your House, and ordered a Bed to be made, how could you admit her into your House again?

Blake. I did not know that it was any clandestine Thing.

L. C. J. Holt. Have you any more Witnesses, *Mr. Swendsen*?

Prisoner. Let the Constable be called for.

L. C. J. Holt. What Questions shall I ask him?

Prisoner. Ask him what it was my Wife said to him?

Constable. My Lord, the Man was in one Room and the Woman in another; when I opened the Door, the Gentleman asked her how she did.

L. C. J. Holt. What Gentleman was it?

Constable. It was the Gentleman that gave me the Warrant. He said to her, Are you married? Yes; There is my Husband. She seemed very much satisfied: He said to her, Madam, I wish you much Joy, and if you please to go to the Recorder's, there is your Guardian to approve of what you have done: But when she was dress'd, she would go to the next Justice of the Peace: They could not agree about going, but they drank each of them a Glass of Wine and went away. The Gentlemen that brought me the Warrant was also with me.

L. C. J. Holt. Are they here?

Constable. The Warrant was to take up the Bailiffs and all together.

L. C. J. Holt. Where do you live?

Constable. In *Lincolns-Inn Fields*.

L. C. J. Holt. In what House did you see them?

Constable. 'Twas in *Red-Lyon-Street*, over against the *Red-Lyon Tavern*.

L. C. J. Holt. About what Time of the Night was it?

Constable. About 7 a-Clock.

L. C. J. Holt. What Night was it?

Constable. Indeed my Lord I cannot tell.

Mr. Mountague. Whose House was it? Was it *Blake's* House?

Constable. Yes it was so.

L. C. J. Holt. Where is your Warrant?

Constable. They took it away from me.

L. C. J. Holt. But you ought not to have parted from your Warrant.

Constable. The Men were not there that the Warrant run for.

L. C. J. Holt. Was not the Warrant against *Mr. Swendsen*?

Constable. The Warrant was for such Men as took the young Gentlewoman away. I cannot tell whether his Name was there or no.

L. C. J. Holt. *Mrs. Rawlins*, what were those Men who came along with the Constable; were they your Friends?

Mrs. Rawlins. Yes my Lord, They were my Friends.

L. C. J. Holt. What is this *Geary*?

Mrs. Rawlins. He is an Acquaintance of *Madam Busby's*.

L. C. J. Holt. Did you say you consented to the Marriage before them?

Mrs. Rawlins. If I did, I did not know what I said.

Prisoner. My Lord, I desire she may be asked what she said to the Constable.

Mrs. Rawlins. My Lord, I did not know whether I said such a Thing; if I did, I was not in my Senses, I did not know what I said.

Prisoner. My Lord, I hope you will give me leave to speak. She said to the Constable, I am very well content with the Marriage, and this is the Ring that married us.

L. C. J. Holt. What say you to that *Mrs. Rawlins*?

Mrs. Rawlins. I don't know but I might, but I did not know what I said.

L. C. J.

L. C. J. Holt. Had you been in Bed then ?

Mrs. Rawlins. Yes, we were in Bed about an Hour.

Mr. Sol. Gen. Was there any Threats used by Mrs. Baynton ?

Mrs. Rawlins. Yes, my Lord ; she said that I must own him for my Husband, or else we were all ruined.

Justice Baber called.

Prisoner. My Lord, he is one of the chiefest Witnesses that I have, I desire it may be asked him, what my Wife declared to him of her own Accord.

J. Baber. My Lord I think it was Friday Night, the 6th of this Month, the Prisoner here at the Bar, and I suppose that may be the Gentlewoman too, pointing to her, and another Gentlewoman and a Woman came to me to my House in York-Buildings, and desired me, but the Prisoner in particular, that I would administer a voluntary Oath to the young Lady, which she was willing to take, that she was married to this Gentleman. I told him that I had nothing to do to confirm Marriages, and told them I was loth to meddle with it.

L. C. J. Holt. How came they to you ? Had they any Officers ?

J. Baber. No, my Lord, they came in a Coach without any Officer.

L. C. J. Holt. Was there any Oath taken ?

J. Baber. No, my Lord.

Coun. What was the Reason that you did not tender the Oath ?

J. Baber. Because I thought I had nothing to do with it.

Coun. What Sort of Frame was the young Woman in ?

J. Baber. In very great Disorder ; not like a Gentlewoman, but in a very confused Condition : She spoke what she said, by her own Consent ; but with much Disorder.

Prisoner. My Lord, I desire it may be asked Justice Baber, whether I desired him to tender the Oath to my Wife.

L. C. J. Holt. Did Mr. Swendsen desire you to tender the Oath ?

J. Baber. He did put me upon it at the first.

Prisoner. I ne'er did so in all my Life.

Mr. Bulkley called.

Prisoner. My Lord, I desire this Man may be heard.

Mr. Bulkley. This Gentleman, on the 7th of November, in the Forenoon, stopped at the Porch of my Door, and gave me Order to wait upon him, upon the Business of my Calling.

L. C. J. Holt. What is your Calling ?

Bulkley. A Barber. He told me that he was Married. I asked him, What, are you Married ? Yes, said he, I am ; and here's my Wife ; and the Gentlewoman she said so too. At that, I wished them much Joy and Happiness. The Young Woman said, She did not question it, since what she had done, was with her own voluntary Consent.

Mr. Hudson called.

Prisoner. What did you hear my Wife say ?

Mr. Hudson. When Mr. Swendsen, with his Wife, came to our House, (my Lord,) he bid her take Mr. Blake by the Hand, and ask him how he does. She said, Yes, my Dear. She went into the House and took my Master by the Hand, ask'd him how he did. Mr. Swendsen said, This is my dear Wife ; and she said, This is my dear Husband, and took him about the Neck and kissed him.

L. C. J. Holt. What Trade are you ?

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Mr. Hudson. An Upholsterer ; Mr. Blake is my Master.

L. C. J. Holt. You say the young Woman took Mr. Blake by the Hand, and said, How do you do : Did she ever see Mr. Blake before ?

Mr. Hudson. Not that I know of. But Mr. Swendsen said, This is my dear Wife.

Mr. Sol. Gen. When was this ?

Mr. Hudson. On Saturday Morning.

Mr. Sol. Gen. If they lay there over-night, what Necessity was there for Swendsen to tell Mr. Blake that was his dear Wife.

Mr. Hudson. He did not say so to him, but to his Wife ; and she kissed him.

Mr. Mountague. What need he to tell Mr. Blake that was his Wife, when he knew it before ?

Mr. Hudson. Why may not I, if I had a Wife, come to her and say, My dear Wife ?

Mr. Sol. Gen. Mr. Blake, Pray was Mrs. Rawlins at your House before then.

Mr. Blake. Never as I know of.

Mr. Green called.

Prisoner. I desire that this Man be asked what he heard my Wife say before the Recorder.

L. C. J. Holt. What did you hear the young Woman say before the Recorder ?

Mr. Green. She owned that she was married to the Gentleman, by her own Consent, without any Force or Compulsion.

L. C. J. Holt. Did she marry him willingly ?

Mr. Green. Yes, my Lord, she said so.

Prisoner. My Lord, I desire he may tell how she behaved her self there.

L. C. J. Holt. What said she ?

Mr. Green. She said she was married to that Gentleman without Force or Compulsion.

Coun. Did she say nothing else ?

Mr. Green. This is all that I remember.

Mr. Sol. Gen. Did the Gentlewoman continue in that Tone all the while she was at the Recorder's ?

Mr. Green. No, I believe she did not.

L. C. J. Holt. Was the Recorder by then ?

Mr. Green. Yes, the Recorder was by. Then he asked her whether she was married by her own Consent ?

L. C. J. Holt. What did the Recorder say more ?

Mr. Green. He said, he was afraid she was drawn in by this Man, who he feared was a Spark and Bully of the Town.

Coun. Pray, when she said she was married by her own Consent, had Mr. Swendsen her Hand in his ?

Mr. Green. Yes.

L. C. J. Holt. Then I ask you whether Swendsen was afterwards withdrawn ?

Mr. Green. He was so.

L. C. J. Holt. And did you hear what she said after that ?

Mr. Green. No, I did not, I was thrust out.

L. C. J. Holt. Where do you live ?

Mr. Green. I live in Carter Lane. I belong to the General Post-Office.

L. C. J. Holt. How came you to be acquainted with this Matter ?

Mr. Green. My Lord, I came into Red-Lyon-street accidentally, Two Doors off Mr. Swendsen's : I went to Mr. Swendsen's Lodgings, and asked how he did ? I was told he was very well, that he had married a Fortune, and was in Bed with his Lady.

L. C. J. Holt. What was the Man's Name ?

Mr. Green. His Name was Blake, my Lord ; it was a pure accidental Thing to me.

G g g g

L. C. J.

L. C. J. Holt. How long have you known Mr. Swendsen?

Mr. Green. I have known him several Years.

L. C. J. Holt. Have you dealt with him?

Mr. Green. Yes, I have; and I believe here are many present, can give a better Account of him than I can.

Prisoner. My Lord, I desire he may be asked what my Wife said to the Recorder?

Mr. Green. My Lord, upon Examination she seemed to be much surprized upon that Occasion, but what she did, she said was voluntarily; and that as he was her Husband, so she would own him; and when she was asked whether she was in Drink; she said she was never given to drinking.

Prisoner. And as I have been represented by some as a Bully of the Town, I desire I may have my Friends heard as to my Life and Conversation.

One of his Friends called.

L. C. J. Holt. Where do you live?

Ans. At Ratcliff; my Education has been at Sea. I have been acquainted with Mr. Swendsen Two Years, and have found him to be a very honest and ingenious Man.

L. C. J. Holt. Had you any Dealings with him?

Ans. Yes, my Lord, I have dealt with him for 3000 *l.* and better?

L. C. J. Holt. In what Manner did you deal with him?

Ans. I consigned my Effects to him.

L. C. J. Holt. From whence?

Ans. From England to Norway.

L. C. J. Holt. How could they be consigned to him when he was here?

Ans. He was not here then, but at Norway. In May 1701. he came over, and had a Ship of mine, called the *Swan*, and sold her for my Account.

Coun. Did you apprehend that he traded for himself, or as a Factor?

Ans. He traded for himself; and I can shew you the Bills of Lading that will shew they were for his Account: And I believe all that knew him, will give him the Character of an honest Man.

Mr. Evans called.

L. C. J. Holt. What do you know of Mr. Swendsen?

Mr. Evans. I was in Norway, and found then that he lived in very good Repute and Credit there among all People, the best of Trading People; and I found he had a familiar Conversation with them: I was with him at the *Generance* and *Admirance*, which are the chief Offices in the Place: I was by his Letter of Recommendation credited by the most eminent Merchants of Norway. At that Time he had several Ships consigned to him for Lading, at a Time when Goods were difficult to be gotten, and he did load them.

Another Witness called.

L. C. J. Holt. What do you know of Mr. Swendsen?

Ans. My Lord, I was born in Norway, where this Gentleman lived for some Years, and was esteemed worth 10000 Dollars. I have had no great Dealings with him, but when he wanted Money, when Money was short with him, I lent him some, which he paid again very honestly.

Prisoner. Call John Shorey.

Shorey. The Knowledge I have had of him was caused by his buying several Parcels of Goods of me, and order'd them to be Shipp'd, and paid me honestly for them.

Another Witness called.

L. C. J. Holt. What say you?

Ans. I have known this Gentleman about Two Years: The first of my Knowledge was, I had a Bill of Exchange of 50 *l.* drawn upon him, which he paid very honestly. I never heard any otherwise, but that he was a very honest, just Man.

Mr. Sol. Gen. I would observe to your Lordship, that the principal Part of our Evidence the Prisoner hath given no Answer to; that is, the Force: If the taking and detaining Mrs. Rawlins was by Force as several of our Witnesses have testified. And if she married while she was under that Force, no subsequent Act or Consent of hers can lessen the Offence, if the Jury could give Credit to the Prisoner's Evidence, and believe her Consent was real.

The Gentlewoman did herself confess, that after she had been hurried from Tavern to Tavern, she did declare he was her Husband, and that she consented to the Marriage; but what afterwards happened, plainly shews that it was through Fear and nothing else: Had she really consented to the Marriage, why was she carried to the Justice of Peace to take an Oath, that she was married by her own voluntary Consent? Whilst the Prisoner held her by the Hand before the Recorder, she confessed that she married with her free Consent: As soon as the Prisoner was withdrawn, she burst out into a Flood of Tears, and confessed that she was married by Constraint. My Lord, there is but one Thing more I would answer, and that is the License which was given in Evidence to give Colour to this Marriage; but this plainly shews, that this whole Management was the Prisoner's contriving. The License bears date Three Weeks before the Time of the Marriage, which shews how long they had waited for an Opportunity to accomplish this Design. When the Prisoner took out this License, he swore her Age to be 25, and his to be 35.

My Lord, now we will examine some Witnesses to these Facts, and so we'll have done. She was carried to Justice Baber to take a voluntary Oath. If your Lordship pleases he may again be called. We will examine him upon Oath.

Justice Baber called.

Mr. Sol. Gen. Pray Sir, give an Account of the whole Matter.

J. Baber. They came to me about 8 or 9 a-Clock on Friday Night the 6th of this Month; and the Prisoner here told me the Purport of his coming, that it was a light and short Business; and pointing to the Gentlewoman, said, that she came to take a voluntary Oath, that she was married to him with her own Consent; she said she was married, and that with her Consent. I told her, I had nothing to do with confirming Marriages. He told me, amongst other Things, that he had a Certificate. You know that best I said; a Marriage is a Marriage, and I have nothing to do with it.

Mr. Sol. Gen. But when she told you that she was married, what Condition was she in?

J. Baber. She was in a very great Disorder.

Another Witness.

Mr. Sol. Gen. Was you before the Recorder?

Witness. Yes, on Saturday the 7th of this November. While Mr. Swendsen held her by the Hand she owned the Marriage; but when he was withdrawn she threw her self upon me, and desired me to stand by her, or she was undone.

Mr. Sol. Gen. What Account did she give when Mr. Swendsen was withdrawn?

Ans. She spoke much to the same Purpose as she

she has done here; and that what she had done was all by Force, and out of Fear.

Mr. Taylor call'd and Sworn.

Mr. Sol. Gen. Do you know any Oath the Party took, in the taking of this License?

Mr. Taylor. Yes, my Lord.

Mr. Sol. Gen. How old did he say the Gentlewoman was?

Mr. Taylor. He said that she was 25, and that he was 35 Years old.

Mr. Sol. Gen. Are you sure he took the Oath?

Mr. Taylor. Yes, my Lord, there is the Surrogate's Hand, and the Prisoner's own Hand to it.

Mr. Sol. Gen. Were you present?

Mr. Taylor. No, I was not, but my Clerk was.

Mr. Serj. Darnel. My Lord, there's his Hand to it, and we can prove his Hand.

Mr. Sol. Gen. My Lord it is an Act of the Court.

Coun. My Lord, I hope that may be of the same Force as a Deposition in *Chancery*.

L. C. J. Holt. It cannot be read as Evidence.

Mr. Taylor, did he ever take a License at any other Time?

Mr. Taylor. No, my Lord.

L. C. J. Holt. Was the License dated that Day he took it?

Mr. Taylor. It is always dated the same Day it is taken.

Mr. Mountague. My Lord, I desire Mrs. *Busby* may be asked, whether she talked at the Picture-Drawers about any Thing of Love, or no? Mrs. *Busby*, the Question is, Whether or no you talked any Thing about Love at the Picture-Drawers?

Mrs. Busby. My Lord, Mrs. *Baynton* desir'd me to go with her to the Picture-Drawers to see her Picture drawn; we were talking by the Fire-side that Mrs. *Rawlins* had spoke by way of Discouragement to Mr. *Pugh*; Mrs. *Baynton* said that she thought her Brother would make her a very good Husband, and was able to make her a considerable Jointure here in *England*. My Lord, Mr. *Pugh* came, by the Consent of Friends, on honourable Terms.

L. C. J. Holt. Gentlemen of the Jury, This Prisoner is indicted for Felony, in taking away by Force Mrs. *Pleasant Rawlins*, and marrying of her; this is Felony by the Statute of the Third of *Henry VII.* which enacts, "That if any Person shall take any Woman that hath any Substance in Goods or Land, against her Consent, and marry or defile her, he and his Procurers and Receivers, shall be adjudged to be Felons."

Now it hath been proved to you, that this young Woman had a Personal Estate left her by her Father, to the Value of 2000 *l.* and had another Estate in Land, to the Value of 20 *l. per Annum*. If any one shall take her away by Force, and marry her, he is Guilty of Felony by that Statute. You have heard that she was placed by her Guardian, under the Tuition of Mrs. *Busby*, who took a Lodging about 3 Years last past, at one Mrs. *Nightingale's*, in *Stretton-Grounds*, *Westminster*; and boarded with her, who took Boarders into her House; and if any Friend of her Boarders came to Dinner there, she received 12 *d.* per Head: About 3 Weeks or a Month before *Michaelmas* last past, there came one Mrs. *St. John*, and recommended to her a Lodger of her Acquaintance, and desired that she might board with her as others did, and said she was a Widow that came out of the Country about a Suit of Law, and represented her to be a sober Person. Mrs.

Nightingale refused her at that Time, and heard no more of her till about 3 Weeks after; then she, Mrs. *St. John*, returns and prevails with Mrs. *Nightingale*, to take her Acquaintance into her House. Mrs. *Baynton* that is mentioned in the Indictment, was the Person designed by Mrs. *St. John*; and she came to Mrs. *Nightingale*, and desired to be with her as other Boarders were; she pretended to be of very good Quality, so she was taken into the House; her Carriage and Demeanor there were very Civil, and she pretended she had a Brother, that would come to see her: The Prisoner at the Bar was the Person that came, and she call'd him Brother, and owned him for such; he dined there several Times with the rest of the Boarders; he said, He had an Interest in Shipping, and invited all the Family to go on Board a Ship. They accepted of his Invitation, and were very well entertained, but suspected nothing; but at length it was observed there was too great a Familiarity between Mrs. *Baynton* and the Prisoner, more than was common betwixt so near Relations; they afterwards perceived that Mrs. *Baynton* was inclinable to drink, which caused some Jealousy of her in the Family, and she perceiving the Strangeness of the Family, gave Mrs. *Nightingale* notice that she should go in a short Time, for that she had finished her Business at Law, and that the Town was chargeable, and she intended to be gone at such a Time. When that Time was expired, she pretended to Mrs. *Nightingale* that there was another Thing had happen'd that would detain her a Week longer: She consented that she shou'd stay. Now you may observe by the Evidence, that it was usual for Mrs. *Busby* and Mrs. *Rawlins* to go to *Oxenden Chapel* on *Fridays*; which Mrs. *Baynton* very well knew, and pretends that she was to go in a Coach that way into *Golden-Square*, and invites them to go in her Coach, and promised to set them down by the Chapel: They accepting the Invitation, and being come near the Place, the Coach was stopped by several Men: *Hartwell* the Bayliff opened the Door, got into the Coach, said it was an Arrest. At which Mrs. *Busby* was very much concerned, and thought this Arrest was for Mrs. *Baynton*, and that she and Mrs. *Rawlins* might go out, for they were not concerned in the Matter. At last they perceived it was of themselves; and then Mrs. *Baynton* pretended to be concerned for them: And when the People in the Street asked what was the Cause of the Disorder, the Bayliffs said, that they were Cheats and Trading-Women that owed People Money, and now they are Arrested for it. Under this pretended Arrest, they were carried to the *Star and Garter Tavern* in *Drury-Lane*, and put into a Back-Room. They were in a great Consternation at their being Arrested, being not conscious to themselves that they owed Money to any Person. One came to Mrs. *Busby*, and said, See that your Name be right, that you are rightly Arrested. Another of the Bayliffs, by Force, carry'd away Mrs. *Rawlins*, saying, she was his Prisoner; and it was pretended, that one Bayliff had a Process to carry the one to *Newgate*, and another had another Process to take the other to the *Marshalsea*. Mrs. *Rawlins* was carried to *Hartwell's House*. When she was there, Mrs. *Baynton* pretended that coming by accidentally, she heard her Voice, and came in, and seem'd to pity her, and said, Madam, will none of your Friends help you? She proposes her Brother to be Bail, and *Holt* he was to be the other. Under that Pretence of being Bailed, they carry her to the *Vine Tavern* in *Holborn*, where *Hartwell* pretended

tended to be very willing to take his Bail, and said he knew *Holt*, but questioned the Prisoner. It will appear to you from this Evidence, and that which follows, of this Force and Contrivance, that their Design was to bring about the Marriage; for when the Bail was pretended to be refused, Mrs. Baynton proposes a Marriage, between the Prisoner and Mrs. Rawlins, as the best way to make an end of this troublesome Business: She would have the Ring from her Finger, to get a Wedding-Ring made by it. Says Mrs. Rawlins, I have no mind to be married; Says Mrs. Baynton, it's best for you to be marry'd; and threaten'd Mrs. Rawlins, that if she did not marry, she should be committed to Newgate. There was a Parson and Clerk ready, who were called to do the Office. The young Woman being under this Terror, the Office of Matrimony was performed; and she was forthwith conveyed to one *Blake's*, and by Constraint there, was put to Bed in the Day-time. You must go to Bed, says Mrs. Baynton: I will not go, says the young Woman: And some Violence was used to force her Cloaths off, and she was put to Bed, where she lay about an Hour or Two, and thereby the Marriage was supposed to be consummated.

The Prisoner, on the next Day, being discours'd with about this Matter, and asked, whether he was Mrs. Baynton's Brother? No indeed, says he; I made use of her as my Tool; she hath done my Job for me; I'll make her Satisfaction for it, not To-morrow, being Sunday, but on Monday I will do it, and never see her Face more. After all this Evidence, the Prisoner doth insist upon his Innocence, because he was not present at the Arrest; and hath produced several Witnesses to prove, that this young Woman was very well satisfy'd with the Marriage; and that Reverend Divine the Parson asked her, whether she was willing to be married, to the Gentleman? And she said she was willing. And then Mr. *Blake's* Maid and Daughter said, that she desired them to pluck off her Shoes and Stockings, undress her, and put her to Bed. And that very Night the Prisoner and Mrs. Rawlins went to Mr. *Baber's*, a Justice of the Peace, at *York-Buildings*, to take a voluntary Oath before him, that she married this Prisoner by her own free Consent. Mr. *Baber* would not Administer the Oath. And that afterward they Bedded together that Night; and the next Day they went abroad together in a Coach; and meeting his Barber, the Prisoner bids him come to him to shave him, and says to him, Here is my Wife; she said likewise, that he was her Husband: he wished her much Joy; she reply'd, that she did not question it, seeing that what she had done was by her free and full Consent; and declared, she was well satisfied with what was done. The next Proof is of their Return to *Blake's* House, where they first lodged; the Prisoner *Swendsen* orders his Wife to take Mr. *Blake* by the Hand, and ask him how he did? Which she did, and expressed to him how well she was pleased with the Marriage, saying, This is my dear Husband, and kissed him. His Witness tells you, on Friday Night a Constable comes with the Recorder's Warrant, to apprehend the Persons supposed to have committed this Force; and discoursing with her, she expressed her self very well satisfied with her Marriage, so that they desisted from serving the Warrant. Then he relies upon his Reputation, as being a Man of great Credit, and having had Goods consigned to him, and paid Bills of Exchange; and produces Witnesses to prove, that he was a Trader in Norway, where he lived, and in good Credit, remitted Mo-

ney, drew and paid Bills of Exchange, freighted Ships, &c. and was in very good Esteem by the chiefest in those Parts. Then he called other Witnesses, to let you know how the young Woman carried it at the Recorder's; that there she said, that she was married by her own free Consent, &c. Gentlemen, this is the Sum of the Evidence that he hath given. To which it is reply'd, That as to what was said before the Recorder, that is true; so long as he had her Hand in his, she declared her Consent to, and Satisfaction in the Marriage; but when he was withdrawn, and she was examined by her self, she declared her Marriage was by Violence and Force, that she did it out of Fear, &c. Then they tell you again, of a License that was taken out by him, and produced by him, but bore Date almost Three Weeks before this Marriage was accomplish'd: It was observed also upon the License, that this License was to marry Mrs. Rawlins of the Parish of *St. Mary White-Chapel*, when she lived not there.

This is the Sum of the Evidence on both Sides, and these Observations are to be made from it:

I. You are to know, that if she be taken away by Force, and afterwards married, tho' by her Consent, yet is he guilty of Felony: For it is the taking away by Force that makes the Crime, if there be a Marriage, tho' by her Consent.

II. In the next place it is to be observed, That she was taken away by Force, and a Stratagem was used to give an Opportunity thereunto, and the Arrest was but a Colour.

III. You may consider upon the Evidence, how far the Prisoner was concerned in the first Force: It is true, he was not at the Arrest, and did not appear until she was brought to *Hartwell's* House; and under that Pretence of Bailing her, she was carried to the *Vine Tavern*, where there was a Parson ready, and the Marriage was had in such manner as you have heard. Now, considering these Matters, it is left to you to determine, whether the Marriage was not the End of the Arrest? And if so, how it could be possible for such a Force to be committed to effect the Prisoner's Design, and he not be privy to it?

IV. If it can be imagined, that he was not privy to the colourable Arrest, yet she was under a Force when he came to her at *Hartwell's* House; and from thence she was carried by Force unto the *Vine Tavern*, where she was married. That is a forcible taking by him at *Hartwell's* House; and tho' when she was at the *Vine Tavern* she did express her Consent to be married, yet it appears even then she was under a Force, and had no Power to help her self. Her Marriage was by Force, when she was carried to *Blake's*, and put to Bed; all this was Force: Nay, when she was carry'd to the Justice of Peace, even then she was under a Force; and all that she said was not freely, but out of Fear: Such a Force would avoid any Bond, for she was under Imprisonment. But however, if the first taking was by Force, and she had consented to the Marriage, the Offence is the same, it is Felony.

And as to his Reputation, it is possible he might have been an honest Man: A Man is not born a Knave, there must be Time to make him so; nor is he presently discovered after he becomes one. A Man may be reputed an able Man this Year, and yet be a Beggar the next: It is a Misfortune that happens to many Men, and his former Reputation will signify

fy nothing to him upon this Occasion. If you be satisfied upon the Evidence, that he is guilty of this Crime, you are to find him so; if not, you ought to acquit him.

Swendsen. I desire, my Lord, that my Wife may be asked, Whether she did not, upon her Knees, swear, she went away from me as good a Maid as she came to me?

L. C. J. Holt. That is a Question need not be ask'd, since the Marriage is so plainly proved, which is sufficient to bring you within the Statute.

The Jury desire the Act may be read.

L. C. J. Holt. Let it be read. *It was so.*

The Jury ask Mrs. Rawlins, how old she is?

Mrs. Rawlins. Eighteen at Candlemas.

L. C. J. Holt. Would you ask any Questions upon this Act?

Jury. No, my Lord.

Then the Jury went out, and after Three Hours Stay, brought him in Guilty.

The Tryal of SARAH BAYNTON, JOHN HARTWELL and JOHN SPUR, On Wednesday, November the 25th, 1702. in the Afternoon.

A Motion was made by the Queen's Council, for putting off this Tryal to Friday Morning; but his Lordship would not grant it, but ordered it to begin presently.

The Prisoners were call'd to the Bar, and a Proclamation made for all concern'd to attend.

The Jury were Sworn, whose Names are, viz.

<i>Robert Lympany, Gent.</i>	<i>Giles Ridle, Gent.</i>
<i>John Outing, Gent.</i>	<i>Robert Legg, Gent.</i>
<i>Francis Parr, Gent.</i>	<i>Thomas Elton, Gent.</i>
<i>Richard Beading, Gent.</i>	<i>Charles Longland, Gent.</i>
<i>Charles Murry, Gent.</i>	<i>Simon Smith, Gent.</i>
<i>John Cannon, Gent.</i>	<i>Henry Lobb, Gent.</i>

Clerk of the Ar. **S**arah Baynton, John Hartwell, and John Spur, hold up your Hands. [Which they did.] Gentlemen of the Jury, look upon the Prisoners, and hear their Charge. Then the Indictment was read as in the first Tryal: Upon which they were Arraigned, and plead Not Guilty.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury; The Prisoners at the Bar, together with one *Swendsen*, stand Indicted before you for a very great Offence; *Swendsen* (for whose Sake this Felony was committed, for which the Prisoners are now to answer) has already had his Tryal: The Three Prisoners at the Bar were his Accomplices. The Law, to show how odious such Offences are, and to deter all Persons whatsoever from committing them, has made no Distinction between the Principal and Accessories: The Abettors, Procurers, or Contrivers, are declared and enacted to be, and to be judged as Principal Felons. The Gentlewoman mentioned in the Indictment, *Mrs. Pleasant Rawlins*, was the Daughter of *Mr. William Rawlins*, who left her a good Fortune: Her Grandfather likewise left her an Estate of Inheritance. Her Father being dead, her Guardian, *Mr. Busby*, placed her under the Care of his Sister, who boarded with her at one *Mrs. Nightingale's*. *Mrs. Baynton* (one of the Prisoners at the Bar) and *Mr. Swendsen* lodged at *Mr. Blake's*, where they projected what was afterwards put in Practice. Lodgings were to be taken for *Mrs. Baynton* at *Mrs. Nightingale's*. In order thereunto, 'twas pretended, That she was a Country Gentlewoman who came to Town about a Law-Suit, and being very tender of her Reputation, would board in a sober Family. By these Insinuations, Lodgings were taken for her at *Mrs. Nightingale's*, where in a little Time she got

acquainted with the Family, and in Conversation, as often as 'twas possible, would take some Opportunity to discourse of her own Affairs, particularly of her Relations, of her dear Brother *Swendsen*, who was never mentioned without many Commendations. *Mr. Swendsen*, tho' no ways related to her, often visited her under that Character: But *Mrs. Baynton* having lived a very scandalous lewd Life in Town, could not long continue under the Disguize she came in to *Mrs. Nightingale's*. Intimation was given to the Family of her true Character, and Notice thereof was soon given to her by her Maid. Whereupon she resolv'd to quit her Lodging; and being past all Hopes of betraying *Mrs. Rawlins*, and wheedling her into her Ruin with her Consent, she enters upon another Project, which was to bring about the Marriage by Force and Violence.

In this Contrivance, you will find every one of the Prisoners at the Bar had their several Parts to act; *Hartwell* was to get a Writ, *Mrs. Baynton*, who could not be concerned in the Execution of the Writ, was to contrive when and in what manner it might be executed: *Hartwell* sues forth the Writ, and *Mrs. Baynton* appoints the Time. She knowing it to be the usual Custom for *Mrs. Busby* and *Mrs. Rawlins* to go to Church on Friday Mornings, she prepares a Coach, and proffers her Service to set them down at the Chapel, and prevail'd with them to come into the Coach. As they were going toward the Chapel, *Hartwell* the Bayliff stops the Coach, and gets into it; and *Spur* conducts the Coach to a House that they had prepared for their Purpose. When *Hartwell* got into the Coach, *Mrs. Rawlins* and *Mrs. Busby*, not imagining themselves to be concerned, desired him to let them go out; No, says *Hartwell* to *Mrs. Busby*, it is you that I am concerned with; let you and I have a few Words together, and all Things will be set to rights. But *Mrs. Busby* refusing to have any Discourse with him, away they were all carry'd (*Mrs. Busby*, *Mrs. Rawlins*, and *Mrs. Baynton*) to the *Star and Garter* Tavern in *Drury-Lane*. While *Mrs. Busby* and *Mrs. Rawlins* were kept together, they had no Hopes of making *Mrs. Rawlins* marry; and therefore *Hartwell* by Force takes away *Mrs. Rawlins*, and carries her to his own House: *Spur*, who had no Process whatsoever against *Mrs. Busby*, yet keeps her Prisoner at the *Star and Garter*. *Mrs. Baynton* seeing her Friends used in this manner, pretended a very great Concern, and out of Kindness went to find their Friends to Bail them. *Mrs. Rawlins* had not been long at *Hartwell's* before *Mrs. Baynton* came into the House to her, in a great Surprize to find her there,

there, telling her she fancied, as she passed by *Hartwell's* House, she heard Mrs. *Rawlins's* Name mentioned: Immediately she gave her a very melancholy Account, how she had been in Search for her Friends; but none could be found, and to Goal she must go, except Bail could be got. At last she thought of her Brother, she was sure he would be her Bail; and having placed him hard by, she brings him to *Hartwell's*. When he comes there, all Three of them (*Hartwell*, Mrs. *Baynton* and Mr. *Swendsen*) under Pretence of setting Mrs. *Rawlins* at Liberty, take her to another Tavern, where she was plainly told, she must marry Mr. *Swendsen*, or go to *Newgate*, and undergo the Miseries of a Goal: If she married, then all should be well. The Circumstances of the Taking, Detaining, and Marrying this Gentlewoman at that Tavern, and of the several Facts I have mentioned, our Witnesses will prove to you.

Mr. Busby Sworn.

Serj. *Darnel*. I pray give his Lordship an Account of this young Gentlewoman, Mrs. *Pleasant Rawlins*.

Mr. *Busby*. My Lord, her Father, Mr. *William Rawlins*, was a Man of a very good Estate: He ordered his Estate to be sold to pay his Debts and Legacies, and the Overplus was given to his Daughter this young Gentlewoman, which was about 2000 *l*. Her Grandfather likewise by Will left her an Estate of 20 *l*. per Annum.

Mrs. Nightingale Sworn.

Serj. *Darnel*. Mrs. *Nightingale*, pray give an Account to his Lordship, how long this Gentlewoman lived in your House.

Mrs. *Nightingale*. My Lord, she hath lived with me about Three Years; and since Mrs. *Busby* and Mrs. *Rawlins* came to live with me, my Husband died: I am likewise a Widow too; we all lived together. Mrs. *St. John*, about Nine Weeks before this Fact, came to me, and asked me whether I took Boarders? I said, No, I would take none without it were those Ladies that boarded with me before. She told me, this was a Country-Gentlewoman that was coming to Town about a Suit of Law; she was a very good Woman, and would be near a Church. She told me, that she was a-kin to the Lady *Anne Baynton*, and a great deal more that I cannot remember: But I told her, I did not design to take Boarders. She came about Three Weeks after, and asked me, whether I was in the same mind? She told me the Gentlewoman was come to Town: She told me she was an extraordinary good Woman, and that her Husband was acquainted with the Family, and gave her an extraordinary Character. She said she would not have parted with her herself, but that she did not take in Boarders, and therefore thought it not worth her while to take her in.

L. C. J. *Holt*. Did she say, she was her Husband's Acquaintance?

Mrs. *Nightingale*. She told me, That her Husband was very well acquainted with the Family. She told me, Mrs. *Baynton* came to Town on Saturday Night, and was very weary with her Journey. She said to me, Madam, if you please she shall come to you, and recommend her self. At length she came, and repeated the same Things, That she was a Country-Gentlewoman, and came up about a Suit of Law, &c. She said, Madam, I understand you are very nice in taking of Boarders, which makes me the willinger to come to board with you. I took her to be a very sober Woman; and seeing it was but for a little while, I agreed with her. She said

she would come on *Wednesday*: The Reason she told me, that she came to Town no sooner, was, because her Maid was sick of a Fever. Mrs. *St. John* recommended to her a Neighbour's Child, which was a pretty civil Girl; she hired her, which made me still like her the better. On *Wednesday*, Mrs. *Baynton* and her Servant came: We were all Widows, and became very familiar in a short Time; for she is a Person of a great deal of Sense, if pleased God to give her Grace. She invited us on *Michaelmas-Day*, to go on Board of a *Norway Ship*; she had a Friend there. One of my Friends asked, whether she had any Interest in it? She said, Yes, she had. She likewise said she had a dear Brother come to Town, an extraordinary Christian, that had married her Sister: They strived, she said, who should out-do one another in Affections; and when her Sister was upon her Death-bed, she recommended Mrs. *Baynton* to be both his Wife and Sister. Mrs. *Baynton* said, My dear Brother will come To-morrow to see me. Accordingly he came, with Two Gentlewomen with him, that we never saw before nor since: Then she sent for a Bottle of Claret, and desired us to drink, which we did, with them. Then she took Occasion to praise the Family she was in: She invited her Brother to live in the same Street near to her, seeing he had but a pingling Stomach; and said, she believed he would like their Viſuals. He declined that, saying, it was out of the way for his Business, being obliged to be every Day at 'Change. Then she asked me, what I would have a Meal, if he should come at any Time to see her? I told her 12 *d*. for a Dinner; for so I had of the young Ladies Friends that came to see them.

Serj. *Darn*. Pray, how did the Country-Gentlewoman behave her self?

Mrs. *Nighting*. She seem'd to be very modest, but show'd abundance of Love to her Brother.

Serj. *Darn*. In her Behaviour?

Mrs. *Nighting*. Very well, below Stairs; but the Maid said she would swear above.

Council. How oft did he dine there?

Mrs. *Nighting*. Nine or Ten times.

Council. You say he dined Nine or Ten times at your House, did you discern that there was any thing of Love betwixt him and Mrs. *Rawlins*?

Mrs. *Nighting*. No Body in the House discerned that there was.

Serj. *Darnel*. Were they observed at any Time to be alone?

Mrs. *Nighting*. No, Sir, they were never alone that I know of.

Serj. *Darnel*. Had you any Mistrust of Mrs. *Baynton*?

Mrs. *Nighting*. Yes, Sir; she came twice home elevated with Drink, and we began to suspect there was something between her and her Brother that was not usual. My Lord, her Servant took notice, that we carried it with Strangeness towards her Mistress; insomuch that she said to her Mistress, Do not you discern the Family to be strange? Ay, Betty, (said she) but I do not care; if they rouse me, they'll find me like a Lion: Or to that Effect.

Mr. *Sol. Gen*. Did Mrs. *Baynton* discern that you knew that she said so?

Mrs. *Nighting*. No, Sir.

Mr. *Sol. Gen*. Did you express any Dislike of her?

Mrs. *Nighting*. No, Sir, not to her; tho' I discovered my Dislike of her to several of the Family, telling them, I designed to give her Warning when her Month was up. But before that, she came to me and

and paid me, as her Custom was, for a Week. She told me she had received a Letter from her Friends, That the Trustees had made up the Business; and the City being chargeable, she designed to return into the Country. I went to my Mother in another Room, and expressed to her, with a great deal of Joy, the Warning she had given me. When her Time was expired, she came to me again, and said, There was a Fellow would cheat her in Town, and that she must take out a Statute of Bankrupt against him, which would detain her a Week longer; and upon her Desire, because I would part friendly, I consented to her staying a Week longer.

L. C. J. Holt. Speaking to the Prisoner Baynton, said, She might ask Questions.

Mrs. Baynton. Yes, my Lord. Mrs. Nightingale, when I went into your House there was no such Character of me, as you speak of; but you invited me; and I said, That if I should be troublesome, I would not come.

L. C. J. Holt. She liked you well by the Character that was given you by Mrs. St. John, but afterwards she had no such good Thoughts of you.

Mrs. Baynton. If they did not like me, my Lord, they might have given me Warning; but instead of that, when I gave her Warning, she seemed to be sorry.

L. C. J. Holt. She was glad of the Opportunity of your giving her Warning.

Mrs. Baynton. You were pleas'd, Mrs. Nightingale, to speak of going aboard of Ship, it was after Mr. Swendsen had been there a second time: When he came to your House, you said you loved Punch entirely; and I said, If you please, Madam, Mr. Swendsen shall make a Bowl; and this was before our going on Board.

L. C. J. Holt. Was Mr. Swendsen aboard the Ship?

Mrs. Nightingale. Yes, he was; but I knew not of his being there.

Mrs. Busby Sworn.

Serj Darn. Come Mrs. Busby, give an Account to my Lord and the Gentlemen of the Jury what you know of this Matter.

Busby. My Lord, I know Mrs. Nightingale told me that Mrs. St. John came to take Lodgings for Mrs. Baynton, according as Mrs. Nightingale expressed her self; and I was a little curious in Enquiring what she was, and begged her Pardon for asking so many Questions about her.

Serj. Darn. After she had been there, how did she carry her self?

Mrs. Busby. At Michaelmas Day, at Night, she came up very brisk, and said she had heard from her Dear Brother, and fell a praising him, and said how happy she was in him; and that her Sister, upon her Death-bed, said that she should be both Wife and Sister to him: She said likewise, that she had been a Widow 4 Years, and that she would never Marry for the Love she had to her Brother.

Serj. Darn. Pray give an Account, Mrs. Busby, whether there was any Talk in the Family of this Woman's leaving the Family?

Mrs. Busby. Sir, as to her leaving the House, we were informed that she was not what we took her to be; and Mrs. Nightingale and I were very uneasy; at which Mrs. Nightingale design'd to warn her away.

Coun. Mrs. Busby, Pray give an Account of your going in the Coach with her.

Mrs. Busby. On Friday Morning, the 6th of this Month, Mrs. Baynton said she was going to have

her Lac'd-Head washed; she sent her Maid for a Coach, and said she would set us down near the Chapel. After she had invited me, and I saw the Coach, I did not know how to evade it well, but accepted of her Civility. She bid the Coach stop at Hedge-Lane, and said we should be as near to the Chapel, as she went to the Place whither she was going. When we came to the Old Buildings, I was looking out at them, and on the contrary side I heard a Bustle, Mrs. Baynton called to the Coach to go on, and presently Hartwell was in the Coach, with his Arm about Mrs. Rawlins's Waist. I did think Mrs. Baynton was Arrested, I cry'd out for God's sake let us alone, we are not concern'd. Hartwell pull'd up the Glass, and said we were the Persons concerned. She (pointing to Hartwell at the Bar) said, This is the Man, and he himself own'd it before the Recorder, that he told me 'twas the Young Lady and I was concerned; says he, Let me have a few Words with you, and all will be well. I said, To be sure I will not say any thing to you except my Friends were near. This Lady, Mrs. Baynton said, No Madam, be sure do not; she advised me not to be frightned, for such a Case once happen'd to her with her Niece. I asked Hartwell what he would do with us? He said he would carry us to a Place where we might send for our Friends, and make up the Business. Mrs. Baynton seemed to take my Part, and said she would go to my Friends; and such Discourse as this held till we came to the Star and Garter Tavern.

Coun. Mrs. She pretended to be your Friend?

Mrs. Busby. Yes, Sir, she argued with the Bailiff and said, May I not go where I will? And seemed to be very angry with him. Mr. Hartwell also seemed to be very angry with her, and call'd her Mrs. Pert, saying; if she were Civil, she should have the more Respect.

Coun. Whom did he call Mrs. Pert?

Mrs. Busby. He called Mrs. Baynton so. Then they carry'd us to Drury-Lane, and she advised us to put on our Masks upon our Faces: I thought to do it, but afterwards recalling my self, and thinking I had done nothing amiss, I would not. They conducted us to the Tavern and put us into a back Room, and Mrs. Baynton hast'ned out of the Room as if she would go for some of my Friends, as she said she would: I directed her to Mr. Thornton and another; which she said she went to. The Room where we were was very dark, so we pressed into a forward one; we were in a very great Fright, inso-much, that I said to Mrs. Rawlins, We'll live and die together, and then she took me hold by my Arm. Hartwell seeing that, took her from me by Force, and said she must go with him. I understood she was Arrested in one Court, and I in another; She must go to the Marshalsea, and I to Newgate. Then they hurried her down Stairs out at a back Door into a Coach: I cry'd out Murder out of the Window, and said, For God's sake take care of the young Woman, for I know not where they are carrying her. After this, Mr. Spar said to me, What have you got by Bawling? we are better known here than you. My Fright was very great, and I was very much surprized: There was a Man left with me, I made my Complaint for Friends to be sent for. Says I to him: Is it Treason or Felony? He told me he did not know, he was only hired for a Crown to keep me: I desired that the Gentlewoman of the House might come up to me; it was about 12 a Clock, and at last she did. And Mr. Wakeman came up, and said, Madam, Why do you not

not Eat and Drink ? He said the young Gentlewoman was well, and did both. Said the Woman of the House to me, Do not you owe Money ? I said, No. Nor the young Lady neither ? I answered, None that we should be Arrested for. When this Mr. *Wakeman* was here, said the Gentlewoman of the House to me, Why do you not enquire into the Cause of Action ? *Wakeman* told me, that there was a Writ against *Sabina Busby*, at the Suit of *William Jones*, and that *William Jones* Arrested me. Says the Woman of the House, it may be your Name is not right, and so you may be falsely Arrested. I asked whether I might not send for Bail, it being an Action of Debt. It being an Action of Debt, says he, you may ; and I will go for you as cheap, and as soon as a Porter. But I saw him no more till Night.

Coun. How long did they keep you ?

Mrs. Busby. It was betwixt 10 and 11 when they carried me there first, and it was till not near Night that I saw him again.

Serj. Darn. Did he make you give Bail for your Discharge in the Afternoon ?

Mrs. Busby. There was a Lad in the Room said, Madam, I will go to some of your Friends for you. I directed him to some of them, and when he came again, he said, they were not at home. There was a Poor Man, a Labourer, at work in the Chimney, he gave me a private Wink, and said he would go for me, for he knew Mr. *Uncles* ; he went, and Mr. *Uncles* came. I likewise sent for Mr. *Thornton* and another ; they all came, and met together. Mr. *Thornton* demanded on what Account they kept me there ? They said they had a Writ against me of 200 *l.* Then they said they would Bail me. They asked them, Where the young Lady was ? They told him she was with her Friends. Then, my Lord, after this, the Bailiffs shifted off, and I knew nothing more of it, but went away to get a Warrant to take care of the young Lady.

Coun. Had you any manner of Dealings with Mr. *Jones* ?

Mrs. Busby. No manner of Dealings with him in all my Life.

Mr. Mountague. When you came into the Fore-Room, was *Hartwell* then with you in the Room ?

Mrs. Busby. She and I was in a great Fright ; several was there, and *Hartwell* was one of them.

L. C. J. Holt. Was Mrs. *Baynton* there ?

Mrs. Busby. Yes, my Lord.

L. C. J. Holt. How long did she stay ?

Mrs. Busby. She went out presently ; she told me she would go to some of my Friends ; and away she went.

L. C. J. Holt. Did she come again ?

Mrs. Busby. No, my Lord.

L. C. J. Holt. Did you see *Hartwell* there ?

Mrs. Busby. My Lord, he was there, and forced the young Lady from me ; and *Spur*, when I put my Head out of the Window, and cried after her, said to me, What have you got by your Bawling ? We are better known here than you.

Mr. Justice Gould. Pray, when was the first time you took notice of *Spur* ?

Mrs. Busby. Sir, the first time I took particular notice of him, was, when I put my Head out of the Window ; but it seems he rid behind the Coach ; he was left with me when Mrs. *Rawlins* was taken away, and was in the Room when my Friends came ; and Mr. *Wakeman* was there too.

Mr. Justice Powell. I ask you, did your Friends offer Bail ?

Mrs. Busby. Yes, Sir, they did.

Mr. Justice Powell. Did any of them require Bail ?

Mrs. Busby. My Friend, Mr. *Thornton*, asked on what Account they kept me ? And they said they had an Action of 200 *l.* against me.

Hartwell. Was I there then ? Did I ever come back after you were there ?

Mrs. Busby. I believe you were, but I cannot be positive ; but you were in the Coach, and you were the Man that carried away Mrs. *Rawlins* from me.

Mr. Wakeman Called.

Mr. Sol. Gen. Give an Account to my Lord and the Council, of what you are concerned in this Matter.

Mr. Wakeman. If it shall please your Honour, my Lord, Mr. *Hartwell* came on *Wednesday*, (before this thing happen'd) to my House, and left Word there, that there was a Writ to be Executed, if I would Execute it : I was not then at Home, but when I came Home, which was late at Night, my Daughter told me of it. I went to him on *Thursday* Morning. He said to me, Mr. *Wakeman*, I have a Writ to be Executed, will you do it ? I said I would. Then he carried me to *Westminster* to the *Mitre-Tavern*, and made no stop nor stay ; then he called for a Quart of Ale, and a Quart of White-Wine, and a Toast and Cheese ; and when we had Eat one Toast, we had another. The Man of the Tavern came in, whose Name was *Holt*. Mr. *Hartwell* said to me, We must not do the Business this Morning ; it cannot be done, said he : But he appointed me to come on *Friday* Morning. He ordered me, if I came first, to call for Wine, and the same as we had before. I came first, and called for Wine, Ale, a Toast and Cheese ; in the mean time Mr. *Hartwell* came in, and Eat some with me.

L. C. J. Holt. Who was the Writ against ?

Mr. Wakeman. It was against Madam *Rawlins*. Mr. *Holt* went out, and called Mr. *Hartwell*, and said, the Business would be done that Morning. Then we followed him to *Stretton-Ground*. Mr. *Holt* said to *Spur* and my self, we had best stand near the Place : He took Mr. *Hartwell* with him to the Top of the Street, the People gazed at us, and I was ashamed, and went into an Ale-House ; a Man came back, and said, The Coach is at the Door ; and Mr. *Hartwell* came and said, the Coach would come by presently ; Mr. *Hartwell* and *Spur* went before, and bid me follow the Coach ; and coming near the Park, in *Westminster*, I was behind ; Mr. *Spur* stopped the Coach. Mr. *Spur* stopping the Coach I made up to it ; but before I came to it Mr. *Hartwell* was in the Coach, and what he said to them I do not know.

L. C. J. Holt. Who stopped the Coach ?

Mr. Wakeman. Mr. *Spur* stopped the Coach, and served the Writ ; it was my Writ. Mr. *Hartwell* ordered the Coach to drive to the *Star and Garter* Tavern in *Drury-Lane* ; we went all along with it ; and when we came there, they led us to a little Room, and the Gentlewomen did not like it, but went into a forward Room, and this Gentlewoman (pointing to Mrs. *Baynton*) with her Band-box, was with them.

Coun. Who was it ?

Mr. Wakeman. (pointing to Mrs. *Baynton* at the Bar, said 'twas she) I did not know but she was this Lady's Friend ; I never saw any of them before in all my Life. Mr. *Hartwell* went down, and Mrs. *Baynton* ; and I thought she went to fetch Madam *Rawlins*'s Friends. Mr. *Hartwell* came to the young Lady,

Lady, and said, You must go to my House. The young Gentlewoman said, O Lord, don't part us. But he did so, and put her into a Coach. I saw the Gentlewoman going, but did not go with her myself, for I was stopped by a Gentleman of my Acquaintance; but when I came to Mr. Hartwell's House, I said, Mr. Hartwell, Where is the young Gentlewoman? He told me she was below Stairs. I told him that I had something of Business elsewhere. I asked him, and he gave me Leave to go. I went, and when I returned back to Mr. Hartwell's House, I asked for him, but his Wife told me he was not within. I asked where the young Gentlewoman was? She answered, that she was gone with her Husband to the *Vine-Tavern* in *Holborn*. I went and asked for Mr. Hartwell; they told me he was above Stairs. I went up; and found him with Mr. Spur, and a Tallow-Chandler. I should have told you, that when I went from Mr. Hartwell's House about my Errand, I saw Mr. Holt standing near the Back-Door of the *Five-Bell Tavern* in *Wich-street*, and he asked me where Mr. Hartwell was? I told him he was at Home. Then Holt asked for the Woman, I said she was at Hartwell's--- Afterwards I saw Mr. Swendsen at the *Five-Bells* with Holt, and he gave me a full Glass of *Claret*; I drank it off, and away I went. When I went to the *Vine Tavern*, Mr. Hartwell, Mr. Spur, and a Tallow-Chandler were in a Room by themselves. I saw that Gentleman (looking out of a Window) that was with Holt; he looked at me, and I at him. Mr. Hartwell asked me if I had dined? I told him, No. He said there were some Stakes. I dined there; then the Gentlewoman, viz. Baynton, at last came out of Door and called Mr. Hartwell to her. When Mr. Hartwell came from her, he told me that the Matter was made up, and the Prisoner was discharged.

L. C. J. Holt. Who was the Writ against?

Mr. Wakeman. Mrs. Rawlins.

L. C. J. Holt. When the Prisoner was discharged they gave you the Writ again?

Mr. Wakeman. Yes.

L. C. J. Holt. Had you a Writ against Mrs. Busby?

Mr. Wakeman. I had none against her.

Coun. How far is it from Hartwell's House to the *Star* and *Garter Tavern*?

Mr. Wakeman. It is about a Furlong.

Coun. What was your Writ for?

Mr. Wakeman. But 20*l*.

L. C. J. Holt. And you said you had an Action of 20*l*.

Mr. Wakeman. My Lord, Mr. Hartwell said so. I do not know the Woman, but she will be shewed us.

L. C. J. Holt. Look at the Prisoner at the Bar. Was she in the Coach when Mrs. Rawlins was Arrested?

Mr. Wakeman. Yes, Yes. I had no ill Design in what I did.

L. C. J. Holt. Did you go behind the Coach?

Mr. Wakeman. Yes, my Lord, I did.

The Writ produced and read in Court.

Mr. Justice Gough. Were you there at the *Star* and *Garter* when Mrs. Busby's Friends came to Bail her?

Mr. Wakeman. When I came to the *Star* and *Garter Tavern*, the Gentleman came and asked me, whether I knew where Mrs. Busby was? I told him I left her at the *Vine Tavern*, and believed that there they might find her.

L. C. J. Holt. Was Spur at the *Vine Tavern* any Time?

Mr. Wakeman. My Lord, I left Spur, Hartwell, and the Tallow-Chandler at the *Vine Tavern*.

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Mr. Serj. Darnel. Was it Mr. Hartwell or Spur that asked you to eat Stakes?

Mr. Wakeman. It was Spur.

Mrs. Baynton. Mr. Wakeman, Did you ever see me before the Arrest?

Mr. Wakeman. No, I never saw you before then.

Mrs. Berkley Sworn.

Mr. Serj. Darnel. Pray look upon this Prisoner Mrs. Baynton, Do you know her?

Mrs. Berkley. Yes, Sir, I do know her.

Mr. Serj. Darnel. How came you to know her?

Mrs. Berkley. By her Lodging in Mrs. Nightingale's House, and no otherwise.

Mr. Serj. Darnel. Did you ever hear her speak of a Brother that she had?

Mrs. Berkley. Yes, Sir, she said this Mr. Swendsen was her Brother.

Mr. Serj. Darnel. Mrs. Rawlins, Are you Sworn?

Mrs. Rawlins. Yes, Sir.

Mr. Serj. Darnel. Stand forward a little. Do you give my Lord an Account of the whole Matter.

Mrs. Baynton. Mrs. Rawlins, speak the Truth, I desire nothing but Justice.

L. C. J. Holt. You are upon your Oath remember, and therefore speak nothing but the Truth.

Coun. Give an Account of your Proceedings in the whole Matter.

Mr. Serj. Darnel. Do you know any of the Prisoners at the Bar?

Mrs. Rawlins. Yes, I know them all, Mrs. Baynton, Mr. Hartwell, and Mr. Spur.

L. C. J. Holt. Do you know them?

Mrs. Rawlins. Yes, my Lord.

L. C. J. Holt. How came you to be acquainted with Mrs. Baynton?

Mrs. Rawlins. My Lord, I came to be acquainted with her by her taking Lodgings at our House. She came and took Lodgings at Mrs. Nightingale's for a Month or Six Weeks. When her Month was out, she said her Business was done, and she must go into the Country.

Mr. Serj. Darnel. Give an Account of what happened to you on Friday the 6th of November.

Mrs. Rawlins. We were going to Oxenden Chapel, Mrs. Busby and I. Mrs. Baynton told us, she was going that Way, and invited us into her Coach; she said she would set us down near the Chapel; we accepted of her Invitation, and went with her. When we were at the Broad Way in *Dartmouth-Ground*, there was Hartwell, and Two more Bailiffs; they stopped the Coach, and Mr. Hartwell got in. Said Mrs. Busby to him, For Christ's Sake let us go out, we owe no Man any Thing. He said the Matter concerned Mrs. Busby and me, and he ordered the Coach to be driven to the *Star* and *Garter Tavern* in *Drury Lane*.

Mr. Serj. Darnel. Did any Body come into the Coach?

Mrs. Rawlins. Yes, Sir, Mr. Hartwell.

Mr. Serj. Darnel. Did he do any Thing to the People in the Coach?

Mrs. Rawlins. No, Sir, but ordered the Coach to go to the *Star* and *Garter Tavern*. When we came there we went up Stairs, and did not stay above a Dozen Minutes in one of the Rooms, but removed from thence to a Room forward: Mrs. Baynton was gone, and Hartwell sent up Spur.

Mr. Serj. Darnel. Mrs. Pray look, Do you see the Man that came up to you?

Mrs. Rawlins. I suppose it was the Man that is next to Mrs. Baynton; if I be not mistaken it is him; I cannot be positive.

H h h h

Mr. Serj.

Mr. Serj. *Darnel*. Some of them came up to you and said, they must have the young Lady down Stairs?

Mrs. *Rawlins*. Yes, Sir; and Mrs. *Baynton* said, Nay. They after that forced me away.

Mr. Serj. *Darnel*. Who was it that did that?

Mrs. *Rawlins*. It was Mr. *Hartwell* that did it. *Hartwell*. Who is Mr. *Hartwell*?

Mrs. *Rawlins*. Your self, Mr. *Hartwell*, took me about the Middle, and drove me down Stairs. I cried out Murder, and desired some good Body to go with me; he said, if I did not hold my Tongue he would send me to *Newgate* that Minute.

Mr. Serj. *Darnel*. Where did he carry you?

Mrs. *Rawlins*. He carried me from the *Star* and *Garter* Tavern to his own House.

Mr. Serj. *Darnel*. Where is his House?

Mrs. *Rawlins*. In *Witch-Street*.

Mr. Serj. *Darn*. How long did he keep you there?

Mrs. *Rawlins*. I do not know justly, but I think it was about an Hour.

Mr. Serj. *Darn*. What did they do with you there?

Mrs. *Rawlins*. They put me into a Back Room, there was no Body with me; but at last Mrs. *Baynton* came in and pretended she was going by and heard my Name, and therefore came in. I was very much frightened. She said she had been at several of my Friends but could get no Body to come. She told me she would send for her Brother, and he should be Bail for me.

L. C. J. *Holt*. You say she would send for her Brother to be your Bail?

Mrs. *Rawlins*. Yes, My Lord.

L. C. J. *Holt*. What followed then?

Mrs. *Rawlins*. She went for her Brother to come to be my Bail, and it was hardly half a Quarter of an Hour before she came in again with her Brother.

Coun. What is her Brother's Name?

Mrs. *Rawlins*. *Swendsen*. Mr. *Hartwell* came into the Room where I was, and said, Is Mrs. *Rawlins*'s Friend come yet? Mrs. *Baynton* answered, Yes. They had a Coach prepared at the Door, and in that they carried me to the Tavern in *Holborn*; there was in the Coach, Mrs. *Baynton*, her Brother, Mr. *Hartwell*, and I.

Mr. *Mountague*. Where did they carry you?

Mrs. *Rawlins*. To the *Vine* Tavern in *Holborn*.

Mr. *Mountague*. What did they do with you then?

Mrs. *Rawlins*. They carried me up Stairs, put me into a Room, I cannot tell exactly how long I was there.

Mr. *Mountague*. What did they do then?

Mrs. *Rawlins*. Then *Holt* was there to be the other Bail; they were very willing to take his Bail, but were very scrupulous in taking Mr. *Swendsen*'s Bail. They told me in short that I must marry Mr. *Swendsen*, and that would put an End to it, or else I must go to *Newgate*.

L. C. J. *Holt*. Who said so?

Mrs. *Rawlins*. Mrs. *Baynton* said, If I did not marry her Brother, I must go to *Newgate*. I replied, that I would not marry without my Friends Advice; but I was not so much afraid of going to *Newgate*, as I was of being murdered, or sent away somewhere into the Country, where I might never see or hear of my Friends.

Coun. How did they behave themselves in the Room?

Mrs. *Rawlins*. They importun'd me to marry Mr. *Swendsen*, and for that End Mrs. *Baynton* would have my Ring from my Finger; I would not let her have it, but she forced it away from me. I asked her what she would do with it? She told me, she would go and get a Wedding Ring made by it. She went and bought a Wedding Ring, and gave me my own again: Then the Minister and Clerk was brought into the Room; the Minister and Clerk came in and married Mr. *Swendsen* and me.

Mr. Serj. *Darnel*. How long did you stay in the Room after you were married?

Mrs. *Rawlins*. Not a Quarter of an Hour.

L. C. J. *Holt*. Where was *Hartwell*?

Mrs. *Rawlins*. They were in the Room over-against us.

L. C. J. *Holt*. Who brought the Parson into the Room?

Mrs. *Rawlins*. *Holt* brought them in.

L. C. J. *Holt*. Where did they carry you then?

Mrs. *Rawlins*. To Mr. *Blake*'s House in *Holborn*.

L. C. J. *Holt*. Who went with you?

Mrs. *Rawlins*. No body but Mr. *Swendsen* Mrs. *Baynton*, and my self.

L. C. J. *Holt*. What did they do then?

Mrs. *Rawlins*. They order'd the sheeting of a Bed, and put me to Bed.

Coun. Was there any Compulsion in going to Bed, or did you go voluntarily?

Mrs. *Rawlins*. I did not go freely, but was forced to Bed; Mrs. *Baynton* asked me to go to Bed; after which she asked me the Reason why I would not go to Bed? Says I, my Reason is, because I don't care to go to Bed so soon.

Mr. Serj. *Darnel*. Who undressed you?

Mrs. *Rawlins*. Mrs. *Baynton* and Mr. *Blake*'s Daughter.

Mr. Serj. *Darnel*. How long was you in Bed?

Mrs. *Rawlins*. About an Hour or Two.

Mr. *Mountague*. When you went out, had you any Expectation to go any where else but to Church?

Mrs. *Rawlins*. No where but to Church, upon my Word.

Mr. *Mountague*. Did you go voluntarily to the Tavern in *Drury-Lane*, or against your Will?

Mrs. *Rawlins*. To be sure it was against my Will.

Hartwell. Did you see me, Madam, at the *Vine* Tavern the Time that you were confined there?

L. C. J. *Holt*. Did you see *Hartwell* at the *Vine* Tavern before you were married?

Mrs. *Rawlins*. Yes, Mr. *Hartwell*, you may remember that you were once in the Room where I was; I will give you an Instance of it; you were smoking a Pipe of Tobacco; Mrs. *Baynton* said to you, What would you have with her? You said, I was the Prisoner.

L. C. J. *Holt*. Did they take the Bail that was offered?

Mrs. *Rawlins*. Mr. *Hartwell* said, he would consider it with Mrs. *Baynton*; and they all went out and left me alone by my self. Mrs. *Baynton*, after they had consulted together, came in and told me that they refused the Bail.

Mrs. *Baynton*. When you were left by your self, Mrs. *Rawlins*, if you had not a mind to marry Mr. *Swendsen*, why did not you make your Escape.

L. C. J. *Holt*. Did she come there by her Consent?

Mrs. *Baynton*.

Mrs. Baynton. No, my Lord, but when she was left to her self, she might have easily got away.

L. C. J. Holt. Mrs. Rawlins, You were left alone in the Room, Was there any Proposal of your Marriage to Mr. Swendsen made before that?

Mrs. Baynton. My Lord, if I may have leave to speak, they contracted Friendship almost a Month before.

L. C. J. Holt. Mrs. stay your Time. (To Mrs. Rawlins,) Consider the Question.

Mrs. Baynton. My Lord, the Ring was bought before she was left alone, she knows it very well, and was looking upon it when I came into the Room again.

L. C. J. Holt. To Mrs. Rawlins. Had you the Ring before that?

Mrs. Rawlins. Not as I know of, my Lord.

Mrs. Baynton. You had the Ring upon your Finger, and said, it was a very handsome one; but I had bought it a little too wide for you.

Mrs. Rawlins. It is very ridiculous; I said no such Thing.

L. C. J. Holt. She was left in the Room alone, when you both went out; but it seems it was upon her Desire to be Bailed, and therefore she would not escape.

Mr. Serj. Darnel. Yes, yes, it was with the Intent to be Bailed that she did this.

L. C. J. Holt. Mrs. Baynton, it is now Time for you to make your Defence.

Mrs. Baynton. My Lord, I will. Mrs. Busby, when Mr. Swendsen came to her House first, called him her dearly beloved Likeness; Did not she say so Mrs. Rawlins?

L. C. J. Holt. Did you ever hear Mrs. Busby call Mr. Swendsen her dearly beloved Likeness?

Mrs. Rawlins. My Lord, I desire she may answer for her self.

Mrs. Baynton. Pray, My Lord, let her stand by her self a little, that no body may speak to her.

L. C. J. Holt. Did you ever hear her speak of Mr. Swendsen, that he was her dearly beloved Likeness?

Mrs. Rawlins. Yes, my Lord; I do not know but she might say so.

L. C. J. Holt. What, when Mr. Swendsen was by?

Mrs. Rawlins. No, my Lord.

L. C. J. Holt. Do you remember that you ever heard Mrs. Busby call him so?

Mrs. Rawlins. Once, my Lord, to Mrs. Baynton.

L. C. J. Holt. What say you Mrs. Busby, did you call him so?

Mrs. Busby. My Lord, I thought him very much like my Husband in one Part of his Face, and Mrs. Baynton her self called him my beloved Likeness.

Mrs. Baynton. My Lord, How could I call him her beloved Likeness, and never saw her Husband with my Eyes?

L. C. J. Holt. Well, what Questions will you ask?

Mrs. Baynton. My Lord, I will ask Mrs. Rawlins several Questions. The Second Sunday when I was at their House, Mrs. Rawlins, you know you staid at home, and I did so too; Did not you say then, that you wished Mr. Swendsen was there, when they were all at Church, did not you say so? Remember you are upon your Oath.

L. C. J. Holt. Upon your Oath, do you remember any such Thing?

Mrs. Rawlins. No, my Lord; and I would not for all the World say any Thing but the Truth.

L. C. J. Holt. Did you, or did you not?

Mrs. Rawlins. Indeed, my Lord, I do not remember that ever I said any such Word.

Mrs. Baynton. Mrs. Rawlins, did you not come to my Bed-side often, and kiss and hug me, and would be talking with Pleasure of Mr. Swendsen?

L. C. J. Holt. Do you remember that you sat at her Bed-side, and spake of Mr. Swendsen, and kissed and hugged her?

Mrs. Rawlins. My Lord, indeed Mrs. Baynton did much talk of her Brother.

L. C. J. Holt. But did you talk of her Brother?

Mrs. Rawlins. My Lord, if I did say any Thing, I did not speak with a Design to have him; it may be I might do so.

Mrs. Baynton. Mrs. Rawlins, did not you bid me to tell him, that there was a good Lady, that had her Fortune in her own Hands, and at her own Disposal, that would make him a very good Wife? Did not you tell me this?

Mrs. Rawlins. I did not say so; but said there was a very good Lady that would make a very good Wife whenever she married; but did not say, that she would make him a good Wife.

Mrs. Baynton. Mrs. Rawlins, Have not you been the most uneasy Woman in the Word, when he did not come to Dine at Mrs. Nightingale's?

L. C. J. Holt. Speak out.

Mrs. Baynton. My Lord, Mr. Swendsen had a Cold, and she told me, she could not be easy till he was cured of it.

Mrs. Rawlins. I never said such a Thing! Can you say so Mrs. Baynton?

Mrs. Baynton. My Life is upon it, and I will not for my Life say any Thing but the Truth.

L. C. J. Holt. Did you express any such Thing to Mrs. Baynton, of your Uneasiness till Mr. Swendsen had got rid of his Cold?

Mrs. Rawlins. No, my Lord.

Mrs. Baynton. But, Madam, Did not you seek to tell me these Things by your self? You told me, you had a great deal of ill Usage; and told me, you lived more like a Servant than any Thing else: You said, that when there was another Lodger there, because you went to see her in her Room, you were chid severely for it, and charged never to go near her.

Mrs. Rawlins. I do not know but that I might do it.

L. C. J. Holt. But why did you do it?

Mrs. Rawlins. My Lord, I can give you no Account.

L. C. J. Holt. Did you bid her tell him, that you knew a Gentlewoman, at her own Disposal, that would make him a very good Wife?

Mrs. Rawlins. My Lord, I do not know but that I said to Mrs. Baynton I wished her Brother a very good Wife.

L. C. J. Holt. But did you say, that you knew a Gentlewoman, at her own Disposal, and a Fortune, that would make him a very good Wife?

Mrs. Rawlins. My Lord, I did not speak with a design to marry her Brother, but was resolved to take the Advice of my Friends.

Mrs. Baynton. Did not you say, that you wish'd your self Mr. Swendsen's Wife, several Times?

L. C. J. Holt. Did you ever tell her, that you wished your self Swendsen's Wife?

Mrs. Rawlins. My Lord, I don't know whether I did or no.

L. C. J. Holt. How came you to have such a good Opinion of Mr. Swendsen?

Mrs. Rawlins. Mrs. Baynton told me, he was a very good temper'd Gentleman, and never out of Humour.

L. C. J. Holt. Would you marry a Man for his good Humour only?

Mrs. Rawlins. I never had married, if there had not been a Force put upon me.

L. C. J. Holt. Did you tell Mrs. Baynton, that you would never marry, but by the Consent of your Friends?

Mrs. Rawlins. Yes, I did.

Mrs. Baynton. My Lord, I never heard her say so in all my Life.

L. C. J. Holt. Did you tell her, notwithstanding what you said of Mr. Swendsen, that you would never marry without the Consent of your Friends?

Mrs. Rawlins. My Lord, I did often say, that I would never marry without their Consent.

Mrs. Baynton. Mrs. Rawlins, did not you, when you were acquainted with Mr. Swendsen, slight Mr. Pugh?

L. C. J. Holt. Did you shew any dislike of Mr. Pugh, upon Swendsen's Account?

Mrs. Rawlins. My Lord, I cannot tell; if I did shew any Ill-will to Mr. Pugh, it was not with a Design to have Mr. Swendsen.

L. C. J. Holt. Hath there been any Courtship carry'd on betwixt Mr. Swendsen and you?

Mrs. Rawlins. My Lord, no more Courtship to me than to all the Family; my Lord, I did not perceive that Mr. Swendsen shewed me more Favour than any in the rest of the Family.

L. C. J. Holt. Have you any more Questions, Mrs. Baynton?

Mrs. Baynton. When Mr. Swendsen was walking in the Garden, did not you say, that you would go and walk with him, but that they would take notice of it? But pray, said I, do not; you may make them angry by it. Did not you say that you would go up, and look out of the Window, with Expectation to have been called down by me? Did not you walk with Mr. Swendsen, and discourse with him about the Things of Love; and he said, he would have no body but you; and you likewise said, that you would have no body but him?

L. C. J. Holt. Were you alone with Mr. Swendsen, at that Time, in the Garden?

Mrs. Rawlins. I think I was with him in the Garden at that Time, but not alone.

Mrs. Baynton. My Lord, she was alone with Mr. Swendsen in the Garden several Times.

Mrs. Rawlins. I can speak it upon my Oath, that I was never in the Garden with Mr. Swendsen, but that Time.

Mrs. Baynton. Did not you say that you would have no body but Mr. Swendsen?

Mrs. Rawlins. No, I never said any such Thing.

Mrs. Baynton. What made you go up Stairs, and cry for an Hour together; and said to my Servant, that you would have your Belly full of crying, before you went away: Betty can testify this, she is in the Court; but must not be heard.

L. C. J. Holt. She may be called, if you will.

Mrs. Baynton. Pray Mrs. Rawlins, did you not once come up to me, and said you had been twice

there, and wished that you could see Mr. Swendsen, and that you could not be easy without his Company?

Mrs. Rawlins. As I am upon my Oath, I never said such a Thing.

Mrs. Baynton. Mrs. Rawlins, did not you say a Hundred Times, that you loved Mr. Swendsen, above any Man in the World?

Mrs. Rawlins. I never said any such Thing in my Life.

Mrs. Baynton. Did not you peel Walnuts for Mr. Swendsen, and desire me to carry them to him?

Mrs. Rawlins. I never did so.

Mrs. Baynton. My Lord, I would have her asked whether she consented to be taken away, directly, or indirectly?

L. C. J. Holt. What say you to that Mrs. Rawlins?

Mrs. Rawlins. My Lord, It was all against my Knowledge and Will, I never consented to it.

Mrs. Baynton. Mrs. Rawlins, is not this true; that you pulled your Ring from your Finger, and gave it me to have a Wedding Ring made by it, which discovered your free Consent to the Marriage.

Mrs. Rawlins. No, Mrs. Baynton, do you think that I would have given any Manner of Consent to be married to him, without the Advice of my Friends, if I had not been forced to it.

Mrs. Baynton. Did not you send all Mr. Pugh's Letters back again, and desired him in your Letter to come no more at you; and that you would have nothing to say to him; and that if he came he would put you in such a Fright, that you would not be capable of seeing him.

L. C. J. Holt. Did you tell her so?

Mrs. Rawlins. I do not remember that I told her any such Thing.

L. C. J. Holt. Did you send back Mr. Pugh's Letters?

Mrs. Rawlins. I do not remember that I spake any Thing to Mrs. Baynton, tho' I did send back the Letters.

L. C. J. Holt. Why did you so?

Mrs. Rawlins. It was not upon Mr. Swendsen's Account that I did so.

L. C. J. Holt. Do you remember that you repeated to her any of the Contents of a Letter that you had written to Mr. Pugh, about sending back his Letters.

Mrs. Rawlins. No, my Lord, I did not.

Mrs. Baynton. My Lord, I had it from her own Mouth, else how could I have known of it? I did not know it, till she told me. Mrs. Rawlins, how can you say you told me not these Things?

Mrs. Rawlins. No, Mrs. Baynton, I did not.

Mrs. Baynton. Mrs. Rawlins, you do not say true. I never knew nothing but what I had from her own Mouth.

L. C. J. Holt. You sent his Letters back again, pray upon what Account did you do so?

Mrs. Rawlins. It was upon Things that we heard of Mr. Pugh, that was not very handsome. Mrs. Busby can tell the same.

L. C. J. Holt. Did the Courtship break off?

Mrs. Rawlins. My Lord, it was but the Day before this Thing happen'd.

Serj. Darnel. Mrs. Busby, did you know of the sending back the Letters? And who was it that put Mrs. Rawlins upon sending of them back?

Mrs. Busby. Yes, Sir, it was by our Advice.

Serj. Darnel.

Serj. Darnel. Whose Hand was it that wrote the Letter?

Mrs. Busby. Mrs. Berkley.

Serj. Darnel. Was it by her Inclination and Consultation of her Friends?

Mrs. Baynton. Had not you a Mistrust, that there was Love betwixt Mr. Swendsen and Mrs. Rawlins?

Mrs. Busby. I had no Mistrust of any such Thing.

Mrs. Baynton. Why did you tax me with it then?

L. C. J. Holt. When was this?

Mrs. Baynton. My Lord, it was at the Limner's; I heard something as if Mrs. Rawlins should speak Words of Discouragement to Mr. Pugh. Mrs. Busby, when I told her of it, she denied it, and said, Mrs. Baynton, I do not know this. But here is Mrs. Rawlins her self, and she shall answer for her self, if such a Thing is. She thought, if there was any Strangeness between Mrs. Rawlins and Mr. Pugh, it was occasion'd by Mrs. Rawlins's Love to Mr. Swendsen. When they asked my Advice of the Thing, Mrs. Rawlins and Mrs. Busby told me, that Mr. Pugh had Three or Four Thousand Pound Stock: I said, if Mr. Pugh had such a Love for Mrs. Rawlins as he pretended to, that he would do well to have drawn out One Thousand Pound, and given it to the young Woman.

L. C. J. Holt. Mrs. Baynton, have you any thing to ask?

Mrs. Baynton. Perhaps I may have more to say, but I am in Confusion, my Lord: Mrs. Busby, as well as Mrs. Rawlins, was never easy, but when Mr. Swendsen was there.

L. C. J. Holt. Mrs. Rawlins, upon the Oath that you have taken, did you consent to your being taken away after the manner as you were, or gave any Encouragement to Mr. Swendsen?

Mrs. Rawlins. No, my Lord, I do not know that I gave him any manner of Encouragement.

Mrs. Baynton. My Lord, she gave him all the Encouragement imaginable.

L. C. J. Holt. I pray, Mrs. Baynton, do not put your self into a Passion: I speak in Favour to you; you will not deliver your self so well in Passion, as without.

Mrs. Baynton. She lay baiting of me Night and Day, and always speaking to me of her Love to Mr. Swendsen; and to hear her speak the quite contrary, really it moves me, my Lord.

Betty, Mrs. Baynton's Maid, called.

Mrs. Baynton. Betty, have not you told me, that Mrs. Rawlins said she would fill her Belly with Crying before she went, and that she would enquire for Mr. Swendsen?

Betty. No, I said no such thing.

L. C. J. Holt. Speak the Truth, without being bias'd by one side or other. Did you hear that ever Mrs. Rawlins went into the Chamber to cry, or enquire for Mr. Swendsen?

Betty. No, my Lord, I never heard it.

Mrs. Baynton. My Lord, I never was the Woman that asked this Maid any Question any way, but she frankly told me all this; and she often said, that she was sure Mrs. Rawlins had a very great Kindness for Mr. Swendsen: And one Day she hearing of such a Noise of Laughing, and the Doors ringing, that she went down Stairs to see what was the Matter; Mr. Swendsen was there then, and Mr. Pugh. Mr. Pugh was so offended at Mrs. Rawlins's Mirth, that he went away in a great Distaste; and she said, that

Mrs. Rawlins was never easy, but when she was talking of Mr. Swendsen.

Mrs. Baynton. Betty, did not you say, that she asked you several times of Mr. Swendsen, and wished he would come and dine with them?

Betty. I never heard her but once.

Mr. Swendsen's Jury return to give in their Verdict all Twelve.

Gentlemen, are you agreed in your Verdict?

Ans. Yes.

Who shall say for you?

Ans. The Foreman.

Erasmus Johnson, a Dane, and one of the Jury, said, He was not satisfied.

Johnson. If it shall please you, my Lord, I am not satisfied; I do not find, from any of the Evidence that hath been given, that he was privy to the Arrest; my Conscience will not let me comply with the rest, that he is Guilty.

L. C. J. Holt. What Kind of a Conscience have you? Do you not believe what the Witnesses have said? Have you any Evidence that Mrs. Rawlins went away with her own Consent?

Johnson. I do not find, my Lord, that it was done by him.

L. C. J. Holt. Did not he go to Hartwell's House, and from thence, while she was under the Force, went with her to the Vine Tavern, where he married her? Which was a forcible taking by him.

Johnson. But my Lord, it was with her Consent; else how could he marry her?

L. C. J. Holt. Tho' she did consent to the Marriage; yet if she was taken by Force, it is the same Offence.

Foreman. My Lord, he did agree that this was a Point of Law, and would leave it with your Lordship; he believes she was forced, but he thinks he was not privy to the Woman's Actions that he employed.

Johnson. My Lord, I do not see there were any Evidence against him.

L. C. J. Holt. When the Bayliffs were employed to take her, it appears by the Sequel, that it was with an Intent that he might marry her: What can be plainer? Govern your self by Reason.

Johnson. I believe that there was a Force by the Bayliffs.

L. C. J. Holt. Did not he take the Advantage of the Force? And was that to any other Purpose, but for him to marry her? There was no Cause of Action either against her or Mrs. Busby.

Johnson. It proved so, my Lord.

Foreman. My Lord, he would know whether he were in that Statute, in Point of Law, if this Maid did consent to it?

Judge Powel. He was guilty of the Thing; he was consenting to it afterward.

Johnson. They were in Streets and Houses before they married; and so, if she had not consented, she might have cried out.

Judge Powel. Did not he go to Hartwell's House, and to the Vine Tavern?

Johnson. I cannot believe him Guilty, as I would answer it before God and the World.

L. C. J. Holt. Pray consider, do not give a Verdict contrary to plain Evidence.

Johnson. By all the Circumstances, she was as willing as he: All that I can say to it, my Lord, is, that he had something of Connivance with this Woman.

Foreman. He believed that all along.

Johnson.

Johnson. I say, Mr. Foreman, at the Beginning there was such a Thing, as was done by Mrs Baynton, without his Knowledge.

Foreman. He did consent before to take your Lordship's Judgment; that if your Lordship be of Opinion that he was concern'd in the first Force, then that will carry it.

Johnson. I do not know that she complain'd to any body, my Lord: I do not speak for any Favour or Affection, my Lord; but 'tis merely out of a tender Conscience.

Foreman. He agreed, that if the first Force was within the Statute, then he would comply; and that we came away upon, to have your Lordship's Opinion. He believed, Mr. Swendsen did employ the Woman.

L. C. J. Holt. Do you agree?

Johnson. I cannot; but I leave it to your Lordship's Pleasure.

Mountague. The Fact he does agree to; he does agree that she was taken away by Force.

L. C. J. Holt. Was she taken away by Force?

Johnson. She was by the Bayliffs.

L. C. J. Holt. Did not he take the Advantage of this?

Johnson. She was under the Force before.

L. C. J. Holt. Besides, Did not you perceive that she consented for fear she should go to Newgate? The Law of England says, that is a void Consent, which is obtained out of Fear.

Mr. Johnson. My Lord, I don't know there was any Violence us'd by him either in Word or Deed.

L. C. J. Holt. Was not he present when Violence was us'd?

Mr. Johnson. Yes, my Lord.

L. C. J. Holt. Then was Violence us'd by him.

Mr. Johnson. But she was very well satisfy'd both before and after she was Married.

L. C. J. Holt. She was under Force, before she was Married; and indeed, all that Night, and afterwards.

Mr. Johnson. She was not hindred to send Letters.

Coun. Who would you have carried them, the Bayliffs, or Mrs. Baynton?

Mr. Johnson. No, my Lord; but somebody for Half a Crown, or a Crown.

L. C. J. Holt. It appears very evident, if you will believe Witnesses, that she was under a Force, before she was Married, when she was Married, all Night after, and the next Day when she was at the Recorder's. If you are not satisfy'd, I'll say no more, not one Word more.

Foreman. We must go my Lord, and have been Fasting all Day, He is prepared for Fasting, if it be for a Day, or two or three.

Judge Powel. The Question is now, Whether you do not believe, upon all this Evidence you have heard, whether this Lady was not under an Arrest, and taken by these Bayliffs?

Mr. Johnson. Yes, I do believe that; but I do not believe Mr. Swendsen employed them; all that I speak upon is this, that she had her free Liberty.

Foreman. My Lord, he was resolv'd to stand by what your Lordship should say.

Judge Powel. If he did not set them to work, yet his Act afterwards made it as bad as if he had actually employ'd the Bayliffs.

Mr. Johnson. I can say no more, I must agree with the rest.

Gentlemen, Are you agreed?

Foreman. Yes, my Lord, we are all agreed now.

Then, Is he guilty, or not Guilty?

Foreman. He is guilty, --- And so you say all. Yes.

What Goods or Chattels, &c. showed

Foreman. We know of none.

L. C. J. Holt. Mrs. Baynton, Will you go on?

Mrs. Baynton. I hope your Lordship will take Notice that my Servant own'd it once.

L. C. J. Holt. What was it?

Mr. Mountague. Only whether he was to Dine there.

Mrs. Baynton. That which I said, my Lord, she said to me.

Mrs. Baynton. Mrs. Rawlins, Will you be pleas'd to answer me to some Questions?

Mrs. Rawlins. I will.

Mrs. Baynton. Did not you sit down in the great Chair in the Dining-Room, and you said, now I must go to Bed? Did not you pluck off your Things, and gave them to me, and I gave them to Mr. Blake's Daughter?

Mrs. Rawlins. I consider Mrs. Baynton, that you undress'd me.

Mrs. Baynton. You sat in the Chair, and undress'd your self; How can you deny it?

Mrs. Rawlins. Mrs. Baynton, I can deny it, for I did not.

Mrs. Baynton. Nay, more than that, when you were in Bed, Did not you call to Mr. Swendsen, My dear Husband, Why do not you come to Bed?

Mrs. Rawlins. I said no such thing.

L. C. J. Holt. Where was this?

Mrs. Baynton. My Lord, it was at Mr. Blake's.

Mrs. Baynton. Did not you say, Come to Bed my dear Husband, you must love no Body in the World but me?

Mrs. Rawlins. No, Mrs. Baynton, I did not, I have taken an Oath this Day, and I said no such thing.

Mrs. Baynton. Did not you say, that you loved him above all the Men in the World?

Mrs. Rawlins. No, Mrs. Baynton, I did not tell you any such thing.

Mrs. Baynton. Did not you say these Things?

Mrs. Rawlins. No, Mrs. Baynton.

Coun. Speaking to Mrs. Baynton, said, Do you know that ever Mrs. Rawlins writ any Letters to Mr. Swendsen?

Mrs. Baynton. She wou'd; but I would not let her.

L. C. J. Holt. Why would you not let her?

Mrs. Baynton. I told her I would not carry any Letters to him, but if she desir'd me to tell him any thing by word of Mouth, I would do it; and, my Lord, when Mrs. Rawlins was Arrested, I going down Witchstreet, the Coach that she was in coming along then, and I seeing her in it, that was the only Reason that I went into the Bailiff's House. When I came there, she hung about me, kissed me, and said she desir'd me to stand by her; when your Lordship hears, you will believe me no other than a Friend to her. She begged me not to leave her. I offered Bail to Mr. Hartwell, but he would not take it; but said I behav'd my self sawcily. And when Mr. Swendsen came in, she said, now she was happy. Besides, my Lord, when he was there, he did not desire her to go out of the House.

L. C. J. Holt. If you had no Design but for her Good, How came you to Mrs. Nightingale's upon

on such a Design, with Pretence that you had a Law-Suit, &c.? And why did you carry her out in the Coach, in order to be Arrested?

Mrs. Baynton. My Lord, it was not the first Time that they went with me in a Coach; they desired me several Times to set them down, and I did so.

L. C. J. Holt. Why did you this? You pretended that you had a Law-Suit, and that you came to Town about it, and it appears not that you had any?

Mrs. Baynton. No, my Lord, I did not.

Nightingale. My Lord, it was Mrs. St. John that recommended Mrs. Baynton to me.

L. C. J. Holt. We know that.

Mrs. Baynton. If I were such a Woman as they represent me to be, Why did they not warn me out of their House. Mrs. Rawlins, say the whole Truth, and remember that you are upon your Oath, I desire not Favour or Affection. Did not you say to Mr. Swendsen, This is my own dear Husband, and this is the Ring that Married us? Did not he begin to speak, and you said to him, hold your Tongue, and let me speak?

Mrs. Rawlins. Mrs. Baynton, you know I was very much intoxicated, I hardly knew I had a Head.

Mrs. Baynton. Mrs. Rawlins, you can drink your Glass of Wine as well as any Body else. Mr. Swendsen was often there at Cards, and she was the most uneasie Creature in the World when he was not her Partner. Did you not desire me to let you fit by him in particular?

Mrs. Rawlins. No, I did not.

Mrs. Baynton. Mrs. Rawlins had said this several Times to Mr. Swendsen to desire him to sit by her. We play'd at Cards, and sav'd the Winnings till it should come to 20s. and design'd it for a Treat. Did not you say you would treat Mr. Swendsen, and would send for Walnuts and Apples? But I said, No, you shall not.

Mrs. Rawlins. I did send for Walnuts and Apples; but it was not with a Design to pleasure Mr. Swendsen?

L. C. J. Holt. Mrs. Baynton, Why did you say Mr. Swendsen was your Brother?

Mrs. Baynton. I never said he was my own Brother.

L. C. J. Holt. You said it.

Mrs. Baynton. No, my Lord, I said he was my Sister-in-Law's Husband.

L. C. J. Holt. How was she your Sister-in-Law.

Mrs. Baynton. By Adoption, my Lord.

L. C. J. Holt. By Adoption, What do you mean by that?

Mrs. Baynton. Mrs. Rawlins, if you had no Mind to him, Why did you give him such Encouragement, as to kiss him, and go betwixt his Legs and kiss him?

Mrs. Rawlins. I take it upon my Oath, that I never did so in all my Life.

Mrs. Baynton. Did you not love him?

Mrs. Rawlins. No, not well enough for to make him my Husband.

Mrs. Baynton. My Lord, it is very hard that all these Things that I have said to her, are all true, and she hath made a Resolution to say nothing but No.

L. C. J. Holt. Mrs. Rawlins, Did you design to have Mr. Swendsen for your Husband?

Mrs. Rawlins. My Lord, I was threatned to be sent to Newgate, if I did not Marry him, You know, Mrs. Baynton, that you said, that if I did not Marry your Brother, they would carry me to Newgate.

Mrs. Baynton. I never in my Life said any such thing.

L. C. J. Holt. Pray Mrs. Baynton, give an Account how you have lived?

Mrs. Baynton. I never run in any Bodies Debt.

L. C. J. Holt. Had you a Husband?

Mrs. Baynton. Yes, my Lord.

L. C. J. Holt. How long hath he been dead?

Mrs. Baynton. Eight Years To-morrow.

L. C. J. Holt. But you have had a Child lately, within this Four Months; Are you Married now?

Mrs. Baynton. Yes, my Lord, I am Married.

L. C. J. Holt. How do you prove that?

Mrs. Baynton. I could give your Lordship an Account; but it is not proper now, before the whole Court.

L. C. J. Holt. Is it not proper now?

Mrs. Baynton. No, my Lord, for some Reasons.

L. C. J. Holt. I think it is very proper. Pray give an Account how you have liv'd?

Mrs. Baynton. I have a Sister at Barbadoes, that hath been very kind to me.

L. C. J. Holt. Was you Married to Mr. Baynton?

Mrs. Baynton. Yes, my Lord.

L. C. J. Holt. Mr. Hartwell, Who directed you to take out this Writ against Mrs. Rawlins, at the Suit of one Jones?

Mr. Hartwell. My Lord, I was sent for to the Star and Garter Tavern in Drury-Lane, by Mr. Holt.

L. C. J. Holt. Where is he?

Mr. Hartwell. He is not yet taken. He sent for me twice before I went. When I came to him, I received Money for a Writ against that Lady; on which I sent my Assistant for a Writ.

L. C. J. Holt. Who was your Assistant?

Mr. Hartwell. (Pointing to Spur, said he was his Assistant.) I sent the Writ to Mr. Wakeman, to get him to serve it. He was not at home, and I went to him the next Morning. I asked him whether he would serve the Writ, he told me he would; and I told him the same that Mr. Holt told me, that it could not be done till Friday Morning. On Friday Morning Mr. Holt went with me, and these Officers, Wakeman and Spur. He bid us be ready, and said the Coach was coming. So we served the Writ as we were order'd, and went to the Star and Garter Tavern in Drury-Lane; from thence I carried her to my House. If I had had any Mistrust of any bad Design, I would have carry'd her back again. But I came forward with her to my House. In a little Time after she had been there, came Mrs. Baynton, and one that is gone now, (meaning Mr. Swendsen) was sent for, by some Stratagem that I knew not of. They being together, told me, that every thing was agreed of and made easy.

L. C. J. Holt. What was made easy?

Mr. Hartwell. The Debt, as I thought, my Lord. When I carried the young Gentlewoman first to my House, I left her with my Wife and a young Woman. When I came home again, I found Mr. Swendsen and this Gentlewoman there, who told me, that every thing was made easy. On which they desired to go to any Tavern, I knew not where; but they agreed to go to the Vine Tavern in Holborn.

L. C. J.

L. C. J. *Holt*. Why did you take her from her Friend Mrs. *Busby*?

Mr. *Hartwell*. It is usual for Officers to do with Prisoners as they please.

L. C. J. *Holt*. That is a barbarous Thing to separate them one from another, when you could apprehend there was no Danger of being rescued.

Mr. *Hartwell*. My Lord, I beg your Lordship's Pardon, I have no Counsel but my self; I may speak Things in Point of Law that may prejudice my Life; but as to the Purpose I'll speak the Truth.

L. C. J. *Holt*. You made her put on her Mask; you forc'd her to it.

Mr. *Hartwell*. Mrs. *Rawlins*, Did I force you to put on your Mask?

Mrs. *Rawlins*. Yes, he forced me, but I would not at first; but he forced me. When I cry'd out Murder, he said, Put on your Mask, and hold your Tongue, or you shall go to *Newgate*.

L. C. J. *Holt*. What Writ had you against Mrs. *Busby*?

Mr. *Hartwell*. There was no such thing, my Lord.

L. C. J. *Holt*. You said you had a Writ against Mrs. *Busby*, and another against Mrs. *Rawlins*.

Mr. *Hartwell*. My Lord, as to the Writ against the young Lady, there was one; I know of no other positively.

L. C. J. *Holt*. Why did you refuse *Holt's* and *Swendsen's* Bail.

Mr. *Hartwell*. It was no such thing, my Lord; I cannot help what the People swear; I hope to prove to the contrary, both from the beginning to the end.

L. C. J. *Holt*. Why did you part with your Prisoner at the *Vine Tavern* without Bail?

Mr. *Hartwell*. My Lord, I no sooner came into the *Vine Tavern*, but the Person that employ'd me, gave me the Money; which was this Woman, pointing to Mrs. *Baynton*.

Mrs. *Baynton*. You said *Holt* employ'd you. I gave him no Money, my Lord; and he declared, that he never saw me before in his Life.

Mr. *Parker* called.

L. C. J. *Holt*. Where do you live?

Parker. I lived at the *Star* and *Garter* then, and Mr. *Holt* was there, who sent me for Mr. *Hartwell*.

Mr. *Hartwell*. My Lord, when I came there, Mr. *Holt* was drinking, and it was all out but a Glass. He asked me to drink; which I did. Then we went from the *Star* and *Garter* down to the *Mitre* in *Westminster*, which was *Holt's* House. Being there, and I smoaking a Pipe, in came this Lady, (pointing to Mrs. *Baynton*) and gave me Money for a Writ. I sent my Assistant for the Writ, and the first Person I lit of, which was Mr. *Wakeman*, I made use of to assist me in it. When I serv'd it at the *Star* and *Garter* Tavern, this Gentlewoman (pointing to Mrs. *Baynton*) asked me where I liv'd? I said in *Wuchstreet*. Said she, take care of her, (Mrs. *Rawlins*) and take her along with you to your House, or you will lose your Money. So I carried her to my House, and having Business elsewhere, I left her with my Wife, and a young Woman to keep her Company. When I came again, I found Mr. *Swendsen* and this Gentlewoman there drinking a Pint of Sack. They told me if I would go to any Tavern, the Business should be made up. We took Coach and went to the *Vine Tavern*, and there the Matter was made an end of. They told me, that they would satisfy me for my Trouble on Monday

Night, if I would meet them at Mr. *Holt's*. Away I went, and was taken ill to that degree that I thought I should have died.

L. C. J. *Holt*. How can you prove that she employ'd you.

Mr. *Hartwell*. I believe I shall have somebody to prove that. But, my Lord, the main Witness of mine is not come in, and that is Mr. *Holt*.

L. C. J. *Holt*. He is fled.

Mr. *Hartwell*. But, my Lord, I suppose his Wife is here. My Lord, I hope you will allow Mr. *Wakeman* to come into the Court, that I may ask him some Questions.

J. *Powel*. A Woman cannot be a Witness for or against her Husband, Then for what Reason should she be called?

Mr. *Hartwell*. What can be more material than my going to *Holt's*? I have no other Persons to appear for me?

L. C. J. *Holt*. Did *Holt* first employ you?

Mr. *Hartwell*. He first sent for me, my Lord.

L. C. J. *Holt*. Have you any other Witnesses?

Mr. *Hartwell*. My Lord, I thought they call'd for Mr. *Wakeman*.

Mr. *Wakeman* call'd.

L. C. J. *Holt*. Ask him what Questions you will.

Mr. *Hartwell*. Mr. *Wakeman*, Who was it employ'd me?

Mr. *Wakeman*. He never told me who employ'd him till he came to the Recorder's, and then he told me that this Woman (pointing to Mrs. *Baynton*) employ'd him. The Recorder ask'd me who it was employ'd me? *Hartwell* made Answer, and said, I employ'd him; and said likewise, that the Woman brought him Money for the Writ.

Mrs. *Baynton*. I never gave *Hartwell* Money, nor employ'd him, nor confessed to the Recorder.

Mr. *Wakeman* call'd a Witness, who said for *Hartwell*, that 'twas Mrs. *Baynton* confessed before the Recorder upon her Examination, that she gave Money to, and employ'd *Hartwell* to sue out a Writ against Mrs. *Rawlins*, at the Suit of *Wi. Jones* for 20*l.* and gave for Reason on further Examination, that the said *Jones* owed Mrs. *Baynton* 20*l.* And he wrote to Mrs. *Baynton* to get Arrested Mrs. *Rawlins* for 20*l.* due from her to *Jones*; and that on such Arrest, Mrs. *Rawlins* would pay the Money to Mrs. *Baynton*.

L. C. J. *Holt*. Have you any thing more to say?

Mr. *Hartwell*. My Lord, I never saw Mr. *Swendsen* before he came to my House with Mrs. *Baynton*, when the young Gentlewoman was there. When I came in, they were drinking a Pint of Sack together. The young Lady was very free to go to the *Vine Tavern*. Madam, Were you not free to go?

Mrs. *Rawlins*. I do not deny but I was free to go.

Mr. *Hartwell*. Did we offer any Rudeness to you at that Place?

Mrs. *Rawlins*. No, not then.

L. C. J. *Holt*. That is the thing you are to Answer to, your taking her away by Force.

Mr. *Hartwell*. My Lord, I know nothing of it; I cannot help it, my Lord, there is nothing in it.

Mr. *Hartwell*. Mr. *Wakeman*, Did I know any thing of your being with Mr. *Holt* and Mr. *Swendsen* at the *Five-Bell Tavern*?

Mr. *Wakeman*. I don't know that you did.

Mr. *Hartwell*. No, my Lord, I knew nothing of it till last Thursday he told me of it.

L. C. J. *Holt*. Who sent for Mr. *Swendsen*?

Mrs. *Rawlins*. Mrs. *Baynton*.

Mr. *Hartwell*. Mrs. *Rawlins*, Was I in the House at that Time?

Mrs. *Rawlins*. No, I did not see you there then.

Mr. *Hartwell*. My Lord, with Submission to your Lordship, I understand by something I have heard, since I have been in Custody, that this Gentlewoman, Mrs. *Baynton*, said to Mrs. *Rawlins*, Shall I send for my Brother?

L. C. J. *Holt*. Do you keep a Publick House?

Mr. *Hartwell*. No, my Lord, only a Prison-Room, but sell no Drink: This Gentlewoman was in the Parlour all the while.

L. C. J. *Holt*. Have you any thing more to say?

Mr. *Hartwell*. Nothing at all, my Lord; I was rul'd by the Person that employ'd me.

J. *Powel*. What did you apprehend by this?

Mr. *Hartwell*. She told me there was one gone for; and she said she would bring a Gentleman to pay me the Money.

L. C. J. *Holt*. Mr. *Spur*, What say you?

Mr. *Spur*. I know nothing more of the matter, than Mr. *Hartwell*'s giving me Money for taking out the *Marshal*'s Court Writ, and I was employ'd by him.

L. C. J. *Holt*. When Mrs. *Busby* cry'd out, did you not say, What have you got by your Bawling?

No Answer made.

Mr. *Mountague*. We have a few Words to reply, if the Prisoners have done. The Gentlewoman at the Bar insists upon it, that Mrs. *Rawlins* was consenting to the Matter, was in Love with Mr. *Swendsen*: We think, not only by the Evidence given, but by what they say themselves, that she was carry'd away by Force. Indeed when she was taken into *Hartwell*'s House, there was no body by at that Time, but those she was not afraid of. To conclude; if there was any Consent by Mrs. *Rawlins*, it was only to have her Bail'd; it was that only that she design'd. *Hartwell* says, he was only employ'd as a Bayliff by *Holt*: He carry'd them from his House to the *Vine Tavern*: Now, what Occasion had he to carry them to the Tavern for Bail? We shall prove further, that when they came to the *Vine*, *Hartwell* himself was said to be the Bail for the Action.

Anne *Cotchet* called, and Sworn.

Mr. *Mountague*. Mistress, pray will you give an Account how *Hartwell* brought the Prisoner there?

Cotchet. Mr. *Hartwell*, when the Coach came, ordered a Pint of Wine for the Coachman. The Drawer said, We draw, and draw, but don't know who will pay for it. Mr. *Hartwell* came to me, and said, it was an Arrest for 120*l.* that he would see us paid.

L. C. J. *Holt*. Was it the Woman in the White Gown that was Arrested for 120*l.*

Cotchet. Yes, my Lord.

Mr. *Hartwell*. Did you see me in Company with the Parson?

Cotchet. You came down Stairs, and ordered a Pint of Wine for the Parson, and half a Pint besides; and told me the Parson was the Bail.

Mr. *Hartwell*. I did not know that the Parson was in the House, till I had just done my Business, and was going away. Did you see me with the Parson, Madam *Rawlins*?

Mrs. *Rawlins*. I do not tell you so.

Mr. *Mountague*. All that is to be prov'd in this Indictment is, that she was taken away against her Will, and afterwards compell'd to marry.

Cotchet. I did not see Mr. *Hartwell* after that.

L. C. J. *Holt*. Gentlemen of the Jury, these Three Prisoners are Indicted for Felony, upon the Statute made in the Third Year of King *Henry* the Vol. IV.

Seventh; That they with *Haagen Swendsen* now convicted, and *Thomas Holt* that is fled, did violently and feloniously assault one *Pleasant Rawlins*, being seized of an Estate of Inheritance about 20*l.* per Ann. and possessed of a Personal Estate of the Value of 2000*l.* and took her away by Force against her Will; and that he, *Swendsen*, did marry her. Now the Question is, Whether the Prisoners at the Bar are guilty of this Crime? First, As to Mrs. *Baynton*, you have heard what an Account is given of her: She was a Person that came to lodge at Mrs. *Nightingale*'s House in *Stretton-Grounds* in *Westminster*: She went for a Widow, by the Name of *Sarah Baynton*. It seems, Mrs. *Busby* and Mrs. *Rawlins* did lodge about Three Years in Mrs. *Nightingale*'s House. They being all single, were very well satisfy'd one with another. Mrs. *Rawlins* was placed by her Guardian under the Care of Mrs. *Busby*; and has a Personal Estate of 2000*l.* and 20*l.* a Year. About three Weeks before *Michaelmas* last, you hear of one Mrs. *St. John* that was an Acquaintance of one Mrs. *Nightingale*'s, came to her and told her of Mrs. *Baynton*, a well-disposed Gentlewoman, that was come to Town about a Suit of Law, and thought she should stay about a Month, and thought that her House was a proper Place for her Lodging, and gave her a very good Character, that she was a Civil Religious Woman, of a good Conversation, and desired to be near the Church. After some Time, Mrs. *Baynton* came her self. She said, as Mrs. *St. John* had done before, that she came to Town about a Law Business, was a Widow in the West. Mrs. *Nightingale*, by reason of the Character that was given her, received her into her House. When she was there, she behaved her self very civilly for some time; so that Mrs. *Nightingale* and Mrs. *Busby* were well pleased with her, and thought her to be a Gentlewoman of very ingenious Conversation. She tells them she had a Brother that had Interest in Shipping; and so there was an Invitation of Mrs. *Busby*, Mrs. *Rawlins*, and Mrs. *Baynton*, to go on Shipboard, where they were treated by Mr. *Swendsen*. Mr. *Swendsen* used to visit Mrs. *Baynton*; and she used to call him Brother: While she was there, *Swendsen* dined 9 or 10 Times. She had not been there long, before they began to have different Apprehensions of her from what they had at first, and were very uneasy at her Continuance. Mrs. *Baynton* did apprehend there was some appearance of Uneasiness; and came to Mrs. *Nightingale* and told her, she had made an end of her Suit of Law, and had no occasion to stay in Town, but would return into the Country. It seems Mrs. *Nightingale* and Mrs. *Busby* were well pleased with Mrs. *Baynton*'s Warning. Before she went away, she understood that Mrs. *Busby* and Mrs. *Rawlins* used to go to *Oxendon Chapel*; she came to them and said, she had occasion to go that way with a Band-Box to her Milliner's; told them she went in a Coach, and if they pleased they might go with her, and she would set them down at a Place near the Chapel. They accepted her Civility, thinking nothing of any Design; and as the Coach was driving along, it was stopped by Bailiffs, and all on a sudden *Hartwell* opens the Coach, and thrusts himself into it. Mrs. *Busby* and Mrs. *Rawlins* were not conscious of any Cause of an Arrest, thought the Arrest was upon Mrs. *Baynton*, they began to be concern'd for her; but it appeared that 'twas upon them, and then Mrs. *Baynton* seemed as much concern'd for them when they were both to be carry'd away; but asked *Hartwell* what it was for? He told them it was no great Matter; but if you and I talk together a little, all will be well.

Mrs. Baynton express'd her self to be much concern'd for Mrs. Busby; she advis'd her not to talk any Thing with him, without her Friends were nigh. And when they were in the Coach, it was directed to be drove away. Mrs. Busby desired to be carried to Fleetstreet to her Friends; but Hartwell would carry her to the Star and Garter Tavern in Drury-Lane. Mrs. Baynton continued in the Coach until they came thither, and then pretended to go for Mrs. Busby's Friends; and when they were at the Star and Garter Tavern they were carry'd into a Back-Room. Mrs. Busby forced her self with the young Woman into a Fore-Room; then Hartwell laid Hands upon Mrs. Rawlins, and said she was his Prisoner, and carries her away by Violence, forces her down Stairs, and swears at her to put on her Mask, otherwise he would carry her to Newgate. Mrs. Busby, the Prisoner above Stairs, was to go to Newgate, as was pretended; but Mrs. Rawlins was to go to the Marshalsea. Away she was carried to the House of Mr. Hartwell; but Mrs. Baynton who pretended, that as she was going by chance that way heard Mrs. Rawlins named; there-upon she goes in, and very luckily finds her there, and pretends to pity her Condition; and said she had been with several of her Friends to be her Bail, but could procure none of them to come. Then she said she would go for her Brother Swendsen, who she was sure would be her Bail. Upon that Message he came, and then Mrs. Rawlins was to be carry'd to the Vine Tavern. Mrs. Baynton went with her thither, as they pretended, to make up the Business. Then it was propos'd that Holt and Swendsen should be Bail. Hartwell refus'd them as insufficient: Upon which she was told she was in danger of going to Newgate, and Bail could not be taken; and the only way was, that she must be marry'd to Swendsen; and if she did not marry, she should go to Newgate. Mrs. Baynton took the Ring from off her Finger, in order to get a Wedding-Ring to be made by it; which being procur'd, there was a Parson in the House ready provided with a Clark to do the Office, who came into the Room where the Marriage was made, and so ended that Arrest. From the Vine Tavern she is carry'd with Mr. Swendsen and Mrs. Baynton to Blake's House, and there she was forc'd to Bed: Within an Hour and Half they arise again at Seven a Clock at Night; and thus the Marriage was Consummated. As for Mrs. Baynton there is this further Proof upon her, that she did pay Hartwell for this very Arrest, which is prov'd upon her by her own Confession, before the Recorder. Then, as to Hartwell, he is affected by these Circumstances. First, there was no Process against Mrs. Busby, but yet she was Arrested and carry'd to the Garter Tavern, where she was kept in Custody until the Evening, and could not procure any Friends to be called to her; and during the time of her being there, Mrs. Rawlins was Married to Mr. Swendsen at the Vine Tavern. And it is further prov'd against him, that when the Parson was come, he told the Mrs. at the Vine Tavern, that the Parson was to be one of the Bail. It is also prov'd, that he insist'd upon very good Bail; for he told the Woman of the House the Arrest was for 120*l*. when as it appear'd it was but for 20*l*. Now you are to consider what hath been said in their Defence. Mrs. Baynton says, that Mrs. Rawlins was in Love with Mr. Swendsen, and did complain of her Confinement and hard Usage; and that she told her she could help Mr. Swendsen to a young Lady at her own Dispos'al; and that there was one Mr. Pugh that made Application to Mrs. Rawlins; but she return'd his Letters that she had receiv'd from him:

That Mrs. Rawlins did say, that she could help Mr. Swendsen to a Lady that had a Fortune at her own Dispos'al, which is own'd by Mrs. Rawlins; and that by that Lady she did mean her self; but that she had any familiar Discourse with him in the Garden, or that she was Sick for him, and went up and Cried for him, that she denies upon her Oath. And further says, that she never intended to do any Thing against the Advice of her Friends, or that she had set her Love upon him. Then Mrs. Baynton charges Mrs. Busby, that she had a Kindness for her Brother Swendsen, because she said he was her beloved Likeness. Mrs. Busby owns, that he was something like her Husband, and on that Account might innocently call him so. As for Hartwell, he relies on his being a Bail, and in the Execution of his Office, being employ'd by Mr. Holt and Mrs. Baynton, and that she paid him for the Writ. Mr. Holt sent for him, and he knew nothing but of Arrest, and was not privy to any other Design. It is prov'd indeed, that Mr. Holt did send for him. This is the Sum and Substance of his Defence. I must tell you, that if Hartwell was employ'd in this Design, in order to take her into Custody to carry on this Marriage, and was privy to it, then he is equally Guilty; but if he did only act as a Bail, and did not know the Design, then he is not Guilty. But his Arresting Mrs. Busby against whom he had no Process, and taking Mrs. Rawlins from Mrs. Busby to his own House, and from thence carrying her to the Vine Tavern; his pretending that the Warrant was for 120*l*. when as in Truth it was but for 20*l*. and his pretending that the Parson was to be the Bail, though he was not present in the Room where the Marriage was, but hard by; yet he was in the same House, which is all one, if he knew what Design was a-Foot; These are the Things you are to consider of. As for Mrs. Baynton, she pretended she was a Widow, and you hear how she proves it; and when she is taxed with having a Child, then she says she hath a Husband. And when she is asked about him, she will give no Account, nor how she supports her self. She said indeed she paid every Body their own, and that she has no Difference with any Body whatsoever. She pretended she was Mrs. Rawlins's Friend in what she did; but it is plain by what she owns her self, that she employ'd Hartwell, and paid him for the Writ. And her pretending to set them down at Oxenden Chapel, there it was her Design to bring them under that Force to effect this Marriage. I must leave it to you to consider, whether from the beginning to the end she was not an Actress and a Manager of this whole Business. She hath been asked how Mr. Swendsen came to be her Brother. First she says, he was her deceased Sister's Husband. Then being asked who was that Sister? She said he was an Adopted Sister's Husband. It was very extraordinary for her to go to Mr. Hartwell's House to the young Gentlewoman, and pretend that she came by chance, and heard her Name. I must leave it to you Gentlemen of the Jury to consider of the whole Matter: And as for Spur, he was an Under-Officer, a Bailiff's Follower, and might be ignorant of the Business. You have not Evidence enough to make it appear that he was privy to this Design, and therefore you are to acquit him; but as to Mrs. Baynton and Hartwell, if they were privy to this Design of a Forceably taking away of Mrs. Rawlins, with an Intent to Marry her to Mr. Swendsen, as it is plain that he was an Actor, and she an Abetter in the Force; then Gentlemen you are to find them Guilty: If you are not satisfied, you are to

acquit them. The Jury went out for half an Hour, and brought in the following Verdicts.

Mrs. Baynton, *Guilty*.
Mr. Hartwell, *Not Guilty*.
Mr. Spur, *Not Guilty*.

L. C. J. *Holt* said to Hartwell, *You have had a very Merciful Fury, let it be a Warning to you for the Future.*

Mrs. Baynton. My Lord, I am with Child.

L. C. J. *Holt*. That will be considered on Saturday.
Saturday, November the 28th.

The Prisoners were called to the Bar to receive Sentence of Death.

Mr. Sol. Gen. I pray your Lordship's Judgment against the Prisoners at the Bar.

Cl. of Arr. *Haagen Swendsen* hold up thy Hand. Thou hast been convicted of Felony done by them, and committed on Mrs. *Pleasant Rawlins*, and the Jury hath found thee Guilty; What have you to say for your self, why you should not receive Sentence of Death according to Law?

Mr. *Swendsen*. I could say a great deal, but I shall say but a very little. I do not doubt but the honourable Court observ'd how various she was in her Evidence. What she deny'd in my Tryal, she confess'd in Mrs. *Baynton's*; and so I leave it to the Court, if there may be an Arrest of Judgment till the next Term.

L. C. J. *Holt*. Unless you can shew us some Cause for it, it will not be granted.

Mr. *Swendsen*. My Lord, She said those Things in her Tryal which she deny'd in mine.

L. C. J. *Holt*. Some Things she mentioned in your Tryal, that she had no occasion for in hers.

Mr. *Swendsen*. The same Things that were in my Tryal were in hers.

L. C. J. *Holt*. There were some Things in her Tryal that was not in yours.

Cl. of Arr. *Sarah Baynton* hold up thy Hand. Thou hast been Indicted for Felony, and found Guilty. What hast thou to say for thy self, why you should not receive Sentence of Death according to Law?

Mrs. *Baynton*. My Lord, I am with Child.

L. C. J. *Holt*. That is no Plea against Judgment.

Mrs. *Baynton*. My Lord, I desire that it may be taken into Consideration, how that she contradicted her self in her Evidence; that she spoke those Things in Mr. *Swendsen's* Tryal, that she contradicted in mine. I think I have a great deal of Injustice; I am as innocent as any Person in the Court.

L. C. J. *Holt*. That you did this Thing is most apparent; that you deluded this young Person, and pretend your self to be a Person of Quality, a Religious Woman, and one that come out of the Country about a Law-Suit; that you pretended that this Mr. *Swendsen*, the Prisoner at the Bar, was your Brother, your Sister's Husband; and all this False Dealing was to bring him in to delude this Woman. It is plain, you had no Suit of Law, as you pretended. It is plain, you took out this Process against the young Gentlewoman. It is plain, that you pretended you would set them down at a Chapel.

Mrs. *Baynton*. It is not the first time, my Lord, that I set them down.

L. C. J. *Holt*. But you made use of this Stratagem to accomplish the Arrest. You have deluded the World by these Things; and indeed it is very hard against you.

Mrs. *Baynton*. My Lord, they desired me to set them down.

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L. C. J. *Holt*. The License was taken out before the 6th of November a considerable time.

Mrs. *Baynton*. My Lord, She cannot deny but she spoke for it to me. She her self ordered it to be done. My Lord, when I was upon my Tryal, abundance of People prompted her to speak those Things she knew nothing of; Mrs. *Busby* in particular; though I do not question but she her self would have Married Mr. *Swendsen*, for she expressed Love for him in calling of him her Beloved Likeness.

L. C. J. *Holt*. She said he was like her Husband, and therefore on that Account she might say so.

Crier, *Make an O Yes.*

Mr. *Swendsen*. My Lord, my Tryal has already made a great Noise in the World; and I do not know but that by this time it may be come to the Queen's Ear; therefore I desire that your Lordship would be pleased to make a favourable Construction of it to her.

L. C. J. *Holt*. Well, I do not question but Her Majesty hath heard of it.

Crier, *Make an O Yes, while Judgment is given.*

Mr. Justice *Powell*. You that are the Prisoners at the Bar, *Haagen Swendsen* and *Sarah Baynton*, you have been both Tried and Convicted of a very great Offence, for which you are brought to receive that Judgment that the Law requires. You have had a very solemn Tryal, and have both been Convicted upon very plain and full Evidence. Your Offence is of a very high Nature; and I am glad that you have had such a solemn Tryal, that all People may know how great a Crime this of Fortune-stealing is (which is Death by the Law) and may take Warning by you; it may be a great many People do not know how penal this Offence may be, but I hope your Tryal may be a Means to deter others from making use of such wicked Practices. Your Offence hath been in a Nation where Property is better preserv'd than in any other Government in the World. Here it is Death for a Man to take away any Thing, though never so small, by way of Robbery: How much worse is it for you to take away the Child of a Man, and with her all that he hath gotten by his Industry all his Life-time, at once? This is most certainly a very great Offence against the Publick, being so great a Violation of Property; and the Injury you have done to this Woman is very great too, and cannot be repaired: All the Satisfaction that can be given, is by taking away the Lives of those Persons that were the Contrivers of it. You *Haagen Swendsen* have had the Privilege (the Law allows to Foreigners) of a Party-Jury; and I believe, had there been any room for a Jury to bring you in not Guilty, you had not been found Guilty; but the Fact was prov'd so plain upon you that they could not possibly avoid it. It is true, you insisted upon it that you were not present at her first taking, and that she gave her Consent to the Marriage. It is true, that you were not present when she was first taken, but there were strong Presumptions to conclude that you were privy and consenting to it, which will render you equally culpable as if you had been present. For when she was taken in Custody, she was brought to an House where *Holt* and you were seen together; *Holt* being the Man that set the Coach, and gave Directions to the Bailiffs when to seize her; and besides, you had a License prepar'd for your Marriage to her. These are very great Circumstances of your being privy to the first taking. But admitting you were not privy to the first taking,

taking, you were privy to her being in Custody under an Arrest, when you was brought to Bail this Woman; and Word was brought in that they were contented to take your Bail, but excepted against Holt's; and when she was told by Sarah Baynton she must go to Newgate unless she Marry'd you, you were present at all this; and this being done and acted whilst the first Force was continued upon her, is in Law a forcible taking: so that you are plainly guilty of a forcible taking. And then also if that were necessary of marrying of her by constraint, she being under Menaces, that if she would not marry you she must go to Newgate; You your self were conscious, this was no such Consent as Marriage requires, since that Evening you made Application to a Justice of Peace to take an Affidavit from her that she had given her Consent. When you brought Witnesses to give an Account of your former Life and Conversation, that some Years since you were an able Merchant in your Country, one in great Credit, an ingenious Man, and of good Interest and Acquaintance there; I confess I had great Commiseration for you, and thought that this Misfortune befel you upon the Account of your Acquaintance with this ill Woman; the Acquaintance with such a Woman will make a rich Merchant quickly poor, will soon reduce a wealthy Man to a Morfel of Bread. I am afraid that she hath been a very great Instrument in your Ruin.

And you Sarah Baynton, when you were ask'd to give an Account of what kind of Life you liv'd, it appear'd to be but a very sorry one indeed, so that I could not but conclude you to be a very lewd Woman. You had Wit and Parts enough which might have been of great Service to you, if you had lived honestly; but you made use of them to another End, and it is not fitting that you should live longer that cannot live better. You contrived and carried on all this wicked Design from first to last; and that you might the better perform it, you went to a civil House under the Character of a Gentlewoman, that came out of the Country about a Suit of Law. There you pretend to be a very good Woman, and seem to be much pleased with the Family, because they were sober People; but your Design was to entice and delude this young Woman. Whether your Design at the beginning was to commit this Fact, I cannot tell; but being not used to this Course of Life, you could not wear your Disguise long without Discovery; you began to be suspected and to be seen through; the Family was very willing to be rid of your Company; which you perceiving, you resolv'd you would Achieve your Design before you went. For that End you invite them into a Coach, promising to set them down where they were going; but instead of that, you employ Bailiffs to Arrest them: for you with your own Hand paid the Bailiff that was to do it; and after they were taken, you pretended to pity them. And when Mrs. Rawlins was at Mr. Hartwell's House, you pretended that you accidentally and providentially over-heard her Name mentioned in Mr. Hartwell's House, as you passed in the Street. You go into the House, and pity her Condition, and propose your Brother for her Bail; but instead of that, all your Design was to bring about this Marriage; and for that end you forced her Ring from her to get another made by it. It was you that told her she must go to Newgate unless she Married your Brother; and afterwards that forced her to Bed. From the Beginning to the End you carried on this wicked Design to the Ruin of this young Woman; you

have a great deal to answer for. I have stated this Matter, that you may be satisfied that this Fact hath been proved against you both very fully, and therefore you can expect no other than an Award of the Punishment the Law requires, that is, Death. I hope you will reflect upon those evil Courses that have brought you to this End. You have but a short Time to live, and therefore it would be well for you to consider your Future State: You may have better Instructions for that than I can give you; therefore I will now proceed to the Sentence, which is,

That you shall go hence to the Place from whence you came, and from thence to the Place of Execution, and that there you severally hang by your Necks until you are dead; and so the Lord have mercy upon your Souls.

Mr. Swendsen. My Lord, now I am bound to do this Woman Justice. She hath not been the Contriver of it. It was all done by my Direction; and for her sake I desire the Queen may know of it.

L. C. J. Holt. Well, that will clear up the Doubt to some of your Countrymen, who did think that you were not the Contriver of it.

Mr. Swendsen. I desire, my Lord, that the Matter may be represented to the Queen as favourable as you can.

Cl. of Arr. Sarah Baynton, Hold up thy Hand.

Mrs. Baynton. My Lord, I am with Child.

L. C. J. Holt. Let a Jury of Matrons be sent for.

They are sent for. Upon the hearing of her Sentence she fell into Fits.

Cl. of Arr. You the Matrons of the Jury, shall view and diligently enquire, and a true Verdict give according to your Evidence, whether Sarah Baynton be with Child, quick with Child, or not. So help you God.

The Names of the Jury of Matrons are as follow:

Mrs. Sarah Johnson.

Mrs. Christian Walker.

Mrs. Susannah Goff.

Mrs. Mary Herbert.

Mrs. Sarah Randol.

Mrs. Mary Vere.

Mrs. Sarah Webb.

Mrs. Dorothy Mordis.

Mrs. Eliz. Gurnella.

Mrs. Mary Rogers.

Mrs. Jane Smithson.

Mrs. Margaret Leach.

L. C. J. Holt. You the Matrons are to consider well the Oath you have taken, which is diligently to enquire whether this Woman be quick with Child: If she be with Child, but not quick, you are to give your Verdict so; and if she be not quick with Child, then she is to undergo the Execution of the Sentence in convenient Time.

About half an hour after the Jury of Matrons came in.

L. C. J. Holt. Are you agreed in your Verdict?

Ans. Yes.

L. C. J. Holt. Who shall say for you?

Ans. The Fore-Woman.

L. C. J. Holt. Do you find the Prisoner to be with Child, with Quick Child, or not?

Mrs. Johnson. Yes, my Lord, she is quick with Child.

L. C. J. Holt. Is this your Verdict?

Mrs. Johnson. Yes, Sir.

L. C. J. Holt. And so you say all?

Ans. Yes, my Lord.

L. C. J. Holt. Hark ye, Mrs. Baynton! These Women by their Verdict give you longer Time to prepare you for Death, and therefore I hope you will improve your Time, for the Judgment is past, and will be executed soon after your Delivery.

T H E

The Tryal of RICHARD HATHAWAY, upon an Information of being a Cheat and Impostor, at Surry Assizes, March 24, 1702. Published by Authority.

Proclamation was made for all Persons concerned to attend.



THE Prisoner being brought into Court, and acquainted what Liberty he had to challenge those Gentlemen that were called; he making no Challenges, the Gentlemen that were sworn on the Jury were,

Charles Bludworth,	William Draper,	} Esqs;
Henry Tendall,	Richard Nicholas,	
Walter Kent,	Cesar Bradshaw,	} Gent.
John Burchet,	John Cater,	
John Pettward,	Samuel Pearson,	
Thomas Lowfield,	Richard Hammond,	

The King against Richard Hathaway, for an Impostor.

Surry ff. The King's Attorney General has exhibited an Indictment against the Defendant, by the Name of Richard Hathaway, of Southwark, in the County of Surry, Labourer; and the Information sets forth, That the said Richard Hathaway being a Person of an evil Name and Fame, and an Impostor, and contriving and maliciously intending, one Sarah Morduck, the Wife of one Edward Morduck of Southwark, in the said County, Waterman, who for the whole Course of her Life was an honest and pious Woman, and not a Witch, nor using Witchcraft, Incantment, Charm or Sorcery, to bring into the Danger of losing her Life, the 11th Day of February, in the 12th Year of the Reign of the King, at Southwark, in the said County, in the Presence and Hearing of divers Persons, falsely, maliciously, devilishly, and knowingly, and as a false Impostor, did pretend and affirm himself, by the said Sarah, to be bewitched, and by the Occasion of that pretended Witchcraft, he could not eat, and by the Space of Ten Weeks to fast, and was affected with divers Diseases; and that he by drawing Blood from the said Sarah, by scratching, should be freed from the said pretended Witchcraft that the said Richard Hathaway did then, and there, with Force and Arms, scratch the said Sarah, and did draw the Blood of her, the said Sarah, by scratching; and thereupon, he, the said Richard Hathaway, did then, and there, falsely, maliciously, and knowingly, by affirming himself to be freed from the said Diseases, by drawing the said Blood, whereas in Fact and in Truth, the said Richard Hathaway was never Bewitched, and had not fasted for the Time aforesaid, nor for any great Time; and whereas in Truth and in Fact, the said Richard, then, and there, well knew himself not to be bewitched by the said Sarah, to the great Contempt of our Lord the King and his Laws, to the evil and wicked Example of all others in the like Case offending, and against the Peace of our said Lord the King, his Crown and Dignity, &c.

Mr. Raymond. May it please your Lordship, and you Gentlemen of the Jury, the Information sets forth, That the Defendant being a Person of an evil Fame, and an Impostor, and maliciously contriving to take away the Life of one Sarah Morduck, the Wife of Edward Morduck, who always was a good Woman, and not a Witch, nor using Witchcraft, the 11th Day of February, in the 12th Year of the Reign of the late King, at Southwark, in the Presence and Hearing of divers Persons, did falsely, devilishly, and knowingly, and as a false Impostor, pretend and affirm himself to be bewitched by the said Sarah, and that by reason thereof he could not Eat, but had fasted for Ten Weeks, and was also affected with divers Diseases, and that by his drawing Blood from the said Sarah, by scratching, he should be freed from his said pretended Bewitching: That the Defendant did thereupon scratch the said Sarah, and did draw the Blood of the said Sarah by such his scratching, and thereupon he falsely affirmed, that by drawing the said Blood he was freed from the said Diseases; whereas in Truth and Fact he was never bewitched, nor had he fasted as aforesaid, and he knew himself not to be bewitched by the said Sarah, in Contempt of the said late King, and his Laws, and against the Peace of his Crown and Dignity.

Mr. Conyers. May it please your Lordship, and you Gentlemen of the Jury: This is an Information against Richard Hathaway, for a Cheat, for endeavouring to impose upon the People a Belief, that he had been bewitched by one Sarah Morduck, and that as an Effect of her pretended Witchery, he vomited up Nails and Pins, and that he could not speak, nor open his Eyes, and that great Noises were heard in the House where he lay, and there could be no Remedy for him, but by his scratching and fetching Blood of this Sarah Morduck; and by this Means the poor Woman has been very much abused by her Neighbours, reputed a Witch, and brought to a Tryal for her Life as such; but that there was nothing but a malicious Design in it, will appear by the Evidence that will be produced. This Richard Hathaway was for some time an Apprentice with one Welling, a Blacksmith, in Southwark. About September last was Twelve-month, he gave out that he was bewitched, and he went to this Woman's House and scratched her; and the Pretence was, that scratching and fetching Blood of her recovered him. The Minister of the Parish, Dr. Martin, hearing that it was noised about, that the Defendant had been relieved by scratching Morduck, came and visited him. He could neither speak nor see, as he pretended; but understood what was said to him, and gave Assent to what was proposed to him, by holding up of his Hands. Dr. Martin tells him, he heard this Woman had bewitched him, and that his scratching of her was the Means by which he was relieved; and that

that he desired to see the Experiment himself, and therefore had brought *Sarah Morduck* there, and desired him to hold up his Hand, if he understood what he said; which he did. *Dr. Martin* had another Woman there at that Time (tho' that was concealed from *Hathaway*) and *Sarah Morduck*, by the Doctor's Direction, spoke to him, and came to his Bed-side, and the Defendant was by the Doctor bid to scratch her. When he came to scratch, the Doctor took the Hand of the other Person, and put it into the Defendant's Hand, and as soon as he had scratched the other Person his Eyes began to open, and he could speak; and immediately it was made known to himself and the Company, that the Person he had scratched was another Person, and not *Sarah Morduck*. But notwithstanding this, he was not satisfied, but still there was a Prosecution of *Sarah Morduck* for a Witch, and she was forc'd for some time to go and reside in *London*: And there the Rabble got about her and abused her; of which Complaint was made to a Magistrate in the City, and *Sarah Morduck* was had before him, and then *Hathaway* was sent for, and there again scratch'd her; and it was so far credited there, notwithstanding the Account given by *Dr. Martin* of the Experiment he made, that the poor Woman is committed for a Witch, and afterwards brought to a Tryal for her Life; and upon the Tryal it appeared plainly, that all this was a Contrivance, and there was no Evidence to charge her with the bewitching this Man; and after a long hearing, upon a full Evidence, the Jury acquitted her, and the Man was committed for a Cheat. But notwithstanding this Acquittal, he still goes on to persuade People, that he was bewitched; that he had fasted several Days together, and could not eat; and then for a further Conviction that he was an Impostor, and only endeavoured maliciously and falsely to impose this Belief on People, he is about the Beginning of last *November* committed to the Care of a Chyrurgeon, one *Mr. Kensley*, where for Two Days he did not eat; but afterwards his Stomach began to come to him, and when he could get any Victuals privately, he had a very good Stomach, and could Eat and Drink till he was drunk. And it was contrived, that Holes were made into the Room where he was, and the Maid that look'd after him was directed to give him Notice, that she would help him privately to Victuals; and from the second Day after he was there, till the Eleventh Day, he did constantly eat every Day, tho' he pretended he fasted all that Time, and had done so for Fourteen Weeks, and he was seen to eat through those Holes. All this, and much more, will be fully proved by the Witnesses. So that there has been a great Affront to the publick Justice of the Nation by this Proceeding, many having abetted it, and they have put up Bills in several Churches to pray for him against the Tryal, and gathered Money to support him in this false and malicious Pretence.

Mr. Brodrick. My Lord, the discovering and punishing such a Cheat as this, is highly necessary; and not only for the Vindicating the publick Justice of the Nation, but for the Sake of Religion it self, which suffers by nothing more, than by the countenancing of indirect Practices, made use of upon a Pretence of maintaining and supporting its Credit. Religion has in it self such Genuine and Native Truth, as must work Conviction upon the Understandings of all Persons, who allow themselves Leisure

to consider it without Prejudice: But when Tricks and little Arts are carried on for a Time, and attain a general Credit, and appear afterwards to be what are called *Pious Frauds*, they do far more Mischief than all the Good proposed by such Practices can make amends for. For when Men who are Sceptically inclined, find that the Generality of Mankind run away with Stories of this Nature, and those Facts afterwards prove undeniably false; they carry their Doubts on much too far, and are apt to conclude, that they cannot securely rely upon the Relation of others, and general Consent of Mankind, for the Certainty of any Fact whatsoever. It is therefore the Duty of all Persons, that are concerned for Religion in general, to endeavour to detect such Practices which weaken one of its most solid Foundations.

And, my Lord, we conceive this Prosecution very necessary, in order to the vindicating the Justice of the Nation. Here was a Woman that underwent a solemn Tryal, and upon a full Hearing was acquitted; yet afterwards, notwithstanding the thorough Examination of the Fact, and such an Evidence given as convinced every unprejudiced Hearer of the Innocence of the Defendant, and the Malice and Hypocrisy of the Accuser, such a Spirit did reign, that it was represented that the Defendant had hard Measure; and not only the Jury, but the Court too, were reflected on: Nay, it went so far, that after the Innocence of the Woman appeared by her Acquittal, a Magistrate (whose Name the Witnesses will disclose in their Evidence) gave publick Countenance to this Impostor (for by that Name I will venture to call him) and so far gave Credit to him, that when the poor Woman was abused by the Rabble, and her Life being in Danger, she made Application to that Magistrate for Protection; who, instead of affording it to her, encouraged her Prosecutors, as if she had really been guilty of the Witchcraft laid to her Charge; and considerable Collections were made for this Man, to support his Spirits under the Disappointment he met with in her being acquitted.

This Prosecution was necessary too, upon the Account of the poor Woman, who, unless some Check be put to the unruly Proceedings of unthinking People, is not yet safe in her House, but in Danger to be torn in Pieces: And it was thought most proper, that this Matter should be thoroughly examined in this Place, where the Scene of his counterfeiting, for the most part, did lie; that prepossessed People might be Ear Witnesses of the Fairness of the Proceeding, and that all Persons might have an Opportunity, if they thought fit, of offering any thing fit to be offered in his Defence.

My Lord, we need not trouble the Court with Evidence tending to prove, that the accused Person is not guilty of Witchcraft: She is acquitted of that, and it ought not to be suffered to be made a Dispute. But our Evidence will go beyond that, not only that there was no Colour or Foundation for the Charge on her of being a Witch; but that the Defendant did maliciously, without any Ground, and contrary to his own Knowledge, charge her with the having bewitched him. And I think our Evidence, all through, will prove this Matter fully upon him, that he was not Bewitched, nay, that he did not believe himself to be so, yet charged and prosecuted her.

The first Part of his pretended Witchcraft shewed it self, by his vomiting Pins: How that Business was managed, and how he was detected in it, the Witnesses

nesses will declare. And though we are not obliged to endeavour the giving an Account of what it was that induced him first to undertake this Imposture, I think it will appear by the Evidence, that he had some Aim and Prospect of Gain to himself. For, upon his first pretending to vomit Pins, we shall prove he had prepared a *Narrative of his own being Bewitched*; and he himself carried it to a Printer, that so he might bring a Concourse of People to him: But the Printer being a Man of some Understanding, look'd on him to be a Cheat, and would not meddle with the Copy. He practis'd his Trick of Vomiting Pins several times; but pretending to it once, before one who did not take every thing upon Trust, but was curious enough to observe nicely, and search him; *after some Resistance, several Rows of Pins were found in his Pocket.*

The next Discovery of his Imposture, was the Affair wherein Dr. *Martin* was concerned; who brought Two Women to him: The Particulars of which having been already opened, I'll not repeat them. The Doctor put an innocent Deceit upon him, but it was in order to disclose a vile Impostor. When the Woman was brought to him to be scratch'd, being conscious to himself, how little real Effect the barbarous Experiment would have upon him, the whole Company observed, that he felt three or four times from her Hand to her Elbow, before he scratch'd, that he might be sure it was a Woman's Hand: And when he had scratch'd, and felt Blood, his Eyes were opened, tho' it was the wrong Woman.

Another Instance of his acting a Part, with Design to impose upon the World, was, when he was carried from the *King's-Bench* to Mr. *Kensley's*. It was necessarily to be imagined, that if he eat or drank nothing, nothing would come from him, either by Stool or Urine. He considered this, and for fear it should be taken notice of, that he discharged himself after so long a Fast as he pretended; having Occasion to make Water, he found the Lid of a Box, and making Water in it, put it out of Sight, on the Bed's-Footer; and the first Discovery of his Counterfeiting at Mr. *Kensley's*, was by the dropping of that Water on the Cloaths of the Bed. After he had been Two Days there, (during which Time he really did not eat) Mr. *Kensley* not knowing but that his Complexion might incline him to such a Sullenness, as to starve himself, rather than directly confess his Cheat, having first examined his Mouth and Throat, and finding nothing there but as it was in all other Men, and that he had not only all other Organs, but that of Swallowing, without any Obstruction, as other People had, thereupon he framed this Design: He took Occasion to pretend a Quarrel with the Maid-servant who lived in his House, within the hearing of the Defendant, and told her, she was as very a Hypocrite as this Fellow; and after warm Words on both sides, and a seeming Resolution by her that she would quit her Service, the Master went away, leaving the Maid and the Defendant together. She, to insinuate her self into the Defendant, said, Her Master was an odd Kind of a Man, a dangerous Man, therefore she would not have the Defendant take any thing from him; and said, she would take care to supply him whilst he staid in the House. Then his Stomach came to him very readily, and he was so far from being unable to drink, that he drank Brandy and other Liquors to Excess, and this for several Days. But still those in the House being wary, thought it might be pretended by People who were very willing to believe

him, that this happened by the Charm's being dissolved, and that he was unable to eat before; and therefore it was thought advisable to bring in several Persons of Reputation, who should observe him through a Hole fit for the Purpose: Who, after they had seen him eat, examined him how long he had been a FASTER? And he made Signs, *that he had fasted Twelve Weeks, and clung up his Belly as a Proof of his Emptiness, according to his common Practice, though he had in their Sight, just before, eaten a plentiful Meal.* So that, Gentlemen, it is evident, that what he did was done maliciously, and with a Design to deceive and impose upon the World. After this, there being sufficient Proof of the Imposture, it was thought fit to bring him before a Court of Justice; thereupon this Information was exhibited against him: And if we prove it, I doubt not but that you, Gentlemen of the Jury, will do that Right to the Government, and to Religion, as to find him guilty of it, that he may be brought to the Punishment that such a Crime deserves.

Mr. *Phipps*. My Lord, I humbly pray your Lordship's Indulgence of the same Side; and beg Leave to observe, this Man was formerly troubled with Fits, and there was a Design laid by him and his Friends to create a Belief in People, that those Fits were the Effect of Sorcery and Witchcraft; but whether to get Money, or take away the Life of the Woman, or both, I submit to your Lordship's Judgment upon the Evidence. 'Tis certain, they proceeded so far as to bring her to a Tryal, and did what they could to take away her Life. And the better to carry on their Designs, and to prepare the World to believe the Impostor, we shall shew, that when he had these Fits, it was industriously published, that he was bewitch'd, and that it was by this Woman; and if he could but scratch her, he would be well. Dr. *Martin*, the Minister of the Parish, hearing of it, came to him; and to make an Experiment to discover the Imposture, brought another Woman with the pretended Witch, and said to *Hathaway*, If you think the scratching this Woman, meaning *Morduck* the pretended Witch, will do you any good; hold up your Hand: Which he did. Then the Doctor put the other Woman's Hand into his; and although at that Time he pretended to be Blind and Dumb, and he and his Friends would have had it thought, that he lay under the strongest of the Old Woman's Charms; yet he was apprehensive of what he did, and so jealous lest he should be imposed upon, and thereby his Imposture discovered, that he felt several times from the Wrist to the Elbow, to discover whether it was the Arm of the pretended Witch or no, before he would begin scratching; and then believing it to be hers, (it being much about the same Size) fell to scratching, and being told he had fetched Blood, his Eyes were immediately opened, and his Speech restored.

The Doctor thinking every body was convinced of this Impostor, and believing the poor Woman would be quiet for the future, went away.

But notwithstanding this Detection, the People were dissatisfied; and *Welling*, the Master of *Hathaway*, and others, being angry at the Discovery, pursued the Woman with more Malice than before: Where-ever they found her, they cried out, *A Witch*, and used her so barbarously, she was forced to leave *Southwark*, where she had lived many Years, and also her Employment, which had been profitable to her, and to go live in *London*.

Their Malice pursued her thither; and there *Hathaway*, with Soldiers and others, in a riotous manner,

ner, got into the House where she lodged, and would have broke open the Door where she was; but a Constable being called in, the Soldiers went off, and *Hathaway* was carried before an Alderman of the City; and the poor Woman and her Friends acquainted the Alderman of the riotous and illegal Proceedings, and prayed that Justice might be done upon them. But instead of punishing them, he was pleased to say, there was too great Provocation for what they had done; and giving Credit to the Accusation of *Hathaway* against the Woman, ordered her to be carried up Stairs to be searched, to see if she had any Teats, or other Signs of a Witch, and permitted her to be scratched by *Hathaway*, and then committed her for a Witch; refusing 500*l.* Bail, and dismissed *Hathaway*.

The Woman afterwards was brought to a Tryal at *Guilford* Assizes, and was acquitted, and he was committed for a Cheat. And to make more ample Discovery of the Imposture, he was taken to the House of Mr. *Kensley* a Chyrurgeon, and there he was obstinate, and would not eat for the first two Days; and a Quarrel was feign'd between Mr. *Kensley* and his Maid, he saying she was as bad an Hypocrite as *Rich. Hathaway*, and gave her Warning to be gone. The Maid seemed very angry with her Master, and said to *Hathaway*, Whatever you do, do not eat any thing that is given you by my Master or his Brother, for they are your Enemies; and promised she would help him privately to what he wanted. Whereupon he thinking she had been his Friend, and that he was safe in her Hands, took Meat and Drink from her from Day to Day, and eat heartily, and drank so very plentifully of Strong Beer and Brandy, and was so merry, that he play'd on the Tongs, and Danced, and shew'd Tricks before the Maid; but when any body else offered him Meat or Drink, he refused it, making Signs that he could not swallow, and signify'd to them, that he had fasted all the Fourteen Days that he had been at *Kensley's*, and that he had fasted many Weeks before. And as to his vomiting Pins, it will appear to you, that he carried Papers of Pins in his Pocket, to make use of on Occasion. But when he vomited in a Basin, and his Hands were kept down, and he not permitted to carry them up to the Basin, there was not one Pin in the Basin.

I will not trouble your Lordship with a Detail of all the particular Instances of this Cheat, but will call our Witnesses; and when we have proved the several Matters that have been opened, there will be no room to doubt but that the Defendant is an Impostor, and the greatest this Age hath produced.

Mr. *Coniers*. We will first call Dr. *Martin*, (who was sworn,) we will go on with our Evidence in the Course of Time. The first Time that Notice was taken in the Parish of this Business, was in September was Twelve-Month. Dr. *Martin*, pray give my Lord and the Jury an Account, Whether you know *Richard Hathaway*, and when was the first Discourse of this Witchery.

Dr. *Martin*. February last was Twelve-Month, (the Ninth Day, to the best of my Remembrance) I came to Church in the Afternoon, and after the Curate was gone into the Desk to read Prayers, I was going into the Pew; but hearing a great Hurly-burly in the Church, I sent the Sexton to know what was the Occasion of it. He brought Word that there was a Witch in the Church; so the Curate could not go on in reading Prayers; and the Sexton went and brought in one *Sarah Morduck* to me, and after her came a great many of the People into the Vestry;

so that tho' it be pretty large, it was presently filled. And this *Sarah Morduck* came up to me, and told me what was the Occasion of her being brought there. I ask'd her how she had behav'd her self amongst her Neighbours, that should give such Occasion to deal thus with her. She began to cry, and said, she had given no Occasion for it. I told her, I had nothing to do to enquire into the Business, but bid her continue in the Vestry, the whole Congregation being so much disturb'd, that they would go out of the Church if she staid in it. So I turned every body out of the Vestry, and locked her in. And Sermon being ended, I came into the Vestry, but found she was gone; and upon Enquiry, I understood the Reason was this, The Sexton told me, that she said, if she staid till all the People went out, she should be torn in Pieces, and begg'd of him to let her out while the Psalm was singing after Sermon, that she might go away undiscern'd, and accordingly she went. Afterwards many of my Parishioners made Application to me to go to *Richard Hathaway*, who was supposed to be bewitched; and told me, that it was taken very ill that I had deferr'd it so long. Upon this I went to him the next Day; and meeting his Master below Stairs, I ask'd him what Condition his Servant was in. He said, he was Blind and Speechless, and was a very dismal Object. I said, I desire to be excused, for I did not love to see any dismal Sight. But he said, he was very sensible, and knew every one by their Voice. And with that, I went into the Room, and his Master (speaking to *Richard Hathaway*) said, Mr. *Martin* is come to see you. Says I, *Richard*, I am come to see you, and if you know me, hold up your Hand: He did so, and took me by the Hand and kiss'd it. I ask'd him whether I should pray with him in the Prayers of the Church, and if he desir'd it, I bid him hold up his Hand: He did so, and I prayed with him, and he did seem to be affected with it, and lifted up his Hands several Times. Afterwards I took my Leave of him, and went down; and I discoursing with his Master for some Time, I ask'd him what he thought was the Reason of it; he said, an evil Tongue; and a bad Woman, *Sarah Morduck*, had bewitched him. But how do you know that? His Master then told me he had scratch'd her, and found Good by it; and said, he was utterly undone by it, and if he did not speak to the Church-wardens to take him off his Hands, he should be ruin'd. And hearing of this Scratching, it came into my Head to try an Experiment too; so I went away, but without discovering my Intentions. And about Ten-a Clock at Night, to prevent Jealousies, I went to the House where *Sarah Morduck* lodged, and found she was gone to Bed. I left Word that I desired to speak with her the next Day: But instead of her coming to me, her Brother, Mr. *Herne*, came to me, and thanked me for preserving his Sister from the Mob. I gave him the Reason why I did that, and I told him then what I intended to do. He answer'd me, I am afraid my Sister will be so silly that it will fail in the Execution. I bid him leave that to me, I would give such Directions in the Matter, that it was impossible for it to miscarry: So he left me to my Liberty to do what I thought fit. Then, says I, when I send for her, do you come with her. I went to the House where *Hathaway* lay, and went into the Room, where he lay with his Eyes fast shut, and seemingly Speechless. I spoke to him, I am informed you have received Benefit by scratching *Sarah Morduck* formerly, now if I can get this Woman for you to scratch her,

her, Do you believe by scratching her you shall receive any Benefit? If you do, hold up your Hand: So he did; and by and by there came a Message that Mr. Hearne and the Witch were come. I then desired Mr. Bateman, whom I brought with me for that Purpose, to sit by the Bed-side while I went down, lest any might inform him what was said, or he might over-hear any thing spoken below. So he sat there, and I went down, and I bid them let in as many as would come in; and when the Room was full, the Door was lock'd. I had before met with a poor Woman, whom I order'd to follow me, who received Alms of the Parish, designing she shou'd be the Person the Experiment should be try'd on. I told them I design'd to try another Woman, and I will make him believe he scratches the Witch. The Answer was, This will signify nothing. Wellings's Wife said, he had scratch'd another Woman, and it signify'd nothing. Now this was, to the best of my Remembrance, one *Willoughby*, who is a very big Woman, and very much unlike *Sarah Morduck*: But I desired the Satisfaction to see it done my self; upon which it was consented to. Then I ask'd the Woman I brought about it; I told her I would give her a Shilling if she would let this Man scratch her: She flew off, and said she would not suffer it for all the World. At last somebody said, here is a Woman will suffer her self to be scratch'd; and this was one *Johnson*. I ask'd her if she would suffer her self to be scratch'd; she said she would, if there would come no Damage by it. Says I, whatever Damage you sustain, I will make it good to you; and you being about the Size of *Sarah Morduck*, are a very fit Person. She did decline it for some time, but at last she consented; and after some Instructions given to her and *Morduck*, we went up together with many of the Neighbours. *Tho' you cannot see*, says I, to Richard Hathaway, *you can hear that there are many People in the Room; now, before all these People, Do you believe that Sarah Morduck has done you this Mischief? If you do, hold up your Hand.* He did so. *Do you believe you shall be relieved by scratching her? If you do hold up your Hand.* He did hold up his Hand. *Sarah Morduck, do you speak to him, that he may know you are the Person.* Says she, *What is the matter with you? Do you believe this Woman*, said I, *to be the Person that has bewitched you? If you do, hold up your Hand.* He held up his Hand. Then I ask'd *Sarah Morduck*, Are you willing this Man should scratch you? *Yes, with all my Heart, he shall have my Hearts Blood, if it will do him any good.* Then, says I, Pray give me your Hand. *Here it is.* And instead of taking her Hand, I took *Johnson's*, and clapt it into his; and I did observe, that two or three times he felt from her Wrist to her Elbow; and I said, I have something else to do than to wait on you, (and I spoke to him somewhat eagerly) if you will not scratch, I will be gone. Then he scratch'd her, and she whisper'd me in the Ear, she believ'd she should faint. I saw he had razed her Skin, and I said, you have drawn Blood, and you may be satisfy'd. With that he left off, and turned on his Back in his Bed. I turn'd out *Johnson* immediately, and I and *Morduck* stood together, and he lay still for some time; but I saw nothing would do, if I did not work him up. Now, says I, I would fain see how his Eyes are now; come some of you, look, do not his Eyes twinkle? With that both his Eyes were as open as mine are now, and he caught hold of the Apron of *Sarah Morduck*, and look'd her in the Face. Then

I told him his Mistake; and *Johnson* came in with her Arm bleeding. Says I this is the Woman you scratcht, you have not touch'd *Sarah Morduck's* Arm, nor fetch'd one Drop of Blood from her. The Fellow upon this seem'd very much cast down. Now, says I, give way to no Humours, and go about your Business, and serve God and your Master. Then I went down, and several People were satisfy'd. Well, says I to *Wellings*, your Man's Eyes are open now. It's well, says he, if his Eyes continue open. He can speak and see too now. I do not know, says he, it is strange if he should do well after this. Farewel, said I; and I went into *London*. Upon my Return, about Five a-Clock, I enquired about him, and found *there was* a greater Mob in the House than before; and I was accosted at my first coming in by the Master and Mistress of that Fellow: What have you done, you have ruined both me and my Family---

L. C. J. *Holt*. Who said so?

Mr. *Martin*. The Master and Mistress of this Fellow. Why, what Hurt have I done you? You have given it out to be a Cheat. Did you get any Money by it? No, I never did expect it. But pray go and look on him now, he is in a worse Condition than he was before. Here have been two Doctors, and they will take their Oath that he is bewitched. So I went away; but as I went out, I was stop't by *Johnson*. She cries out, What have you done? What is the matter, said I, Does your Arm fester? No; but this wicked Woman has spread abroad, that by scratching me he was relieved, and she is not the Witch, but I am the Witch; and it had reach'd her Husband's Ear, and he was become so jealous of her, that he would not have any thing to do with her. I went away after this; and going home, met her Husband, and gave him all the Satisfaction I could, that his Wife was no Witch. And I was informed the next Day, that *Sarah Morduck* had been dragg'd again to the House, some time after I went away, and brought to *Hathaway's* Bed-side, and he scratch'd her, and his Eyes were opened, and he eat and drank, and walk'd about. Upon this, I sent one Evening to him to come to me; and I took him into my Study, and said, What is the Meaning of it, that you make such a Trouble in the Parish, to condemn this Woman for Witchery? I see no Reason for it. Says he, she has done me a great deal of Hurt; said *Hathaway*, she has bewitch'd me. He said, that was the Woman had done him all the Prejudice he labour'd under. Then says I, you are a poor sort of Fellow, you must get your Living by your Labour; now you had better go into the Country out of her Reach. No, Sir, says he, I am bound Apprentice to my Master; and if I go, I shall be as bad there as I am here: And seeing I was bound here, this Parish must keep me; and if I should go into the Country, they will send me back again. Why will you not try? No, I will not. Do you not believe I am bewitch'd? No, I do not. Then, says he, I may as well not believe what you say in the Pulpit; I may say to you, as our Saviour said to the *Jews*, *Tho' you see Miracles, you will not believe.* Whereupon, I turn'd him away, and did not think I should have had any thing more to do with him. But about *Easter* last, Sir *Thomas Lane* sent to me, to desire me to come to him; the Witch being then got into *London* for Shelter.

I went accordingly, and when I came, I found *Hathaway*, his Master, and several others there. I found him looking briskly, and eating heartily, and

I ask'd the Meaning of it. It was answered, That before Sir Thomas Lane, he had drawn Blood of Sarah Morduck, and that had brought him to himself. I sent in my Name to Sir Thomas Lane, and he sent for me in. There was Sir Owen Buckingham, and I think, Dr. Hamilton. There were several People examined while I was there, about this Person; and after all, Sir Thomas Lane desired me to tell what I knew in this Matter. I gave an Account of what I have done here. Says Sir Thomas Lane, Richard Hathaway, Do you know that Gentleman? Yes. How? I have seen him in the Pulpit. What, no where else? Did you not see him by your Bed-side? No. Was not I with you at your Bed-side? No. All this while he was eating Bread and Cheese; till Sir Thomas Lane spoke to him, Lay by your Bread and Cheese, and be not so unmannerly. Says I, this is very unaccountable, that he should not know me; and yet he had said, That after Mr. Martin was gone, I was a great deal worse than I was before. This is a very unaccountable Thing, and I desire to know how this is consistent; therefore I do desire that his Master may be called in. And his Master was sent for, and Hathaway was going out to call him. No, says I, I desire he may not go out, I will call his Master my self. When Welling came in, I ask'd him whether he did not tell me that Hathaway was sensible from the Time I came to him? Yes, he was. Now I desire to know how these Things are consistent? And to put this out of doubt, that this Man did see me, the Woman stood at the side of the Bed by me, near the Feet, and he took hold of her Apron readily. How can he come off in this Matter? Says Sir Thomas Lane, They tell you he had a most violent Fit after, and that made him forget what was done before. Another Question was ask'd Mr. Welling, You know you desired me to get this Servant of yours off your Hands, and that I would speak to the Church-wardens about it. Now I am inform'd, this Servant of yours was going to Goodman's-fields, and as he was going, the Preis-masters met him, and he being a likely Fellow, they whipt him aboard. Is this true or no? Yes. And then you got a Letter, and went down and fetch'd him up. Yes. Then, says I, How came his Master to be so much concern'd to be rid of him as he pretended; and yet when he might have been rid of his Servant, would not take the Opportunity? To that Sir Owen Buckingham answer'd, It was only his Charity for him to fetch him from aboard; he could do no less, considering his Condition: So I came away. In a little Time after, I heard that this Sarah Morduck was bound over to the Assizes, and I was Subpana'd to give my Evidence the last Assizes at Guilford.

Then the Indictment was read, upon which Sarah Morduck was Tried and Acquitted of Bewitching Richard Hathaway.

Mr. Coniers. Dr. Martin, pray go on.

Mr. Martin. I was Subpana'd to go to the Assizes; but before the Assizes came on, there were Bills put up in several Churches, and particularly at Christ Church, where I hapned to preach. I read the Bill, *A poor Man being afflicted by an evil Woman, now coming to her Trial, desires the Prayers of this Congregation.* I went down to Guilford to the Tryal; and when I came up, I thought all People would be satisfy'd with the Justice that was done. But when I came to Town, I was abused by many People, both openly and privately: *You have the Blood of that innocent Man to lie at your Door; The Woman had been hang'd, if you had not saved*

her; The Judgments of God will fall on you. One Woman followed me to the Water-side, and said, I was the Occasion of the Ruin of that innocent Man; for she her self-----

L. C. J. Who is this?

Mr. Martin. I do not know her, I only give Evidence of the Abuses I underwent.

Mr. Coniers. Do you know any thing after the Assizes, how he behaved himself?

Mr. Martin. No, Sir, I know nothing of that.

Mr. S. Jenner. What was done by other People, ought not to be given in Evidence.

Mr. Broderick. If this Man does prove an Impostor, it will aggravate his Crime, if the Consequence be mischievous, and the World be still abused with a Persuasion that he was Bewitched.

Mr. S. Jenner. What was done by other People signifies nothing to us.

Mr. Broderick. This is very material, for it is a Confirmation that there was a Design carried on-----
(being interrupted.)

L. C. J. Holt to Serj. Jenner. What other People did, must not affect this Man. But hear what Answer can be given, you that are the Queen's Council?

Mr. Broderick. The Charge of the Information is, That he, as an Impostor, pretended himself to be bewitched by Sarah Morduck, to deceive the World, and prejudice the Woman. And what can be more proper Evidence of that Charge, than that altho' he really was not bewitched, yet he had so prevailed upon the Opinions of the People, that they still believe him bewitched, and affronted Dr. Martin for being instrumental in her Acquittal: 'Tis all of a Piece, a Continuance of the same Imposture.

L. C. J. Holt. This Evidence is proper. He is Indicted for a Cheat, for endeavouring to beget an Opinion in People by his fraudulent Practices that he is bewitched. Now, Dr. Martin says, the People were still possessed with such a Belief; and thereupon affronted him, because they thought he was instrumental in having the Woman acquitted. Now, Is not this an Evidence that his pretending himself to be bewitched, begat that Opinion in the People.

Mr. Serj. Jenner. What the Doctor has said all along, has been of what others have done.

L. C. J. Holt. No, it has been what he saw himself. You say this Man's Evidence is most of what others have said. Not so, He has by himself prayed with him, and tried an Experiment with him upon a wrong Woman.

Mr. Serj. Jenner. He tells you what Welling said, and others; How does this affect my Client, what another Man, or another Woman said?

L. C. J. Holt. He was insulted upon the Account that Hathaway pretended himself to be bewitched; blind, speechless, and not able to eat.

Mr. Serj. Jenner. My Lord, with Submission, other Peoples censuring the Doctor cannot be brought as Evidence against my Client, unless they make it appear that he had a Hand in it, unless he put them upon it.

L. C. J. Holt. What other People have said, abstractedly considered, ought not to affect Richard Hathaway; but if there be Evidence that Hathaway hath been guilty of Deceit, and a Design to deceive People, Will you not allow it to be given in Evidence, that the People have been deceiv'd? And how came they to be deceived, but by his feigning himself to be bewitched?

Juryman. Mr. Serjeant, If you have any Thing to object, we desire to hear what you say, for you speak so low we cannot hear you.

Mr. Serj. Jenner. I object to what the Doctor says by hearsay only.

Juryman. I believe that will be little considered by the Jury.

L. C. J. Holt. The Information is for an Impostor and Cheat: Now what is that? A Cheat is a Design to impose on the Credulity of others, to induce them to believe a Thing that is not true. Now Dr. Martin's Evidence is what Hathaway did, and that People did believe him to be bewitched; and they abused Mr. Martin, and told him he had done very ill in the Case of this Woman; and if it had not been for him she had been Condemned.

Mr. Martin. I have only one Thing more to say; it was reported that I had been bribed: I was told I had received several Guineas; that the Judge was Bribed and the Jury Bribed, and the Judge would not suffer the Woman to be searched, he being Bribed.

Mr. Coniers. Doctor have you done?

Mr. Martin. I have.

Mr. Coniers. We will next call Mrs. Johnson who was scratched.

Mr. Broderick. Sir, I think you mentioned a Gentleman that you sent for up? Where is he?

Mr. Martin. He is here.

Mr. Broderick. What is his Name?

Mr. Martin. Mr. Bateman.

Mr. Broderick. We will call him to give an Account of that.

Mr. Coniers. We will first call this Woman. *Mrs. Johnson.* Were you at any time with Dr. Martin at such time as Hathaway pretended to be Bewitched?

Mrs. Johnson. Yes.

Mr. Coniers. Then pray give my Lord and the Jury an Account of what you know about it.

Mrs. Johnson. I went into the Room to see Sarah Morduck.

Mr. Coniers. What Room?

Mrs. Johnson. I was in the Room where Dr. Martin fetched her to be scratch'd; and Dr. Martin told me, he designed that he should scratch some other Woman; and he desired me to let him scratch me; but I denied him, and said, I was a Wife, and was not willing; at last I consented, and he told me I must not speak when I came into the Room where Hathaway was; and he brought me to the Fellow; and he said to him, If you think the Blood of this Sarah Morduck will do you any good, hold up your Hand. Which he did. Then he bid Sarah Morduck speak to him; which she did. Says he; Are you willing this Man should scratch you? She said, Yes: My Hearts Blood, if it will do him good. So with that he scratch'd me, and Sarah Morduck cry'd out. He had razed the Skin off my Arm, but no Blood came presently. Dr. Martin desired me not to speak, and I did not; the Blood came afterwards, but none then.

Mr. Coniers. Were you in the Room when the Doctor spoke to him?

Mrs. Johnson. I went into the other Room; Dr. Martin put me out before him.

Mr. Coniers. Was you not brought in again?

Mrs. Johnson. No. I went in of my own accord.

Mr. Coniers. In what Condition was he then?

Mrs. Johnson. He looked in this manner, his Eyes staring open.

L. C. J. Holt. Were his Eyes shut when you first came and was scratch'd, or open?

Mrs. Johnson. No, they were fast shut.

L. C. J. Holt. Did he speak then?

Mrs. Johnson. No, he said nothing when I came back, till his Eyes were open, and then he said, O Christ Jesus, or O Lord Jesus!

Mr. Phipps. But did he feel your Arm before he scratch'd you.

Mrs. Johnson. Yes, over and over.

Mr. Coniers. Call William Bateman. (Who appeared and was sworn) Pray give an Account what you know of this Defendant's vomiting Pins.

William Bateman. About a Twelvemonth ago I went to see Richard Hathaway.

Mr. Coniers. Were you desired to go to him by Dr. Martin?

William Bateman. I can't remember that.

L. C. J. Holt. Where do you live?

William Bateman. In Pembroke-shire.

Mr. Coniers. Then you do not remember any Thing that past then.

William Bateman. I do not say I do not remember any Thing, but I do not remember whether Dr. Martin desired me to go to him.

Mr. Coniers. Give an Account of what you know about his vomiting Pins.

William Bateman. About this time Twelvemonth, on a Sunday Night, a Woman came to Dr. Martin's House to enquire for him. I went to the Door; and the Woman said, If Dr. Martin would but come now, he might see Hathaway vomit Pins. Can I see him, says I? Yes, says she. So I went immediately; and in the House there were little Chinks that I could see through; and I saw him walk about the House, and heard him talk to the People, and I stood some time to hear him. At last I knock'd, and he came and let me in; and seeing me, he seemed to be troubled, and feigned himself to be in some Pain.

Mr. Raimond. You say you look'd through the Chink, How was he then? Repeat that.

William Bateman. He seemed to be as well as he is now.

Mr. Raimond. What did you do then?

William Bateman. I knocked, and he let me in; and when I came where the Light was, he knew me; and I said to him, I hear you spew Pins. Yes, says he. Says I, Prithee let me see thee. So he sat on a low Seat, and they gave him something in a Cup, and by drinking this I was to see him vomit Pins; and he took some Drink, but as far as I could perceive he did not swallow any.

Mr. Coniers. What was the Effect of it?

William Bateman. He pretended then to be in an Agony, and vomited several times, and there were Pins on the Ground. I had the Room swept very clean, and gave him the same again. He vomited again, and there were abundance of Pins on the Ground again. I believe he vomited Fourteen or Fifteen Times, and I believe there were some Hundreds of Pins on the Ground; but I thought the Pins were dropt from one or other; and I took up some of them, and they were dry, and I took up two or three in a Chain; and I said, I believed those were the Pins that were shewn at our House. No, no, says his Master, these are not the same; and he did endeavour to satisfy me that he did vomit these Pins; so I desired he might have a Pot to vomit in; and I had a Pot brought and made very clean, and I searched his Mouth and found no Pins there; and I held the Pot to his Mouth close, and

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he often endeavoured to put his Hand to the Pot, and I would not suffer him, for I perceived his Hands often moving to his Pocket. He vomited several Times, and there were some Pins scattered on the Ground, but none in the Chamber-Pot. Says I, these Pins do not come out of his Mouth; but the People were very pressing on me to believe they did.

L. C. J. *Holt*. Who were they?

William Bateman. They were all Strangers to me. Upon this I told them I believed he had a Slight of Hand to convey them there, and I took hold of his Pocket. He stopt my Hand, and would not let me put my Hand into it. But after some time, says one, Let him, let him search your Pocket. So I did, and took out several Things, and among the rest several Parcels of Pins, and I believe these were they that he convey'd on the Ground.

L. C. J. *Holt*. Did you see him take them out of his Pocket?

William Bateman. No, but I took out several Hundred.

Furyman. What sort of Shape were they of?

William Bateman. They were of a very odd kind of Shape.

L. C. J. *Holt*. Were they straight, or crooked?

William Bateman. They were crooked in strange Figures, like them on the Floor.

Mr. Broderick. And he made a great Difficulty of letting you meddle with his Pocket.

William Bateman. Yes.

Mr. Phipps. And when you would not let him put his Hand to the Pot, there were none in the Pot, but only on the Ground?

William Bateman. Yes, Sir.

Furyman. Did you see any Pins come out of his Mouth?

William Bateman. No, Sir.

Mr. Serj. Jenner. What became of the Pins you saw on the Ground; you say you saw abundance, what became of them?

William Bateman. They were swept away.

Mr. Serj. Jenner. Who swept them away?

William Bateman. Some of the Family.

Furyman. I think he says that several of the Pins were taken up dry, were any of the Pins that were on the Ground dry?

William Bateman. Yes, and I said, these Pins did not come from him.

Mr. Serj. Jenner. When was this?

William Bateman. About a Twelve-month ago.

Mr. Broderick. Now, my Lord, we will shew your Lordship, that he drew up a Narrative for the Press, giving an Account of this Business. Call Richard Ball, (who was sworn.) *Mr. Ball*, pray give an Account what you know of Richard Hathaway's endeavouring to print a Story of his Vomiting of Pins.

Richard Ball. About a Twelve-month ago, in December, Richard Hathaway brought a Writing, and withal a Dish-full of crooked Pins, and told us, those Pins he had vomited, and that he had been afflicted by a Woman in Southwark, and I think he said he had not eat any thing from my Lord-Mayor's Day.

Mr. Broderick. What did he desire you to do?

R. Ball. To print his Paper. And after he had told this Story, he said he had been with a Woman in Goodmans-fields. There was a Boy with him. And he desired us to print his Paper. It related the

Story of his Vomiting of Pins. He said he had taken *Quicksilver*, and it would not move him; and Madam Goodwin was mentioned several times in the Papers, that she had cured him.

Mr. Coniers. How came it that you did not print his Paper?

R. Ball. My Master stood by; says he, You look very well; I will have nothing to do with it; I believe you are a Cheat. I believe no such thing, says he; and upon that went away. But the next Day there was a Paper printed by somebody; and Richard Hathaway comes to us afterwards, and says, You have printed a Paper, tho' you would not have it of me: But it is not true, says he; I can give a better Account.

Mr. Broderick. Then he talked very freely to you, tho' he had not eat in Six Weeks before?

R. Ball. Yes, Sir.

Mr. Broderick. And he look'd very well?

R. Ball. Yes, Sir; and we wonder'd at it.

Mr. Coniers. Call Mr. Hearne, (who was sworn.) *Mr. Hearne*, pray give my Lord, and the Jury, an Account what you know of this Matter.

Mr. Hearne. About September was Twelve-month, my Sister was fall'n upon by this Hathaway, and Scratched and Abused in a barbarous Manner; and about Six Weeks after, she was scratch'd again. After this we went before Justice Riches, and Justice Riches perswaded them to be quiet, and not to trouble this Woman; and he perswaded her to remove to some other Place. After this there was a Tumult made about her in Newgate-street.

Mr. Coniers. Were not you present when Dr. Martin was with the Defendant.

Mr. Hearne. Yes, Sir.

Mr. Coniers. Then give an Account of that.

Mr. Hearne. I went to Dr. Martyn; and Dr. Martyn told me that he would try a Stratagem, (to see whether he was bewitch'd,) by making him Scratch another Woman. I told him, I was afraid we should be betray'd. Says he, Let me alone to manage it: So I said no more. Says he, Do you go and fetch Sarah Morduck to me, and I will go before. So I came with my Sister to Welling's House where Dr. Martin was, and there was a House full of People; and then he ordered the Door to be shut; and then Dr. Martyn left me at the Bed-side, and he got a Woman that was willing to be scratch'd. She refused at first, but afterwards consented. And then Dr. Martyn brought them into the Room where Hathaway was; and he ask'd him if he did believe that scratching of Sarah Morduck would do him any Good; if he did he should hold up his Hand; and he held up both Hands. Says he then to Sarah Morduck, Are you willing to be Scratch'd? Yes, her Hearts Blood to do him good. Then give me your Hand, says he; but instead of hers he took Mrs. Johnson's Hand, and gave it into Hathaway's Hand. And Hathaway took her by the Wrist, and felt her several times. Then says Dr. Martyn, if you will scratch her scratch her, I cannot wait on you always. Then he fell to work, and Dr. Martyn said, he will open his Eyes presently, there is Blood enough; and he presently opens his Eyes and catches Sarah Morduck by the Apron, and holds her as fast as he could, and the Woman that was scratch'd was gone into the other Room; with all the Strength I had I cou'd hardly loosen his Hands from Sarah Morduck. Now, says Dr. Martyn, you are mistaken, this is not the Woman you scratch'd; and then his Countenance chang'd, and he

he looked like a Fool, he was so surprized. Then says Dr. *Martyn*, Where is the Woman that he scratch'd? And I fetch'd *Johnson* out of the other Room, and show'd him her Arm, that she was the Woman he had scratch'd. Says Dr. *Martyn*, I see what you are; go and mind your Business; or to that Effect; and then we went away. This was about Twelve or One a Clock the 11th of February. And when we were gone, the same Day, as soon as it was Dark, they got half a Dozen lusty Fellows to go to *Sarah Morduck's* House, and there they abused her.

L. C. J. *Holt*. How do you know that? Did you see it?

Mr. *Hearne*. My Lord, I will tell you presently. When she had had this Mischief she sent for me; and when I came, her Shift on her Back was as wet as Muck. She sent for me, because she had none to assist her but me, and I found her that Night in that Pickle. They said, as soon as we were gone, the Fellow was bad again, and they have put this Trick upon us; but we will have the right Witch to scratch her.

L. C. J. *Holt*. Who was at the House that Night that you say she was in an ill Condition.

Mr. *Hearne*. There were several at the House then, Mrs. *Sarah Hays* the Landlady was there, and others.

L. C. J. *Holt*. You say they were in a Hubbub, and would have the right Woman scratch'd. Who was it that would have it so?

Mr. *Hearne*. I heard so. But when I came to her, I found her in a lamentable Condition. Then I went to Justice *Riches*, and desired his Warrant to take some of them; and he granted it, and I took up one *Osburn*; and when I came with him to Justice *Riches*, we had no Body to swear that she was lame a-Bed, and so he was discharged; and Justice *Riches* said, if there be no other to prove it on the Tryal you will spend a great deal of Money to no Purpose, and therefore he let him go. So she was removed to *Paul's Wharf*, but a Company of Fellows follow'd her thither.

L. C. J. *Holt*. How do you prove that?

Mr. *Hearne*. I heard of it, and I desired the Landlord to send for a Constable; he did so; and when we came there, all the People made their Escape, except *Hathaway* and another Person. So then she was carried before Sir *Thomas Lane*; and they telling him that he had vomited Pins, and other Things, Sir *Thomas* was perswaded to believe it. I told him, these Fellows had disturbed this Woman's Peace, and very much abused her. Sir *Thomas*, Will you not let me know who this Man is?

L. C. J. *Holt*. What Man do you mean?

Mr. *Hearne*. *Jones*. I begg'd, Pray let me know this Fellow's Name. Says he, it is no Matter, there was Provocation enough. And then when we were talking of the Pins, Dr. *Hamilton* look'd in *Hathaway's* Mouth, and found his Mouth very well; and he gave him Beer; and he, when he had taken it, struggled with all his Might to keep it out; then he cry'd out. Let her be scratch'd, said Sir *Thomas*. Dr. *Hamilton* said, Forbear a little, let us see the Effect of this Beer, and so they forbore a little longer. Then they talked again of the Pins, and Dr. *Hamilton* would have her scratch'd again; so he spake to the Woman about it, but she would not consent, for she said she had been abused, and would not be scratch'd, unless they would secure her for the future. But Sir *Thomas* would have her

scratch'd; and so she was; and then when she was scratch'd, and he had drawn her Blood, the Fellow brustled about like a Cock-Sparrow; and then they call'd for Bread and Cheese; and so he that before pretended he could not swallow any Thing, show'd like an Antick to the People, for he was very greedy. And when he had eaten that, he call'd for more; and *Welling* said, Pray let him not have it, it will do him hurt, because he has not eat so long. Then Sir *Thomas Lane* ordered her to be stript, and she was stript above-Stairs, and then he would commit her to Prison.

L. C. J. *Holt*. Why? Did any Body say she had any Thing extraordinary about her?

Mr. *Hearne*. No. Dr. *Hamilton* said she had nothing about her; I offered a Hundred Pound Security for her; and Sir *Thomas Lane* would not take it. But when Dr. *Martyn* had been with him at Night, I Bail'd her out.

Mr. Bar. *Hatsell*. Was this *Hathaway* dumb when he was at Sir *Thomas Lane's*?

Mr. *Hearne*. He spoke before, and when Sir *Thomas Lane* bound her over to the *Old-Baily*; and all that time he was as well as could be.

Mr. Serj. *Jenner*. Was you at the Assizes at *Guilford*?

Mr. *Hearne*. Yes, and gave Testimony for her there.

Mr. *Coniers*. My Lord, we have a great many others that were present with Dr. *Martyn*; but we have proved that Matter sufficiently. Now we will show how he behaved himself at Mr. *Kensy's*. Call Mr. *Kensy* (who appeared, and was sworn.) Mr. *Kensy*, Do you know *Richard Hathaway*?

Mr. *Kensy*. Yes.

Mr. *Coniers*. Was he not committed to your care?

Mr. *Kensy*. Yes.

Mr. *Coniers*. When was it?

Mr. *Kensy*. In *November* last.

Mr. *Coniers*. Now pray give my Lord and the Jury an Account of what you know of his Fasting.

Mr. *Kensy*. He was brought to my House the First of *November* last about Noon. I went to see him at the *King's Bench*, where about Nine in the Morning I found him in Bed. The Servants in the Prison told me his Tongue was swell'd. At my Request he put out his Tongue, which I found in a very good State and Colour, free from any Induration or Contraction. I observ'd the Glands under the Tongue, also his Throat, so far as I could see, free from any preternatural Accident or Impediment. He was brought to my House about Twelve the same Day. I kept him in the Room where we dined, and offer'd him Meat and Drink several Times, which he refused. About Eight at Night we put him to Bed, and took his Cloaths out of his Chamber. The next Morning we offer'd him Meat again, and he refused to eat; and we brought him his Cloaths, and he was surly and would not rise. At Night I offer'd him a Glass of Cordial, which he also refused. At the same time we found his Rug wet, which we discovered to be his Urine dropping through the Tester of the Bed, he having hid his Urine upon it in the Cover of a large Box, through which it dreined. And I threatned to discover him, and said, Pray discover who set you to work in this Matter: I look on you as a poor innocent Fellow, and that you are set on by others that have more Wit; but he would discover nothing. The next Morning I forced him to rise, and I found him resolute in his Humour of Fasting: I found Persuasions and Promises of a Pardon could not prevail,

prevail, nor Threatnings that I would starve him if he would not confess; so I feigned a Quarrel with my Maid, and railed at her in his Presence, saying she was as very a Hypocrite as *Richard Hathaway*, and that I would be troubled no more with her. And I order'd her, so soon as my back was turn'd, to rail against me as bad as she could, and charge him not to take any Thing from me or my Brother, for she alone would take care to feed him. After this we took him up every Day, and contrived Places and Holes, whereby we discovered him to eat and drink heartily, sometimes Three Times a Day, he thinking no body was Witness to it but the Servant. Particularly one Day I had Fish and Oysters for Dinner, and I order'd the Maid to give him some, and to give him strong Beer and Brandy too, and he eat and drank freely. And afterwards he brought up his Dinner, and I coming in, told him I was glad the Witch was found out at my House, and I told him to morrow I would find out the Pins and Needles. He took the Poker, and raked the Ashes over it, that it might not be seen what he had vomited.

L. C. J. Holt. But did he know that you saw him eat?

Mr. Kenfy. No, my Lord. The next Day I offer'd him something to eat, to see if I could make him speak. But he pretended to be so faint that he could not get off his Chair; this was after he had eat several Days. And he danced and play'd on the Tongs.

L. C. J. Holt. But did you not see him drink?

Mr. Kenfy. Yes, my Lord.

L. C. J. Holt. But did he know you saw him?

Mr. Kenfy. He thought no body saw him but the Maid; but I saw him drink.

Mr. Broderick. How did you see him?

Mr. Kenfy. I hid my self in a dark Place in my own Buttery, and did see him eat and drink several Times. I did not see him eat every Day. But the Eighth Day he endeavour'd to make his Escape. My Brother and my Sons went into his Chamber with his Cloaths, and *Hathaway* having dress'd himself, watch'd his Opportunity, and jump'd out of the Room, and bolted them in. But they staying so long, I sent the Maid up, and she met him stealing down Stairs, and then he went back again and let them out. On Monday the 10th I gave him his Cloaths, and I being alone, he had not Patience to dress himself, but immediately seized me; but struggling with him, he pretended Feebleness, and fell on the Bed.

Mr. Coniers. Can you give Account of any thing afterwards?

Mr. Kenfy. Yes.

Mr. Coniers. What Discourse had you with him then?

Mr. Kenfy. I will tell you. He was very surly. That was the first Day he spoke. I came to him, and told him he was a Fool; that his Friends were in Custody, and had not been true to him, but had discovered the whole Matter; and advised him to make a Discovery himself; and if he would, I would go with him to my Lord Chief Justice. Upon that, he cried passionately, and said he would tell the Lord Chief Justice the whole Truth. But my Lord not being at his Chamber, he in about an Hour recanted, and said he was bewitch'd. When he cried, he ask'd if his Mother was safe.

Mr. Coniers. Did he at any Time tell you how long he had fasted?

Mr. Kenfy. Yes. He made Signs that he had fasted several Times when we had seen him eat, and he took his Cloaths and wrapt them over him. And I said unto him, How long hast thou fasted before you came to my House? He made Signs that he had fasted Ten Weeks.

L. C. J. Holt. Did he pretend to be Dumb?

Mr. Kenfy. Yes. And I ask'd him how long he had fasted at my House; and he pointed Two more.

Mr. Coniers. You say he made Signs that he had fasted Ten Weeks before he came to your House, and Two Weeks while he was there. Now how often did you see him eat at your House after the Two first Days?

Mr. Kenfy. I saw him eat several Times at Noon and Night. And after I had seen him eat, I would have perswaded him to eat, and he made Signs still as if he could not eat, and shook his Head.

Mr. Serj. Jenner. How did you know what he meant by shaking his Head?

L. C. J. Holt. How did you know what he meant by his counting? How did you know that he meant Weeks?

Mr. Kenfy. He counted upon his Fingers, my Lord. I ask'd him how many Weeks he had fasted before he came to my House, and he counted Ten Fingers; and how long he had fasted at my House, and he counted Two more. And I ask'd him whether he had fasted Twelve Weeks then, and he made Signs of Twelve.

Mr. Serj. Jenner. You say he was dumb, and yet could hear.

Mr. Kenfy. Yes.

Mr. Serj. Jenner. How is that likely, that he should hear, and yet was dumb?

L. C. J. Holt. Cannot a Man hear, tho' he be dumb?

Mr. Coniers. Call *Elizabeth Baker*. Where is she? (*She was sworn.*) Were you a Servant to *Mr. Kenfy* when this Man was at his House?

Eliz. Baker. Yes, I was.

Mr. Coniers. Then pray tell my Lord and the Jury what you know of him.

E. Baker. *Richard Hathaway* came to my Master's House about Twelve a-Clock on Saturday. When we went to Dinner at One a-Clock, my Master offer'd him Meat and Broth, and he refused it; he was ask'd to eat several Times, but still refused it. They ask'd him again at Night, and he shook his Head, and would not eat. And when he went to Bed, we took his Cloaths, and lock'd him in. And the next Day he refused to rise, and at Noon they went to see if he would eat any Thing, and offer'd him a Glass of Sack, and he refused it. And on Monday Morning he was ask'd to rise again, and he would not; but my Master would have him rise, and would have him come down and sit by the Fire; and when he was come down, ask'd him to eat, but he would not. And at last he look'd in his Mouth, and said he saw nothing but that he might eat and drink if he would. And my Master said to me, When I am with him I will call you up, and take an Occasion to fall out with you, and when I am gone, do you rail at me, and tell him he should take nothing of me or my Brother. And so I did; I said my Master call'd me Presbyterian Jade, but I said I did not know what Religion he was of; and that he was not more willing to have me go, than I was to be gone. And I told him

he should take nothing of my Master or his Brother, I would look after him while I stay'd. So I went out of the Room, and fetch'd a Glass of Brandy, and gave it to him. But there was a Child with me, and he refused to drink it, with a Sign pointing to the Child; so I said I would hide the Child, and I stood between him and the Child; and then he drank it. And the same Day I gave him some Pudding and Small Beer; and at Night I carried him a Pint of Ale and a Toast, but found he had not eat the Pudding: I saw him eat the Toast and drink the Ale; but I did not see him eat the Pudding, tho' I suppose he eat it afterwards, for I saw it no more.

Juryman. In what Manner did you convey this Provision to him?

E. Baker. My Master gave me the Key, and I went in and staid while he eat and drank, and I made him believe I had got the Key by Stealth. And I gave him a Glass of Brandy on Monday Night, and he drank it. And the next Day he eat and drank; he drank some Broth, and eat boil'd Mutton at Noon; and at Night he eat a Chop of Mutton, Bread and Cheese, and drank Beer and Brandy. On Wednesday we had a Shoulder of Mutton roasted, and after they had dined, I gave him a Plate of Meat, and he eat it in the Kitchen with me, and drank freely. And so he did every Day after while he was at our House.

Mr. Coniers. Did any ever see him eat, besides your self?

E. Baker. Yes. That Day that we had Fish, he was in the Kitchen; and being there, he went and wash'd his Hands, and I gave him a Plate of Fish, and set it by him; and he took it, and eat it. And I gave him a Bottle of Stout, and told him it was my Birth-day, and he must drink my Health; and after he had drunk it, he pointed to his Forehead, signifying it was got into his Head; and about two Hours after, he was very merry, and danced about, and took the Tongs and play'd upon them. But after that he was mighty sick, and vomited sadly. And, says my Master's Brother, we shall see the Pins and Needles now. And to hide it, he falls a pulling the Fire over it.

Mr. Coniers. Did any of the Neighbours see him eat?

E. Baker. The 11th Day of the same Month, we had a Shoulder of Veal for Dinner; and after Dinner, my Master bid me set by some for him, and he would have some Gentlemen to see him eat it. They were accordingly hid in the Buttery and Coal-hole; and Richard Hathaway was brought down, and he took his Bread and Meat, and eat heartily, and drank with it.

Mr. Raymond. Who were those Gentlemen that saw him eat?

E. Baker. Mr. Collet, Mr. Norbery, Mr. Page, and Mr. Stanton.

Mr. Coniers. These Persons are here.

Mr. Serj. Jenner. My Lord, all this is of what was done after the Tryal, this Evidence ought not to be given; the Record bears Date the first Day of the Term, and all this is said to be done in November; it is all after the Record.

L. C. J. Holt. It is to prove the Imposture committed before now. What Mr. Kensy says of his pretending to fast twelve Weeks, tho' two or more be not within the Time of the Information, I hope they may give it as Evidence subsequent, to prove what was done before.

Mr. Serj. Jenner. But I oppose all this of eating at their House.

L. C. J. Holt. It is an Evidence of his cheating since that Time, and that out of the Information; but it is an Evidence also to prove that his pretended Fasting before was a meer Deceit; for he then pretended to have fasted Ten Weeks before he came thither, and after pretends to continue fasting in the same manner; if that be proved to be a Fraud, it is strongly to be inferred, that his pretended fasting before was so too.

Mr. Serj. Jenner. But then they may not give Evidence in Matter after.

L. C. J. Holt. Matter afterwards that proves a Thing done before; for if a Confession be made subsequent to an Indictment for a Crime, Shall not that Confession after be brought as Evidence of the Thing done before? Sure it may.

Mr. Serj. Jenner. And will that prove what was done before?

L. C. J. Holt. It is certainly so. The Thing is, Whether I can give in Evidence any Thing after to prove what was done before. If he pretends to fast Twelve Weeks, Ten Weeks before he came there; and the Two Weeks after, he did not fast but only pretended it: Whether what he did after be not Evidence of what he did before? Sure it is. For he that cannot hold out fasting Two Weeks, but was glad to eat, tho' he pretended to fast, may strongly be presumed to have eaten during the Ten Weeks, tho' then he pretended to fast.

Mr. Coniers. Call Mr. Stanton, (who appear'd) Was you at Mr. Kensy's House to see Richard Hathaway eat?

Mr. Stanton. Yes. Mr. Kensy came to me the 11th of November, and desired me to come to his House, to see whether he eat or drank or not; and I went, and was put into a dark Place, and I saw the Victuals before he was brought; there was five Slices of Meat, and Bread, and Beer. And he was brought where it was, and he looked about him earnestly to see if any one saw him, and then he fell to, and eat as heartily as any Man could. And hearing a Noise whilst he was eating, he run away with it, and set it on the Dresser. The Maid said, there is no body coming; and then he went to it again, and eat it up, and drank the Drink, and sat down by the Fire. And afterwards we went to him, and carried a Bottle of Drink with us, and drank to him; but he made Signs that he could not drink, and show'd us that his Belly clung to his Back, which we thought was very strange.

Mr. Coniers. Call Matthew Shipp, and Baxter. (They did not appear.) *Jo. Hunt.* (He was sworn.) My Lord, we call this Man to give you an Account of the strange Noises that they pretended were heard in Mr. Welling's House; and we will make it appear how that Noise came. *Mr. Hunt,* pray give an Account what you know in this Matter.

Jo. Hunt. My Lord, an Acquaintance of mine, one Kelpin, told me that he had watch'd with Richard Hathaway one Night; and the next Day he came to me, and told me he fell asleep, and had not watch'd him as he ought; and desired me to sit up with him, and to observe him as narrowly as I could, and see if I could find any Deceit in him. Accordingly I did so; and when I came into the Room, I sat down on the Bed-side. There were two Gentlemen in the Room, Mr. Pocock, and Mr. Butler, and

Thomas

Thomas Welling. He lay as if he were almost Dead. In a little Time his Master, *Tho. Welling*, brought in some Pins in a Coffee-dish, and said he had brought them up that Day, and that he believed he would bring up more. And after this seeing of the Pins, I went to Mr. *Pocock*, and said, I did imagine the Pins might lie in his Mouth, rather than in his Stomach; and therefore it was very proper to have his Mouth search'd. And Mr. *Pocock* replied, Who will venture to do it? And I said, If they would wash the Fire Poker clean, and put it into his Mouth, to prevent his biting my Finger, I would do it. Immediately upon this *Hathaway* raised himself, and began to make a Reaching, as tho' he would Vomit; and then *Welling* and his Wife said, now he is going to bring up Pins. Thereupon I kneeled down by the Bed-side with a Candle in my Hand to observe his Morions; and after he had strain'd some times, he made a Motion with his Tongue at each side of his Mouth, but I could not perceive any thing come up his Throat, tho' his Mouth was wide open; and by and by he drew up his Mouth, and turned out two or three bright Pins, and presently after two more, which I catch'd in my Hands, and shew'd them to the Company, saying, they are bright and new; and his Master said he believed they came out of some Chandler's Shop. Afterwards *Hathaway* lay down very quiet, and so continued for some Time. And *Welling's* Wife coming into the Room, ask'd why the Charms were not put on? I replied, I have been told the Charms have been always taken off from him by the Witch; but was resolved to watch so narrowly that Night, that they should not be taken from him. Then *Welling* and his Wife offering to put on the Charms, *Hathaway* made a struggling, as tho' he was unwilling to have them on; and *Welling* said, you have always found Benefit by it, Why will you not? They are order'd by Mr. *Butler*.

L. C. J. Holt. What were those Charms?

Jo. Hunt. Three little Things in black Bags, I did not know what they were. And they ask'd him whether he was willing they should be put on; if he was, he should hold up his Hand; but he was unwilling. But I said I was minded to have them put on; so he lay still, and Mrs. *Welling*, or some other Woman, sew'd them to the Bosom of his Shirt. After the Charms were put on, I watch'd to see what would become of them; and perceiving *Hathaway* to make several Motions with his Hands about them, I struck his Hands. I bid him either keep his Arms straight in the Bed, or else put them out of the Bed, for that the Charms should not be taken off that Night. Then I and the Company sitting still about the Bed, *Welling* said, Harken, you will not believe; hear what a Noise there is, the like is heard here almost every Night. Whereupon all were silent. At last I heard a small scratching or rubbing at the Bed's-feet; and putting my Head close to the Bed's-feet, listning, I heard something screek; and perceiving the Bed-cloaths stir, I took hold of the Fellow's Foot, and said, I have caught the Witch that made the Noise. I thought it had been Mice at first; but seeing the Cloaths move, I catch'd his Foot. Thereupon *Hathaway* rose up, and in a Passion made a Motion towards me with both his Hands; but I lifting up his Foot, he fell back upon his Pillow, and lay still, and the Noise ceased; and about Five a-Clock in the Morning I left him, and the Charms upon him.

Mr. *Coniers.* Call *Elizabeth Brand* (who ap-

peared). Pray give an Account what you know of any Collection of Money for *Richard Hathaway*.

Eliz. Brand. There was betwixt Six and Seven Pounds gathered.

L. C. J. Holt. How was it gathered?

Eliz. Brand. We went about to get Money for him to bear his Charges to *Guilford*, and we got betwixt Six and Seven Pounds.

Mr. *Broderick.* Do you know of any other Sums that were gathered for him?

Eliz. Brand. Yes; but I know not how much.

Mr. *Coniers.* Who employ'd you to do this?

Eliz. Brand. A great many of the Neighbours.

L. C. J. Holt. Who was the Money paid to?

Eliz. Brand. To Mrs. *Welling*.

Mr. *Coniers.* Do you know any thing of his scratching *Sarah Morduck*?

Eliz. Brand. I over-persuaded her to let the Fellow scratch her.

L. C. J. Holt. Did she consent to it?

Eliz. Brand. Yes, my Lord. I call'd her, and said to her, Let me persuade you to let this Fellow scratch you; and she bid me go and fetch him. And he came, and sits him down on a low Seat. Says she, Will you engage he shall not scratch my Eyes out? At last he scratches, and there came no Blood; and he scratches again, and then the Blood came; and he cry'd, O my Eyes, O my Eyes. And I said, now the Blood comes, and he itared. Says I to him, Can you see me? Yes, says he, as well as ever I could.

Mr. *Coniers.* Mr. *Herne*, you was at *Guilford* Assizes, How long did this Fellow pretend he had fasted?

Mr. *Herne.* I cannot be positive what he said at the Tryal as to that; but they said he had fasted six Weeks, before Dr. *Martin* tried the Experiment with him.

Mr. *Coniers.* Call *Matth. Shipp*s (he was sworn.) Was *Richard Hathaway* under your Custody?

*M. Shipp*s. Yes. He was brought from *Guilford* Assizes upon the 31st of *July* last. He came home at Eleven a-Clock at Night, and they told me he was come a Prisoner from *Guilford* to the *Marshalsea*, where he continued Four Days, and he was order'd to lie with me; and every Night that he lay there, he slept very well to my thinking: And several times I ask'd him how he did, he answer'd, he was pretty well; and every Day while he was there, he eat and drank with me, as the rest of the Servants of the House did, and was not in all that Time in any Fit as I could perceive, but went very well out of the Prison.

L. C. J. Holt. What did he say at the Assizes about his Fasting?

*M. Shipp*s. I was not at the Assizes.

Mr. *Coniers.* Then we must leave it here.

Mr. *Broderick.* My Lord, we have the Woman here that they pretended was the Witch; but it may be, they may think it not proper, and therefore we shall let her alone.

Mr. *Serj. Jenner.* My Lord, and you Gentlemen of the Jury, I am Council for the Defendant, *Richard Hathaway*, who is indicted for a Cheat and Impostor; and it is for pretending himself to be bewitched, and that he has used indirect Arts and Means to make People believe he was so bewitch'd; and that this *Sarah Morduck* was the Person that had bewitch'd him; and that this was contrived by him, in order to bring Mischief and Damage on this *Sarah Morduck*, and to the evil Example of the

Queen's

Queen's Subjects. You have heard the Evidence that has been given, and therefore I shall not repeat it, but only observe some good Things to you. The Doctor has taken a great deal of Pains in this Cause; but that which he does tell you by Hearsay, what other Persons have told him, is not such Evidence as you are to take any Notice of, that is, what *Johnson* told him, and likewise what other Persons told him concerning this Man; for what they have said to him of this Man, tho' it may be true, is not to come under your Consideration. There are several others that have given Evidence of what other Persons have said, and they have given it as their Opinions that what this Man did was the Cause of their Doings; of which you are to take no Notice. But, my Lord, that which seems to bear most hard upon us, is, That because the Doctor, and several others have been abus'd, both before and after the Tryal, for what they endeavour'd to do; therefore they would insinuate as if my Client had had a Hand in it. But if a Man be doing any thing, and another takes the Advantage of it, to do another a Mischief, I hope that Mischief shall not be laid to his Charge. My Lord, there is one Man that has given a great deal of Evidence as to his Vomiting of Pins, and says that he was by, and he swept the Ground, and after he had Vomitted, there were Pins upon the Ground; and when he had a Chamber-pot to vomit in, he could not find any Pins there; but there was some upon the Ground again. So likewise for his Fasting, you have had Evidence to prove that a Cheat. And this seems to affect him most, that all this Pretence to be Bewitch'd, and Vomiting of Pins, and Fasting, was a Cheat. This is the Matter that they accuse him of. Of which if he be really Guilty, I come not here to defend him; but I am to defend him as far as Witness will do. And now, my Lord, if my Brief be true, we shall satisfy you that my Client was in a very lamentable Condition, such as one would think no Man could be in and live; and I will lead you by these Steps. When he was thus disabled, could neither speak, nor take Sustenance; his Master, after he had served him Two Years, and he had lived very civilly, and behaved himself well in his Master's Service, till he fell thus ill: Then he was so ill, that after the Master had spent a great deal of Money with Doctors and Apothecaries, he could get no Cure for him; then he got him into the Hospital, and there he continued a long Time, and at last they gave it in that he was incurable, and they turn'd him out. But his Master made Interest, and got him in again, and he continued some Time there again; and there it was that he was first thought to be bewitched: For they had him twice, and could do no good with him, and the Tenders told him he must lie under some evil Tongue; and thereupon he was turn'd out as incurable, and with that Instruction that it was an incurable Disease. So he came home again, and his Master and Mistress were acquainted with it; and they consider what Person it should be that should have any evil Design against him. And at last they recollect, that his Master had taken a Room over the Head of this *Sarah Morduck*, and she had gone to the Shop often, and had given them very ill Words, and she should be even with him one Time or other; and therefore they concluded this Woman was the Person. Upon this there were many Things contrived, what Course they should take to do him good, and there was one Thing concluded upon

in order to his Ease, (which I think none should advise) that is, the Business of scratching. But this Woman, when she was accused by them of bewitching him, she offered herself to be scratch'd, and she was scratch'd, and from thence this Man found Ease. But afterwards he fell ill again, and he went into *London*, and was examined at Sir *Thomas Lane's*; and upon Examination they thought that this Man did lie under such an Affliction. I cannot say it is an irreligious Thing to say there are Witches in the World; but this Man lay under such a Distemper, that no Doctor could know what to do with it. And they could not imagine who should do it but this Woman, and she was there scratch'd by him, and he did find Relief by it. My Lord, this being the Matter of Fact, we shall call very substantial Witnesses to prove it. As to his Fasting, we shall prove that he was put under the Care of very substantial Persons, and that he did not eat or drink for Three Weeks or a Month; so that it will appear we had no Contrivance in the World, but only would get Ease if we could. We have Twenty Witnesses to call.

L. C. J. Holt. Let them all be call'd. Call as many as you will.

Mr. Serj. Jenner. Call *Anne Eaton*. (She appeared.) Do you know *Richard Hathaway*?

Anne Eaton. Yes, Sir.

Mr. Serj. Jenner. How long have you known him?

Anne Eaton. Ever since he came to his Master.

Mr. Serj. Jenner. How long is that?

Anne Eaton. About Five or Six Years.

Mr. Serj. Jenner. Do you know what Condition he was in Two Years ago?

Anne Eaton. Yes.

Mr. Serj. Jenner. Then pray give my Lord and the Jury an Account of it.

Anne Eaton. I watch'd with him several Nights.

Mr. Serj. Jenner. Where did you watch with him?

Anne Eaton. At his Master's House.

Mr. Serj. Jenner. In what Condition was he then?

Anne Eaton. He was in a very bad Condition, he was dumb and blind, and his Senses were gone, and he seem'd as if he were dead; and when his Senses have come to him, he has burn'd like a Flame of Fire.

L. C. J. Holt. How long did you watch with him?

Anne Eaton. About Nine Weeks.

L. C. J. Holt. Did he fast all that Time?

Anne Eaton. Yes, my Lord.

L. C. J. Holt. Might he not eat in that Time, and you not see him?

Anne Eaton. I was with him constantly at Nights, but not in the Day; I have been with him Four or Five Days and Nights together, and did not see him eat or drink.

L. C. J. Holt. What Time was this that you watch'd with him?

Anne Eaton. From the Time that he came from *Madam Davenport's*; till your Lordship confined him.

L. C. J. Holt. Who put him to *Madam Davenport's*?

Anne Eaton. I had nothing to do with that.

Mr. Serj. Jenner. Can you not tell what Month that was in?

Anne Eaton. I can't tell that.

Mr. Raymond. Did you observe him all that Time?

Anne Eaton. When I went out, I left one always in my Room.

L. C. J. Holt. You say you were with him Four or Five Days and Nights together.

Anne Eaton. Yes, my Lord.

L. C. J. Holt. Were you with him all Night and all Day?

Anne Eaton. My Lord, some Days I had Occasion to go out, but then I left some Neighbours with him.

Mr. Serj. Jenner. Call Gibson. (Who appeared.) Do you know this Man, Richard Hathaway?

Gibson. I have seen him in a deplorable Condition.

Mr. Serj. Jenner. When was this that you saw him?

Gibson. About Two Years ago. His Master ask'd me to go and see him, and when I came up I saw him foaming at Mouth; I thought he would not live till Morning. The next Day his Master desired me to watch with him at Night; and I did, and he was so bad that I thought he would not live till Morning. Afterwards I saw him again, and he was blind and dumb, as it appeared to me. And he had a strange Motion, he threw himself forward, and afterwards threw himself backward, as if his Head lay in the Reins of his Back; and I said to this Woman then, I believe he has broke his Back. I believe this was after he came from Madam Davenport, about the Time that he appeared at the Bar at Westminster.

L. C. J. Holt. The first Time that you speak of, when you say he was blind and dumb, you say that was Two Years ago; was he blind and dumb when you saw him the Second Time?

Gibson. Yes, the Second Time I saw him he was blind and dumb. I saw him in a deplorable Condition Three Times.

Juryman. We desire to know the Circumstances of his Condition.

L. C. J. Holt. The Jury desire to be satisfied of the Circumstances of his Condition. You say you saw him Two Years ago, and he was then in a deplorable Condition, and you saw him twice after; the Jury would have you describe the Circumstances of it as plain as you can.

Gibson. His Master desired me to go to him, and I was willing to oblige him; and when I came to him, he was both blind and dumb.

L. C. J. Holt. How long was this after you saw him the first Time?

Gibson. About half a Year after.

L. C. J. Holt. Are you a Neighbour?

Gibson. Yes, my Lord.

L. C. J. Holt. You say you saw him Two Years ago, and you say he then foamed at Mouth and Nostrils; was he blind and dumb then?

Gibson. No, my Lord; but he was when I saw him the second Time.

L. C. J. Holt. When did you see him after?

Gibson. It was about a Twelve-month after that I saw him.

L. C. J. Holt. And not before?

Gibson. He was Seven Weeks in the Hospital.

Mr. Broderick. Then you did not see him in the Hospital.

Gibson. I did; but he went almost double.

Mr. Broderick. Did you hear any Thing of Mrs. Morduck then?

Gibson. No, Sir.

L. C. J. Holt. What Trade are you?

Gibson. I am a Glazier.

Mr. Coniers. Have you no other Trade?

Gibson. Sometimes I work at the Custom-house. One Sunday we went to hear Dr. Peard, and R. Hathaway went with us. And when we were gone out a-Door, he could not speak; and when we came upon the Bridge, his Face was drawn a-wry so strangely that it astonished me; he stagger'd the Length of this Table, and his Face was drawn back again, and he fetch'd a Reel; but in a Quarter of an Hour he spoke, and his Speech continued till he came to Gracechurch-street, and there we met Mr. Fox, and so he continued till we came to Bishopsgate: But coming to Houndsditch, he made Motions that his Speech was gone again.

L. C. J. Holt. Did you hear him speak at Westminster?

Gibson. No, my Lord.

Mr. Serj. Jenner. Call Flummery, (who appeared.) Do you know this Man?

Flummery. Yes, I am a Neighbour.

L. C. J. Holt. What is thy Name?

Flummery. Flummery. After Guilford Assizes I went to see him, and he was in a lamentable Condition; he was like a Stock or Stone, Blind and Dumb. I went to see him ---

L. C. J. Holt. Did you ever see him before?

Flummery. I saw him several times, but took no notice of it; but then his Eyes stood wide open.

L. C. J. Holt. And yet you say he was blind, How could that be?

Flummery. My Lord, I will tell you how; I tried him, I wagg'd the Hair of his Eye-Lids, and put the Candle to his Eyes, and he took no notice of it.

L. C. J. Holt. How could you know that he did not see?

Flummery. I tried him.

L. C. J. Holt. How did you try him?

Flummery. I tried them with my Fingers, and his Eyes would not wag.

L. C. J. Holt. Did he not look then as he looks now?

Flummery. No.

Mr. Broderick. Did you speak to him then?

Flummery. Yes, but I could not make him Hear nor Answer me.

L. C. J. Holt. Could he speak then?

Flummery. No, May it please your Lordship.

Anne Pearse, Sworn.

Mr. Serj. Jenner. Anne Pearse, Pray tell my Lord, what you know of this Richard Hathaway.

Anne Pearse. I belong to the Hospital. When he came into the Hospital he was very bad.

L. C. J. Holt. Was he Blind and Dumb when he came in?

Anne Pearse. After he was brought in he was put to Bed, and he was taken with a Fit, and I was call'd to him; and I came to him, and he did not stir much, and turn'd up his Eyes. And afterwards one of his Master's Journey-Men came to him, and he raised him out of his Bed; and one came to me and said, Sister, he is come to the Fire, but he is very bad still. Says I, What did you raise him out of his Bed for? He went upon his Ankles almost; he went very Weakly, and continued so for some time.

Mr. Serj. Jenner. How long was he in the Hospital?

Anne Pearse. About Five Months.

Mr. Serj. Jenner. Was he out, and came in again?

Anne Pearse. Yes, he was. He complain'd he could not go to Stool; and the Doctor gave him

Quicksilver;

Quicksilver; and when it came from him, I heard the Apothecary made him take it again, and swallow it again.

Mr. Serj. *Jenner*. When he came in the second time, Was you there then?

Anne Pearse. Yes.

Mr. Serj. *Jenner*. How long was he there the second time?

Anne Pearse. How long he was there the second time, I cannot tell.

Mr. Serj. *Jenner*. Can you tell when he was put in the second time?

Anne Pearse. No.

Mr. Serj. *Jenner*. What was your Opinion of him?

Anne Pearse. I apprehended him to be in a very strange Condition; he lay Seven or Eight Days, and did not Eat or Drink; he had taken *Quicksilver*, and it did not come from him, and the Doctor wonder'd it should lie so long in his Body.

Mr. *Broderick*. Did the Doctor or you apprehend any Thing of Witchcraft in the Case?

Anne Pearse. No, Sir. But at this time his Eyes were set in his Head.

Mr. *Broderick*. When he was recovered out of those Fits, did he pretend that he was bewitch'd?

Anne Pearse. No.

L. C. J. *Holt*. Did you never hear him complain that he was bewitched?

Anne Pearse. No, my Lord, I did not hear of that.

Mr. Serj. *Jenner*. Call *Jo. Smith* (who appeared.)

Mr. *Smith*. Do you know this Person, *Richard Hathaway*?

Mr. *Smith*. Yes, Sir.

Mr. Serj. *Jenner*. How long have you known him?

Mr. *Smith*. About Five or Six Years.

Mr. Serj. *Jenner*. How far do you live from him?

Mr. *Smith*. I believe about two Stones throw.

Mr. Serj. *Jenner*. Were you well acquainted with his Condition two Years ago.

Mr. *Smith*. Yes, I have done Business for the Family several Years. About Five Years ago, I found him much afflicted with Convulsion Fits at his coming to his Master.

Mr. Serj. *Jenner*. How was he about two Years ago?

Mr. *Smith*. He was in a very strange Condition; and I advis'd his Master to get rid of him, and to get him into the Hospital.

Mr. Serj. *Jenner*. What did he ail?

Mr. *Smith*. He lay in a very strange Condition.

Mr. Serj. *Jenner*. How did he lie?

Mr. *Smith*. He lay struggling and striving often, and sometimes like a Man that was dead; and once when he lay in that Condition I laid Cupping-Glasses to him, and that enliven'd him.

L. C. J. *Holt*. What did you imagine ailed him? Did you think he counterfeited or not?

Mr. *Smith*. Indeed, my Lord, I can't tell that.

Mr. Serj. *Jenner*. Why did you advise his Master to put him into the Hospital?

Mr. *Smith*. I can't tell.

Mr. *Phipps*. You say you have known him Five Years, and that he has been troubled with Fits. Did he ever talk of being bewitch'd till within this two Years?

Mr. *Smith*. No, not till within these two Years.

Mr. Bar. *Hatfield*. When he lay seemingly dead, you do not know whether he counterfeited or no.

Mr. *Smith*. No, my Lord.

Mr. Bar. *Hatfield*. Do you think a Man can be in such a Condition as he seem'd to be, and yet only Counterfeit?

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Mr. *Smith*. Indeed, my Lord, I know not. I examined him whether he was subject to those Fits formerly; and he told me, he was very much troubled with them in the Country.

L. C. J. *Holt*. You do not answer the Question. Cannot a Man counterfeit in such a Case? What do you think of that?

Mr. *Smith*. Without doubt it may be counterfeited.

L. C. J. *Holt*. You say, when he was in those Fits, you put Cupping-Glasses to him, and it enliven'd him; now if he were in a real Convulsion, do you think it would have enliven'd him?

Mr. *Smith*. Sometimes it may be so.

Mr. Serj. *Jenner*. Call *Elizabeth Willoughby* (she appeared.) Mrs. *Willoughby*, pray give my Lord an Account whether you know *Richard Hathaway*, and what you know of him.

E. *Willoughby*. Sir, I have seen him since the Affizes at *Guisford*.

Mr. Serj. *Jenner*. Did you never see him before?

E. *Willoughby*. Yes.

Mr. Serj. *Jenner*. Then give an Account of what Condition you have seen him in.

E. *Willoughby*. I have seen him when the Breath came out of his Mouth like the Barking of a Dog. I had a Child that was troubled with Fits, and I was above Stairs, and I heard a great Noise; and I went out of the Door to see what was the Matter, and over the Hatch lay *Richard*. Lord bless me, says I, is it you makes this Noise? And I could not fancy any Thing, but that it was like the Barking of a Dog.

L. C. J. *Holt*. How thick was it? Was it not like other Folks?

E. *Willoughby*. No.

Mr. S. *Jenner*. What ailed him?

E. *Willoughby*. I cannot tell what ailed him.

L. C. J. *Holt*. Do you think he was bewitched?

E. *Willoughby*. I believe he was, my Lord.

L. C. J. *Holt*. I suppose you have some Skill in Witchcraft. Did you ever see any Body that was bewitched before?

E. *Willoughby*. My Lord, I have been under the same Circumstances my self when I was a Girl, in Sir *Edward Bromfield's* Time.

L. C. J. *Holt*. How do you know you was bewitched?

E. *Willoughby*. There was a Woman taken up upon Suspicion for it.

L. C. J. *Holt*. For bewitching thee?

E. *Willoughby*. Yes, my Lord.

L. C. J. *Holt*. Did you scratch her?

E. *Willoughby*. My Lord, I had no power to do any thing. I flew over them all.

L. C. J. *Holt*. You say you were in the same Condition with this Man, and you say you flew; Did you fast too?

E. *Willoughby*. One held me by one Arm, another by the other, and another behind, and I flew sheer over their Heads.

L. C. J. *Holt*. Woman, can you produce any of these Women that saw you fly?

E. *Willoughby*. It was when I was a Child; they are dead; it was in old Sir *Edward Bromfield's* Time.

L. C. J. *Holt*. What became of that Woman that made thee to fly?

E. *Willoughby*. I cannot tell, I have been well ever since I was Married.

Mr. Serj. *Jenner*. How was you cured of that Witchery?

E. *Willoughby*. How do I know?

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Mr.

Mr. Coniers. Did you scratch her?

E. Willoughby. How should I scratch her, when I had not power to see her?

Mr. Coniers. And yet you believe this Man was bewitched as well as you. What Condition was this Man in? How long did he lye in this Condition.

E. Willoughby. Night and Day he has lain over the Hatch, and over the Bed, and made a great Noise with his Breath.

Mr. Serj. Jenner. Who did you suspect had done him this harm?

E. Willoughby. I know not that.

Mr. Broderick. Are you a Widow?

E. Willoughby. No, Sir.

Mr. Serj. Jenner. Call Keeling. (he appeared.) Do you know any Thing concerning this Richard Hathaway.

Keeling. I watcht with him 9 Nights.

Mr. Serj. Jenner. What did he Eat or Drink all that Time?

Keel. He did neither Eat nor Drink, nor had he any Stool all that Time.

L. C. J. Holt. Did you watch with him 9 Nights and Days?

Keel. There was another Man that watch'd with him in the Day; as I came out, he was let in; and as he came out, I was let in.

Mr. Serj. Jenner. How long was this before the Tryal?

Keel. Two or three Days before he came before Sir Thomas Lane.

Bridges Sworn.

Mr. Serj. Jenner. Did you watch with Richard Hathaway?

Bridges. Yes.

Mr. Serj. Jenner. How long?

Bridges. Nine Days.

Mr. Serj. Jenner. Did you watch with him the same Days that he watch'd with him in the Nights?

Bridges. Yes.

Mr. Serj. Jenner. Did you not stir from him till he came?

Bridges. No.

Mr. Serj. Jenner. Did you see him Eat or Drink all that Time?

Bridges. No.

Mr. Serj. Jenner. Where was it that you watch'd with him?

Bridges. In an old empty House.

L. C. J. Holt. Where was this House?

Bridges. By a Dock on the Bank-side in St. Mary Overy's Parish.

L. C. J. Holt. How came you to put him into that House?

Bridges. The Masters of the Parish put him in it.

Mr. Webb sworn.

Mr. Serj. Jenner. Mr. Webb, did you get a House to put Hathaway in?

Mr. Webb. Yes.

L. C. J. Holt. How came you to do so?

Mr. Webb. His Master used to work for me, and he came to me, and said, I cannot tell what to do with my Man, unless the Masters of the Parish take some Care of him; and I did speak with some of them about it; and they said, we will not trouble the Parish about it, we will spend a Crown a-piece, and put these Men into the House with him.

L. C. J. Holt. You took the House then?

Mr. Webb. We borrowed the House, it being

empty, and put in these Two Men. There were four or five Neighbours more, and I said to him, They say you vomit Pins, I will be satisfied whether it be true or no; and we stript him, and could find none about him; we search'd his Shirt, his Stockings, his Breeches, and his Hat, but could find no Pins about him.

Mr. Serj. Jenner. Did he eat or drink all the Time you were there.

Mr. Webb. No, my Lord.

Mr. Serj. Jenner. Did he vomit?

Mr. Webb. Yes, I went to him on Thursday Morning, and he had a husky Cough, and I thought he would have been choak'd; and at last he made a Crumb of Spittle out of his Mouth, and there were Three Pins came from him in the Spittle, as rusty as if they had lain in a Ditch Seven Years. About Saturday following he had I believe Four Pins more came from him; I took them, and I think the Hands of Man could not join them as those Pins were. On Sabbath-day in the Morning, a Gentleman came and desired him to go to Church with him, and desired him to drink a Pint of Ale, but he did not drink half; and about Five a-Clock in the Afternoon came Mr. Sutton the Apothecary, and I stay'd with him till Six on Monday, and heard not a Word from him.

Furyman. What People came in to see this Fellow while you watch'd him?

Keeling. No Man, Woman, or Child came to him the Time I was there, but only that Sunday Night that my Masters were there, and I said, you do not put him here to starve him; and they bid me ask him if he would eat any Thing; if he would eat any Thing, he might have it.

Mr. Coniers. Did you not use to carry him out sometimes?

Keeling. We never carried him out.

Mr. Coniers. Just now you said he was out on Sabbath-day.

Keeling. Yes, but never otherwise.

Mr. Broderick. Was he in a Ground-Room, or up Stairs?

Keeling. He was in a Ground-Room.

L. C. J. Holt. Were there any Windows in it?

Keeling. Yes.

L. C. J. Holt. Was there any Casement?

Keeling. Yes, there was.

Furyman. We desire to know of this Witness, whether he never was asleep in that Time while he watch'd with him.

Keeling. No, I sat just at his Head. I slept in the Day-Time.

L. C. J. Holt. You that watch'd with him in the Day, did you not sleep all Day?

Bridges. No.

L. C. J. Holt. How came you to concern your self in this Business? Are you one of the Masters of the Parish?

Mr. Webb. No, I am not, but it was my Turn to be Overseer, and his Master spoke to me to speak to the Church-Wardens; and I did, and they said they would not put the Parish to the Charge, but do it themselves.

L. C. J. Holt. What Trade are you?

Mr. Webb. A Lighter-Man, my Lord.

Dell sworn.

Mr. Serj. Jenner. Do you know this Richard Hathaway?

Dell. Yes.

Mr. Serj. Jenner. How long have you known him?

Dell.

Dell. Ever since he was an Apprentice.

Mr. Serj. Jenner. Did you know him Two Years ago?

Dell. Yes.

Mr. Serj. Jenner. What Condition was he in then?

Dell. I was at the Assizes at Guildford —

Mr. Serj. Jenner. What did you know of him before that Time?

Dell. I took no notice of such Things.

Mr. Serj. Jenner. Can you say any Thing of him?

Dell. I can say, that the Night before he was before Sir Thomas Lane I watch'd with him, and he went to Stool, and in his Excrements there was a Lump of Hair, loose Pins, a Stump of a Nail, half a Nutshell, and Two or Three Pieces of Stone.

Mr. Serj. Jenner. And this you saw.

Dell. I saw him in a very deplorable Condition.

L. C. J. Holt. How? In what Condition?

Dell. This is all I have to say.

Mr. Serj. Jenner. What do you call a deplorable Condition?

Dell. He lay in such a Condition as if he were Dumb; and if he was not, I believe he is the greatest Villain in the World.

L. C. J. Holt. How do you know those Excrements came from him?

Dell. I was one of the Three Men that watch'd with him that Night. We had Two Chamber-Pots; these Things were in the first Stool, and when he had the second Stool, he sat on the Pot, and when he had done, we look'd, and there was nothing in it.

L. C. J. Holt. And were these Things in the first?

Dell. Yes, in the first; in the other there was none. And there were Twenty Neighbours more that saw them.

Mr. Serj. Jenner. Was Benn there?

Dell. Yes, he was there.

Mr. Serj. Jenner. Mr. Benn, was this so?

Benn. Yes.

Mr. Serj. Jenner. Did you help watch with him?

Benn. Yes.

Mr. Serj. Jenner. And are you sure those Excrements came from him?

Benn. Yes, I am sure. I stood over him with a naked Sword.

Mr. Serj. Jenner. Why did you stand over him with a naked Sword?

Benn. Because People said he was bewitched.

L. C. J. Holt. Who employed you to watch with him?

Benn. I went into the House, and I told his Master, if they would watch him in the Day, I would in the Night.

Powel called.

Mr. Serj. Jenner. What do you know of this Matter?

Powel. This Man and I went up one Night —

Mr. Serj. Jenner. When?

Powel. February was Twelve-month. We went up and look'd upon him, and he lay as one dead, and he did not wag his Eyes; and presently he hook'd his Neck about in such a manner that I thought he had broke it; and he foamed, and we took the Foam from his Mouth, and in it were Five Pins, the crookedest Rams-hornest Things, that I believe no Man could do them so.

Mr. Serj. Jenner. That was one Night; did you see the same at any other Time?

Powel. Yes, Sir.

L. C. J. Holt. But you did not see them come from him?

Powel. I took it from his Mouth, and they were rusty.

L. C. J. Holt. How should they be rusty?

Mr. Serj. Jenner. The Stomach will make them rusty. Call Madam Davenport. (She appeared.) Madam, pray give my Lord and the Jury an Account what you know concerning Richard Hathaway, when he came to your House, and how he was managed there.

Mrs. Davenport. My Lord, one Saturday I accidentally went to Dr. Hamilton's to visit his Wife, and I saw with the Doctor this Fellow's Master standing there; and I perceived he was come to desire the Doctor to perform a Promise he had made to him formerly —

L. C. J. Holt. Was this before the Tryal, or after?

Mrs. Davenport. It was after the Tryal. I came accidentally to the Doctor's, and saw the Fellow's Master with the Doctor.

L. C. J. Holt. Was the Fellow there himself?

Mrs. Davenport. No, my Lord, I never saw him there. But standing there, I perceived him expecting the Doctor to make good a Promise he had made him about this Fellow. I found the Doctor demurr'd upon it, not knowing where to put him. At last says he to me, Mrs. Davenport, will you let me have a Garret in your House? Doctor, says I, you shall have my whole House at your Service, if you have occasion for it: I thought nothing of this Fellow, till the Doctor told me it was for him. And the Doctor told me he should come that Night. Says the Fellow's Master, I will not send a Bed, that the Doctor may be satisfied there is no Cheat. And the Doctor, to prevent any Cheat, desired me to go and buy an old Bed. So I went and got a Bed in Long-Lane; and at Night he was brought by his Master and some of his Neighbours. And truly I was surprized when I saw him, he seemed very weak.

Mr. Serj. Jenner. What did you do with him?

Mrs. Davenport. They said he had Fits, and I found I must take other Measures with him than I thought of. His Master desired he might be search'd; and my Son and Two Men more search'd him. So he went to Bed, and was watch'd with that Night, and in the Morning he was struck blind.

L. C. J. Holt. At your House?

Mrs. Davenport. Yes, my Lord.

Mr. Serj. Jenner. Did you appoint any Persons to watch with him?

Mrs. Davenport. Yes.

Mr. Serj. Jenner. Did you watch with him your self?

Mrs. Davenport. Yes, several Times.

L. C. J. Holt. How long at a Time did you watch with him?

Mrs. Davenport. But one Night at a Time my self.

L. C. J. Holt. When you did watch with him, did you watch the whole Night?

Mrs. Davenport. Yes, several Nights; and this Gentlewoman or my self took care of him always.

Mr. Serj. Jenner. What did he eat or drink while he was there?

Mrs. Davenport. Nothing. As for his Fasting, the Doctor gave me a great Charge, and said he knew I would do it.

Mr. Serj. Jenner. All the Time you watch'd with him, you say he did neither Eat nor Drink.

L. C. J.

L. C. J. Holt. How many Nights did you watch with him in the Seventeen?

Mrs. Davenport. But Two.

L. C. J. Holt. How many Days?

Mrs. Davenport. Every Day.

L. C. J. Holt. Did you watch with him every Day your self?

Mrs. Davenport. Either my self, or this Woman, or the Servant, or my Son Davenport. He is now gone to Sea. My Lord, I do not tell you I kept him in the Garret all this time.

Mr. Serj. Jenner. When you left him, who relieved you?

Mrs. Davenport. This Gentlewoman, or my Servant.

Mr. Serj. Jenner. What is that Gentlewoman's Name?

Mrs. Walker. Walker.

She was Sworn.

Mr. Serj. Jenner. Mrs. Walker, Did you watch with him in this Place?

Mrs. Walker. Yes.

Mr. Serj. Jenner. Did he Eat or Drink while he was there?

Mrs. Walker. He did neither Eat nor Drink.

Mr. Coniers. How often was it that you watched with him?

Mrs. Walker. I cannot tell whether one or two Nights.

L. C. J. Holt. I would be satisfied in some Things. Is that Davenport you speak off your Son?

Mrs. Davenport. Yes, my Lord. He is now gone to Sea.

L. C. J. Holt. How long has he been gone to Sea?

Mrs. Davenport. But a Week.

Mrs. Dorman Sworn.

Mr. Serj. Jenner. Mrs. Dorman, Did you watch with this Man at Mrs. Davenport's?

Mrs. Dorman. Yes.

Mr. Serj. Jenner. Within the 17 Days that he was there, did he Eat or Drink?

Mrs. Dorman. No.

Mr. Phipps. How many Nights or Days did you watch with him?

Mr. Serj. Jenner. Give an account of the Time when you watch'd with him, and no longer.

Mrs. Dorman. Two Nights, and every Day.

L. C. J. Holt. He might have Eat, and you not see him, might he not?

Mrs. Dorman. But the time I saw him, he did neither Eat nor Drink. And he made Water, and I believe five times more came from him than he took.

Mrs. Dean Sworn.

Mr. Serj. Jenner. Mrs. Dean, Do you know Richard Hathaway?

Mrs. Dean. Yes.

Mr. Serj. Jenner. How long have you known him?

Mrs. Dean. Not till he was at Madam Davenport's.

Mr. Serj. Jenner. Was you there all the Seventeen Days?

Mrs. Dean. Not all the Time. I sate up with him two Nights.

Mr. Serj. Jenner. Who sate up with you?

Mrs. Dean. Madam Davenport.

Mr. Serj. Jenner. While you were there, did he Eat or Drink?

Mrs. Dean. No.

Mr. Serj. Jenner. Call Dr. Hamilton. (He was Sworn.) Doctor, pray give an Account of what you know concerning this Richard Hathaway.

Dr. Hamilton. My Lord, I have very little to say upon my own Personal Knowledge. But happening to be at Sir Thomas Lane's when he was brought before him, I heard what past, and I desired Sir Thomas to let me try his Throat; and I did try it, and found nothing amiss. But at last I found there was nothing to be depended upon, for there are abundance of Legerdemain Tricks, therefore his vomiting Pins, and other Actions were not to be trusted to; and therefore there was nothing to be depended on but his Fasting; and if you would discover whether he be an Impostor or no, he must be lock'd up in a Room for a Fortnight, and watch'd. And then I said to the Fellow's Master, for my Curiosity, if you please, I will lock him up in a Room a Fortnight, and I shall find out whether he counterfeits or no. And he came to me afterwards, and said, Dr. you promised you would make this Tryal of my Man. I did so, says I, and if I can I will. I had Thoughts of putting him in the Garret; but then I considered, if I should put him in the Garret by himself, he might dye. But at the same time Mrs. Davenport happen'd to come to my House; and I said to her, I dare trust you with an Experiment, for I believe he is an Impostor; and I desired her to let me have her Garret to put him in, and she consented. And I desired her either to go her self, or send to Long-Lane, and buy Things for him; and that she should strip him, and see that nothing may be about him to hide Bread or any Thing else in; and, said I, let none come to him, and let one or two of your Family sit up with him every Night. And she promised me she would. Accordingly she bought a Bed for him, and other Things, and he was sent to her; and the next Day they sent me Word that he had strange kind of Motions; but I said, there is nothing to be depended on as to these Things; but I would fain know whether he fasts or no. I have heard of many that have fasted many Weeks, but they have taken Water, or some such Thing, which, though they are very weak Things, yet may keep one Alive; but none can live without taking something; and if he should live to the End of the 17 Days without Eating or Drinking any Thing, I should have something to take hold of. They told me---

Mr. Serj. Jenner. That is no Matter what they told you. Did you see him afterwards?

Dr. Hamilton. I was mightily concerned for the poor Creature when I saw him at Sir Thomas Lane's; and I was willing to try him.

Mr. Serj. Jenner. Did you see him after that?

Dr. Hamilton. Yes, when he was blind for several Days. And I sent to Dr. Martin, and desired the Favour of him to call upon me; and I said ---

Mr. Serj. Jenner. Did you see him after he had been at Madam Davenport's?

Dr. Hamilton. Yes.

Mr. Serj. Jenner. Did you see him while he was there?

Dr. Hamilton. Yes. The Thing that I depended upon was purely his Fasting. I saw him my self several times, and I could not believe but that he had eat, because his Pulse were strong; that was one Reason that I thought he must eat.

Mr. Serj. Jenner. Did you see him the last Day of the Fortnight?

Dr. Hamilton. I was just going to Dinner when Dr. Martin came to me; and I said to him, Dr. Martin,

Martin, let us try every Thing: Will you go along with me to him? Says he, if I go he will fall in a Passion. But after I had dined I went, and enquired about him, and they told me he had strange Motions.

Mr. Broderick. You say you reject every Thing except that of his Fasting.

Dr. Hamilton. Yes.

L. C. J. Holt. Doctor, Do you think it is possible in Nature for a Man to fast a Fortnight?

Dr. Hamilton. I think not, my Lord.

L. C. J. Holt. Can all the Devils in Hell help a Man to fast so long?

Dr. Hamilton. No, my Lord, I think not; and that made me to suspect him.

Mr. Phipps. Do you think the Pulse of a Man can be strong when he has fasted Eight Days?

Dr. Hamilton. I think not.

Sir Thomas Lane Called and Sworn.

Mr. Serj. Jenner. *Sir Thomas*, be pleased to tell my Lord and the Jury what you know of this Man.

Sir Tho. Lane. It was above a Twelve-month ago that his Master brought a Woman before me, upon suspicion that she was a Witch, and that she had bewitched his Man: but there having been a Tryal I shall waive that. I enquired what kind of Life he had lived; and his Master said he had behaved himself very civilly, and gave him a very good Character. He told me how grievously he had been afflicted, and that he had been Six or Seven Months in the Hospital, and had fasted a great while, above Eight Weeks, and had voided and vomited Pins; and two Witnesses swore to Chains of Hundreds of Pins that came from him in his Excrements. And it seems they had a fancy that scratching *Sarah Morduck* would give him Relief, and they were earnest with me that I would command this Woman to be scratch'd; and I appeal to them, whether I did not refuse it. I said, if I should order this, it would be an Assault; but if she will consent, you may do it. Says she, If I may be secured for the future, I will let him. Says I, if you do it, do it in your own Way: There are several here that know it was so. And she did give her Consent; and he scratched her, and I pull'd away her Arm from him. The Fellow had Bread and Cheese brought him; and as soon as he had scratch'd this Woman, he took the Bread and Cheese and eat prodigiously; and he had about a Quart of Drink, and he drank it up at a Gulp. I ask'd *Mrs. Morduck*, and her Friends, whether they did ever know that this Fellow had got any Money by these Tricks? No, they could not tell of any; so that there appeared to be neither Profit nor Revenge in the Case; and I thought he could not be such a Fool to pretend all this for no End, and run the hazard of being whipp'd.

L. C. J. Holt. The Question is not whether he shall be punished for a Fool, but whether he be a Knave; whatever Punishment he may suffer, if convicted, does not belong to you to determine.

Sir Thomas Lane. I sent for *Mr. Martin*, and I sent for him, and I sent for the Woman, and I examined them both; and *Mr. Martin* told me he suspected the Fellow might be an Impostor, for he had got a Woman to be scratch'd for *Sarah Morduck*. And he ask'd the Woman that *Mr. Martyn* had hired, and she said in her Opinion he could see no more than a Post.

L. C. J. Holt. Call *Johnson* again. This Man scratch'd you. When he had done it, did you see him afterwards?

Mrs. Johnson. Yes.

L. C. J. Holt. Were his Eyes open?

Mrs. Johnson. Yes.

L. C. J. Holt. But could he see?

Mrs. Johnson. No. When he scratch'd me they were shut.

L. C. J. Holt. Every Body can see when their Eyes are open.

Sir Thomas Lane. This Woman said, she believed he could neither see nor hear, any more than a Post.

Mr. Martin. It was after I was gone, I heard nothing of it.

Sir Thomas Lane. I sent for him after the Examination; all the Evidence that was before was of his Fasting.

L. C. J. Holt. *Anne Eaton*, How long did you watch with him?

Anne Eaton. Nine Weeks.

L. C. J. Holt. Was he dumb and blind so long?

Anne Eaton. No, my Lord.

L. C. J. Holt. How long did he fast?

Anne Eaton. Thirteen Weeks in all.

Mr. Serj. Jenner. Did you watch with him all the Time?

Anne Eaton. Sometimes by Night, but not by Day.

Heycock Sworn.

Mr. Serj. Jenner. What do you know of this Man?

Heycock. I saw this Man in a very dreadful Condition since the last Assizes.

Mr. Serj. Jenner. Where did you see him?

Heycock. At *Mr. Welling's*. I saw him Blind and Dumb, and his Eyes were ready to start out of his Head.

Mr. Serj. Jenner. How long since was it that you saw him thus?

Heycock. I saw him several times in that Condition. And I was once in Company, when there were Four or Five to hold him in his Bed, whereas at another time he had not half the Strength of a Man.

L. C. J. Holt. When was this?

Heycock. Since the Assizes.

Spurling Sworn.

Mr. Serj. Jenner. What did you see of this Person?

Spurling. I saw him at *Madam Davenport's*.

Mr. Serj. Jenner. How often did you see him?

Spurling. Three Times.

Mr. Serj. Jenner. Did you watch with him there?

Spurling. I went to see him, because I heard he was under a supernatural Power.

L. C. J. Holt. What do you think that was, was it an Infernal Power?

Spurling. A Diabolical Spirit.

L. C. J. Holt. Did you ever hear the Power of a Diabolical Spirit described?

Spurling. But I suppose those that are under Witchcraft are under such a Spirit.

L. C. J. Holt. But can a Diabolical Spirit enable a Man to fast Forty Days?

Spurling. I can't tell that. I was acquainted with one that was under a supernatural Power, that was in such a Condition as this Man was.

L. C. J. Holt. Did he fast too?

Spurling. I know not that.

L. C. J. Holt. I never heard that the Devil ever made such a bold Attempt.

Spurling. That Person, the Devil, acted him so subtilly, that it was impossible to prosecute him.

L. C. J. Holt. How could you know that?

Spurling. Because when his Eyes were shut, he could tell any Man's Name that was coming up.

L. C. J. Holt. Was not he very well pleased to be bewitch'd?

Spurling. No, he was actually possess'd.

L. C. J. Holt. Was he sick, or out of Order?

Spurling. No, my Lord; but he had crooked Pins came from him.

L. C. J. Holt. Did he accuse any body of bewitching him?

Spurling. Yes.

L. C. J. Holt. What is become of that Person he accused?

Spurling. He accused several.

L. C. J. Holt. How many did he accuse?

Spurling. Five Women; especially one.

L. C. J. Holt. Where is that Woman?

Spurling. She is deceased.

L. C. J. Holt. Gentlemen of the Jury, you have heard a very long and tedious Evidence. The Information is against this *Richard Hathaway*, for that he with an evil Design to take away the Life of *Sarah Morduck*, pretended to be bewitch'd, and to have fasted for a considerable Time, being not able to take any Sustenance for divers Days; nay, for several Weeks, which he pretended to fast. And his fasting was imputed to this Woman's bewitching him; that he did pretend to fast a considerable Time; that he did procure this Woman to be committed for being a Witch; that she was Indicted, Tried and Acquitted, is plainly proved to you, without all manner of Question. The only Question that you are now to try, is, whether this Man did do this by reason of any Disability of his Mind, or Delusion that was upon him; or did counterfeit (what was the Reason to induce him to counterfeit, does not appear; whether to get Money, or what else, will not be material); but if this Man was under a Delirium of his Mind, and did fancy himself to be bewitch'd, then there will be no Reason to convict him.

Now it is urged, that he did this maliciously, and with a Design to take away the Woman's Life. First they tell you, that this Man had been a Servant to one *Welling* a Blacksmith: He came to him about Four or Five Years ago; then he had Fits, and was put into the Hospital; and being there, he pretends he could not eat. After that, he was dumb; and after that, he began to be blind; and being blind and dumb, and fasting, these were look'd upon to be the Three Tokens that he was bewitch'd. Then the Man had a Fancy that he was bewitch'd by this Woman, but for what Reasons does not appear; but his Fancy appear'd to be very strong, that he brought him into these Mischiefs. Therefore he must go and scratch her; which he did, and presently he could see and eat. This was look'd on as very strange, and People concluded that this Woman was the Cause of these Maladies that were upon this Man. It seems that this Scratching was thought to be so effectual, that he was well for about six Weeks; after which he appeared to be ill again, and his Sight and his Stomach were gone again, and then it was proposed he should scratch her again. It seems that before that, *Dr. Martin* was desired to come to him, and pray with him; and he did; and to try whether he was sensible or not, he took him by the Hand, and by the Signs he made, found he

was sensible; and therefore he did pity his Condition, but could not tell what to make of it. But *Welling* his Master told the Doctor he had received great Benefit by scratching the Woman before; and thereupon desired she might be scratch'd again. But he suspecting this might be a mere Counterfeit, and that it could not have that Effect, he thereupon gets the Woman seemingly to consent to be scratch'd, being resolved to try whether this was an Imposture or no. And *Hathaway* pretending himself to be blind, gave him an Opportunity to make that Experiment; for he procured another Woman to represent *Sarah Morduck*, and she consented to be scratch'd in her stead; *Hathaway* was laid up in a Bed, and *Sarah Morduck* was in the Room, and spake to him. It was observed, when this other Woman, whose Name was *Johnson*, was brought to represent this *Morduck* to *Hathaway*, she put her Hand into his, and then he examin'd it, and her Wrist, and her Arm; so it seems he had some Apprehensions of a Design to impose upon him. And then he proceeds to scratch that other Woman, who takes it patiently, till the Blood was ready to come; and then she was suddenly taken away; and some of the Company said the Blood is come, and presently his Eyes opened, and he laid hold on *Sarah Morduck*, and seizes her, and did not only appear to see, but to speak. This is proved to you by other Evidence besides *Dr. Martin*. Upon this, says *Dr. Martin*, you are mistaken; you have deceived the World, you have not scratch'd *Sarah Morduck*, but another Woman. When he understood that, he was very much concern'd, and seemed to begin to be ill again; and *Welling* said, he will not be well till he had scratch'd the right Woman; so to Appearance he fell ill again. You have heard how the Matter had been carry'd on afterwards; for many looked on this Blindness and Fasting as an errant Imposture. *Welling* and his Wife complained to *Dr. Martin*, saying, you have undone us all, and our Family too. What should be the Meaning of that? What, because he had discovered a Cheat, therefore they were undone. It seemed likely, that if it were a Cheat, and *Welling* not conscious to himself of carrying it on, he need not have been concern'd at it. But they rest not here, the Woman, *Sarah Morduck*, must be scratched again; which was perform'd with Violence, against her Consent; and the Woman being pursued by the Rabble, not able to live quietly in *Southwark*, was forced to go on the other side of the Water, and take a Lodging there for her Security; where she was again pursued, and assaulted by *Hathaway* and others, in a riotous manner, in order to scratch her again; and tho' Complaint on her behalf was made of this Violence to *Sir Thomas Lane*, he did not think fit to give her any Relief, being (as it seems upon some Evidence) possess'd with an Opinion that there might be some Grounds for pursuing this Woman in that manner. She was carried before him, and he being informed that this Fellow could not eat nor drink, thereupon it was thought convenient by *Sir Thomas*, in order to make a full Discovery, that she should be scratched again; and accordingly she was perswaded to submit to be scratched, and presently after the Scratching, *Hathaway* did eat, and drank very greedily, and thereupon this Woman was committed to Prison. This was thought a great Evidence of this Man's being bewitched by this Woman, *Sarah Morduck*. What Rule they have for it either in Philosophy or Divinity, I cannot tell. There was a Tryal, and the Woman was acquitted, and

and upon full Evidence. He then pretended to have fasted for a long Time. That of our Saviour's Fasting Forty Days, is mention'd in Scripture as miraculous, and an Effect of Divine Power, being one Evidence of the Truth of the Christian Religion. Who can imagine, that without such Assistance, a Man can fast Forty Days, or above, and yet continue in Health? It is not within the Compass of my Understanding to conceive it; I must leave you to consult your own, and to consider with your selves, whether you have any Evidence to induce you to believe it to be in the Power of all the Witches in the World, or all the Devils in Hell, to enable a Man to fast beyond the usual Time that Nature will allow; they cannot invert the Order of Nature: And if the Thing be impossible, and he endeavour all this while to make the World believe he has fasted so long a Time, it is most evident he is a Cheat; for he must contrive to have some Viſtals ſomeway or other ſecretly conveyed to him; of which the Impossibility of his being able to fast so long, is a Demonſtration. But notwithstanding this Tryal, and that this Woman was acquitted, yet this Matter must be carried on still. He was bailed out, and then returns to his Fits again; and tho' then he was not blind, or pretended to be so, yet he seemed to fast, and to be dumb again for a long Time. This made a great Hubbub about the Town, and the People clamour'd that the Man had Injustice done him in the Trial at the Assizes; and Reports were spread, that the Woman was acquitted by Favour, or Corruption both of Judge and Jury. Upon this Account, the Woman was pursued by a Rabble, and came to be in imminent Danger of her Life. Wherefore it was thought highly necessary that the Prosecution against this Man, and others concern'd with him, should be speedy; and thereupon he was apprehended, and bound to appear in the *King's Bench*, and there he pretended still to be dumb. His Bail deliver'd him up, and he was sent to the *Marshalsea*. There he lay without eating or speaking for some short time, till it was consider'd that if he was under any real Affliction, it was proper he should be under the Care of some proper Person: Therefore he was put to the House of Mr. *Kensley* a Chyrurgeon in *Fetter-Lane*, who was order'd to take care of him, and use him well; also to watch him, and endeavour to make a Discovery of the Truth of his Condition. He was deliver'd into his Hands the First of *November* last. The People of the House took care of him, and he fasted from *Saturday* till *Monday*; and Mr. *Kensley* ask'd him how many Weeks he had fasted, he counted on his Fingers Twelve: But Mr. *Kensley* thought he did not deal truly, but had a mind to impose upon the World, and therefore he locks him up. He eat nothing all *Saturday* and *Sunday*; but Mr. *Kensley* found he had made Water, for he discover'd the Rug or Counterpane of the Bed to be wet; and that it appear'd to come from the Tetter of the Bed: He made Water it seems in an old Box, and set it over the Bed. Drink was offered him, but he refused it. After this Mr. *Kensley* makes use of this Stratagem: He pretends to quarrel with his Maid, and gives her reproachful Language, in the Hearing of *Hathaway*; calling her Hypocrite, like unto him. At which the Maid seemed to be provoked; and out of Revenge, to prevent her Master's Design in making a Discovery, she takes an Opportunity and says to him, Take heed of my Master, he will betray you. And she had insinuated herself so far into him, that he began to trust her. She

gave him on the *Monday* a Glass of Brandy, which he drank, and a Piece of Pudding, which he received and put into his Pocket; and afterwards a Toast and Beer, which he eat and drank, and afterwards he entirely trusted this Woman. And Day by Day he did eat plentifully for several Days together in her Presence, from *Tuesday* to *Friday* Se'ennight following, thinking Mr. *Kensley* did not see him; but he being in a secret Place, undiscover'd by *Hathaway*, did see him eat and drink several Days; sometimes he drank so much, that he was perfectly drunk; and all this while he pretended to fast, tho' divers others besides Mr. *Kensley* and the Maid were Witnesses to his eating and drinking. Then it was thought to be time to discover this to the World; and he was told plainly by Mr. *Kensley*, that he was discover'd, and if he would tell the Truth, he should be pardon'd, seeing he could carry it on no longer. Now it is plain this Man had counterfeited during the Time he was at Mr. *Kensley's*, tho' that particular Time be not laid in the Information, yet it is a Continuance of that Time which is laid therein. And if he was an Impostor by pretending to have fasted while he was at Mr. *Kensley's* House, I leave you to consider whether he was not so all the while before. You hear what Management there has been, how he was at *Welling's* Home, how Pins were pretended to come from him, how they were made use of, and Charms sewed to him. You hear how some time ago one Mr. *Bateman* came to him, hearing at the Beginning of this Business, he vomited Pins: He saw some on the Ground; when he vomited a considerable Number, they were linked up together; for it is hard to manage so many loose Pins; but when they are linked together, they are the easier to manage in the Mouth. Here he pretended to vomit Pins, and would be still putting his Hands to his Pocket, and Mr. *Bateman* fancied he pulled them out from thence. Therefore he took the Chamber-pot, and would not let his Hands come near it; then he vomited no Pins there; and he search'd his Pockets, and there were great Quantities of Pins found therein; neither did he at any time seem to vomit any Pins, until he had drank a Draught of Ale. But notwithstanding all this, there are People that come and tell you that he was sick; he was disturb'd; and had these Fits. One Woman tells you she has watched with him several times; sometimes by Night: Another Woman tells you that she watched with him, when the other did not, and sometimes by Day; and that he did not eat, but was sick, and out of Order. And another tells you, he saw him; that he was in great Disorder, threw himself backward and forward; and would turn his Face round towards his Back; and that he was blind, tho' his Eyes were open. But how could he tell that he was blind? Said he, when I pulled him by his Eye-lids, his Eyes did not stir; and therefore he infers, that he was blind. And then they give you an Account that he was at the Hospital Five Months; and that he was weak, and went upon his Ankles, and had Quicksilver given him; and that he lay seven or eight Days, and did not eat; but then there was no Apprehension of Witchcraft. And one Mr. *Smith* an Apothecary, a Witness, called on his part, and a Neighbour, said, he knew him four or five Years ago; and that *Hathaway* was then with his Master, and had Fits, and would fall down, and seem to be dead; whether he was really sick, or counterfeited, he cannot tell; he applied his Cupping-glasses to him, and presently brought him to himself. This is one of his own

Witnesses. And then there is Mrs. Willoughby; she saw him in his Master's House, and she said his Breath made a Noise like the Barking of a Dog, and she believed he was bewitched, for she herself had been bewitched, and was made to fly, and she fancies he was bewitched because of his breathing in that Manner. And then they tell you what care was taken of him, and he was put into an empty House about Nine or Ten Days, and one Man watch'd with him by Day, and another by Night, and how they came to do that; and they swear they never saw him eat or drink all that Time; but they say he did several Times vomit Pins in that Time; but it seems he was put there merely out of Charity, the Parish would not be charged with him: Then they tell you there were People appointed to watch with him, there were Two Chamber-pots; and in one there were Extrements, and there were Pins in it, and Hair and a Piece of a Nail, but after he sat on the Second Pot, there was nothing found therein; but they conclude him bewitched. Then there are others that say he lay as dead, and that they took out of his Mouth several Pins, and then you have an Account after the Tryal, what happened at Mrs. Davenport's, where he was sent by Dr. Hamilton to be tryed whether he was an Impostor or not. She says she watched with him herself sometimes, another Woman at other Times, and another at other Times, and that they could never perceive that he eat any Thing. But there is one Mr. Davenport that was with him some other Times, but he is gone to Sea, and could not appear. Then comes in at last Dr. Hamilton, and he tells you he was by, when this Matter was brought before Sir Thomas Lane, and he could not tell what to think of his Fastings, but as to his Fits and the Pins, he says those may be easily counterfeited by Legerdemain Tricks, but, says he,

fasting for so long as some People did believe he did, is more than Nature can bear; no body can think the Devil has such a Power to enable a Man to undergo it. Tricks the Devil may play, but not work a Miracle, it is not to be thought that God should let him loose so far. This is the Sum of the Matter; his pretending to be dumb and blind, and to fast, and to be restored to his Speech, his Sight, and Stomach, by scratching this Woman, is fully proved. You are to consider whether he did labour under these Infirmities, or counterfeited them, and whether scratching and drawing Blood of the old Woman, could be effectual to cure him of them, if they had been real? If not, then it is a strong Argument that these Infirmities were counterfeited. His scratching and drawing Blood of a strange Woman, instead of Sarah Morduck, did seem to avail him, as much as if he had scratch'd her, until he understood he was imposed upon; then he seemed to relapse to his former Condition. You will remember what passed at Mr. Kensley's, and the Manner of vomiting of Pins as was pretended. You are to consider whether this Man was *non compos mentis*, or under a Delusion; therefore I shall spare the troubling you with more Words, but leave it wholly to you. If you do believe, upon the whole Matter, that this Man has imposed upon the Magistrate and on the World, or endeavoured by counterfeiting these Infirmities, to persuade People to believe that this Woman was a Witch, and had bewitched him, then there is all the Reason that can be, to find him Guilty. But if you believe he did not counterfeit, or that he was *non compos mentis*, or under any kind of Delusions, you must acquit him.

The Jury consulted, and without going from the Bar, brought him in Guilty.

A Short Account of the Tryal held at Surrey Assizes, in the Borough of Southwark, March 26. 1702.

In an Information, against Richard Hathaway, Thomas Wellyn and Elizabeth his Wife, and Elizabeth Willoughby, Wife of Walter Willoughby, upon an Information for a Riot and Assault, &c.

THE Information sets forth, that the Defendants, with divers other Persons, the 25th of September, in the Twelfth Year of King William, at Southwark, in a Riotous and unlawful manner assembled themselves, and made a great Affray and Riot; and upon one Sarah Morduck, the Wife of Edward Morduck, being an honest Woman, and not a Witch, nor ever using Witchcraft, Inchantment, Charm or Sorcery, did make an Assault, and under a wicked Colour, against the Law, to try whether the said Sarah was then a Witch (the Defendant Hathaway then falsely and maliciously affirming himself to be bewitched by her the said Sarah, though in truth he was never bewitched, and well knew himself not to be so), her the said Sarah did then, and there Scratch, Wound, &c. against the Peace, &c.

The Information further sets forth, That the said Defendants, the 11th of February, in the Twelfth

Year of King William, at Southwark aforesaid, assembling themselves together riotously and unlawfully, did then and there make a great Affray and Riot, and also Assaulted the said Sarah, and Beat, Scratch'd, and Wounded her, in Contempt of the King, and against the Peace, &c.

The Information further sets forth, That the said Defendants, the said 11th of February, did Assault the said Sarah, and wounded her the said Sarah, against the Peace, &c.

The Defendants pleaded Not Guilty, and Issue was taken thereupon. The Council for the King opened the Case to this Effect: That the Defendants Case was the same in the other Information. Hathaway pretended himself bewitch'd, and the Contrivance was carryed on by the other Defendants and divers others; but whether for the hopes of getting Money by it, or out of Malice to take away the poor Woman's Life, or what the Design was, was

was not then known; but it was certain that several Riots and Assemblies were made, and great Numbers of People came together in a Body at several times to *Morduck's* House, and in a violent manner enter'd the same, and by Force took her out and carried her away to the Defendant *Wellyn's* House, where the Defendant *Hathaway* scratch'd her; and the other Defendants also in a very barbarous manner beat her, pulled out her Teeth, tore her Face, Hair and Cloaths, threw her on the Ground, stamp'd upon her Belly, and threw her into the Street, where she lay as Murdered, until taken into a Neighbour's House; which the Defendants and others in a riotous manner beset, and threatned to pull it down, unless *Morduck* (the pretended Witch) was again delivered to them. These Riots and Assaults happened to be encouraged by an Accident, which fell out as *Morduck* was going through *Newgate-market*, where the People crying out, A Witch, the Rabble seized her, and threatned to throw her into a Horse-Pond; that one of these Rioters being taken away, was carry'd before a Magistrate in the City, but he was so far from taking notice thereof, that he declared that there was Cause enough for it; and being desired to ask the Person's Name, refused it; but the same Magistrate afterwards ordered the Defendant *Hathaway* to scratch *Morduck* in his Presence, where were also present some of the Aldermen of London. These Matters being acted by Publick Authority, gave the Licentious Mob such a Confidence, that even after the Woman was Tryed and Acquitted, and the Defendant *Hathaway* committed for an Impostor, yet he with the other Defendants, did again in a riotous manner Assault, Scratch, and Wound the said *Morduck*, and pursued her after a cruel manner from Day to Day, till they were taken into Custody, in order to be punished for the same. For which several barbarous Facts the Defendants were then to be Tryed.

Then the Council for the King called their Evidence to prove the several Branches of the Information.

Sarah Morduck being called and Sworn, deposed to this Effect: That in *September* last *Richard Hathaway* came to this Informant in *Surry*, as she was opening her Window, and being behind scratch'd her Face in a very cruel manner, and forced out one of her Teeth, and carried away her Cloaths. And upon the 11th of *February* last, *Thomas Osborn*, *Thomas Hatton*, with Four other Persons unknown, all in Disguise, came to this Informant's House in *Surry*, and forced her out of her House, and carried her to the House of *Thomas Wellyn*, who is Master to the said *Richard Hathaway*; and there the said *Hathaway*, by the Encouragement of the said *Osborn* and *Hatton*, and the rest of the Company, did again scratch this Informant in a most barbarous manner; and afterwards *Elizabeth*, Wife to the said *Thomas Wellyn*, fell upon her and scratch'd her in a most cruel manner; and tore her Face, and tore off her Head-cloaths and Hair; and then the said *Thomas Wellyn* gave this Informant two or three Kicks on her Belly, and threw her on the Ground and stamp'd upon her, and so much bruised her that she was forced to keep her Bed for about a Fortnight. And this Informant further deposeth, That in *September* last one *Elizabeth Willoughby*, the Wife of *Walter Willoughby*, came to this Informant's House in *Surry*, and brought a great many Persons unknown to this Informant with her; and the said

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Elizabeth gave this Informant several Blows with her Fist, and would have pulled her out of her House, for him the aforesaid *Richard Hathaway* to have scratch'd her, he standing at a Corner hard by, but was prevented by Mrs. *Sarah Hall*. And further saith, That in the Month of *September* last she having occasion to go into *Newgate-market*, a Boy, his Name is *John Hopkins*, called out, saying, *There goes the Old Witch*; whereupon a great Company of People in a riotous manner, flock'd about her, and threatned to throw her into a Horse-Pond; and this Informant being got into an Ale-house by the Assistance of some Women, avoided the Fury of the Rabble, otherwise she had been Murdered, as she verily believes; and afterwards Mr. *Burrel* her Landlord, with others his Assistants came and conveyed her home.

Sarah Hall was the next Witness, who said, That in *September* 1700, about 8 in the Forenoon, the Defendant *Willoughby* came with *Hathaway* and others, pretending to buy Fruit of *Morduck*, and told *Morduck* she came to have her out, that *Hathaway* might scratch her; and *Willoughby* struck *Morduck* several Blows, and forced her out of Doors, before *Hall* could come to her Assistance, who with difficulty got *Morduck* into her House again; upon which the Defendants *Willoughby* and *Hathaway*, and others, beset her House, and threatned to pull it down, unless they had *Morduck* delivered to them; but *Hall* calling up her Husband, who was a-Bed, the Person went away.

Robert Adams, and *John Bowrer*, both Watermen, declared, That plying for their Fare at *Mason's* Stairs, they saw the Defendant *Hathaway* come behind *Morduck* as she was opening her Window, and took her about the Neck with one Arm, and pulled her almost to the Ground, and scratch'd her Face in several Places till the Blood came, and tore her Mouth, and tore her Hood and Head-cloaths from her Head; and being taken off, *Morduck* got into a Neighbour's House, whom *Hathaway* would have pursued in at a Window, had not *Adams* stopt him.

To prove the Riot and Assault in *February* 1700.

Sarah Morduck declared, That the 11th of *February*, 1700. *Thomas Osbourn*, *Thomas Hatton*, with four others unknown, all disguised, came to and forced her out of her House, and carried her to the House of the Defendant *Wellyn*, *Hathaway's* Master; where *Hathaway*, by the Encouragement of the Company, scratch'd her barbarously; and after that, *Wellyn's* Wife scratch'd her, and tore her Hair, and Face, and pulled off her Head-cloaths; then *Wellyn* kick'd her two or three Times on the Belly, and threw her on the Ground, and stamp'd on her, and bruised her so much, that she was forced to keep her Bed for a Fortnight.

Mrs. *Hall* said, That in *February* 1700. in the Evening, several Persons unknown came to her House, and forced *Morduck* from thence, and carried her to *Wellyn's* (as she was told:) That about half an Hour after, *Morduck* was cast into the Street, and being received into a Neighbour's House, *Hall* went to her, and found her Face much torn, in a most barbarous Manner, and her Legs, Arms, and Body cruelly bruised and black.

Then the Council called Witnesses to prove the Third Part of the Information.

Samuel Burrel being sworn, deposed, that *Edmund Jones*, in Company with Two more, came

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to

to his House, and desired to speak with *Morduck*, who lodged there, who being called to *Jones*, he ask'd her to go over the Water to be scratch'd by *Hathaway*, who declared he was bewitch'd by her; but she refusing to go, *Jones* said, if she walked London he would have her scratch'd; and further, that about *Easter* or *Whitson* Week last, the said *Jones* came to his House with about Fourteen Strangers, among whom was *Hathaway*, and would have forced into *Morduck's* Chamber; but a Constable coming, they all but *Jones* dispers'd, whom the Constable took, and carried before Sir *Thomas Lane*; but Sir *Thomas* would take no Notice of it.

Thomas Knowlton being sworn, deposed, That in *Easter* Week last, *Jones* and *Hathaway*, and several others, went into *Burrell's* House, and asked for *Sarah Morduck*, who was called down to them, when *Burrell* desired them to go up Stairs into the common Drinking-room, and desired *Knowlton* to see *Morduck* had no Harm done her. That soon after came in about fourteen Persons, one of which said, they came to give *Hathaway* Ease, and that they would do it before they went; upon which *Morduck*, at *Knowlton's* Desire, retired into her Chamber.

Thomas Noon being sworn, declared, That all the Time aforesaid he saw Three or Four Persons, who were of *Jones's* Company, endeavouring to get into *Morduck's* Chamber; and upon *Noon's* asking them their Business, they cry'd they would speak with *Morduck*, but upon his threatening them they went into the Room below Stairs from whence they came.

Henry Armstrong declared, That in *September* was Twelve-month he saw a great Number of People following *Morduck*, calling her Witch; and going home afterwards, he saw a Crowd of People at an Alehouse Door, near *St. Paul's Church-yard*, who declared *Morduck* a Witch; and that he assisted *Burrell* in securing *Morduck* from the Rabble.

James Hearne being called, deposed, that in *Easter* or *Whitson* Week last, one *Jones* was apprehended for a Riot by him and others committed in *Burrell's* House, and carried before Sir *Thomas Lane*, who discharged *Jones*, saying there was Cause enough for the Riot; and tho' often intreated by *Hearne*, yet Sir *Thomas* refused to let him know *Jones's* Name. And the said *Hearne* further declared, That the Day after *Jones* was carried before Sir *Thomas*, he and *Burrell*, by Sir *Thomas's* Directions, carried *Morduck* before him, where were present Sir *Owen Buckingham* and Dr. *Hamilton*, and the Defendant *Hathaway*. That Sir *Thomas* would have had *Morduck* scratch'd by *Hathaway*, which she refused, unless she might be at Peace for the future: And after Dr. *Hamilton* had given *Hathaway* some Beer, Sir *Thomas* would have had *Morduck* scratch'd; but the Doctor said, Let her alone a little, to see what Effect the Drink would have on *Hathaway*; and said, if she was scratch'd it would be said, that the scratching, and not the Drink, made the Alteration. And when Sir *Thomas* had heard some more Discourse of *Hathaway's* vomiting Pins, &c. Sir *Thomas* said again, let her be scratch'd; but *Hearne* opposed it, saying, she had been too much abused already; notwithstanding which, Sir *Thomas* ordered *Hathaway* to scratch her, and ordered her to be stript and search'd by some Women in his own House. That *Hearne* seeing Sir *Thomas's* Resolution, bid him satisfy himself. After which Sir *Thomas* committed *Morduck* to *Woodstreet-Compter*, and refused 500 l. Bail for her Appearance: But upon Application made to him by Dr. *Barton* and Dr. *Martyn*, Sir *Thomas* accepted *Hearne's* and his Brother's Bail for *Morduck*.

The Witnesses for the Defendants being called and heard, and the Right Honourable Lord Chief Justice Holt having spoken to the Jury, they withdrew, and soon after brought them all in Guilty.

The Arraignment and Confession of JAMES BOUCHER, Gent. at the Queen's-Bench Bar, February 28, 170³/₄.



THE Court being set, the Prisoner was called, and the Clerk of Arraignments ordered Proclamation to be made, for the Under Sheriff of *Sussex* to return the Precept, and the Keeper of *Newgate* to bring into Court the Body of *James Boucher*. Accordingly the Precept was return'd, and the Prisoner set to the Bar.

Clerk of Arr. *James Boucher* hold up thy Hand. (Which he did.)

Then the Grand Jury of *Sussex's* Presentments were read.

Sussex ff. "THE Jurors for Our Lady the Queen, upon their Oaths do present, That *James Boucher*, late of London,

"Gent. who was a Subject of the late King *William* the Third, and now Subject of Queen *Anne*, after the 11th Day of *December* 1688, viz. the First Day of *August* 1689, was in the Kingdom of *Ireland*, and after and before the Third Day of *December* 1697, viz. the First Day of *December* 1694. the said *James Boucher* did voluntarily go into the Kingdom of *France*, without License from the late King *William* the Third, or from the late Queen *Mary*: And that the said *James Boucher*, on the said Third Day of *December* 1697. was not within the Dominions of the late King *William* the Third: And that he the said *James Boucher*, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance towards Our said Lady the Queen that now is, his Supreme, True, Legitimate, Lawful and undoubted

"doubted Lady; and as a false Traytor against our
 "said Lady Anne, the Queen that now is, after the
 "14th Day of January 1697, viz. the Tenth Day
 "of December, in the Second Year of the Reign
 "of our Lady Anne, the Queen that now is; did
 "Traiterously return and come into the Kingdom
 "of England, viz. at East Bourne in the County
 "of Sussex, without License from the late King
 "William under his Privy Seal, or from our said
 "Lady the Queen under her Privy Seal, obtained;
 "against the Duty of his Allegiance, and against
 "the Form of the Statute in this Case provided,
 "and against the Peace of our said Lady the
 "Queen, her Crown and Dignity, &c.

Clerk of Arr. What sayest thou, Art thou guilty
 of the said Treason whereof thou art indicted, or
 Not Guilty?

J. Boucher. Guilty.

L. C. J. Holt. What say you? Speak out.

J. Boucher. Guilty.

Clerk of Arr. James Boucher hold up thy Hand,
 (which he did.)

Then the Second Presentment was read.

Sussex ff. "THE Jurors of our Lady the Queen,
 "upon their Oaths, present, That
 "James Boucher, late of London, Gent. who was
 "a Subject of the late King William the Third,
 "and now a Subject of her present Majesty;
 "after the 13th Day of February 1688, and be-
 "fore the Third of February 1697, (viz.) the First
 "Day of August 1689, was in Arms in the Ser-
 "vice of the late King James in Europe, viz. in
 "the Kingdom of Ireland; and that the said James
 "Boucher, afterwards and before the said Third
 "Day of December 1697, (viz.) the First Day of
 "December 1694, did voluntarily go into the King-
 "dom of France, and the Third Day of Decem-
 "ber 1697, was not within the Dominions of the
 "late King William. That the said James Boucher,
 "not having the Fear of God in his Heart, and
 "not regarding the Duty of his Allegiance to
 "our Lady the Queen, his Supreme, True, Law-
 "ful and undoubted Lady, and as a false Traytor
 "against the said Lady the Queen, after the 14th
 "Day of January 1697, viz. the 10th Day of
 "December, in the Second Year of the Reign of
 "Our said Lady the Queen, did traiterously re-
 "turn and come into this Kingdom of England,
 "viz. at East Bourne in the County of Sussex,
 "without License from the late King William
 "under his Privy Seal, or from our said Lady
 "the Queen under her Privy Seal obtained; against
 "the Duty of his Allegiance, and against the Form
 "of the Statute in this Case made and provided,
 "and against the Peace of our said Lady the
 "Queen, her Crown and Dignity, &c.

Clerk of Arr. How sayest thou, art thou Guilty
 of the said Treason whereof thou art indicted, or
 not Guilty?

J. Boucher. Guilty.

J. Boucher. My Lord, I humbly beg that I may
 have leave to speak Two or Three Words.

L. C. J. Holt. What would you say?

J. Boucher. My Lord, I humbly beg leave to
 speak Two or Three Words.

L. C. J. Holt. Ay, let us hear what you have to
 say.

J. Boucher. My Lord, it is very well known,
 that I have solicited this Two Years for Leave

to come over into England. And while I have
 been in France, I have done all that I could to
 subvert the English that were brought Prisoners to
 the French Camp, and have to my Power assisted
 them with Money, and other Necessaries, especi-
 ally one Troop of Horse. I applied my self to
 Colonel Lumly, and he promised to lay my Case
 before the Queen. But not hearing from him, I
 went to his Son, and he told me he had no Op-
 portunity to acquaint the Queen with it. After-
 wards I was taken going for Holland, and then I
 sent to Colonel Lumly, and he promised to re-
 member me. And I continued still to sollicite
 the Service of Her Majesty's Subjects, and have
 procured their Horses that have been taken from
 them, to be restored to them. I spoke to Co-
 lonel Godfrey, and he promised to speak to —
 who promised to make it their Interest to procure
 my Return. And after the Camp was over, I
 came over into England at Noon-Day, with my
 Children, and sent up a Letter to my Lord Not-
 tingham to acquaint him where I was. It's true,
 I followed King James into Ireland, but had no
 Commission, only served the Duke of Berwick as
 Aid du Camp. And afterwards I went into France,
 but never served there with any Commission, but
 as Master of the Horse to the Duke of Berwick.
 And I did hope that the Articles of Limerick would
 take off a great Part of my Offence. My Lord,
 I hope you will represent my Case favourably to
 the Queen.

Dr. Sandys. My Lord, I beg leave to speak a
 Word or two on behalf of the Prisoner. My
 Lord, I solicited —

L. C. J. Holt. What you can say to us will
 signify nothing; but if you have any Thing to say
 for the Prisoner, you must apply your self else-
 where.

Mr. Attor. Gen. My Lord, as it is my Duty,
 I demand Judgment against the Prisoner, upon his
 Confession of the Two Indictments.

Clerk of Arr. James Boucher, thou hast been
 indicted on Two Indictments, and confessed thy
 self Guilty of both. What hast thou to say why
 Sentence of Death should not be pronounced against
 thee?

J. Boucher. I hope your Lordship will be plea-
 sed to intercede for me to the Queen.

Clerk of Arr. My Lords the Queen's Justices
 do strictly command all Persons to keep Silence
 while Judgment is giving, on Pain of Imprison-
 ment.

L. C. J. Holt. Mr. Boucher, You are, by your
 own Confession, convicted of High Treason, for
 which, Judgment of Death is to be pronounced
 upon you, and which you are to suffer under
 those Circumstances which the Law hath ap-
 pointed.

The Fact of which you were Accused, and have
 now Confessed, is, That since the Eleventh Day
 of December, 1688. you went into France with-
 out License either from the late King or Queen,
 and have returned since the Fourteenth of Jan. 1697.
 without any License under the Privy-Seal, either
 from the late King, or Her Majesty that now is;
 which Fact is made High Treason by the Statute of
 the Ninth Year of the late King.

The Wisdom and Justice in making that Law,
 will be very evident to any one that will but
 reflect upon the Posture of our Affairs at that Time:
 For in the Year preceeding to that of the making
 thereof, there was an horrid Conspiracy formed
 from

from among that Party of Men who had so left the Kingdom, to assassinate the late King; to introduce a *Popish* and *French* Power, for the Subversion of the *Protestant* Religion, and the Liberties and Properties of the People of *England*; which was managed with that Privacy, carried on with that Secrecy, that it was not discovered, nay, not so much as suspected, until it arrived to that Maturity, that it was come to the very Point of being put in Execution.

The Truth of which is very clear, as well as by the Proofs produced at the Tryals of several of the Malefactors, as even by their own Confession.

In the following Year the Peace of *Reswick* was made, whereby the Intercourse was restored between *England* and *France*. From thence it was evident, that divers of that Party of Men would return into the Realm, and thereby have an Opportunity to revive and carry on that horrid Design, in the Success whereof they had been so disappointed; for which, no doubt, they were not a little enraged, and it could not be otherwise expected but they would make use of it: For those of the same Principles will be guilty of the same Practices.

Therefore it was necessary to make a Returning into *England* by any of those who were under these Circumstances, to be so very penal, unless they should first give Satisfaction to the Government, either of their Innocence or Repentance, and obtain a License and Approbation for their Return, under the Privy-Seal; for their returning in any other Manner, is a Danger to the Queen's Person, and Her Kingdom.

This Treason, tho' it seems, and is new in the Form, yet it is compounded of an old Treason, known in the ancient Law of the Kingdom, which is, that of adhering to the King's Enemies. For what can be thought of those who, in Time of War, shall abandon their own Country, be harboured and protected in any Enemies Country; for being of an Interest inconsistent with, even repugnant to, that of their own?

What your Design might be in returning in this Manner, whether to revive and pursue those wicked Practices, your own Conscience is your Witness, and will be your Judge; and if that shall acquit you, it will be for your Advantage in the World to come. But you are an Offender against the Law of the Land, which hath made this your Offence to be High Treason, and therefore that Judgment appointed for one guilty thereof must be pronounced; the Court therefore doth award, *That you be conveyed from hence to Newgate, the Prison from whence you came, and from thence you are to be drawn upon a Hurdle to Tyburn; where you are to be hanged by the Neck, and while you are alive to be cut down, your privy Members to be cut off, and your Bowels to be cut out of your Body, and burnt in your View; your Head is to be cut off, and your Body is to be divided into Four Parts, and your Head and your Quarters are to be disposed as her Majesty shall appoint. And the Lord have Mercy upon your Soul.*

Clerk of Arr. Goaler; look to your Prisoner.

J. Boucher. My Lord, I beg that my Friends may have Leave to come to me.

L. C. J. Holt. You shall have such as is usual, and as is fitting.

Clerk of Arr. Take away the Prisoner.

The Tryal of DAVID LINDSAY, on Wednesday the 19th of April, 1704.



HE Court being set, Proclamation was made.

Clerk of Arr. David Lindsay hold up your Hand, (which he did.) Thou standest Indicted by the Name of David Lindsay of London, Gent. for that thou being a Subject of the late King William, and now a Subject of her present Majesty, after the Eleventh Day of December 1688, viz. the 26th Day of March 1689. was in the Kingdom of England, viz. at the Parish of St. Martins in the Fields, in the County of Middlesex; and afterwards and before the Third Day of December 1697, viz. the First Day of October 1696. Thou the said David Lindsay did voluntarily go into France without License from the late King William or the late Queen Mary; and that thou the said David Lindsay on the said Third Day of December 1697. was not within the Dominions of the late King William; and that thou the said David Lindsay not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance towards our Lady the Queen that now is, thy Supreme, True, Legitimate, Lawful and undoubted Lady; and as a false Traytor against our

said Lady Anne, the Queen that now is, after the 14th Day of January, 1697. viz. the 10th of December, in the Second Year of the Reign of our Lady the Queen, did traiterously return and come into the Kingdom of England, viz. at the Parish of St. Martins in the Fields, in the County of Middlesex, without License from the late King William under his Privy Seal, or from our said Lady the Queen, under her Privy Seal obtained; against the Duty of thy Allegiance, and against the Form of the Statute, and against the Peace of our Lady the Queen, her Crown and Dignity, &c.

Mr. Lindsay, (Taking a Paper out of his Pocket read it to the Court.) My Lord, I am very sorry I am so unfortunate as to fall under the Displeasure of the Government; and being willing to save the Court all unnecessary Trouble upon my Tryal, I have therefore resolved to confess most of the Facts charged upon me in the Indictment, viz. As to my being in France, and coming into England without License. But I am advised that there is something so singular for my Benefit in this Case, that I beg your Lordship to hear me by Council

Council before my Arraignment; the Council I desire, are Mr. Williams and Mr. Raymond.

Mr. Att. Gen. My Lord, he Sir Edw. Northey. might have had Council assigned him before, if he had desired it.

L. C. J. Trevor. You shall have these Council assigned you which you desire.

Mr. Soll. Gen. My Lord, I suppose this is not desired now, with any Design to delay the Tryal; the Prisoner must first plead to his Indictment.

L. C. J. Trevor. If his Council be here, we are willing to hear what they have to say.

Clerk of Arr. Call Mr. Williams and Mr. Raymond. (Who came into Court.)

L. C. J. Trevor. Mr. Raymond and Mr. Williams, the Prisoner here desires you may be of Council for him, and the Court have assigned you to be of Council for him accordingly.

Mr. Att. Gen. He has heard the Indictment read to him, but he has not yet pleaded to it.

Mr. Lindsay. My Lord, I desire to be heard by my Council first.

Mr. Raymond. My Lord, I apprehend Mr. Lindsay's Intention is, to give the Court as little Trouble as may be, and therefore the Facts, of which he is Guilty, and that are charged upon him in this Indictment he will confess. But, my Lord, he has been advised by his Friends, and other Council, that his Case has something particular in it, which he hopes will be for his Advantage, and desires to have the Benefit of what can be pleaded, besides Guilty or Not Guilty.

L. C. J. Trevor. Is there any other Plea, that he can plead specially?

Mr. Williams. My Lord, not any that we know of; I desired him to advise with some other Persons about it, I hope he has done so. As to the Prisoner's Confessing, or Pleading Not Guilty to the Indictment, it's a Matter of Prudence and not of Law.

L. C. J. Trevor. Let him plead then.

Clerk of Arr. David Lindsay, Art thou Guilty of this High Treason whereof thou art indicted, or Not Guilty?

David Lindsay. Not Guilty.

Clerk of Arr. Culprit, How wilt thou be tried?

David Lindsay. By God and my Country.

Clerk of Arr. God send thee a good Deliverance.

Mr. Lindsay. My Lord, I have one Favour to beg, that my Wife and Children may come to me.

L. C. J. Trevor. I think he may have that Liberty, in the Presence of the Keeper, if you have nothing to object against it.

Mr. Att. Gen. My Lord, we are willing they should come to him, in the Presence of the Keeper; we will not abridge any Man of what he can reasonably and justly desire.

L. C. J. Trevor. Have you pitch'd upon any Time to appoint for the Tryal?

Mr. Att. Gen. Yes my Lord, on Monday next, if it suit the Court. He shall have a Copy of the Pannel, and all other Things that are fit for him. I suppose my Lord, the Prisoner is now committed to the Sheriff as is usual on these Occasions.

L. C. J. Trevor. Yes, he is committed to the care of the Sheriff.

Clerk of Arr. Where is the Keeper of Newgate? He appeared, and took Charge of the Prisoner. And then the Court adjourned till Monday Nine of the Clock.

April 4. 1704.

THE Court being set, and the Pannel called over, as usual, the Prisoner making no Exceptions, the following Gentlemen were sworn upon the Jury.

Timothy Lenox, Esq;	Tho. Ellis, Esq;
Richard Brown, Esq;	Nich. Goodwin, Esq;
Joseph Forey, Esq;	Tho. Blackmore, Jun. Esq;
Tanner Arnold, Esq;	Will. Snelling, Esq;
Arthur Bayly, Esq;	Peter Lekeux, Esq;
George Ford, Esq;	Jo. Pack, Esq;

L. C. J. Holt. You Gentlemen that are sworn, go within the Bar.

Clerk of Arr. David Lindsay, hold up thy Hand. (Which he did.) Gentlemen of the Jury; look upon the Prisoner, and hearken to the Charge. He stands indicted by the Name of David Lindsay, of the City of London, Gentleman, &c. as before in the Indictment. Upon which Indictment he hath been arraigned, and hath pleaded Not Guilty. Your Charge is to enquire whether he be guilty of the said Treason, whereof he stands indicted. If you find him Guilty, you are to enquire what Goods and Chattels he had at that Time, or if he fled for it. But if you find him not guilty, you are to say so, and no more. And stand together, and hear your Evidence.

Mr. Morley. May it please your Lordship, and you Gentlemen of the Jury, This is an Indictment preferred against David Lindsay, the Prisoner at the Bar, for High Treason, for that he being a Subject of the late King William, and now a Subject of her present Majesty, after the Eleventh Day of December 1688, viz. the 26th Day of March 1689, was in this Kingdom of England, viz. in St. Martins in the Fields, in the County of Middlesex, and afterwards, and before the Third Day of December 1697, viz. the First Day of October 1696. the Prisoner did voluntarily go into France without License either from the late King William, or the late Queen Mary: And that the Prisoner on the Third Day of December, 1697. was not within the Dominions of the late King William. But the Prisoner, not weighing the Duty of his Allegiance towards our Sovereign Lady the Queen, did, as a false Traytor, after the 14th Day of January 1697, viz. the 10th Day of December, in the Second Year of the Reign of her now Majesty, traiterously return and come into this Kingdom of England, viz. in the Parish of St. Martins in the Fields, in the County of Middlesex, without License either from the late King William under his Privy-Seal, or from her now Majesty under her Privy-Seal; and this he hath done against the Duty of his Allegiance, and against the Form of the Statute in this Case made and provided. To this Charge he hath pleaded Not Guilty.

If we prove him Guilty I doubt not but you will find him so.

Mr. D. Lindsay. I shall give your Lordships, and the Court, as little Trouble as may be. I shall only beg leave to state my Case truly before you, and then I shall submit to your Judgment.

L. C. J. Holt. Mr. Lindsay, if you had a mind to confess, you should have done it before, now the Jury are to enquire whether you are Guilty or not.

Mr. Lindsay.

Mr. *Lindsay*. My Lord, I only desire to be heard as to the Fact.

L. C. J. *Holt*. You must stay till the Queen's Evidence is heard, and then you may say what you can.

Mr. *Williams*. My Lord, his Intentions may be as to some Things to save the Time of the Court; and perhaps to ease the Queen's Council of some Trouble.

L. C. J. *Holt*. Let the Queen's Council state the Evidence first, and then it may be proper for him to say what he will.

Sir T. *Powis*, [the Queen's Serjeant.] You must either confess the Treason wherewith you are charged, or else we must proceed to prove it.

L. C. J. *Holt*. If you open the Evidence, then it may be he will confess; but it must be first opened.

Sir T. *Powis*. My Lord, there is nothing meant by us to restrain him in any Thing that he has to say; all that we design, is to put him into a proper Method. It is proper that he should understand the Case. He has pleaded *Not Guilty*, and we are under a Necessity to show what Evidence we have to prove him Guilty. My Lord, this Indictment is founded on an Act of Parliament made in the Ninth Year of the late King *William*. And it is grounded on very good Reasons; for, as it is taken notice of in this Act, there had been a former Act made in the Third and Fourth Years of the Reign of the late King *William* and Queen *Mary*, by which it was made High Treason for any to repair into *France* without License; that any one that did so, should fall under the Guilt of High Treason. But that Act was calculated only for the Time the War lasted, and was of no longer Continuance; and there being a Peace concluded, the Preamble of this Act takes notice, that thereby it would become necessary for the carrying on of Trade and Commerce between *England* and *France*, that there should be a Freedom of going and coming out of, and into the said Kingdoms respectively. And therefore the Act farther says, that whereas several Persons who had been in Arms, or had been engaged in treasonable Practices against the King and Government, and other disaffected Persons (as all that resorted into *France* without License, during the War, were supposed to have sufficiently shewed themselves disaffected to the Government) therefore the Act goes on, and provides against the Mischiefs that might ensue; and says, If any of his Majesty's Subjects who had voluntarily, since the 11th of December, 1688, gone into *France* without License, and should at any Time, after the 14th of January, 1697, return into *England* without License, that such Person, so doing, should fall under the Guilt and Penalty of High Treason. This is the Substance of the Act upon which the Indictment is formed. Now, that which we have to charge and prove upon the Prisoner, is, That he was here in *England* after the 11th of December, 1688. We are ready to prove that he was here in the beginning of March, 1689; that he went into *France* in October, 1696; that he afterwards returned into *England* in December last. We say, He went into *France* without License, and return'd without License; and it will be his Part, if he can, to make it appear otherwise. If he does not admit these Facts, we shall call our Witnesses to prove them upon him. If they are Facts that he admits, then he may regularly proceed.

Mr. *Lindsay*. My Lord, May I speak now?

L. C. J. *Holt*. Yes, you may.

Mr. *Lindsay*. My Lord, I do confess, that being a Native of *Scotland*, and never having had any Office in *England*, I did go into *France* without his late Majesty's License, after the Time mentioned in the Act; and I did continue beyond Sea, till I was informed that her Majesty did, according to her usual Clemency, by her gracious Proclamation in 1703, give a general Pardon to all her Subjects; and being desirous to take the Advantage of it, and to return to my Native Country, I came into *Scotland*, where I presented my self before the Government, and had the Benefit of the Queen's Proclamation allowed me. Whereupon my Lord, being advised by some eminent Council there, that I was as free to come into *England*, as any other Subject; and having my Wife and Children here, I came to *London* by the Way of *Berwick*. Therefore, my Lord, humbly conceiving, in these Circumstances, that I am not guilty of Treason within the Intent of this Act, I desire to be heard by my Council.

L. C. J. *Holt*. You own you went into *France* since the 11th of December, 1688.

Mr. *Lindsay*. Yes, my Lord.

L. C. J. *Holt*. From what Place did you go into *France*, from *England*, or from *Scotland*?

Mr. *Lindsay*. From *England*.

L. C. J. *Holt*. Then he confesses the whole Fact.

Mr. *Soll. Gen.* But, my Lord, he was there before 1697.

L. C. J. *Holt*. You must agree on the Fact. He says he did go into *Scotland* within the Time mentioned in that Proclamation. And being in *Scotland*, he says, he did advise with some learned Council, and they told him he might safely come into *England*. Now do you admit that he did go into *Scotland* on that Occasion of the Queen's Proclamation?

Mr. *Att. Gen.* My Lord, as to that Fact, we cannot admit it. There was no License mentioned in it, the Proclamation gives no License to come into *England*, only a general Pardon. What his Council will make of it, I cannot tell.

L. C. J. *Holt*. Do you expect it should be proved?

Mr. *Att. Gen.* If he will shew us the Proclamation, if it be the same that I have, I will allow it.

L. C. J. *Holt*. Produce that Proclamation, look upon it, it may be you will admit it without any further Proof.

Then the Proclamation was produced, and Mr. Attorney General looked on it.

Sir T. *Powis*. Will they have it read?

Mr. *Att. Gen.* It may be read if they desire it.

Mr. *Williams*. My Lord, We desire it may be read.

Sir T. *Powis*. My Lord, We would not have it look'd on as a Thing of Right to be read, without further Proof.

L. C. J. *Holt*. No, that is of Grace, it is a voluntary Offer of yours.

Mr. *Att. Gen.* Then I shall not oppose the reading of it.

L. C. J. *Holt*. Then you do admit that to be the Queen's Proclamation for *Scotland*.

Mr. *Att. Gen.* Yes, my Lord.

Mr. *Williams*.

Mr. Williams. I desire to know, whether they admit the Prisoner to be a Native of Scotland?

Mr. Att. Gen. We do not know that.

L. C. J. Holt. Then you must prove it, if you think it material.

Sir T. Powis. My Lord, he went from England into France, and returned from France into England again.

L. C. J. Holt. He must be taken for a Native of England, unless he can prove the contrary.

Mr. Williams. My Lord, Shall we first read the Proclamation, or prove him a Native of Scotland?

L. C. J. Holt. Read the Proclamation first.
[Then the Clerk read the Proclamation.]

A Proclamation of Indemnity.

A N N E R.

" A N N E by the Grace of God, Queen of
" Scotland, England, France and Ireland,
" Defender of the Faith, &c. To all and sundry
" our good Subjects, to whom these Presents
" do or may concern, greeting. Forasmuch as it
" has been, and is our constant Resolution and
" Design, to establish the Peace, and promote the
" Welfare of our People; not only by procuring
" the equal and impartial Administration of Justice,
" but also by such a Mixture of the Benign
" Influences of our Goodness and Clemency, as
" may best compose all Distempers, and give a just
" Assurance against all Fears and Jealousies: And
" for that Effect, we being desirous to compleat
" the Indulgence that hitherto we have shewed,
" and to reclaim even such Offenders as might
" justly have expected the deserved Effects of our
" Displeasure. And that for Time to come, we
" may by a gracious Pardon and Act of Oblivion,
" establish firm Peace and Concord amongst
" all our Subjects. Therefore we, of certain
" Knowledge, and by Virtue of our Sovereign
" Power and Authority, Pardon, Remit, Indemnify,
" and for ever Acquit, all and every one
" of our Subjects, of all Crimes of Perduellion,
" Rebellion, Treason, Concealing of Treason, Harbours,
" Receipt, Supplying, Corresponding and
" Intercommuning with Rebels, and Declared
" Enemies; the impugning the Dignity and the
" Authority of the Estates of Parliament, and all
" other Kinds of Treason or Lese Majesty, whether
" Common or Statutory; and of all Crimes
" of Lefing-making, whether to us or our Subjects,
" or to our Subjects of us, Depraving or
" Misconstruing our Laws, or of any of our Proceedings,
" or Misrepresenting or Slandering us
" or our Proceedings in any Sort; and all Breaches
" or Abuses of, or Malversations in Publick Trusts,
" with all other Crimes, Delinquences or Transgressions
" of whatsoever Nature or Quality, committed,
" acted or done by any of Her Subjects by Word or
" Writ, or incurred by any other Act either by Commission
" or Omission, preceeding the Date of these Presents,
" and which directly or indirectly are, or may import the
" Contravention of any Law or Act of Parliament,
" Custom or Constitution of that our ancient Kingdom;
" and that in so far as the same may infer any Pain or
" Punishment against any of our Subjects, either in their
" Lives, Fortunes, Estates, Fame or Reputation. All which,
" we by virtue of our Royal Power and Authority
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" rity aforesaid, Will, Declare and Ordain to be
" hereby Pardoned, Acquitted and Indemnified,
" and put in perpetual Oblivion; and that this
" General Pardon and Indemnity shall be as valid
" and effectual to all our Subjects for their Exoneration
" and Discharge of all Pains and Punishments, as if every
" particular Crime, Offence, Delinquency or Misdemeanor
" were here set down, and as if Remissions, under our Great
" Seal were past and granted for the same, wherewith
" we for our Selves and Successors dispense for ever.
" Like as we hereby Prohibit and Discharge any of our
" Ministers or Judges to call in Question, or proceed
" against any of Her said Subjects for the said Crimes,
" and their Crimes and Punishments in any Time coming;
" declaring and Ordaining this our General Pardon and
" Indemnity to be interpret and understood in the most
" Benign, Favourable and Comprehensive Sense the same
" can admit, for the Security of our Subjects. Excepting
" always forth and from this General Pardon and Indemnity,
" all Fore-faulters, and Sentences, and Dooms thereof,
" and all pecunial Fines and Unlaws already paid or
" transacted; and but prejudice to us, or these
" commissioned by us, to call all Collectors and other
" Intromitters with publick Money, to give Account
" of their Intermissions, and to make Payment of what
" shall be found due by their Intermissions. And
" farther excepting, all Manslaughters, Murders,
" Assassinations, Witchcrafts, Fire, Raifings,
" Depredations, Robberies, Raps, Spulzies,
" Thefts, House-breakings, Mutilations, Adulteries,
" Blasphemies, and Delinquences of Immorality.
" All which Crimes, and those guilty thereof, are no ways
" to be comprehended in, or have any Benefit by this
" our Pardon and Indemnity as the said Crimes excepted.
" And lastly to the end all our good Subjects may
" have Notice of our Royal Will and Pleasure,
" we do hereby command our Lion King of Arms,
" and his Brethren, Heralds, Pursivants, and
" Messengers at Arms, to make due Publication
" hereof at the Market Cross of Edinburgh; for
" all which these Presents shall be a sufficient
" Warrant. Given at Our Court at St. James's,
" March 16th, 1703, and of our Reign the Second
" Year.

By Her Majesty's Command.

Queensberry,

GOD save the QUEEN.

Mr. Raymond. Look on the Backside.

Mr. Att. Gen. What is that?

Mr. Raymond. A Certificate from the Duke of Queensberry, Secretary of State of Scotland, that it is a true Copy.

Mr. Att. Gen. We admit it.

Mr. Williams. Then, my Lord, it is insisted on that we should prove the Prisoner a Native of Scotland.

Mr. Att. Gen. If you think it material, you may prove it.

L. C. J. Holt. They did think it material, and therefore made it part of their Case.

Mr. Williams. Call James Grey, Esq; (who appeared and was sworn.) Sir, do you know the Prisoner at the Bar?

J. Grey. Yes.

Mr. Williams. What Country-man is he?

J. Grey. Always reputed of Scotland, I have known him this 20 Years, and he was always reputed so.

N n n n

L. J. C.

L. C. J. Holt. Have you known him Twenty Years in England?

J. Grey. Yes, my Lord, in England, not in Scotland.

Mr. Soll. Gen. Have you had any Correspondence with him?

J. Grey. No, Sir, no great Correspondence. In King James's Time he was Secretary to the Lord Melfort.

Mr. Williams. What Country-man was he reputed then?

J. Grey. A Scotchman.

L. C. J. Holt. Did you know his Family?

J. Grey. No, I have been always in England, I did not know his Family.

Mr. Williams. We have another Evidence.

L. C. J. Holt. You must bring better Proof than this, or else it will not do.

Mr. Williams. Call Mr. Trumbal, (who appeared, and was Sworn.) Mr. Trumbal, do you know the Prisoner at the Bar?

Mr. Trumbal. Yes.

Mr. Williams. How long have you known him?

Mr. Trumbal. I have known him this Twenty Years.

Mr. Williams. What Country-man did you always reckon him?

Mr. Trumbal. A Scotchman.

L. C. J. Holt. How do you know that?

Mr. Trumbal. He has been always reputed so. He dealt in Wine with one that I knew, and so I came to know him.

Mr. Williams. Did you know him in Scotland?

Mr. Trumbal. No.

Mr. Att. Gen. Have you known him any where but in England?

Mr. Trumbal. No, but he has been reputed a Scotchman, that dealt in Wine. He had always the Repute of an honest Man.

Mr. Williams. Call Charles Canair, (who appeared.)

Mr. Att. Gen. You should bring your Witnesses into the Court. What is your Name Sir?

Mr. Canair. Charles Canair.

Mr. Williams. How long have you known the Prisoner?

Mr. Canair. Ever since I was a Child.

Mr. Williams. Where did you know him?

Mr. Canair. In Scotland. I remember him from a Child.

L. C. J. Holt. And you knew him to be a Native of Scotland?

Mr. Canair. Yes, my Lord, of Dundee in Scotland.

L. C. J. Holt. Did you know any of his Relations?

Mr. Canair. Yes, my Lord, his Father was of Dundee in Scotland.

Mr. Williams. My Lord, we have something farther to prove.

L. C. J. Holt. What is it?

Mr. Williams. That the Prisoner was allowed the Benefit of this Proclamation in Scotland; and we beg leave to say, this Fact which is now charged against him is already pardoned.

Mr. Att. Gen. That Pardon has Influence in Scotland, not in England.

Mr. Williams. Then you admit also that the Prisoner had the Benefit of this Proclamation allowed him in Scotland.

Mr. Att. Gen. I know nothing of that.

L. C. J. Holt. Now go on and state your Case.

Mr. Williams. My Lord, Mr. Attorney General is not pleased to admit we had the Benefit of the Proclamation allowed us in Scotland.

Mr. Att. Gen. They insist on what I know nothing of; if they think they can have any Benefit by it, they may prove it.

Mr. Raymond. We have done our Endeavour to have the Secretary of State of Scotland appear here, but I don't know whether he has done us the Favour. We have the Certificate under his Hand.

L. C. J. Holt. Is it the same Hand?

Mr. Att. Gen. My Lord, he asserts that Certificate, but we know not whether it be true.

L. C. J. Holt. Then that must be proved.

Mr. Raymond. Call Tho. Bruce, Esq; (who appeared, and was sworn.) Mr. Bruce, do you know the Prisoner, and whether he had Benefit of the Pardon in Scotland.

Mr. Bruce. I know very little of him. I know he was at Edinburgh last Summer, and was under Confinement there, and under Examination several Times; but after some Days he was at Liberty again. That's all that I know.

Mr. Raymond. Was he not at Liberty by leave of the Government?

Mr. Bruce. It was so believed.

Mr. Att. Gen. Can you tell when he came back to Scotland?

Mr. Bruce. No, Sir. He was in Custody about July last.

Mr. Att. Gen. Can you be particular to the Time? Was it in June or July?

Mr. Bruce. I can't be positive, it was in the Time when the Parliament sate. I never was in his Company.

Mr. Raymond. Call Mr. Southerland.

Mr. Att. Gen. I know not why we should trouble the Court with this. What signifies the Pardon?

L. C. J. Holt. Let them make what use they can of it.

Mr. Att. Gen. Sir, what is your Name?

Mr. Southerland. Southerland.

Mr. Raymond. Do you know any Thing of the Prisoner's having any Benefit allowed him of the Scotch Pardon?

Mr. Southerland. I heard he had surrendered to the Government.

Mr. Raymond. Was he discharged by the Government?

Mr. Southerland. Yes, It was generally reported so.

Mr. Att. Gen. What Time was that, Sir?

Mr. Southerland. In June or July last Summer.

Mr. Att. Gen. Was he there the 27th of July, or before?

Mr. Southerland. I cannot be positive.

Mr. Raymond. Call Dr. Hutton, (who appeared.) Doctor. What do you know of the Prisoner's having the Benefit of the Scotch Pardon, and its being allowed him by the Government?

Dr. Hutton. I was in September at Edinburgh, and there I saw Mr. Lindsay at the Queen's-Head, with the Attorney General. He had been examined about some Letters (as I heard say) that had been directed to him. And there I heard Sir John Stuart tell him, the Council had set

set him Free. And I met him afterwards at Liberty, and it was done upon the Proclamation of Indemnity.

Mr. Williams. What Religion is he reputed of?

Dr. Hutton. I know not that. But I have known him Six and Twenty Years, and I heard him tell Sir James Stuart (who asked him why he came away from France,) because he would not be a Papist, and he said, he had rather go to the Gallows, than return again.

Mr. Williams. What is his Temper? Is he a quiet Man in relation to the Government; or of a turbulent Temper?

Dr. Hutton. I have always known him a fair, peaceable, friendly Man.

Mr. Raymond. Doctor, I would ask you one Question, whether you have any Law in Scotland that prohibits going into France?

Dr. Hutton. I do not know. I know several Persons that came from France to Scotland.

Mr. Att. Gen. Dr, you give him a fair Character. Can you tell in whose Service he was in France?

Dr. Hutton. No, Sir; I cannot.

Mr. Att. Gen. What was his Affection towards the Government?

Dr. Hutton. I know nothing of that.

Mr. Soll. Gen. When did he return into Scotland; was it before or after the 27th of July?

Dr. Hutton. I do not know.

Mr. Raymond. He came into England in September last, after he had his Pardon. We say he came through Northumberland, and other Places hither, and in this County he was taken.

Mr. Lindsay. I was taken no where, but surrendered my self to Sir Charles Hedges.

Mr. Williams. The Fact is, that he came from Scotland through Northumberland, &c. and so into Middlesex, and surrendered himself; so that Northumberland was the first County of England that the Prisoner came into, after his leaving Scotland; and so that the Treason, if any, was committed there, and we insist that the Arraignment and Tryal ought to be there.

L. C. J. Holt. If you insist upon it, that the Treason committed was in Northumberland, then you must prove it.

Mr. Williams. My Lord, with submission, tho' the Fact being that Northumberland was the first County of England, that we came into, yet it may be difficult to us to prove it; but, with Submission, it may not be absolutely necessary for us to prove, that Northumberland was the first County, in regard that your Lordship will take notice that Middlesex cannot be the first County, it being impossible to come from Scotland into Middlesex, without being in other Counties before; and the Indictment ought to have been in the first County of England he came into.

Mr. Att. Gen. My Lord, we indict him where we find him.

Mr. Raymond. We can prove that he came first to Eerwick, then through Northumberland, before he came into Middlesex.

L. C. J. Holt. If you can, do.

Mr. Raymond. Dr. Hutton, do you know, where he came first into England, and which way he came hither?

Dr. Hutton. No, indeed; I have heard that he came through Northumberland, &c.

Mr. Raymond. Did you lend him your Horse?

Dr. Hutton. No Sir, but a Friend of mine did lend him his Horse.

Mr. Raymond. Where does your Friend live?

Dr. Hutton. At Edinburgh.

Mr. Raymond. Did he come hither on that Horse?

Dr. Hutton. That I know not. He was left there by a Friend of mine, to be sent into England with the first Opportunity, and so he sent him by Mr. Lindsay.

Mr. Raymond. Did he make use of that Horse all the Way?

Dr. Hutton. I know not that.

Mr. Williams. My Lord, I am, by your Lordship's Permission, of Council for the Prisoner: And I hope this free and ingenuous Confession which he has now made at the Bar, being the very same which he before made at his Arraignment; and being the very same Confession which he made before the Secretary of State, and others, before whom the Prisoner was examined; will be taken, and weigh with the Court as a good Argument of the Sincerity of this unfortunate Gentleman; and that he designs in his Tryal to put your Lordship to as little Trouble as possible. My Lord, It has been proved that he is a Native of Scotland, and he always has been of the Protestant Religion. He has been indeed in France but finding he could not enjoy his Religion there, he was resolved by the first Opportunity to endeavour to gain a License from the Government for his Return into his own Country. In the mean Time comes out her Majesty's Gracious Proclamation of Indemnity. That Proclamation was proclaimed in a publick Manner, by all Her Majesty's Heralds, at the Market-Cross at Edinburgh, and it has very extensive Words in it, pardoning all Treasons, Felonies, &c. all Crimes and Misdemeanors whatsoever. My Lord, in Confidence of this Her Majesty's Royal Proclamation, we came from France to Scotland, and there claimed, and were allowed by that Government, the Benefit of the Queen's Mercy. Afterwards having been advised by the most eminent Advocates and Council of Scotland, that by this Proclamation we were rendered in every respect as a free Subject, and might with Safety come from thence to England; we accordingly came from thence hither; but all this while we paid all the due Submission and Regard that could be, as well to the Law as to the Government; for we came from France unto the Hague, and we there attended upon Her Majesty's Envoy, Mr. Stanhope, and acquainted him with our Intentions of returning Home. Immediately upon our Return into Scotland, we voluntarily came before the Chief Commissioner and Magistrates there; who, upon our Claim, were pleased, at length, to allow us the Benefit of Her Majesty's Royal Proclamation and Pardon. And when we were in England, on the first Notice of a Warrant out against us, we, of our own Accord, waited on the Secretary of State, Sir Charles Hedges; and he happening not to be then at Leisure, we voluntarily attended upon him a Second and Third Time; and upon our Third Attendance we were committed. And now, my Lord, we stand indicted before your Lordship for the greatest of Crimes, High-Treason. My Lord, as to the Statute upon which we were indicted, tho' some Part of it, without doubt, was not only very reasonable, but absolutely necessary, I mean that Part of it which was for the Preservation of his late Majesty's Person and Government; but as to that Part

of it upon which we are indicted, it seems, with great Submission, a severe Law. That the bare returning into our Native Country, when we before were convicted of no Crime, or guilty, at most, but of a bare Contempt in going out of the Queen's Dominions without License, that this should be made High-Treason, this, with Submission, is somewhat severe: So that in respect of the Severity of this Law, besides the common Argument of its being a Penal Law, your Lordship will be the rather induc'd to admit of the most favourable and merciful Construction to every Part and Clause of this Act, that it will bear. My Lord, we do humbly insist on the Words of the Proclamation; and we take it, that those Words do amount to a License to us to come into *Scotland*: And if so, then we are not guilty within this Act of Parliament, of coming to the Queen's Dominions without License. And we likewise further insist, that one that has the Queen's License to come into *Scotland*, may, without any further License, come into *England*.—— I beg your Lordship's Leave to read that Part of the Proclamation, which we chiefly insist on. The Proclamation pardons all Treasons, and all corresponding and intercommuning with Rebels, or declared Enemies of the Queen. My Lord, it pardons all other Crimes, of what Nature soever. It pardons any Act, that may infer any Pain or Punishment, on the Lives or Estates of Her Majesty's Subjects. And it is declared to be as available to all Subjects, to pardon them all Crimes, as if the particular Crime were named, and as if Remissions under the Great Seal were pass'd. And then Her Majesty declares, That this shall be taken in the most favourable and comprehensive Sense that may be, for the Security of the Subject. Now, my Lord, taking this Proclamation in the most favourable and extensive Sense, in Favour of the Prisoner; which Her Majesty has been pleas'd expressly to direct it should; with Submission, I take it, it will amount to a License from Her Majesty, to return from *France* to *Scotland*: And we humbly take it, that if the Prisoner did by License come from *France* to *Scotland*, that he afterwards coming from *Scotland* into *England*, is not within the Act.

My Lord, I wou'd beg Leave to consider what it was that hinder'd the Prisoner from returning from *France* to *Scotland*: Sure it was his going to *France* without License. Then when Her Majesty is graciously pleas'd to pardon this Offence, we take it, that Her Majesty, by removing the Obstacle, does by necessary Implication give Leave to the Prisoner to return to *Scotland* again. Her Majesty is pleas'd, with Submission, plainly to give him this Leave, by taking off that that hindred his coming. That Parliament plainly did take it, and have been pleas'd to declare it an Offence, to go into *France* without License; and have therefore been pleas'd to punish that Offence with a Temporary Banishment: But when that Offence is pardon'd, when that Banishment is remitted, then the Prisoner seems at Liberty to return Home: And that Liberty being given by the Queen's Proclamation; this, with Submission, amounts to a License from the Queen, for the Prisoner's returning home. My Lord, there are many Instances, wherein the King or Queen's Grants or Pardons shall have a double Operation, for the Benefit of the Persons upon whom they are bestow'd. But these Cases, as I humbly conceive, not immediately relating to this Point now before your Lord-

ship, I shall not trouble your Lordship with citing them. My Lord, if we, when in *France*, had been guilty of more than what is charged upon us in the Indictment; I mean, had we corresponded, or adher'd to the Queen's declar'd Enemies; still the express Words of the Proclamation seem plainly to extend to us, when it pardons all corresponding and intercommuning with the Queen's declared Enemies; which the *French* then were, and now are. My Lord, If this Proclamation could in any Part of it bear Two Constructions, (the one making for the Prisoner, the other against him) the Queen has been pleas'd to determine in what Sense it shall be taken; in the most beneficial manner for the offending Subject. But, with humble Submission, would this be observing of Her Majesty's Gracious Directions; instead of allowing to the Prisoner the Benefit of this Proclamation, to make his very coming to *Scotland*, to claim the Benefit of it, and humbly to lay hold of her Majesty's Mercy; to make this very Act to amount to a Crime; to make it the greatest of Crimes, High Treason? This surely would be the very Reverse of Her Majesty's most Gracious Intentions: And yet this, with Submission, would be the Consequence, if the Prisoner's coming from *France* into *Scotland* should be constru'd to be Treason. My Lord, I admit the Words of this Act are, If any return into *England*, or any other of Her Majesty's Dominions, without a License under the Privy Seal, it shall be High Treason.

Sir T. Powis. But this is not a License under the Privy Seal.

Mr. Attorney General. The Great Seal of *Scotland* will not vacate an *English* Act.

Mr. Williams. Now we humbly take it, if the Queen is pleas'd to bestow her License by any Act, or in any manner equally notorious with her Privy Seal; 'tis sufficient, and within the Meaning and Equity of the Statute. And this Proclamation made by all the Heralds at Arms, at the most publick Place in *Edinburgh*, is as notorious, nay, much more notorious and publick, than a License under the Privy Seal only; and therefore within the Meaning of this Act. Besides, the very Words of the Proclamation are, That it shall be in every respect as valid and effectual, as if it were under the Great Seal: And if under the Great Seal, surely it must be at least as strong, as if under the Privy Seal. Besides, the Statute does not say, that the License must be under the Privy Seal of *England*. The Words of the Act are, If any return into *England*, or any other of Her Majesty's Dominions, without License under the Privy Seal, without saying of what Kingdom. Now, with Submission, it not being said what Privy Seal, or of what Kingdom; it must be intended according to the Subject-Matter, the Seal of that Kingdom or Dominion where the License is granted; and that being *Scotland*, the License under the Great Seal of *Scotland* is sufficient: For it seems improper, that the Seal of one Kingdom should be made use of, to License an Act in another Kingdom. Now, if a License under the Great Seal of *Scotland* be sufficient, this Proclamation declares, that it shall be as valid as if 'twere under the Great Seal: And it can't be deny'd, as I have said, but a License under the Great Seal, must be equivalent with a License under the Privy Seal. Besides, the Queen's Proclamation does not mention what Great Seal, or of what Kingdom; and so it may be intended,

tended, that Great Seal that would be most beneficial to the Prisoner; taking it in its most favourable Sense, as Her Majesty is pleas'd to direct it should be.

But 'twill be said, That taking this to be a License, this is only a License to come into *Scotland*; but the Prisoner is indicted for coming into *England* without License. But we take it, If we had a License to come into any one of the Queen's Dominions, and we first came into that Dominion with this License; we can't then be guilty of Treason within this Act. The Words of the Act make it Treason to come into *England*, or any other of the Queen's Dominions, without License; so 'tis the same Thing as if it said, that it should be Treason to come into the Queen's Dominions without License. Then if one comes into *Scotland* with License; *Scotland* being one of the Queen's Dominions, the Prisoner can't be said to come into the Queen's Dominions without License; so that by this License the Prisoner is wholly out of the Act. This Act, with Submission, must operate, and take its Effect, upon the first Step made from *France* into any of the Queen's Dominions; so that if the Prisoner be guilty of Treason within the Act, it must be when he made his first Step from *France* into *Scotland*: But that being made lawful, by the Proclamation, amounting (as we say) to a License; it can't be afterwards Treason, for the Prisoner to come into *England*. Take it, that the Prisoner had had Her Majesty's License to come from *France* into *England*; and accordingly, the Prisoner comes into *England*, and afterwards goes into *Scotland*; had this been Treason? Surely not. Take it, that a Man within this Act returns from *France* into *England* without License, and is pardon'd, and he afterwards goes into *Scotland*; would this have been a new Treason, for which the Man that was before pardon'd must lose his Life? We humbly take it, that it would not.

Besides, with Submission, this Proclamation amounts to a Pardon of the Treason, tho' it be before the Prisoner return'd to any of the Queen's Dominions. And if it appears to your Lordship, that the Prisoner is pardon'd; tho' we have not pleaded it, your Lordship will not be pleas'd to suffer the greatest Punishments to be inflicted on any that your Lordship perceives are entitled to Her Majesty's Mercy, or on any that are so much as within Her Majesty's Intentions of being pardon'd. Besides, another Consequence of the Prisoner's being pardon'd, is, That then if he be pardon'd, he is a free Subject, and has Liberty to go any where, and into any of the Queen's Dominions. My Lord, as to this Point, whether the Treason be pardon'd, 'tis necessary, with humble Submission, to consider what makes this Treason. 'Tis the going into *France* without License, and returning home without License: 'Tis both join'd together make the Treason; and the one without the other does not make the Treason. Had not the Prisoner gone into *France* without License, his returning without License would not have amounted to Treason: So that the going into *France*, is the Foundation of the Treason. And I humbly take it, that this Act of Parliament has made the bare going into *France* without License, an Offence; and has punish'd it as such, by Banishment during the Queen's Pleasure: So that the Prisoner, from the Time he went into *France* without License, was an Offender, and consequent-

ly capable of a Pardon. So, with Submission, 'tis plain, there was some Things on which the Pardon might operate; tho' the Pardon was before the Prisoner's landing in *Scotland*; then taking it, that the Prisoner's going into *France* without License was an Offence, and the original Foundation of the Treason: This original Offence is, with Submission, pardon'd by the Proclamation, by the Pardon of all Crimes and Misdemeanors, of what Nature soever. And if the original Offence be pardon'd, all the Consequences, all the Dependencies upon that Offence, all that ensues upon that Offence, are, with Submission, at the same Time pardon'd. This, my Lord, seems to be prov'd by *Cole's Case*, *Plowd.* 401. where, after one had feloniously wounded another, then comes a Pardon of all Crimes and Misdemeanors; and afterwards the Party wounded dies. The original Misdemeanor being pardon'd, all that ensues upon it is pardon'd; and consequently the Murder is pardon'd, by the Pardon only of all Misdemeanors. Now in our Case 'tis plain, the original Offence is going into *France* without License; and that being pardon'd, all that ensues that Offence, all the Dependencies upon that Offence, according to the express Words of that Case, are pardon'd also: And therefore, the returning into the Queen's Dominions without License, being only a Consequent and a Dependent upon the going into *France* without License, is pardon'd also. Besides, my Lord, so favourable a Construction does the Law make upon Acts of Mercy, that when the Crown pardons any Crime, the Pardon restores the Man in such a manner, as if the Offence had never been committed. And consequently, after this Pardon, 'tis the same Thing as if the Prisoner had never gone into *France* without License: And if the Prisoner had never gone into *France* without License, 'tis plain his coming home without License would not have been Treason.

In *Hob. 81. Cuddington v. Wilkins*, If a Man commits a Theft, and is pardon'd; if afterwards he is called Thief, an Action lies, tho' he is called so by one that had no Notice of the Pardon; for that after the Pardon, 'tis as if he had never been guilty of Theft. There is likewise another Case put there, which seems much stronger than the Prisoner's Case; which is this: If an Appeal of Felony be brought against a Man, and the Defendant prays Trial by Battel; the Plaintiff counterpleads the Battel, by saying, that the Defendant, when committed to Prison for his Felony, broke the Prison, and so escaped, (which is a Presumption of Guilt) and so takes off the Trial by Battel; yet 'tis adjudged, that when the King pardons the Breach of Prison, this restores the Defendant to his Trial by Battel, and 'tis then as if the Defendant had not broken the Prison at all. Yet in this Case it might have been objected, That tho' the King has pardon'd the Breach of Prison, tho' the Prosecution or Punishment for Breach of Prison is pardon'd; yet the Collateral Effect of it, which is the Presumption of Guilt upon the Party's Flight, might remain; especially as to the Appellant, whose Suit (according to the General Rule) the King's Pardon can't influence. Yet here 'tis adjudged, that even as to the Appellant, the King's Pardon of the Breach of Prison, makes it as if the Party had never been guilty of it. Now this is stronger than the Prisoner's Case: For in the Prisoner's Case, the Queen's Pardon is only made use of, to prevent her own Prosecution, and not the

the Suit of any Appellant. Therefore, in the present Case, the Proclamation pardoning all Misdemeanors, pardons the Offence of going into *France* without License: And that being pardon'd, 'tis as if the Prisoner had never gone into *France* without License; and without this, the bare Return without License will not amount to Treason. So that, with Submission, we take this Proclamation to be a License to the Prisoner to return into the Queen's Dominions. Nay, we take it to be a Pardon even of the Treason of which he stands indicted.

Besides, I would humbly beg Leave to offer to your Lordship's Consideration, whether a *Scotchman*, that was not in *England* at the Time of the making of this Act of Parliament, be within the Meaning of this Act. The Act says, If any of his Majesty's Subjects shall go into *France* without License, if he return without License, 'tis Treason. I don't pretend to call in question *Calvin's Case*, which was (at that Time at least) a very convenient Resolution. I don't deny, but a Natural-born Subject of *Scotland* is, as to many Purposes, a Natural-born Subject of *England*. But whether (upon the Construction of so very Penal a Law as this is) a *Scotchman* is within the Meaning of this Law, is the only Question. Now, with Submission, when the Act says, If any of His Majesty's Subjects shall go into *France* without License, this (according to a reasonable Construction) shall be intended only of *English* Subjects, strictly speaking, that is, those of *England*; it must be intended only of such of His Majesty's Subjects, who were represented by the Parliament that made this Law, and who are presumed to consent to the making of this Law; 'tis these Subjects only that may reasonably be supposed to have Notice of this Law, and therefore 'tis reasonable that they only should be bound by it; especially in the Case of so severe a Law, where a Man's Life, Estate, and all that is dear to a Man is at Stake. There may be a great deal of Difference betwixt an Act of Parliament that punishes a Fact that was before *Malum in se*, and an Act which makes that an Offence which was before lawful: Every one of any Nation is, at his Peril, to abstain from committing any Act that is *Malum in se*; and if he commits such an Act in any Country, he seems subject to be punished according to the Laws of that Country where the Fact was committed. But going into *France*, or any Place beyond Sea, without License, seems only *Malum Prohibitum* by this Statute: And therefore when the Act says, If any of His Majesty's Subjects who went into *France* without License, shall return without License, shall be deem'd guilty of Treason; it shall be intended only of those of *England*; such Subjects as either by themselves, or their Representatives, were consenting to the making of this Law. Therefore I humbly beg Leave to put the Case; That if one of Her Majesty's Subjects of her remote Plantations, (as *Barbadoes*, or *Antegoa*) that was resident there at the Time of the making this Law, should have since the Year 1688. gone into *France* on any private or particular Account, without License; and afterwards should come into *England*; would this Subject (who, in all Probability, knew nothing of the making of this Law) be guilty of High Treason, for coming into *England*? Surely this would be excessively hard. Then if one resident at *Barbadoes*, or *Antegoa*, at the Time of the making of this Act, should not be within this Law; much less shall a *Scotchman* be within it, in regard

Scotland is a separate Kingdom, that can't be bound by our Acts of Parliament; whereas any of the Foreign Plantations are plainly liable to be bound by *English* Acts of Parliament.

Besides, there is another Reason from the very Words of the Act, why a *Scotchman* that was not resident in *England* at the Time of the making this Law, can't be intended within the Meaning of the Act; and that is, not only because the Act mentions nothing of *Scotland*; but because the Words of the Act are, If any of His Majesty's Subjects who went into *France* without License, shall return into *England*, or any other of His Majesty's Dominions, without License, 'tis Treason. Now the Word (Return) must plainly have Relation only to that Country where the Party was resident at the making of the Law, or to the Country that he left at the Time of his going towards *France*. But it does not appear that the Prisoner, who is a *Scotchman*, was in *England* at the making the Act; and he having been prov'd to be a Native of *Scotland*, must be intended to be then in *Scotland*, unless prov'd to be elsewhere: And therefore the Prisoner's coming into *England*, can never be within the Meaning of the word Returning into *England*, any more than a Man can be said to return to a Place where he was not before.

There is another Objection, (because I will give Mr. Attorney only one Trouble) and that is, That this Indictment (or Tryal) can't in this Case be in *Middlesex*, but must be in that County where the Prisoner first came after his leaving *France*; which really was *Northumberland*, as he came from *Scotland*; or at least your Lordship will take notice, that it can't be *Middlesex*. 'Tis a known Rule, that all Indictments, and Tryals for Treasons and all other Crimes, must be in the County where the Treason was committed: And 'tis clear, (taking the Proclamation out of the Case) that the Treason was committed in that County which the Prisoner first came into, after leaving *France*. The Treason (taking the Pardon out of the Case) was completed by the first Step made into *England*. Nay, if the Prisoner, immediately after his making his first Step into *England*, had returned, still it had been a compleat Treason; and the Party had returned with his Guilt upon him. And, my Lord, I do not take it, that the Party commits a new Treason, by his going into another County. 'Tis true, 'tis said, if I steal Goods in one County, and carry them into another, this is Felony (tho' not Robbery) in every County where I carry them: But even in this Case, the Law (as I take it) is said to be otherwise, in *Fitz. Abr. Tit. Coron. Par.* 194. and that the Tryal must be in the County where the Goods were first taken. But taking this to be Law, That the Felon may be tried in any of the Counties, where he carries the Goods he stole; as I must needs own, the Law is now allowed to be so; yet this depends upon a different Reason, no way affecting the principal Case. For the Reason given of this Case, in *Dyer* 40. and 7. *Coke* 2. and *Bulwer's Case* is, That the Robbery or Felony does not alter the Property of the Goods; and therefore, into whatever County the Felon carries the Goods, 'tis a new Felony. But there 'tis not that special Reason in the principal Case, and therefore the Law is not the same. Supposing the Prisoner had been pardon'd the Treason, in coming into the first County of *Northumberland* without License; could he afterwards have been punish'd for Treason, for coming into

into the next adjacent County; this would be a pretty strange Construction of multiplying Treasons. And if coming into every County would make a fresh Treason, a Man at that Rate may be brought to suffer as a Traytor, tho' with many Pardons about him. No surely, my Lord, 'tis the original Act the Law regards, and the coming into a Second County does not make it a Second Treason; and therefore we take it that the Indictment or Tryal in this Case can't be in *Middlesex*, but must be in *Northumberland* or such other County, which was the first County of *England* that the Prisoner came into. Upon the whole Matter, we with great Submission, insist. First, That Her Majesty's Proclamation amounts in Law to a License for the Prisoner to come from *France* into *Scotland*; nay, that it amounts to a Pardon to him, even of his Treason that he is now indicted for. But if that be against us, we in the next Place take it that a *Scotchman* not resident in *England* at the Time of the making this Act, is not within the Meaning of this Act. But if that also be against us, yet in the next Place we humbly insist, that he can't be Indicted for this Treason in *Middlesex*, but must be indicted in the County where we first enter'd *England*. And 'tis sufficient if any one of these Points are for us; and therefore we humbly hope the Prisoner shall be acquitted.

Mr. Raymond. My Lord, if your Lordship please, I'd beg the liberty to offer a Word or Two on the same side for the Prisoner at the Bar.

I humbly apprehend, your Lordship expects no Apology from us, for appearing as Council in a Cause of this Nature, since 'tis by your Lordship's Permission granted us in Pursuance of an Act of Parliament, that we have this Liberty; and I can't forget what your Lordship has said formerly in this Place on the like Occasion, That it is as lawful for the Gentlemen of the Bar to be Council in such a Case, and that they are as much oblig'd to do their Duty for their Client in it, as in any other Case, wherein by Law they are allowed to plead.

I shall therefore, the Fact being agreed on by both Sides, state it as a Case, and submit the Observations I shall make upon it to your Lordship's Opinion.

The Fact is no more but this.

Mr. Lindsay, being a Native of *Scotland*, came into *England*, and resided some Time here; from thence he went into *France*, where he continued a considerable Time; after he was gone into *France*, and whilst he was there, the Act of Parliament, upon which he now stands indicted, was made. Afterwards the Queen granted a general Pardon and Indemnity to her Subjects in *Scotland* for all Treasons, &c. Depending upon which, Mr. Lindsay returned into *Scotland*, and having had the Allowance of the Benefit of it there, he returned into *England*, coming by the way of *Berwick* and *Northumberland* to *London*.

My Lord, I shall humbly insist upon it in behalf of the Prisoner at the Bar:

First, That he is not comprehended within the Words of this Act.

Secondly, That if he should be within the Words, yet that he is not within the Meaning of the Act.

My Lord, I shall by no means presume to

arraign the Wisdom or Justice of the Law-makers in making this Act, which doubtless was founded on great Reason, and was very necessary for the Preservation of his late Majesty's Person and Government. But let it be never so wise, never so just, or never so necessary, yet, with great Submission, 'tis a very penal Law; partly, because it has a Retrospect and makes that Fact an Offence, which was none at the Time when it was done, (for before this Act, it was lawful for any one to have gone into *France*, between the 11th of *December* 1688. and the Time of the proclaiming War with *France*.) But principally because it makes the Offender against it a Traytor, therefore it must be expounded according to those strict Rules of Construction, the Law has appointed for other Penal Statutes, and must never be extended by Equity beyond the Letter.

My Lord, As to the Penning of this Act, I must observe there is not one Word in it of *Scotland*, or the Subjects of *Scotland*, in express Terms.

The Question then will be, what other Words in it can extend to Mr. Lindsay's being a Native of *Scotland*? The most comprehensive Words seem to be these at the beginning of the enacting Part, *If any of Her Majesty's Subjects, who have, &c.*

I must beg leave to insist upon it, that Mr. Lindsay can't be called one of His late Majesty's Subjects within this Act. I do agree he was the late King's Subject, as King of *Scotland*, but not as King of *England*; but this Act being made in *England*, by the *English* Parliament, and using the Word, Subjects, must mean such Subjects as that Parliament were able to oblige, which are only the Subjects of *England*, or the Dominions depending on the Crown of *England*; but not the Subjects of *Scotland*, which is a distinct Dominion from *England*.

The King of *England* has a double politick Capacity in him, one as King of *England*, the other as King of *Scotland*; the Two Nations are absolutely distinct, and so are the Laws by which they are respectively govern'd: If therefore the King, as King of these Two Kingdoms, has Two several Politick Capacities in him; if the Nations and the Laws are distinct, with Submission, the Subjects of necessity must be considered so too.

I am very sensible, My Lord, with what Solemnity *Calvin's* Case in 7. *Rep.* is said by my Lord Coke to have been adjudged; it shall be therefore, with a great deal of Submission to your Lordship's Opinion, and Deference to the Authority of that Case, if I shall say any Thing that may seem to clash with that Resolution.

I confess that Case has determined, that Allegiance is a Quality of the Mind, and can't be circumscribed by Place; that 'tis due to the Person of the King; and because his natural Person can't be divided, the Allegiance owing to him is inseparable and indivisible, and therefore that there is an Union of Allegiance of both Kingdoms; and that a Man can't be consider'd as a Liege-man or Subject, which is all one to the King, as King of *Scotland*, and not as King of *England*, and so *Vice Versa*.

I'll beg leave to consider my Lord Coke's Foundation, upon which this Resolution is built, and submit it entirely to your Lordship whether that is able to support it.

According to my Lord Coke himself in *Calvin's* Case, Legiance is a true and faithful Obedience of

of the Subject due to the Sovereign, for which the Sovereign is obliged to protect his Subjects. *Protectio trahit Subjectionem, Subjectio protectionem, 7 Co. 5.*

I suppose it will not be pretended that this Obedience due from the Subject to the Sovereign is an absolute blind Obedience to every arbitrary Command of the Sovereign; but is only such an Obedience as the Law of the Kingdom, or Principality, or Dominion, has respectively prescribed for the Subject to pay to his Sovereign; and the same holds as to the Sovereign's Part in Point of Protection. If therefore this Obedience or Legiance (which is the same) is altogether prescribed and governed by the Law of the Place where 'tis due, it must necessarily follow, that where the Laws are different, the Legiance or Rule of Obedience and Subjection must be different also, and consequently the Legiance due to the King as King of *England*, and the Legiance due to him as King of *Scotland*, (since the Laws of both Nations are distinct) must be separate and distinguishable: Were it not so, the same Act, if so in one, must in both Kingdoms be the Performance of the Subjects Legiance; and the same Act, if so in either, must in both Kingdoms be the Breach of it. But that that is otherwise, is easily to be proved; as for Instance, according to my Lord *Coke* in *Calvin's Case*, 7 Co. 7, 6. The King of *England* may command any Subject of *England* to attend him in his Wars beyond Sea; but suppose by the Law of *Scotland* a Subject of *Scotland* is not oblig'd to go with the King out of the Kingdom, the King commands a Native of *Scotland* to wait on him out of *Scotland* beyond Sea, and he refuses; now by the Law of *England* he has broke his Legiance to the King, and yet in *Scotland* he is as good a Liege Subject (notwithstanding this Refusal) as any Subject the King has there. — In this very Case of Mr. *Lindsay*, By his Return into *Scotland* from *France* (if your Lordship takes the Word Dominions in the Act in as large a Sense as I suppose the Queen's Council would have the word Subjects took, that is, to all the Places in Subjection to the King, tho' not dependant on the Crown of *England*) he was become a Traytor to the Queen as Queen of *England*, which is the highest Breach of Allegiance that can be; and yet at the same Time (laying the Pardon out of the Case, and supposing there was no Law in *Scotland* to prohibit his coming thither) he was a very good Subject of the Queen's in *Scotland*, and not guilty of any Breach of Allegiance due to her there. Then certainly these Two Allegiances are not the same, but distinguishable; one owing to the King as King of *Scotland*, the other owing to the King as King of *England*; and if the Allegiances may be considered separately, so may the Subject (who owes those Allegiances, and by owing of which he becomes a Subject) be separately considered as such in respect of them; and consequently, that Mr. *Lindsay* being a Native of *Scotland*, must be regarded as a Subject of the King as King of *Scotland*, and not a Subject of the King as King of *England*, and so not within the Words of the Act, for the Reasons offer'd to your Lordships before.

The Second Thing I begg'd your Lordship's Leave to insist upon was, That taking it, that Mr. *Lindsay*, tho' a Native of *Scotland*, should be

comprehended within the Words, *any of his Majesty's Subjects*, yet that this Act did not design to extend to any Native of *Scotland*, and consequently not to him. With great Submission to your Lordship, there are many Cases in the Books where Statutes have receiv'd a Construction contrary to the Words, to comply with their Intent. The State of *Glocester*, Cap. 1. enacts, that the Disseisin shall recover Damage, in a Writ of Entry, founded upon the Disseisin, against him who is found Tenant; upon which *Litt. Sect. 685.* puts this Case, That if the Disseisor makes a Feoffment of the Land to B. C. and D. and Livery of Seisin is made to B. and C.; but D. was absent, and never would agree to this Feoffment, nor take the Profits; B. and C. die, the Disseisee brings a Writ of Disseisin in the *Per* against D. who pleads this Matter; tho' he is Tenant of the Freehold of this Land, yet no Damages shall be recover'd against him. So in this Case, tho' the Words of the Act in their utmost Extent would comprize the Prisoner at the Bar; yet if the Parliament did not design they should, a Construction shall be made accordingly.

That the Parliament did not intend to concern themselves with *Scotland*, or the Natives thereof, appears, with Submission, by the Preamble (which is, as my Lord *Coke* terms it, *Co. Litt. 79.* a Key to find out the meaning of the Law-makers.)

The Words of the Preamble are, That upon the Conclusion of the Peace between his Majesty and the *French King*, it was become necessary for the carrying on a Trade between *England* and *France*, That the Subjects of each Kingdom should have, &c. — I suppose it will not be pretended that *Scotland* can be comprehended under the Word, of *England*; nor *Scotchmen* under the Word, the Subjects of each Kingdom, that is, of *England* and *France*. — For if a *Scotchman* should be took to be a Subject of the King of *England*, yet I humbly conceive he was never took to be a Subject of the Kingdom of *England*; the Word Kingdom is the same as Realm, and is usually apply'd to the Land of *England*, and not to the Dominions dependant on the Crown of *England*; as on the 35 *Hen. 8. c. 2.* a Treason committed in *Ireland* was adjudged to be a Treason committed out of the Realm of *England*, and triable as a Foreign Treason, *Orurke's Case, Ander. 262. Pl. 269.* But if Kingdom or Realms should be taken to have the same Signification as Dominion, that Case could not be Law, because *Ireland* was never held to be out of the Dominion of the Crown of *England*; so that with great Submission to your Lordship, nothing in the Preamble affects the Prisoner at the Bar.

The next thing to be consider'd, is, what the Parliament meant by the Words, If any of his Majesty's Subjects, &c. And I humbly hope your Lordship will think it reasonable to let that Expression be explain'd by the Word Subjects used in the Preamble, and so interpret them his Majesty's Subjects of the Kingdom of *England*, which this Prisoner is not; and the rather, because to construe them to extend to *Scotchmen*, will be an Interpretation that will make the *English* Parliament make an Offence a Treason, which will not be in the Power of the *English* Government to punish, unless by Accident: For if a *Scotchman* returning out of *France* into
Scotland,

Scotland, contrary to this Act, should be a Traytor; yet he could not be punish'd here, unless he accidentally came hither afterwards, because the *English* Government has no Coercive Means to fetch him from *Scotland* hither to be punish'd. --- But 'tis otherwise in respect of the Dominions depending on the Crown of *England*, as *Ireland*, &c. for a Man may be transmitted from *England* to *Ireland*, or *Vice Versa*, to be try'd; as Colonel *Lundy* was 2 *Ventr.* 314. but *England* can't compel the Government of *Scotland* to send a Man hither from thence to be try'd. Then I humbly conceive that it can't be imagin'd, that the Parliament design'd to make an Offence a Treason, which can't be punish'd but by Accident here, since 'tis below the Dignity of a Government to have Offenders against their Laws, in Crimes of so high a Nature, out of their Power to punish. --- But of an *English* Subject it would be otherwise, tho' he was in *Scotland*, or any Foreign Prince's Dominion, because they might proceed against such a Person to Outlawry, and upon Attainder confiscate his Estate.

Another Thing I must beg leave to offer to your Lordship, as a Proof that this Parliament did not intend in this Act to include *Scotland*, or the Natives of *Scotland*, is, that the Paragraph which makes the taking of a Charter or Grant from the late King *James* to be Treason, is so far from relating to *Scotland*, or the *Scotch*, that it does not make it penal for any *Englishman* to take a Grant of Honour or Estate in *Scotland* from the late King *James*; the Words of the Act being, to be had or enjoy'd in the Kingdom of *England* or *Ireland*: So that the Parliament seem'd industriously not to concern themselves with any thing relating to *Scotland*; and yet doubtless they might have made it Treason for any *Englishman* to have took such a Grant; and there had been as great Reason so to have done, if they had thought fit to have meddled with any thing relating to *Scotland*, since the taking of such a Grant in *Scotland* by an *Englishman* from the late King *James*, had been as great a Derogation to the Liegance owing to the King, as if it had been of any thing in *England*; the Acceptance of such a Grant amounting to an Acknowledgment of another Power besides the King's. --- So that for these Reasons I humbly insist upon it, that the Parliament did not intend to include any *Scotchman* within this Act.

But, my Lord, taking it that Mr. *Lindsay*, tho' a Native of *Scotland*, should be within both the Words and Meaning of this Act; yet I must submit it to your Lordship's Judgments, whether this Act could bind him, he being beyond Sea, *viz.* in *France*, at the Time when it was made. I do agree, that if any of the *Scots* have Lands, &c. in *England*, they shall be liable to pay all Duties imposed by Act of Parliament on those Lands. I do also agree, that every *Scotchman* resident here, is bound by all the Laws of the Land; and so are all Foreigners whatsoever, (be they *Danes* or *Swedes*, or of whatsoever other Nation they be) who live here under the King's Protection: But as soon as they are gone out of the Kingdom, their Allegiance, which was but local, ceases; and they are no longer obliged by the Laws of *England*. It must be agreed, that no *English* Act of Parliament can bind *Scotland*, nor, as I humbly apprehend, the *Scotch*, whilst out of *England*; if so, then how could this Prisoner be bound by this Act, being a *Scotchman*, and out of this Kingdom, at the Time when the Act was made? With great Submission, his coming into *England* alone could not subject him to this Law;

for there seems to be a great Difference between this Act, and other general Acts or Laws of this Place: For, as I said before, if a *Scotchman* comes into *England*, and inhabits here, he is liable to all the Laws then in Force, and shall be punished for the Breach of any of them; because he was before protected by those Laws, and therefore must be obedient to them. But in this Case, the Subjection to the Law, and the Offence, began at the same Instant; for before his Landing in *England*, this Law had no Power over him, and the very Act of Landing made the Offence in this Indictment; 'twill be therefore something severe to construe that Act, which only makes the Prisoner liable to the Law, to be a Breach of it. As to this Matter, there will be no Difference between a *Scotchman* or a *Dane*: Both, when here, are bound by the Laws; neither, when absent. Suppose it should be enacted, That if a *Dane* should land in *England* without License from the King, he should be a Traytor; and a *Dane* notwithstanding such Act should come into *England* without such License, would he be a Traytor? With humble Submission, Not. Such Act might amount to a Prohibition of his coming, and make him be used as an Alien Enemy, 7 Co. 6 B. as *Perkin Warbeck* was in *Henry* the VIIIth's Time; but could not make him a Traytor, because he owed no Allegiance to the King, nor Subjection to the Law, at the Time when the Act was made. As to the Prisoner's having been in *England*, and having resided here before; that, I humbly think, will make no Difference, because his Subjection to the *English* Law ceased, as soon as he stept off from the *English* Shoar.

What I shall beg Leave further to insist upon for the Prisoner, (supposing your Lordship should be of Opinion against him on the former Points) is, That this Evidence don't maintain the Indictment. The Indictment is for returning without License from *France* into *England*: The Evidence is, That he returned out of *France* into *Scotland*, and from thence into *England*. The Act of Parliament is, That if any of his Majesty's Subjects, &c. return into this Kingdom of *England*, or other his Majesty's Dominions: The Meaning of which, we for the Prisoner humbly take to be, That the first coming of any such Person, as is within the Act, into any of his Majesty's Dominions, shall be the Treason; and that the Act did not intend to make every several Coming into every distinct Dominion a new Treason; as if such Person should come out of *France* first into *Scotland*, then into *Ireland*, thence into *Jersey*, and so into *England*, the Act, with Submission, did not design to make this Person liable to be indicted for Four Treasons; but that into what Dominion he first came, for that he was a Traytor and punishable: And that Construction sufficiently prevents the Mischief and Danger the Act design'd to arm against. For if a Man should come without License into any one Dominion, and is look'd on as a dangerous Person, the taking away his Life will prevent any future Mischiefs from him: If he has a License to come into one, 'tis to be believed, with a great deal of Reason, he may be trusted in any other of his Majesty's Dominions, or else his Majesty would never have granted him a License to return into any of his Dominions, where he would be equally capable of putting in Execution any dangerous Practices against the Government. If that should be the Meaning of the Act, then, with Submission, this Indictment ought to have been for coming into *Scotland*, which was the Place he first came into, for there was the Treason, and not for coming

coming into *England*. Besides, if the coming into *Scotland* was the first and only Treason punishable by this Act, then we must offer the general Pardon of *Scotland* in the Prisoner's Excuse: Not, my Lord, that I can pretend, that a Pardon in *Scotland* can pardon a Treason in *England*; but we must beg Leave to insist upon it, as amounting to a License to return into *Scotland*. I do expect that it will be objected, that the License which this Act appoints, must be under the Privy-Seal of *England*, which this *Scotch* Pardon can't be pretended to be. I confess, my Lord, the Words are, without License from his Majesty under his Privy-Seal. But 'tis not said Privy Seal of *England*. And tho' generally speaking, when an *English* Act mentions the Great Seal or Privy Seal, it must be took to be the Great Seal or Privy Seal of *England*; yet in this *English* Act, if your Lordship will construe the Words, *His Majesty's Subjects*, not only to be his Subjects as King of *England*, but as King of *Scotland*, or any other Nation; if your Lordship will construe the Word, *Dominions*, to be not only the *Dominions* dependant on the Crown of *England*, but also all other *Dominions* of which his Majesty was King, as *Scotland*; by Parity, the Words, Privy Seal, ought to be extended to all the Privy Seals the King has, as King of *England*, or King of *Scotland*. And if so, then since the Queen has in Her Proclamation, declared that Her Pardon shall be took as beneficially as if it had been under the Great Seal; but the Great Seal includes the Privy Seal, and is of greater Efficacy: We humbly hope, that it will be as beneficial to the Prisoner, as if it had been under the Privy Seal; nay, rather more, because as to *Scotland* it pardons the Offence; for tho' the Return is after the Pardon, yet it pardons the going into *France*, which is the Foundation of the Crime, and without which the returning into *Scotland*, or any of his Majesty's *Dominions*, was no Offence. This is the Use the Prisoner would make of this Pardon. I can't press it as a Pardon of an *English* Crime; tho' with great Submission to your Lordship, it seems something strange, that Mr. *Lindsay*, should by virtue of this Pardon be a very good Subject of the Queen's in *Scotland*, and have all the same Liberties other of his Countrymen have there; and yet that he should be a Traytor against the Queen here in *England*; that he should be within the Queen's Protection there, and out of her Protection here; and yet at the same Time that his Allegiance to her can't be severed, nor he considered as a Subject to Her, as Queen of *Scotland*, and not as Queen of *England*.

But admitting the Pardon will not avail the Prisoner in any respect, and that your Lordship should be of Opinion that his coming to *England* is a Treason, notwithstanding he returned from *France* into *Scotland* first; then I must insist upon what Mr. *Williams* has before mentioned, that this Indictment is ill, and that he ought to have been indicted in the County which he first came into, which was impossible to be *Middlesex*; and I must ground it on the general Rule, that all Crimes are Local, and Inquirable by the Grand Jury of the County where they are committed. Even in Batteries, which are Transitory in Actions; yet, with Submission, Indictments are Local, and must be enquired of by the Grand Jury of the County where they are committed. My Lord, I shall trespass no longer upon your

Lordship's Patience, only just beg leave to say, that upon the whole Matter, for the Prisoner at the Bar, I humbly insist upon it, That he being a Native of *Scotland*, is not within the Words of this Act: For if he should be within the Words, yet he is not within the meaning of the Act. But if both those Points are against me, That, as this Case is, he is not obliged by it. If I should fail in all these, then I must have recourse to the Construction of the Act, that it intended only to make the first Entry into any of the Queen's *Dominions*, Treason, and consequently that this Treason was upon his Return to *Scotland*, and ought in the Indictment to have been laid as such: For which Reason I humbly conceive that the Indictment is not only ill, but the Pardon will amount to a License. But if your Lordship should be of Opinion he is indictable for coming into *England*, that then the Indictment ought to have been laid in that County where he first came into. If any of which Points hold, with Submission, the Prisoner can't be found guilty on this Indictment; but your Lordship will be pleased to direct the Gentlemen of the Jury to acquit him, which I humbly pray in his Behalf.

Sir *Tho. Powis*. My Lord, I have observ'd these Gentlemen in the Method they have gone, and will follow them in the same Manner to give them an Answer. What we have to say, will be nothing but with respect to the Law, as it now stands upon the Act of Parliament: Whether the Case deserves Mercy or no, is not the Question here, that will be consider'd in another Place. Our Part is to maintain the Law as it stands, with reference to this Indictment; it must be owned that a great deal of that which has been said might have carried weight with it, if it had been pleaded in *Scotland*, where the Proclamation was made; but to make use of it here in *England*, as having any Force in this Case, is not agreeable to Law or Reason. First, no Man can say, a Pardon, if it had been under the Great Seal of *Scotland*, could pardon a Crime committed here in *England*; but it is not so, for it is not under any Seal at all. But supposing it were to be taken in the Extent they would have it, yet it would not be a sufficient Pardon in this Case. For these Two Things must be consider'd. First, It is a Pardon only of Crimes committed in that Kingdom. Secondly, It cannot be a Pardon of a Crime committed since that Pardon granted; for we must mind the Date of that Pardon, and the Crime he is tryed for. The *Scotch* Pardon is dated in *March*, 1705. that was *March* was Twelvemonth. No Man can say a Proclamation in that Kingdom can pardon a Crime that was committed afterwards. Now this Crime was committed in *December* last, for then it was he returned into *England*; therefore that Pardon can never extend to this Case. So that these Two Things if consider'd, will be sufficient to answer all that has been insisted on, by way of Pardon. First, It is a Pardon of another Kingdom for Offences committed against the Crown of *Scotland*; whereas this Indictment is for an Offence committed against the Crown of *England*. And Secondly, It was granted at a Time precedent to the Time of this Offence committed: But next, they say the Pardon in *Scotland* will amount to a License from the Queen to go into *Scotland*, and that then by Consequence he was free to come into *England*; with Submission,

mission, we think they cannot make such an Inference, for the Queen's Pardon cannot extend to such a double Purpose. Suppose the Queen had expressly pardoned his going into *France* and returning into *Scotland*, that would not have amounted to a License to come into *England*. So that we deny their Inference, that the Pardon in *Scotland* amounts to a License to come into *England*. But in the Second Place, if the Queen had expressly given him a License to go into *Scotland*, (tho' I do not admit that to be the Case) yet I deny that that would have been a License to come into *England*. If the Queen under the Privy Seal of *Scotland* should have admitted him to come into *Scotland*, yet that would not have been a License for him to come into *England*; for it would have been a Special License to go to one Place, which can never be reckon'd, in such a Case as this is, a License to go to another Place in another Kingdom. For the King or Queen might perhaps think fit to license one to come into *Scotland*, and yet not think it convenient to license him to come so near their Royal Person, as he would be here in *England*. So that there is no such License in that Pardon, as is insisted on; and if there had been, yet it would not have had that Operation to license him to come to *England*. The next Thing they speak most fully to (and which is very considerable, if they make it out) is, that the Words of this Act of Parliament, upon which the Indictment is founded, or at least the Meaning of them, cannot be extended to a Native of *Scotland*. As for the Words of the Act we need do no more than read them, to make it appear to be otherwise. It is observ'd by them very truly, that *Scotland* is no Part of the Kingdom of *England*; but they must admit it is a Part of the Dominions of the Queen of *England*, tho' not Part of the Kingdom of *England*. They would do little Service to the Subjects of *Scotland*, if they should endeavour to overthrow *Calvin's* Case, which was so solemnly determined near a Hundred Years ago, which enables them of *Scotland* to come into *England*, and enjoy the same Privileges here, as the Subjects of *England* do. Certainly, as they are let into all these Benefits by the Resolution of that Case, so they are at the same Time the Subjects of the King or Queen of *England*. That the Words therefore of the Act are against them, nothing can be plainer; If any of His Majesty's Subjects, who since the 11th of *December*, 1688. have gone into *France*. — This leaves them no room for Dispute; it says not, if any of the Subjects of the Kingdom of *England*, but if any of His Majesty's Subjects; so that whoever was a Subject of the late King is within the Act. The Words are without any Restriction whatever, If any of his Majesty's Subjects; and they will not deny but that a *Scotchman* was a Subject of His late Majesty. But then they say, if the Words should extend to it, the Meaning of the Act cannot. With Submission, we think the Case before you is within the Words and Meaning of the Act, and within the Mischief which the Act provides against. For at the Time this Act was made, it being taken notice of, that upon the Peace concluded there would be a Door opened for a Communication between *England* and *France*, and that many Persons who had resorted thither, who had been

actually in Arms there, and other disaffected Persons, might take Advantage, and be encouraged from thence to form and carry on treasonable Designs and Practices against his Majesty's Person and Government; Therefore, to obviate that Mischief, this Act was made in such general Words, That if any of His Majesty's Subjects who had gone voluntarily into *France*, since the Time mentioned in the Act, without License, let them be born where they would, whether they were of the one Kingdom or the other, the Mischief of their returning without License was equal. And by consequence, it was the Meaning of the Act to exclude one as well as the other; for the Design of the Act was to prevent the Danger that might arise by such Persons coming over. But as to this present Case, if what the Witnesses have said be true, it would be very mischievous indeed, if a Person that had been resident here for near Twenty Years, as the Prisoner was, by his own Witnesses, and afterwards went into *France* without a License, if he may be allowed to return back again without a License, because not originally a Native of *England*. By the same Rule all those Persons that have done the like both of *Scotland* and *Ireland* would be at Liberty to return also, because not Natives of *England*; which was not surely the Meaning of the Act of Parliament, nor ought the Construction of the Words to be so taken. It's true, we can't here by an Act bind them in *Scotland*, but we are not now putting in Execution this Act in *Scotland*, but putting it in Execution here in *England* on a *Scotchman* that had been long an Inhabitant here before. My Lord, the next Thing that was insisted on, is, that if he be such a Subject as may be construed within this Act, and if the Pardon should not have the Effect they contend for, yet they say this Indictment is laid in the wrong Place, it ought to have been laid in the County where he first arrived. There need little to be said to this, because the Prosecution is made where the Party was apprehended. The Objection they make, is that which would render it impracticable to prosecute any for this Offence. For how is it possible to know where a Man first privately arrived? That which is enough to charge him, is, that he was first found in such a Place in *England*; for 'tis not said in the Act, that they shall not return to this or that County, but not to *England*. And then where-ever he is found in *England*, there the Indictment may be laid against him. And the Case of the Felony comes home to this Point; the Man that steals Goods in one County, may be indicted in any other County where he carries them. So he that returns into *England* contrary to the Act, where-ever he is apprehended he carries the Crime with him. And it does not appear, but that this is the first Place where he was found. They say it is impossible to come from *Scotland* into *Middlesex* without first coming into some other County; but it is agreed that this is the Place where he was first apprehended. Therefore upon the whole Matter, the Fact being confessed, we insist that he is within the Words and the Meaning of the Act, and within the mischievous Consequences which are intended to be prevented by it.

Mr. Att. Gen. My Lord, I would not speak any Thing to aggravate Matters against the Prisoner;

but there have been some Things said by his Council, which I think fit to be taken notice of---They have given him a Character for his Faithfulness to the Queen, and called some Witnesses to it : And Mr. Williams was pleased to say, His owning the Facts charged against him in the Indictment, (whereby he saved the Court and the Queen's Council a great deal of Trouble) was an Argument of his Sincerity.---I only say, I believe he had a better Opportunity by other Methods to have shewn it. My Lord, Every one knows from whence he came, (*viz.* from *France*) and how long he stay'd there, and in whose Service. And it would have been a better Argument of his Sincerity, if he had given an Account of his Knowledge of what pass'd in *France* while he was there ; and probably would have been of more Advantage to him, than saving the Trouble of proving what (he knew) we were ready and able to prove.

What has been said as to the Act in general, is something surprizing to me ; to hear any *Englishman* complain of the Hardship of this Law, on which the Prisoner is indicted, which was made for the Preservation of the King's Person and the Government, and by the Wisdom of the Nation thought necessary. But as to the Matters of Law the Prisoner's Council have insisted on, they are reducible to Two Heads.

First, That the Queen's Proclamation in *Scotland*, pardoning Her Subjects of *Scotland* of all Treasons, &c. amounts to a License to return to *Scotland*, by pardoning the Offence in going to *France* ; and every Subject of *Scotland* may lawfully come thence into *England*.

Secondly, That the Prisoner ought to have been indicted in the first County, into which he first returned ; which is impossible to be *Middlesex*.

As to the first Matter, it has been said, That a Native of *Scotland* is not bound, nor can be punish'd by a Law made in *England*. And the Council, tho' they have not deny'd the Authority of *Calvin's Case*, yet they do seem to dislike the Resolution of it. Now he is (according to *Calvin's Case*) a Subject of *England*. That Case was more beneficial to the Subjects of *Scotland* than to the Subjects of *England* ; and it has been always allow'd to be Law ever since. But, my Lord, we are not to consider this Gentleman in this Case as a *Scotchman* absolutely, but as a *Scotchman* here in *England*. How far an Act made in *England* would affect a *Scotchman* that should return into *Scotland*, I need not meddle with. But the Question here is, Whether an Act of Parliament made in *England*, will not bind every Person that is resident here in *England* ? Now the Prisoner was resident here in *England* with his Family, and went hence to *France* : And by the Law, every *Scotchman* residing in *England*, is an *Englishman*, and hath Right to enjoy the Privileges of an *Englishman*. This is the Resolution of *Calvin's Case*. I will give but one Instance of this. The Act of Navigation made 12. of *Car. II.* requires, in many Cases of Goods imported, that the Master, and Three Fourth Parts of the Mariners, shall be *English*. The Act of 14. *Car. II.* Chap. 11. of Frauds, declares, That any of Her Majesty's Subjects of *England*, *Ireland*, and the Plantations, shall be accounted *English*, and no others.

Now the Natives of *Scotland* inhabiting in *England* or *Ireland*, have always been allow'd to be *English* or *Irish* within the Act of Frauds ; and have

enjoy'd the Privilege ever since of being Masters of Ships : And the same hath been allow'd them on all Trials in the Court of *Exchequer*, that is according to *Calvin's Case* ; That to all Intents and Purposes, a *Scotchman* being in *England*, enjoys the Privileges of an *Englishman*, he is a Subject of the Crown of *England*.

But give me Leave, my Lord, to consider how the Prisoner comes to be affected by this Act : Not as being Her Majesty's Subject, living in *Scotland* ; but he is bound by this Act, as he is a Subject residing here in *England*. For as to what they say, that his Offence is going into *France* ; that is not the Matter he is charged with : That is the Description of the Person that falls under the Disability of the Act ; [A Man under these Circumstances :] But his Returning from *France* into *England* (being a Person described by the Act) is the Offence.

My Lord, His Returning is the Offence : Not his Returning to *Scotland*, but Returning to *England*, or any other Her Majesty's Dominions, bound by the Acts of Parliament made in *England*. The Act is, If any of His Majesty's Subjects return : And every *Scotchman* that resides here, is a Subject of the Queen. Every Law that is made in *England*, will bind every *Scotchman* that resides here ; and this will bind him from returning into *England* without License ; which is all that is in this Case.

It hath been objected, The Act cannot bind the *Scots* here, because they have no Representative in Parliament. But that is not so : They may be Freemen of Corporations, and are capable of being Freeholders ; and as such, may be represented in Parliament. The Penning of the Act shews, the Parliament intended to include all Subjects, that might in the utmost Latitude be called Subjects. The Words are, [If any of His Majesty's Subjects, that have gone into *France*, shall return into *England*.] So that the Act says, They that were His Majesty's Subjects, and went into *France*, and did return, shall be guilty. Therefore, what hath been said of the Laws of *England* binding *Scotland*, is quite out of this Case.

The Council for the Prisoner have argued, That the Proclamation of Indemnity in *Scotland*, is a License to return into *Scotland*. I would fain know where they find that. If there were a Pardon under the Great Seal of *England* for all Offences committed, I would be glad to know whether that would be accounted a License to return into *Scotland* ? No, certainly. They have said, That the Matter that hinder'd the returning to *Scotland*, was the Offence of going to *France* without a License ; which Offence is remitted by the Pardon. That is plainly a Mistake : For the Act had not Regard to any Offence in going to *France* ; referring to the 11th of *December*, 1688. when, and long after, it was not any Offence to go thither without a License : Every Man, till the War was declar'd, might have gone thither without License. And yet by this Act, those that went between that Time and the War declared, as well as those that went during the War, are prohibited to return without License. So that the Pardon which they rely on, cannot avail the Prisoner : For the Act did not regard Crimes committed ; but, as the Preamble is, it was made to prevent an Inconvenience which might follow by disaffected Persons returning ; who might form and carry on Traiterous

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Conspiracies, against the late King and the Government. And the Parliament look'd on Persons to be disaffected, that left their Country, and went and stay'd in *France* after the late King went thither; and therefore judg'd it not reasonable to have such trusted here, without the Government should license their Return.

The Persons mention'd in the Act are characteriz'd: So that as to the Matter of the Pardon, (if it were an *English* Pardon) it would not bring them from under the Act. Besides, any License or Pardon in *Scotland*, cannot indemnify them from an Act made in *England*.—The Law and the Seals of each Kingdom are distinct: And an express License under the Seal of *Scotland* to return to *England*, nay, an Act of Parliament for that Purpose there, would not avail: For no Act of *Scotland* can take off a Disability laid on by any Act made in *England*. For this Act is a banishing them from *England*, unless the Queen give a License to return.

My Lord, It is an extraordinary Thing which they argue from the Preamble of the Act, that mentions the carrying on the Trade between *England* and *France*; and *Scotland* being not named, the Act shall not extend to the *Scotchmen*. I do not see what can be gather'd from that.—The *Scotchmen* residing here, are consider'd as *English*; and being here, are bound by the *English* Laws; else the *Scots* would be in a better Condition here than the *English*. But, my Lord, that which we insist on, is, That the *Scots* residing here, are to all Intents *Englishmen*; That they are subject to the Laws of *England*, and bound by them. The going first to *Scotland* will not avail the Prisoner: For the Offence is, Returning to the Place from whence he went, that is, *England*. Whether his Returning to *Scotland* be an Offence within this Act or not, is not material; nor whether an Act of Parliament made in *England*, can banish a *Scotchman* from *Scotland*: But it is, That an Act of Parliament in *England* may prohibit any *Scotchman*, or any other Person, from returning out of *France* into *England*.

My Lord, The next Matter, which they mightily insist on, is, as to the Place of Trial: But if that Objection should prevail, it would make the Act ridiculous and useless. For then it would lie on the Queen's Council to prove, Where a Person (who privately return'd, and got into the Kingdom) first landed. But the Act says, [If they shall return into *England*.] And wherever he is found, thither he is returned. There was an extraordinary Thing said indeed: That if we can make it Treason wherever he is found, then he may be try'd in every County he comes into; altho' he be pardon'd, or tried, for returning into one County. Certainly that will not be so. For the Returning is but one Treason: And tho' he may go into several Places, yet when he is tried in one Place, and convicted, and pardon'd for that, it discharges him wholly. For the Returning is but one entire Offence, tho' having been in many Places: The Queen may proceed against him in any one of them. It is like the common Case of an Escape. An Escape is an Escape in every County, wherever the Party goes afterwards: And the Party escaped, or the Sheriff, may be proceeded against in any County whither the Party escaped goes, as well as in that whither he first escaped. And without this be so, the Act can never be put in Execution.

My Lord, I think this is the Substance of what they have said; That an Act made in *England*, will not bind a Native of *Scotland*. We think an Act made in *England*, will bind such a one residing in *England*. Now the Prisoner was residing in *England* for Twenty Years; and he is both within the direct Words, and within the Intent and Meaning of the Act. There are a great many of them that are in *France*: And I believe the Parliament never intended to leave the *Scots* free to return into *England*, any more than the *English*.

Mr. *Lindsay*. My Lord, I desire to know, whether the Queen's License does not set us free, as well in *England* as in *Scotland*? And whether one that has a License to come into *Scotland*, may not come into *England* too?

Mr. *Att. Gen.* One may be brought to a Trial here, tho' he had a License in *Scotland*.

Mr. *Lindsay*. My Lord, Her Majesty's Pardon extends further than a License: It restores to all the Privileges I had before.

L. C. J. *Holt*. If I take you right, you mean, This Pardon in *Scotland* secur'd to you all the Advantages you had at the Time of your Birth, or at any Time before your Departure out of *England*; so that you are not to be impeached, or convicted of any Crime you have committed against the Laws of *Scotland*; but you are thereby upon the same Foot, and have the same Rights and Privileges as any other *Scotchman* hath, that hath never offended: And every innocent *Scotchman* hath a Right and Liberty to come into *England* when he will. Which is very true, that the Pardon discharges all Disabilities and Incapacities, that you have incur'd by any Offence committed against the Laws of *Scotland*, but not any committed against the Laws of *England*. That is, supposing the Pardon had been subsequent to your Return into *Scotland*, and that your Return hither had been High-Treason by this Act.

Mr. *Lindsay*. My Lord, I think this Pardon reinstates me in all the Privileges I enjoy'd before.

L. C. J. *Holt*. I tell you no: It only restores you to the Privileges that you had as a *Scotchman*; and which you would have lost, if convicted of those Offences by the Law of *Scotland*; but exempts you not from any Punishment, to which you were then obnoxious by the Law of *England*.

Mr. *Att. Gen.* My Lord, I would say but this only; That speaking of the Pardon, as a Pardon, it cannot pardon a Crime before it is committed. If the Pardon granted in *Scotland*, would pardon a Crime committed in *England*; yet it would not pardon a Crime committed afterwards.

L. C. J. *Holt*. But observe what he says. Says he, I am by this Pardon made a Free *Scotchman*: (And it is to be admitted, that the Pardon of *Scotland* has that Effect;) And if, says he, this Pardon has made me as Free a *Scotchman* as I was before; Ergo, I may come into *England*, as well as any other *Scotchman* that was under no Disability.

Mr. *Att. Gen.* My Lord, He is bound by the Laws of *England*, as he resided here: It has been the constant Practice. He does not pretend that he had King William's, or the present Queen's License to come into *England*; only that he had the Queen's License to come into *Scotland*.

L. C. J. *Holt*. You hear what he says.

Mr. *Soll. Gen.* My Lord, The several Facts alledged in the Indictment are admitted to be true; except

except that the Prisoner was a Subject to His Late Majesty ; and, That his Return into *England* since the 14th of *January*, 1697. was without License.

'Tis objected, He was not a Subject of His Late Majesty within the Meaning of the Act, because he was a *Scotchman*.

Whoever is born under the Legiance of the King of *England*, is a Subject of the King ; and 'tis admitted Mr. *Lindsay* was so born.

It has been likewise objected, His Return was not without License.

'Tis not pretended he had such a License as the Act of Parliament specifies, and the Indictment mentions ; a License under the Privy Seal, to return into *England*.

But 'tis insisted on, That the General Pardon in *Scotland* does, by Construction of Law, amount to such a License.

It can't surely, with any Colour of Reason, be urg'd, That such a Pardon should be construed any farther than a License to return into *Scotland* ; and such a License would not excuse the Prisoner.

My Lord, This Pardon in *Scotland* can have no Relation to the Offence in Question. A Pardon in that Kingdom can't extend to any Crime, which by the Laws of *Scotland* can't be there punish'd. But had that Pardon, which pass'd in *Scotland*, been under the Great Seal of *England*, it could have been of no Service to the Prisoner. As a Pardon it could not ; because 'tis precedent to the Offence, and it can't by any Implication amount to a License.

The Reason offer'd, why it should be so construed, is, That the Offence, whereof the Prisoner stands indicted, is of a complicated Nature : That it consists of Two Parts ; Going out of *England* into *France* ; and, Returning out of *France* into *England*. That the first Part of this Offence (his Going to *France*) being pardon'd, he can't be prosecuted for his Return.

The Supposition whereupon this Argument is founded, is a Mistake : For after the 11th of *December*, 1688. any Man might (before the War was proclaim'd) have, without any Offence, gone into *France* : And therefore, his going thither after the 11th of *December*, 1688. is no Part of the Crime ; but a Description of the Person, whose Return without License was enacted to be High Treason.

Mr. *Conyers*. My Lord, The Prisoner insists on the Benefit of Her Majesty's Proclamation of Pardon in *Scotland* ; which (as has been already taken notice of) bears Date in *March*, 1703. and cannot extend to pardon a Treason since that Time. The Treason for which he stands charged, was not till *December* last ; then he came into *England* without License of the Queen : He voluntarily went into *France* without License, since the 11th of *December*, 1688. He came back into *England* without License, in *December* last ; and for that he stands charged with Treason, by Virtue of the Act of Parliament in the Ninth Year of the Late King. But the Inference he makes from this Pardon, by the Queen's Proclamation in *Scotland*, is, That he is thereby restored to all the Privileges of a *Scotch* Subject, and consequently may freely come into the Kingdom of *England*, as any other of Her Majesty's Native Subjects of that Kingdom may do. Now the Pardon in *Scotland* can only extend to exempt him from Punishment for any Crimes committed in that

Kingdom ; and he can have no Benefit of it for a Crime committed against the Laws and Statutes of *England*, which is a distinct Kingdom, and govern'd by distinct Laws. And such Inference as he makes from this Pardon, is both against the very Words and Meaning of the Act of Parliament, upon which he stands indicted. The Words are very express and plain : *Any of Her Majesty's Subjects, who have at any Time since the 11th of December, 1688. voluntarily gone into France without License, (as the Prisoner confesses he did) and after the 14th Day of January, 1697. shall return into England, or any other Her Majesty's Dominions, without License, shall be judged guilty of High Treason.* He was residing in *England* after the 11th of *December*, 1688. He went from *England* into *France* ; and is returned into *England* without License, since the 14th of *January*, 1697. and so is within the express Words of this Act. And the Intent of the Act will appear by the Preamble. The Mischiefs and Inconveniencies apprehended at the making of this Act, were, That the Freedom of Going and Coming out of *England* into *France*, and from *France* to *England*, by the respective Subjects of each Kingdom after the Peace, might be an Encouragement to such of the King's Subjects, who had been engaged in Traiterous Designs and Conspiracies against His Majesty, and who might be encouraged to form and carry on Treasonable Designs and Practices against the King and the Government, to come out of *France* into *England*. The Persons from whom those Dangers were apprehended, were such Persons as are described in this Act ; and therefore, for the Safety and Preservation of His Majesty's Person and Government, the Intent of this Law was to prohibit their Returning into *England*, without such License from His Majesty under His Privy Seal.

L. C. J. *Holt*. Have you any more to say ? Or have you any Thing to reply ?

Mr. *Williams*. My Lord, We would save your Lordship's Time as much as might be ; but we humbly insist, that our Objections are not answer'd : And it being upon a new Law, and in Case of Life, we pray that the Matter may be found Specially.

L. C. J. *Holt*. If we see any Reason to doubt it, it shall be found Specially. But what you have said, overthrows *Calvin's* Case : For you urge, That you are a Subject of *Scotland*, and so not within this Act of Parliament. But you ought to consider, That as you are a Subject of *Scotland*, so also you are a Subject to the Crown of *England*, by being a Native of *Scotland* since the Accession of *Scotland* to *England*, which is by the Law of *England*. And if the Case had been, that you had only departed from *Scotland* into *France*, and from thence returned into *Scotland*, and stay'd there without ever coming into *England*, the Case would have been much different : For it may be, the Law of *England* cannot oblige a *Scotchman*, for any Act by him done in his own Country ; (tho' there is no Occasion to give any Opinion of that) but an Act of Parliament in *England*, may subject any *Scotchman* to any Penalty, for any Act that he should do in *England*. Suppose a *Scotchman* going out of *Scotland* into *France*, since the 11th of *December*, 1688. that shall return into *England* since the 14th of *January*, 1697. he seems to be within the Words and Meaning of the Act. But there is no need of determining that Point now : The Prisoner being a *Scotchman* born, and having been in *England* for a long Time, and departing

parting from *England* into *France* within that Time, and returning into *England* afterward, is to all the Purposes within the Letter and Design of the Act: For, being a Resident in *England* at that Time, you are to all Purposes a Subject of the Crown of *England*, as much as any Native of *England*; and your departing into *France*, and remaining there for so long Time, and returning without License, is the same Danger that the Act of Parliament intended to prevent.

Mr. Williams. My Lord, I would not presume to say any Thing in Derogation of *Calvin's* Case: But I say, that tho' a *Scotchman* may be as a Natural-born Subject of *England*, yet he may not be within the Meaning of this so Penal a Law.

L. C. J. Holt. Certainly within the Meaning, if within the Words and Reason. But there is another Point that you, his Council, have urged in his Behalf; which is, That this Pardon is a License to him to return into *Scotland*. Which in Truth is not; for it is to another Purpose; viz. To pardon and discharge all Treasons and Crimes committed in *Scotland*; but not give a License to return into that Realm: But suppose it to be a License to go into *Scotland*, that will not be a License to return into *England*. The Treason is, to return into the Realm of *England*, or any other His Majesty's Dominions. Another Matter that you have insisted upon, is, That supposing this to be a good Pardon under the Great Seal of *Scotland*, it hath pardon'd the Offence of going into *France*. The Return into *England* can't be High Treason; because the Treason consists of Two Facts, say you, which are, The Departing into *France*, and, The Returning into the Queen's Dominions. Like unto the Case, when one gives another a mortal Wound of which he languishes, and before he dies, the Stroke is pardon'd; and then the Party dies: Afterwards it will not be Murder; because that Act, which should make it so, is discharged by the Pardon. To this a plain Answer hath been before given by the Queen's Council; That Going into *France* since the 11th of December, 1688. is no Offence originally; but only the Return of such Person is made High Treason, and from that Return doth the High Treason commence. Therefore such a Pardon under the Great Seal of *England*, could not have discharged him from being guilty of High Treason, if he had returned afterwards.

But, says he for himself, (as I apprehend him) That this Pardon hath made him a Free *Scotchman*, to all Purposes, as if he had never offended. And tho' the Pardon can't have any Operation to discharge him of any Crime committed against the Law of *England*; yet it hath this Effect, by putting him in the same State of other *Scotchmen*, to enable him to come into *England*. It is true, this Pardon puts him in the same Condition, in which other *Scotchmen* are by the Law of *Scotland*; but it puts him not in the same Condition that other *Scotchmen* are by the Law of *England*. By the Law of *England*, *Scotchmen* may at any Time come into *England*: But the Law prohibits those who are Subjects, and went into *France* without License, to return into *England*.

They who are born in *Scotland*, may inherit Lands in *England*: But if an Alien to *England* and *Scotland* be Naturaliz'd by Act of Parliament in *Scotland*; tho' he is to all Purposes a Natural-born Subject of *Scotland* by the Law of that Realm; yet not therefore Inheritable to Lands in *England*, be-

cause he is not a Natural-born Subject by the Law of *England*.

There is another Question hath been stirr'd; which is, That he should have been indicted in the First *English* County into which he came: For it appears, upon the Evidence, that he came from *Scotland*. Now *Middlesex* can't be the First County; but it must be *Northumberland*: For upon his coming there, the Treason is compleat; And his proceeding further into other Counties, can't make it more Treasons than it was before. As to the Case of Felony, stealing Goods in one County, and carrying them into another; it is Felony in every County they are carried into. A Prisoner escapes from a Gaol in one County, and then goes into several Counties; it is an Escape in every County into which he comes; which is a Case very apposite to this in Question. Suppose a Man committed for Felony has escaped out of *Newgate* into *Northumberland*; may he not be indicted in *Northumberland*? He came voluntarily into this County of *Middlesex*; and certainly may be indicted, and tried here. Indeed, if he had been taken in one County, and carried into another County, that would be another Case; because he came there by Coercion.

Mr. Williams. Now, my Lord, in this Case, the Prisoner comes into this County of *Middlesex* to surrender himself; and coming into *Middlesex* with an Intention to surrender himself, when a Warrant is out against him, will not be Treason in *Middlesex*, tho' his first Coming into *England* were admitted to be Treason.

L. C. J. Holt. That does not appear: He says otherwise himself. He says, He heard there was a Warrant out against him; and then he surrender'd himself.

L. C. J. Trevor. I do not think, if he had come into this County to surrender himself, it would have alter'd the Case. If he had surrender'd himself in the first County he came into, he would have been within the Law.

Mr. Williams. My Lord, with humble Submission, if he comes into *England*, he by that commits Treason. But if after his coming into *England*, and before he comes into *Middlesex*, he hears that in *Middlesex* there is a Warrant out against him; and, purely to surrender himself upon this Warrant, he comes into *Middlesex*, and surrenders himself in *Middlesex*; with humble Submission, this Act of Surrendering himself, which the Prisoner does in Obedience, and in Justice to the Process of Law, won't amount to make him guilty of High Treason in *Middlesex*.

L. C. J. Holt. This is not the Case. However, we are all of Opinion, that alters not the Case; (For I have consulted my Lord and Brothers.) Have you any more to say for the Prisoner? Or has he any Thing more to say for himself?

Mr. Lindsay. My Lord, I have told you what was the Motive that brought me into *England*; That I was to come to my Wife and Children, believing that I might have done it without Trespassing against the Law, because I saw others did so before me. Now, if it be taken as a Fault in me, and not in others; that will be very hard, my Lord. If I have offended, it is out of Ignorance.

L. C. J. Holt. Ignorance of the Law is no Excuse: But that may fall under another Consideration, which doth not belong to us. Have you any more to say?

Mr. Lind-

Mr. *Lindsay*. If I have by my Ignorance offended in this Point, and if you think my Indemnity in *Scotland* will not avail me, I humbly beg your Lordship will intercede for me to Her Majesty.

L. C. J. *Holt*. Gentlemen of the Jury, this Prisoner, *David Lindsay*, is indicted for High Treason upon the Statute that was made in the Ninth of King *William*. The Offence set forth in the Indictment is to this Effect, That he being a Subject of the late King, did, since the 11th of *December*, 1688. go out of this Realm into *France*, and that he has returned into *England*, without License under the Privy Seal, since the 14th of *January*, 1697; which returning, by that Act is made High Treason. This Act was made upon the concluding the Peace of *Reswick*, because, then (as the Act recites in the Preamble) the Seas would be open for Commerce between *England* and *France*, and that would give an Opportunity to those Persons to return to *England*, whom the Wisdom of the Nation thought dangerous to the Government, that is, those that had been in the Service of the *French* King, and others that by departing the Realm since the 11th of *December*, 1688. Therefore to prevent all Danger to the King and his Government, this Act was made, to make such a Return to *England* by such Persons to be so Penal as to amount to High Treason.

Now, the Question is, whether this Prisoner be guilty. It does appear that he is a Native of *Scotland*, and also that he was here in *England* for many Years (I think one of his own Witnesses says about Twenty) and did depart since the 11th of *December*, 1688. and he returned into *Scotland* since *March* was Twelvemonth, and came into *England* afterwards about *December* last, which is also admitted. So that it appears he is in the Words of the Act, and had no License under the Privy Seal.

But that which he insists upon by his Council, is, that he was a *Scotchman* by Birth, and had an Invitation to return into *Scotland*, and had the Queen's Pardon, whereby he was pardon'd all Manner of Offences. It's true, he admits he was at *St. Germain's*, but returned into *Scotland* in order to take the Benefit of that Pardon. He was at first secured by the Government there, but he had the Benefit of the Pardon allowed him, and was discharged. And then he says, he did desire to come into *England*, and would not continue longer in *France*, because he would not be a Papist. That when he was in *Scotland*, he desired to come into *England* too, which he thought he might upon the Account of his Pardon in *Scotland*; and he advised with Council, whether he might safely come into *England*, and they told him he might, as he says.

The Question is, whether any of these Things will be to his Advantage. First, It is a Law of *England*, that he is indicted upon; no Pardon under the Great Seal of *Scotland* can discharge any Crime committed against the Law of *England*, neither can a Pardon under the Great Seal of *England* discharge any Crime against the Law of *Scotland*. But suppose he had had a Pardon under the Great Seal of *England* before his Return, that would not have pardoned in this Case. For his Offence is not in going into *France*, and coming into *England* in Time of Peace, but that having so gone, he returns without License, that

is the Fact that is made so Penal. Now a Pardon given before a Man commits any Offence, is ineffectual; the Queen cannot pardon a Crime before it is committed.

But, says he, I am by this Pardon made to all Purposes a Free *Scotchman*, I am restored to all my Capacities that I had lost; therefore if I have all the Capacities that I had as a *Scotchman* before, I may come into *England*. Now that is a Mistake. It's true, he is restored to all the Capacities of a *Scotchman*, which is to be had by the Laws of *Scotland*; but a Pardon in *Scotland* cannot give him those Privileges he had by the Law of *England*, and therefore cannot discharge him from an Offence committed against the Law of *England*. Nay, if he had been in *Scotland*, having escaped after he had been here, that would not have been effectual to discharge him from his Offence against the Law of *England*. Gentlemen, the Matter is before you, he is a Subject of the Queen of *England*, he has departed from *England* since the 11th of *December*, 1688. and has returned hither without License under the Privy Seal. And if you do believe all this, then you are to find him guilty; but if you do not believe it, you are to acquit him.

Then the Jury withdrew, and in about half an Hour returned into Court.

Cl. of Arr. Gentlemen, are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall speak for you?

Jury. Our Foreman.

Cl. of Arr. *David Lindsay*, hold up thy Hand (which he did) How say you? Is he guilty of the High-Treason, whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels had he at the Time of this High Treason committed?

Foreman. None that we know of.

Then the Court adjourned till Five of the Clock.

About Five of the Clock the Court met, and the Prisoner being brought, the Court proceeded.

Mr. Att. Gen. My Lord, Mr. *Lindsay* the Prisoner hath been convicted of High Treason, and I pray the Judgment of the Court.

Cl. of Arr. *David Lindsay*, thou hast been arraigned for High Treason, and thereof convicted, what hast thou to say why Judgment should not pass against thee?

Mr. *Lindsay*. My Lord, I refer my self to the Queen's Mercy.

L. C. J. *Holt*. Have you any Thing to plead for your self, or by your Council?

Mr. *Williams*. My Lord, I did design to have insisted upon a Point in relation to this Statute, upon which the Indictment against the Prisoner is grounded; but understanding it has been already under the Consideration of your Lordship, and the rest of my Lords the Judges, and that it has receiv'd your Lordship's Determination, I shall chuse to wave it; but this, with Submission, I do insist upon; That it is not shewn in this Indictment that the Prisoner was a Subject of King *William* at the Time of his going into *France*, or at the making this Act. Now as I

humbly

humbly conceive, the very Words of the Act require, that the Party should be a Subject at that Time. The Words are thus, If any of His Majesty's Subjects, who have after the 11th of December gone into *France*, if they return without License they shall be guilty of High Treason. Now by the Words of the Act, it seems requisite that he should be a Subject at the Time of his going into *France*; or at least at the Time of the making of the Act. So that, with Submission, the Indictment does not agree with the Act of Parliament, unless it be shewn that the Prisoner was a Subject at the Time of his going to *France*; and no Indictment in any Case, much less an Indictment for High Treason shall be aided by Intendment. ---And in this Case, my Lord, there is the less room for an Intendment, that the Prisoner was then a Subject, because it is not shewn that the Prisoner was a natural born Subject, or that his Treason was *contra naturalis allegantie debitum*. And it not being shewn that he was a Natural Subject, it must be supposed he became a Subject by Naturalization, or by Denization, which might be since his going into *France*. --- My Lord, I must own, 'tis said in the Indictment that he was a Subject of King *William*, but 'tis not said when he was a Subject; so that it may be as well supposed he became so after he went into *France*, as before; and the rather in regard he is not shewn to be a Natural-Born Subject. And we take it, that by the Penning of this Law, which says, If any of his Majesty's Subjects who have gone into *France*, &c. --- it must be meant of a Subject at that Time, or at the Time of his going into *France*; and it not being shewn that he was a Subject at that Time, we humbly take it that the Indictment is insufficient.

Mr. *Raymond*. My Lord, we say, with great Submission, that this Indictment is not good, because it does not shew that Mr. *Lindsay* was a Subject of the late King at the Time of the making the Act, nor any Time before. If this Person had become a Subject of the King after the making of the Act, as he might by Derivation, and had return'd into *England*, having been in *France* in the Time mentioned in the Act, he would not be within the Act. Therefore it was necessary to shew at what Time he was a Subject. It is not laid in the Indictment, that he was a Natural-Born Subject, nor do I pretend that it is necessary in an Indictment for Treason, because one that owes Local Allegiance may be guilty of Treason. But they ought to have aver'd, either that he was a Natural-Born Subject, and that he shall be intended so always; or else, that he was a Subject at the Time of the making of the Act, otherwise he won't be within the Act; because the Words of the Act seem to tie it up to Subjects at the Time of the making the Act, by the Words which follow, *viz.* Who have gone into *France*, &c.

Sir *T. Powis*. I have look'd both into the Indictment and the Act. One Part of the Objection is, that he is not a Natural Subject. That is not to be insisted on, for there is no such Thing in the Act; for the Act says, If any of His Majesty's Subjects; and there is no need of laying any more in the Indictment than the Act requires; and it was not intended to be confined to such. The other Part of the Objection is, that it is not alledged that the Prisoner at the Bar was the Subject of King *William* at the Time when

the Act was made. Now there is no need of alledging these Words in the Indictment; for the Act runs thus, Therefore be it enacted, that if any of His Majesty's Subjects, who have at any Time, since the 11th of December, 1688. voluntarily gone into *France*, without License from His Majesty King *William*, or from Queen *Mary*, shall return: And the Indictment does lay it, that this Prisoner was a Subject of the late King *William*, and that he is now a Subject to the present Queen; and that he, after the 11th of December, 1688, did go into *France*. Now sure here is all alledged in this Indictment that the Act refers to; that is, that if any Subject, who went into *France* after the 11th of December 1688, shall return into *England*. And the Indictment says, he was a Subject of King *William*, and that he did go into *France* after that Time, and did return into *England* after the Time prohibited by the Act. Here is nothing required in the Act, but what is laid in the Indictment. And it is a very strange Objection to say that we should aver that he was a Subject when this Act was made; this ought to have been shewed on the other side, if it be otherwise. Here is that in the Indictment which is conformable to the Act, and there is no more necessary, than to describe the Person according to the Act.

Mr. *Att. Gen.* My Lord, we have taken that Method in the Indictment that is proper, that is, to pursue the Act of Parliament; we have laid him as the Act describes. Now they say, that it being not shewn that he was a Subject at the Time of his going into *France*, he is not within the Act. But when a Man is laid in the Indictment to be a Subject, it is a strange Objection to fancy we must mention the Time of his beginning to be a Subject. We have shew'd he was a Subject before the making of the Act, and we have shew'd he was a Subject after; and he is presumed to have always been a Subject, unless special Matter is shewn when he was not a Subject, as that he was an Alien, and at a particular Time naturalized or made a Denizon; which without Proof will not be presumed; and this Objection should not have before arisen from Evidence. It is laid likewise to be contrary to the Duty of his Allegiance, being a Subject of the late King *William*, and of the present Queen.

Mr. *Williams*. My Lord, this Exception against the Indictment seems, with great Submission, not to be answer'd; I go upon the Words of the Act.

If any of his Majesty's Subjects, who have since the 11th of December, 1688, gone into *France*. My Objection is, That it is not shewn, that at the Time of going into *France*, nor when the Act was made, that the Prisoner was a Subject; and it not being so shewn, to intend the Prisoner then a Subject, is helping the Indictment by Intendment, which cannot be. And I say there is the less room for this Intendment here, because this Prisoner is not shewn to be a Natural Subject.

Mr. *Raymond*. My Lord, every Word of this Indictment would have been true if this Gentleman had been an Alien, and become a Subject after the Act was made, and before the late King died. And yet in such a Case he would not have been within the Act: For if he had been a Stranger, and after the Act had been denizon'd, and then had returned into *England*, having before been in *France*, that would not have been within the Act, because the

Act says, If any of the King's Subjects, who have gone into *France*, shall return : Which must be meant, that were so before the Act was made : And yet that is all this Indictment says.

L. C. J. *Holt*. That is a foreign Supposition. Can any Man suppose, that such a Man that has been in *France*, that he should be Naturaliz'd or Indeniz'd after such an Act was made ? And suppose it were so, that he was an Alien, and happen to be Naturaliz'd by General Words ; the Act does not say, If he shall be a Subject at his Departure ; but if he were in *France* since such Time, and return after this Act.

He was a Subject to King *William*, and to Queen *Anne* ; and that he went away since the 11th of *December*, 1688. and return'd into *England* without License.

This is an Indictment formed suitable to the Act of Parliament ; it pursues the Words of the Act of Parliament. The Act describes the Person, and sets out what shall be the Offence ; that is, One that is a Subject of the King, and has gone away into *France* since the 11th of *December*, 1688. and shall return without License.

Mr. *Williams*. It appears not he was a Subject when he went away.

L. C. J. *Holt*. If any of His Majesty's Subjects, that have gone away since the 11th of *December*. It does not say, Any that shall go away ; but that have gone away after the 11th of *December*.

Mr. Justice *Powel*. A Subject is supposed to be a Natural Subject, unless he be Naturalized afterwards : But now he being laid to be a Subject according to the Act, supposes him to be a Subject then.

Mr. *Raymond*. My Lord, we think, with Submission, this is not an Indictment according to other Indictments.

Mr. Justice *Powel*. It's enough that he is said to be a Subject.

Mr. *Raymond*. But, my Lord, must there not be a Distinction between a Subject that owes Natural Subjection, and commits Treason, and one that only owes Local Legiance ?

Mr. Justice *Powel*. You might have shown that, when you were upon the Evidence.

Mr. *Williams*. My Lord, We humbly think it must be shown that he was a Subject, at least at the Time of the making of the Act.

Mr. Justice *Powel*. We must take him to be a Natural Subject, unless the contrary appear.

L. C. J. *Trevor*. We suppose that he was a Subject at the Time of his going out of *England* ; and that the Indictment sufficiently sets forth. If you could have shown that he became a Subject afterwards, that might have help'd you ; but else it signifies nothing.

L. C. J. *Holt*. Have you any more to say ?

Mr. *Williams*. If we have slipt any Thing on Behalf of the Prisoner, which might have been of Service to him, we hope he shall not suffer for any Omission of his Council ; and therefore humbly pray, that your Lordship will favour him, and will be pleased to hear him for himself.

Mr. *Lindsay*. My Lord, What I have done has been out of Ignorance, and being supported by what other People did. And therefore, my Lord, having come into *England* by my self, I did not come with any Design of Harm, or to do any Thing contrary to the Law. As I am a Scotchman, it is not to be presumed I can understand the Laws of

England : And therefore, if I have done any Thing amiss out of Ignorance, I hope your Lordship will make a favourable Construction of it ; and represent my Case to the Queen. And I hope, as Her Majesty has given me the Effects of her Mercy in *Scotland*, I shall not feel the Effects of her Displeasure in *England*.

L. C. J. *Holt*. Mr. *Lindsay*, You have been indicted, and upon the Evidence of your own Confession of the Fact alledged against you, and after a great Debate in Matter of Law, (which by you, and your Council, was urged on your Behalf) are convicted of High Treason. That which now remains, is, To pronounce Judgment of Death upon you, which you are to suffer in that Manner which the Law hath appointed. Your Crime is, Returning from *France* without the Queen's License ; having before gone thither without any License from the late King or Queen. That Law which hath made such your Return to be an Offence of so high Nature, cannot (by any considering *English* Protestants) be thought to be severe : For they who, in the Time mention'd in the Act, chose rather to run into *France*, than to stay in *England* ; could have no other Inducement, than an Affection to an Interest opposite to the Protestant Religion, and the Ancient Constitution of this Kingdom. For they were received, protected and encouraged by that Prince, who is a dangerous and profess'd Enemy both to our Religion and Government. The Wisdom of the Nation thought it absolutely necessary to keep them out ; unless they should either clear their Innocence, or give Satisfaction by their Repentance, that they were fit to be trusted here. For he that should adventure to return, without doing either, must be presumed to come in upon the same Principles, and with the same Purposes, with which he went out : Which must be a constant Danger, even to the Foundation of our Government, which is established upon the Protestant Religion, and the Laws of the Kingdom. As to these Circumstances which you have mention'd to be peculiar to your Case, they fall not under Consideration ; since they are not sufficient to justify you in acting contrary to the Law. Of what Consideration they may be to obtain the Queen's Mercy, falls not under our Cognizance ; for that is a peculiar Attribute, inseparable from Her Majesty's Royal Person, by whom it can only be dispensed. Our Business is to put the Law in Execution. And you must be convinced in your own Conscience, that you have been convicted on a full Evidence, proving the Fact, which hath proceeded from your own Mouth. We have all heard, and debated that Matter of Law which you urged by your Council in your own Behalf ; and are all of Opinion, that doth not avail you ; but you are an Offender against an Act of Parliament : And nothing remains now, but to pronounce the Sentence of the Law upon you ; which is,

That you shall be conveyed from hence to Newgate, the Prison from whence you came ; and from thence to be drawn upon a Hurdle to Tyburn, where you are to be hang'd by the Neck ; and while you are yet alive, to be taken down, your Privy Members are to be cut off, and your Bowels to be taken out of your Body, and burnt in your View. Your Head is to be cut off ; your Body is to be divided into Four Parts ; and your Head and your Quarters are to be disposed of as Her Majesty shall appoint. And the Lord have Mercy upon your Soul.

Mr. *Lind-*

Mr. *Lindsay*. My Lord, I beg that my Wife and Children may come to me; and that I may have a Minister of the Church of England allow'd me.

L. C. J. *Holt*. You shall have whom you will, according to what is usual in such Cases.

Mr. *Lindsay*. I desire my Wife and Children may come to me alone, without the Keeper.

L. C. J. *Holt*. That is not to be permitted, that may occasion Danger.

Mr. *Lindsay*. I desire they may be lock'd up with me.

L. C. J. *Holt*. Mr. *Lindsay*, It is a Charge on the Keeper, that he admit them; but so as may not occasion any Danger.

Mr. *Lindsay*. It is a Trouble to the Keeper to wait on me so long, (Two or Three Hours together) which was the Reason I desired it. And if a Minister come to me, I desire we may be private.

L. C. J. *Holt*. He will use you with all the Charity that may be; but he must do what is prudent.

Nothing that is reasonable, or fit, shall be deny'd you.

Mr. *Lindsay*. My Lord, I should be sorry, if I desired any Thing that is unreasonable. My Lord, I suppose it is my Time now to say any Thing. I shall say only thus much; that is, I well understood what Circumstances I was in: I believe no *Scotchman* has been call'd in Question upon that Act; and I believed in my Conscience I was not guilty.

L. C. J. *Holt*. You are guilty of the Fact charg'd upon you; and it was a very reasonable Law.

Mr. *Lindsay*. My Lord, I own, the Reason was good for making the Act; but that the Reason that I am guilty of the breaking it, I cannot own that.

L. C. J. *Holt*. You are guilty of the Thing you are charg'd with. All that you can do now, is, To appeal to the Mercy of the Queen: She is the best Judge of it.

Mr. *Lindsay*. My Lord, I rest upon your Lordship's Representing my Case to the Queen.



The Tryal of JOHN TUTCHIN, upon an Information for a Libel, entitled, The Observator, Nov. 4. 1704.

The QUEEN against JOHN TUTCHIN.

London ff.



THE Information sets forth, That the Defendant being a Seditious Person, and a daily Inventor and Publisher of false News, and horrible and false Lies and seditious Libels, and a perpetual Disturber of the Peace of this Kingdom; and wickedly and maliciously devising the Government, and Administration of Justice under our Lady the Queen, to traduce, scandalize and vilify; and our said Lady the Queen, her Ministers and Officers, to bring into Suspicion, and the ill Opinion of her Subjects: The 30th Day of May, in the First Year of Her Majesty's Reign, at London, &c. did falsely, seditiously and scandalously, write, compose and publish, and cause to be written, composed and published, a certain false, malicious, seditious and scandalous Libel, entitled, The Observator. In which Libel (of and concerning this Kingdom, and the Officers and Ministers of the Queen) are contained (inter alia) as follows.

N^o. 11. Saturday, the 30th of May, 1702.

"At the same Time we [the Subjects of this Kingdom meaning] "consider the French King's Success in his Bribery and Corruption, we ought "to lament the sad State of our own Country, [the Kingdom of England meaning] "which affords "to many Instances of Treachery. If we may "judge by our National Miscarriages, perhaps no "Nation in Europe has felt the Influences of "French Gold more than England: And worthy it is our greatest Lamentation, that our

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"Dear Country [meaning this Kingdom] should "be thus weaken'd by Men of Mercenary Principles; when Countries inferior to us in Strength and Riches, are secured from Attempts of this "Nature only by the Fidelity of their People. "What is the Reason that French Gold has not "affected Holland as well as England; but that "their Ministry is such as is entirely in the "Interest of their Country, and altogether incorruptible? They prefer Men that are knowing "in their Posts, and are active in Business: "When, in England, we find out Offices for Men, "not Men for Offices. And a Title of Honour "gives a Man a Title to a Great Employment "he is altogether ignorant of. By this, and by "preferring of Men by Interest and Favour, has "the Excise, the Customs, and other Branches of "the Revenue intolerably sunk: And by this means "has the Navy of England, our Chief Support, "been hitherto perfectly bewitch'd. And can Lewis "spend his Money better, than in getting Men into "Offices in England, who are either false, or "ignorant in the Business, or are his Friends?

N^o. 23. Saturday, the 11th of July, 1702.

That the Defendant afterwards, the 11th of July following, another false, malicious, seditious and pernicious Libel, entitled The Observator, falsely, maliciously and seditiously, did write, compose and publish, and caused to be written and published: In which Libel (of and concerning the Government of this Kingdom, and the Power of the People of this Kingdom) are contained (inter alia) as follows.

"And this is a Prerogative of singular Advantage to the People of England; in that their

P p p p 2

"Repre-

“ Representatives are the Judges of the Male-Administration of their Governors; that they can call them in Question for the same, and can appoint such to wear the Crown, (meaning the Crown of this Kingdom) who are fittest for Government: Which they have often done, and indeed which is the Privilege of all free People, who are authorized by the Laws of God and Nature, to chuse their own Governors.

Nº. 19. Saturday the 12th of June, 1703.

That the Defendant afterwards, the 12th of June, in the Second Year of the Queen, did write and publish, and caused to be written and published, another false, scandalous and seditious Libel, Entituled, The Observer. In which said Libel (of and concerning the Royal Navy of this Kingdom, and the Government of the said Navy) are contained (inter alia) as follows: “ Take one Time with another, the Mismanagements of the Navy (meaning the Royal Navy of this Kingdom) have been a greater Tax on the Merchants, than the Duties raised by Parliament: We never had a better Navy, but the Wisdom of the Managers thereof is like a bottomless Pit, past finding out.

Nº. 20. Wednesday the 16th of June, 1703.

That the Defendant afterwards, the 16th Day of the said June, did Write and Publish, and caused to be Written and Published, another false, scandalous, and seditious Libel, Entituled, The Observer; in which was contain'd (inter alia, of the said Royal Navy, and the Officers of the said Navy) as follows: “ What avails it a Man of Learning and Parts, to qualify himself for the Service of his Country on the Ocean? If he has Knowledge enough to advise Neptune himself, if he has no Interest, he shall have no Preferment. How much does it look to our Nation's Disadvantage, to have Men in Eminent Stations in the Navy, who have not so much as an Idea, a Notion, a Thought of Naval Affairs? To have Men to superintend the Building of our Floating Castles, who know not the Nature of any Part of the Management? To have Men employ'd in the Victualling, who qualify themselves for that Post by learning to write their Names, which is indeed a Post for a Philosopher bred to the Sea?

Nº. 27. Saturday the 10th of July, 1703.

That the Defendant afterwards, the 10th of July following, did write and publish, and cause to be written and published, another false, scandalous, and defamatory Libel, Entituled, The Observer; in which are contained (inter alia, of one Daniel De Foe, who was indicted the 24th of Feb. in the First Year of the Queen, before the Justices of Oyer and Terminer at the Old Bailey, London: And in July following, was convicted upon his own Confession, for composing and publishing a seditious Libel, Entituled, The shortest Way with the Dissenters, or Proposals for the Establishment of the Church, and of the Judgment against him to pay a Fine of 200 Marks, and to stand Three Times in the Pillory, and to find Security for his good Behaviour for Seven Years) as follows: “ Countryman, truly Master Observer, “ I have no very good News for you: Mr. Daniel “ De Foe has pleaded Guilty to the Indictment

“ against him, for writing and publishing the “ shortest Way with the Dissenters; and he is sentenc'd to stand Three times in the Pillory, to pay “ a Fine of 200 Marks, and to find Security for “ his good Behaviour for Seven Years. Observ. The “ Court could do no otherwise than convict him, “ upon his pleading Guilty; *habemus confitentem* “ *reum*, is very often the Voice of Courts of Judicature, 'tis the Ease of Judges and Juries: If “ Daniel De Foe was in Expectation of Coleman's “ Black Box, he has found a Pillory instead of it. “ I don't trouble my Head about the Custom of “ giving the Pillory to Authors, which is the Punishment of Bakers. You talk'd just now of “ turning Author, have a care of your Candle; you “ see which is the shortest Way with Authors; “ you must all enter your selves in the Regiment of “ Colonel Foe: The Law of England directs, that “ no Man shall be fined *ultra tenementum*; and I “ make no question, but the Justice of the Court “ has fined Mr. Foe answerable to his Estate: His “ Security for his good Behaviour for Seven Years, “ without doubt, was rationally consider'd, as to “ the Legality thereof. For my part, I am only “ acquainted with Old Laws of England, the Ancient Birthrights and Immunities of Englishmen: “ This I take to be the Foundation of New “ Laws.

Nº. 17. Saturday the 20th of May, 1704.

That the Defendant afterwards, the 20th of May last, did write and publish, and cause to be written and publish'd, another false, scandalous, and seditious Libel, Entituled, The Observer. In which are contain'd (of and concerning the Defendant, and a Prosecution to be had against him for divers seditious Libels by him, before that Time, composed and publish'd) as follows: “ Countrym. Master Observer, “ there's another Plot against you (meaning the “ Defendant.) Observ. Prithce Man, there's a Plot “ against the Queen, and the whole Nation; is it “ any Wonder then, that there are Plots against me? “ The High-Fliers are now plotting against every “ honest Man in England. I'll tell you more of it, “ the next time we meet. Countrym. I fancy some “ Sort of People plot against you, because you endeavour to countermine their Plots against the “ Queen and Nation. Observ. You are right “ enough; but that shan't hinder me from detecting their Designs, and from opening the People's “ Eyes: But prithce, what Plot is this? Countrym. “ Why, Sir, it is a Plot preparatory to your Tryal; “ and if they can't effect this Plot, I suppose you'll “ never be try'd. They insinuate into the Citizens “ of London, that you have lately written very “ scandalously, maliciously, and treasonably, and I “ don't know how many other Lies, against them “ the said Citizens; and by this Means they are “ minded to set your Jurors against you. Obs. This “ is likely enough; they'll leave no Stone unturn'd, “ to suppress the Truth. I understand, I should “ have been prosecuted by Bill the last Sessions, but “ that the High-Fliers did not like the Jury; nay, “ they say they don't like the Two Sheriffs, because they won't pack Juries to find innocent Men “ guilty”. To the Disturbance of the Peace of this “ Kingdom, to the great Scandal of the Queen and her “ Government, and against the Peace of the Queen, “ her Crown and Dignity, &c.

*Proclamation was made for all Persons to attend.
Then the Jury was called.*

*John Cooper,
Thomas Briscoe,
Alexander Pollington,*

Edward Pinfold *being called, desired to be excused.*

Mr. Pinfold. My Lord, I desire I may be excused. I do not know Mr. Tutchin; for I never saw him in my Life; but I have read his *Observations*, and have several Times publicly disallowed them; and therefore some may think I am prejudiced against him.

Mr. Att. Gen. The Question is only, whether he was the Author of these Papers? For that is the Matter to be tried.

Mr. Pinfold. I do not know that.

Mr. Mountague. But my Lord, there may be something more in it, for he publicly disallowed his Papers.

L. C. J. Holt. You must not be excused unless the Queen's Council will.

Mr. Mountague. My Lord, we Challenge him on behalf the Defendant.

Mr. Att. Gen. Shew your Cause.

Mr. Mountague. My Lord, our Cause is, that he himself looks upon himself as not indifferent.

L. C. J. Holt. He says, he has read some of his Papers, and has publicly condemned them, that he did not approve of the Matter contained in them, but he does not know the Author.

Mr. Whitaker. But he said he did not doubt but he was the Author of them.

Mr. Serj. Darnel. He is the fitter Man for a Jury.

Sir T. Powis. He does not say he has disapproved all the Papers he has read, and it may be those were not the Papers now in Question.

Mr. Mountague. My Lord the Matter we are contending for, is, that one that is not altogether an indifferent Person should not be on the Jury.

Mr. Att. Gen. The Question is not whether the Papers are Criminal, but whether the Defendant is the Author of the Papers; and if this Gentleman knows him to be the Author of them, he is proper to be on the Jury: For the Jury are by Law to be of the Neighbourhood of the Place where the Fact is alledged to be done, because they are presumed to know what is done there; and if this be a Cause of Challenge, you may Challenge all People and so there could be no Tryal.

L. C. J. Holt. He can't be Challenged, unless he had given his Verdict before.

Mr. Sol. Gen. My Lord, we can have no Jury in this way they are going. A Jury-man is not to be asked what his Opinion of the Cause is; what he will voluntarily say, he may; and if upon what he says voluntarily he is liable to Exception he may be set aside.

L. C. J. Holt. It is not a Challenge.

Mr. Mountague. Surely, my Lord, he is not so indifferent as he ought to be. He says he has already declared his Opinion publicly concerning Mr. Tutchin's Papers.

Mr. Pinfold. My Lord, I know not well what he is indicted for, but it may be they are those Papers that I have given my Opinion of.

Mr. Att. Gen. I believe no Man that has read them, but has given his Opinion of them one way or other; but that is not a sufficient Cause of Challenge.

Mr. Whitaker. Mr. Attorney, I hope you will not contend for one Jurymen.

Mr. Att. Gen. He says, he knows not what Papers he is indicted for, he says only that he has read some of his Papers, and has declared his dislike of them.

L. C. J. Holt. Draw up your Challenge in Form, and it shall be consider'd.

Mr. Att. Gen. If these Gentlemen think there is nothing in it, what need they put us to this Trouble?

Mr. Mountague. Indeed I believe there is something more than ordinary in it, for I object only what he himself has said.

L. C. J. Holt. I will have it done, that it may remain a Decision *in perpetuum rei memoriam*. But if you that are for the Defendant will wave it you may.

Mr. Mountague. My Lord, we must insist on it; they have Jurymen enough.

Mr. Sol. Gen. We can't tell whether we have or no, for you may challenge them all as well as this Man.

Mr. Mountague. No, I will Challenge no body besides; and I Challenged him, only because he mentioned himself as not an indifferent Person.

Mr. Sol. Gen. Is it a principal Challenge, or to the Favour?

L. C. J. Holt. A principal Challenge, if any.

Mr. Sol. Gen. He can't Challenge to the Favour in Case of the Crown.

L. C. J. Holt. He makes it as a principal Challenge; which must be determined, and you shall have my Judgment when drawn up; it must be a principal Challenge or nothing; for there can be no Challenge to Favour in the Case of the Crown.

Mr. Att. Gen. My Lord, we are not willing to put you to this Trouble, we will leave it to Mr. Pinfold himself.

L. C. J. Holt. Then ask Mr. Pinfold.

Mr. Att. Gen. Mr. Pinfold, do you know who was the Author of these Papers?

Mr. Pinfold. I know nothing of it but what is commonly reported. I know not Mr. Tutchin if I see him; I have read his Writings.

Mr. Att. Gen. My Lord, we leave it to the Jurymen himself.

Mr. Pinfold. My Lord, I desire to be excused.

Mr. Att. Gen. Then we excuse you.

Then the Persons following were sworn on the Jury.

John Cooper,	Mark Proffor,
Thomas Briscoe,	William Grub,
Alexander Pollington,	James Lund,
James Dod,	John Baker,
Isaac Bennet,	Thomas Allen,
Robert Fotherby,	Jasper Waters.

Then Proclamation for Information being made, the Court proceeded.

Mr. Serj. Weld. This is an Information against John Tutchin: The Information sets forth, that he
being

being a feditious Person, and a daily Inventor and Publisher of Lies, and maliciously designing to asperse the Government, and the Administration of it, has composed and published several malicious and scandalous Libels; some of them are relating to the Government, some to the Parliament, some to the Courts of Justice; other of them to the Ministry. I shall not now take up your Time in opening the Words at large, because they are very long, and for that you will have them read to you, when the Witnesses come to prove them. He hath pleaded, Not Guilty.

Mr. Att. Gen. You must recite the Words of the Charge.

Mr. Well. The Charge is very long. The Information sets forth, That he did Write, and Compose, and Publish a false and scandalous Libel, called, *The Observer*, of and concerning the Government. This is laid to be on Saturday the 30th of May, 1762. And the Words therein charged against him, are these: "At the same Time, we the Subjects of England considering the Success of the French King, in his Bribery and Corruption, we ought to lament the sad State of our own Country, which affords so many Instances of Treachery. If we may judge by our National Miscarriages, perhaps no Nation in Europe has felt the Influences of French Gold, more than England; and worthy it is our greatest Lamentation, that our dear Country should be thus weaken'd by Men of mercenary Principles, when Countries inferior to us in Strength and Riches are secured from Attempts of this Nature, only by the Fidelity of their People. What is the Reason, that French Gold has not affected Holland, as well as England; but that their Ministry is such, as is entirely in the Interest of their Country, and altogether incorruptible: They prefer Men that are knowing in their Posts, and are active in Business. When in England we find Offices for Men, not Men for Offices; and a Title of Honour gives a Man a Title to a great Employment he is altogether ignorant of. By this, and by preparing of Men by Interest and Favour, has the Excise, the Customs, and other Branches of the Revenue, intolerably sunk; and by this Means has the Navy of England, our chief Support, been hitherto perfectly bewitch'd: And can Lewis spend his Money better, than in getting Men into Offices in England, who are either false or ignorant in the Business, or are his Friends?" And the Information further sets forth, That on Saturday the 11th of July, 1702, he published another Libel, called, *The Observer*; in which are these Words: "And this is a Prerogative of singular Advantage to the People of England, in that their Representatives are the Judges of the Male-Administration of their Governors; that they can call them in Question for the same, and can appoint such to wear the Crown, who are fittest for Government: Which they have often done, and indeed which is the Privilege of all free People, who are authorized by the Laws of God and Nature to chuse their own Governors". It further sets forth, That June 12. 1703, he published another Libel, called, *The Observer*; in which are these Words: "Take one Time with another, the Mismanagements of the Navy have been a greater Tax on the Merchants, than the Duties raised by Parliament. We never had a better Navy; but the Wisdom of the Managers thereof is like a bottomless Pit, past finding out". The Infor-

mation further chargeth, That on the 16th of June, 1703, he publish'd another Libel, called, *The Observer*; in which were these Words: "What avails it a Man of Learning and Parts, to qualify himself for the Service of his Country on the Ocean? If he has Knowledge enough to advise Neptune himself, if he has no Interest, he shall have no Preferment. How much does it look to our Nation's Disadvantage, to have Men in Eminent Stations in the Navy, who have not so much as an Idea, a Notion, a Thought of Naval Affairs? To have Men to superintend the Building of our floating Castles, who know not the Nature of any one Part of the Management? To have Men employ'd in the Victualling, who qualify themselves for that Post by learning to write their Names, which is indeed a Post for a Philosopher bred to the Sea?" It's further set forth in the Information, That on the 10th of July, 1703, he publish'd another Libel, wherein, among other Things, are these Words relating to Daniel De Foe. "Countrym. Truly, Master *Observer*, I have no very good News for you. Mr. Daniel De Foe has pleaded Guilty to the Indictment against him, for writing and publishing *the shortest Way with the Dissenters*; and he is sentenc'd to stand Three times in the Pillory, to pay a Fine of 200 Marks, and to find Security for his good Behaviour of Seven Years. *Observ.* The Court could do no otherwise than convict him, upon his pleading Guilty; *habemus confitentem reum* is very often the Voice of Courts of Judicature; 'tis the Ease of the Judges and Juries: If Daniel De Foe was in Expectation of Coleman's Black Box, he has found a Pillory instead of it. I don't trouble my Head about the Custom of giving the Pillory to Authors, which is the Punishment of Bakers. You talk'd just now of turning Author, have a care of your Candle; you see which is the shortest Way with Authors: You must all enter your selves into the Regiment of Colonel De Foe. The Law of England directs, That no Man shall be fined *ultra tenementum*; and I make no question, but the Justice of the Court has fined Mr. Foe answerable to his Estate: His Security for his good Behaviour for Seven Years, without doubt, was rationally consider'd, as to the Legality thereof. For my part, I am only acquainted with Old Laws of England, the Ancient Birthrights and Immunities of Englishmen: This I take to be the Foundation of New Laws". And that on Saturday, May 20. 1704, he publish'd another Libel, called, *The Observer*; wherein, among other Things, are these Words: "Countrym. Master *Observer*, there's another Plot against you. *Observ.* Prithce Man, there's a Plot against the Queen and the whole Nation; is it any Wonder that there are Plots against me? The High-Fliers are now plotting against every honest Man in England. I'll tell you more of it, the next time we meet. Countrym. I fancy some Sort of People plot against you, because you endeavour to countermine their Plots against the Queen and Nation. *Observ.* You are right enough; but that shan't hinder me from detecting their Designs, and from opening the People's Eyes: But, prithce, what Plot is this? Countrym. Why, Sir, it is a Plot preparatory to your Tryal; and if they can't effect this Plot, I suppose you'll never be tried. They insinuate into the Citizens of London, that you have lately written very scandalously, maliciously, and treasonably, and I don't know

" know how many other Lies against them, the
 " said Citizens; and by this means, they are mind-
 " ed to set your Jurors against you. *Obs.* This
 " is likely enough: They'll leave no Stone un-
 " turn'd, to suppress the Truth. I understand, I
 " should have been prosecuted by Bill the last Ses-
 " sions, but that the High-Fliers did not like the
 " Jury. Nay, they say they don't like the Two Sher-
 " riffs, because they won't pack Juries, to find in-
 " nocent Men guilty. The Defendant has pleaded
 Nor Guilty: But if we prove the Charge, I doubt
 not but you will find him Guilty.

Sir T. Powis. My Lord, I am of Council with
 Her Majesty. This Information is brought on the
 Behalf of the Queen, against Mr. Tutchin. I shall
 not long entertain you about it, because the Matter
 is short. The Charge is, That he has publish'd se-
 veral Libels, scandalous and seditious, reflecting on
 the Government, and the Administration of it, in
 many Instances given at large. I think the Papers
 are Six in Number; and by and by you will have
 them more particularly before you. I presume,
 there ought to be made a Difference between a just
 Liberty, and Licentiousness. This Information is
 brought, that Men may be warned. The Plea he
 has made, is, That he is not Guilty. The Matter
 we are to prove, is, That He was the Person that
 did Write and Compose these Papers, and did Pub-
 lish them, or cause them to be done. My Lord,
 We shall call our Witnesses: And notwithstanding
 what you have heard of late from the Defendant,
 relating to this Tryal, I do not doubt but there
 will be all Justice done. I am sure, on our Side,
 nothing else is intended. And I doubt not, but if
 we prove that he did Publish these Papers, the Jury
 will find him Guilty.

Mr. Att. Gen. My Lord, The Information is
 laid against Mr. Tutchin, for a few of his *Observa-*
tors of the many he has writ; sometimes Two,
 sometimes Three in a Week. It is a great while
 that he has done it; and it has been the great In-
 dulgence of the Government, that he has not been
 prosecuted before. He has been taken Notice of
 by the *House of Commons*, and been before the Se-
 cretary of State; where he has been admonish'd
 to take care of what he should write: But he
 would not take Warning. And now he is to be
 try'd for some of his Papers; wherein it will ap-
 pear, that he has taken the greatest Liberty, I be-
 lieve, that ever Man took. Libels used to come
 out by stealth, and in the dark: But these have
 been publish'd openly, with all the Defiance ima-
 ginable. You may see how mild the Prosecution
 hath been, by what he has done since the Beginning
 of it: He has been writing in such a manner, to
 prepare for the Tryal, as I think was never done be-
 fore. A Prosecution of this Nature is of the great-
 est Consequence: And it may be, I may be blam'd,
 being in the Office wherein I am, that there have
 not been more such made. Here is the highest Re-
 flection on the Government imaginable. There can
 be no Reflection on them that are in Office under
 Her Majesty, but it must cast some Reflection on
 the Queen who employs them. I believe there is
 hardly one in any considerable Post under the Go-
 vernment, but has been criminated by him: No-
 thing escapes him. He censures all Mankind;
 writes magisterially, and defies all Authority, and
 casts the vilest Reflections on the Government:
 As if we, who are in the Queen's Service, made it
 our Business to corrupt Juries. And makes Re-
 flections both on Sheriffs and Juries. These are

of the greatest Consequence in the World to the
 Government, and to every body. For if such Mer-
 cenary Writers may have the Liberty to reflect on
 whom they please, no Man's Reputation can be
 safe.

Gentlemen of the Jury, The Matter you are to
 enquire into, is, Whether the Defendant be the
 Author, or Publisher of these Libels: That is the
 Matter you are to Try. What the Punishment
 must be, if you find him Guilty, is in the Judg-
 ment of the Court. We will produce our Wit-
 nesses; and doubt not but you will do the Queen
 Justice.

Mr. Soll. Gen. Call John How.

[He appear'd, and was sworn.]

Show him those *Observers*.

[Which was done; and he look'd them over.]

Have you look'd over them?

Mr. How. Yes.

Mr. Soll. Gen. Then pray acquaint my Lord and
 the Jury, Whether you know who compos'd, and
 brought them to the Press?

Mr. How. I do suppose them to be Mr. Tutchin's:
 I dealt with no other Man for them.

Mr. Att. Gen. Acquaint my Lord and the Jury,
 how they came to be printed.

Mr. How. About the latter End of March, 1702.
 I treated with Mr. Tutchin about writing an *Ob-*
servator, to be publish'd Weekly: The first of
 which was publish'd in April, 1702. And all that
 have been printed since, I had from him, to this
 Year.

Mr. Att. Gen. You look'd on these Papers
 here: Were these printed by the Direction of
 Mr. Tutchin?

Mr. How. To the best of my Knowledge they
 were. They were always brought from him to
 me.

Mr. Att. Gen. Was there any Agreement made
 between you about the writing of it?

Mr. How. Yes, it was agreed at first to write
 once a Week; and I was to give him Half a Gui-
 nea for it. I have printed in all about 266.

Mr. Att. Gen. Have you had frequent Discourse
 with him about them since? You said, you printed
 in all about 266: Have you paid him for all?

Mr. How. Yes.

Mr. Soll. Gen. Have you had any Discourse with
 him, wherein he has own'd them all to be his?

Mr. How. He has own'd them from time to
 time, till within this Week.

Mr. Soll. Gen. Has he own'd himself to be the
 Author of them?

Mr. How. He always own'd himself to be the
 Author.

Mr. Soll. Gen. Have you had any Discourse
 with him, lest you should come into Danger for
 it?

Mr. How. Yes, I have had Discourse with him
 about the Danger: And he has said to me, I own
 my self to be the Author: And do not fear; if any
 Danger happen, you are a Rogue to your self and
 Family, if you do not discover me.

Sir T. Powis. Look on these Papers, and see if
 he deliver'd these very *Observers* to you: Were
 these the very same?

Mr. How. Yes.

Sir T. Powis. And was he paid for them by
 you?

Mr. How. Yes.

Mr. Mountague. I desire to see them.

Mr. Att.

Mr. Att. Gen. Deliver them to Mr. Mountague.

Mr. Mountague. Take that *Observer*, and look on it: 'Tis that which they are about to read. [Then Mr. How look'd on it.] How long ago is it, that you had that Paper in your Custody?

Mr. How. I suppose this was deliver'd out of my Shop, to be sent to Mr. Borret.

Mr. Mountague. Do you know you sent that Paper?

Mr. How. Yes, I deliver'd it, and put my Mark upon it.

Mr. Mountague. How long ago?

Mr. How. I do not justly remember it.

Mr. Mountague. If you do not remember that, do you remember the Printing of it?

Mr. How. It was done at my House.

Mr. Mountague. When a Copy is brought to you to be printed, do you print that Copy always exactly?

Mr. How. As near as I can, I do.

Mr. Mountague. The Question I would ask you, is; Do you, when you have a Copy, strictly keep to the Letter of the Copy? Or do you, as you think convenient, alter it?

Mr. How. I have alter'd it oftentimes, to make it safe.

Mr. Mountague. Then you do take it on you to alter.

Mr. How. To strike out a Line, never to alter his Sense.

Mr. Mountague. Do you not insert any Thing?

Mr. How. Yes, frequently a Word.

Mr. Mountague. Do you not take upon you to insert several Words, and leave out several?

Mr. How. Yes.

Mr. Mountague. You do. Then I ask you, Are you sure that that Paper is printed without Alteration?

Mr. How. I do not remember any thing of that.

Mr. Mountague. I ask you, Whether that Paper were not alter'd from what was sent you?

Mr. How. I cannot swear it.

Mr. Att. Gen. Can you say that Paper was alter'd?

Mr. How. Not that I know of.

Mr. Whitaker. Look on the Title; whose putting down is that?

Mr. How. He agreed to the Title.

Mr. Mountague. Does the Paper come to you entituled the *Observer*; or not?

Mr. How. I cannot tell whether he ever put it in.

Mr. Mountague. Who put it in then?

Mr. How. It was agreed between us to call it *The Observer*.

Mr. Mountague. Does he write *The Observer*, or did you?

Mr. How. There is no Occasion for the Title, that I know of.

Mr. Mountague. But who writ the Title to it?

L. C. J. Holt. They ask you this Question: Who was it, that put this Title to this Paper?

Mr. How. I do not know but I might write it in the Paper at first, and so it was inserted afterwards.

L. C. J. Holt. Who was it first writ that Title?

Mr. How. I do not know who did write that, He or I. I did first propose the Title to him.

L. C. J. Holt. Was that Title writ by him or you?

Mr. How. I do not know, my Lord.

L. C. J. Holt. Was there an Agreement made between you, that this Paper should be writ once a Week with that Title?

Mr. How. Yes, my Lord.

L. C. J. Holt. Did he agree to that Title? And was he privy to it?

Mr. How. Yes, my Lord, it was agreed upon between us; and He agreed to write such a Paper, with such a Title.

Mr. Whitaker. Where did you come to this Agreement?

Mr. How. I cannot tell.

Mr. Whitaker. Was it in London, or Middlesex, or Surrey?

Mr. How. I cannot tell.

Mr. Whitaker. Where were they printed?

Mr. How. I printed some of them in *Fenchurch-street*, about Eighteen; the rest in *Grace-Church-street*.

Mr. Harris. Was that Paper alter'd by you, or not?

Mr. How. I cannot remember whether I alter'd that, or no.

L. C. J. Holt. You say you alter'd sometimes: Did you acquaint him with the Alterations you made?

Mr. How. Sometimes they have been sent to me; I knew not where to find him; and then I have alter'd them my self, rather than be disappointed. At other Times, I have been in his Company; and then I complain'd, and he has alter'd them. And sometimes he said, You have the Pen; do you alter them.

Mr. Soll. Gen. Can you say, You alter'd a Syllable in these Papers?

Mr. How. I cannot say so.

Mr. Soll. Gen. Since the first Publishing of them, have you not publish'd them in Volumes?

Mr. How. Yes.

Mr. Soll. Gen. And who gave Order for it?

Mr. How. Mr. Tutchin.

Mr. Att. Gen. What Direction had you about this Volume? [A Volume bound up being in Court.]

Mr. How. That Volume was order'd by Mr. Tutchin. He order'd me to bind up Three Volumes: One of which he order'd to be deliver'd to Mr. Borret; which I did not deliver, by reason of a Prosecution at the *Old Baily*.

Mr. Att. Gen. Did he order any other Man's Works to be bound up, or his own?

Mr. How. He order'd me to bind his own, with the *Preface*.

Mr. Att. Gen. Where is that *Preface*?

Mr. How. Before the Book: And he owned that, and put his Hand to it?

Mr. Att. Gen. Had you paid for these?

Mr. How. Yes; He order'd me to bind up these together, and to deliver one of them to Mr. Borret?

Sir T. Powis. Did you pay him for the *Preface*?

Mr. How. Yes, and for the *Index*.

L. C. J. Holt. Who made the *Index*?

Mr. How. He did.

L. C. J. Holt. Did he write his Name to the *Preface*, after it was brought to you?

Mr. How. It was deliver'd to me with his Hand to it; and he owned it.

Mr. Soll. Gen. Then he owned all the *Observers* to be his, by setting his Name to the Volume?

Mr. Moun-

Mr. Mountague. Where was this Book deliver'd to you to be bound up?

Mr. How. I do not know, whether in London, or Middlesex, or Surrey.

Mr. Mountague. Recollect where it was that you had this Discourse about a Book?

Mr. How. I do not remember the exact Time.

Mr. Mountague. But you remember the Discourse: And can't you say where it was?

Mr. How. No, indeed.

Mr. Mountague. The Preface they talk of, was it brought in Writing?

Mr. How. It was brought, or sent in Writing; and I printed it from a Manuscript Copy.

Mr. Mountague. How do you know he sent it?

L. C. J. Holt. What did you give him for that Preface and Index?

Mr. How. I think it was Ten Shillings.

Mr. Mountague. My Lord, With Submission, they cannot read this Paper: For if it be read, it must be read as the Paper of Mr. Tutchin. Now, as to this Paper that they produce, we do insist upon it, that it is Mr. How's Paper, and not Mr. Tutchin's. For he tells you, That whatever Papers he had, or whatever Directions were given him from Mr. Tutchin, were in Writing. Now if Mr. Tutchin is to be charg'd with a Libel in Writing, they must produce that very Writing, or a true Copy thereof. And another Man's taking a Copy of my Writing, cannot be said to make it my Writing; especially when it is not prov'd to be a true Copy. So that this Paper, which is printed by Mr. How, cannot be charged on Mr. Tutchin. If one single Penman had taken a Copy, of it, if he could not be sure it was an exact Copy, it could not be read; much less such a Paper, which goes thro' so many Hands as this has done. And Mr. How says, He did often alter it, according to the best of his Understanding; and therefore that makes it his Paper. For, by a very small Alteration, a Thing may be made a Libel, that was not so before. And besides, it appears by Mr. How's own Evidence, that Mr. How makes an Advantage by the Printing and Publishing of it: And perhaps he makes Alterations, to make it sell the better. That makes it nothing like to Mr. Tutchin's Paper; and therefore they ought to produce that very Paper that was brought from Mr. Tutchin: And this Paper ought not to be read against him.

Mr. Harris. My Lord, He does not swear it is a true Copy; and therefore we cannot allow it to be read.

Mr. Whitaker. He has added the very Title: It is called an *Observer*; and he has put that Title to it. And he gives you no Account when, or where there was any Agreement made with Mr. Tutchin about it.

L. C. J. Holt. Where was the Agreement made for Printing the Papers?

Mr. How. I am not positive where it was; whether in London, or Middlesex. I did think it was in Fenchurch-street; but he says it was in the Strand.

Mr. Mountague. Can you be positive it was in Fenchurch-street?

Mr. How. I cannot be positive.

Mr. Att. Gen. Where were they printed?

Mr. How. In Fenchurch-street.

Mr. Att. Gen. Where did you bind the Book, and put the Preface?

Mr. How. That Book was sent out of my House Vol. IV.

to be bound; and when it was done, it was sent from my House again.

Mr. Conyers. Did he come to Fenchurch-street, to direct the Printing at any time?

Mr. How. Yes, several Times.

Mr. Weld. Did he agree with you to have them printed and publish'd?

Mr. How. Yes.

L. C. J. Holt. Have you the Original Papers of these *Observers*?

Mr. How. I have very few of them now.

L. C. J. Holt. How came you to part with them?

Mr. How. I thought there would be no Use made of them, and so I did not keep them: But I have most of the Third Volume by me.

Sir T. Powis. My Lord, In Answer to this Objection, I must say, If this shall prevail in that Strictness, I take it for granted, that instead of restraining Libels, it will be the best and most effectual Way to publish them. For the Author then hath nothing to do, but when a Copy is printed, to destroy the same; and then no Evidence can be against him: Because the Printer will be called on, to know if that which is printed agree with the written Copy to a Letter. If that be so, it will be impossible to come at the Author. It is not an Answer, to say, You may go to the Printer: For tho' he is punishable; yet it is more reasonable to come at the Author. We have given a fair Evidence, that this is the same that was brought to this Man: And they do not make it appear, that he did add to, or diminish any of these Papers. The Printer says, The Defendant has avowed and justified all that he did for him since the Beginning. That by his Order, he collected all those *Observers* we insist on, in this Volume; which he has owned, and publish'd sufficiently: For here is his *Index* and *Preface*. And that he did publish this Volume, there is no room to question. We have given as good Evidence of this, as the Matter will bear.

Mr. Att. Gen. My Lord, we have given as good Evidence as can be expected, of a Matter of this Nature. We are prosecuting the Author, and have brought the Printer to give his Evidence; which is all we are able to get: For it is not in our Power to prove, where the Defendant did actually write them. The Printer had no Reason to take care of the Original Papers, because when they were printed, they were of no Use. He tells you, the whole Volume was printed, and owned by Mr. Tutchin continually, and by him directed to be made up into a Book, and he paid Mr. Tutchin for writing them from Time to Time. If this be not a sufficient Evidence of his publishing of them, it would be impossible to give any Evidence; for the Author would always take away his Copy, and then he is safe. These were printed and published in London; and where-ever the Agreement was made, we may charge the Defendant, where the Papers were printed, pursuant to an Agreement made between him and Mr. How; which makes the Composing and Printing his Act.

Mr. Serj. Darnell. My Lord, if this be not Evidence, that this Man is the Maker or Publisher of these Papers, his Agreement to have it done, his owning after it is done, and his own Confession, and his being paid for it; if this be not Evidence, nothing is.

L. C. J. Holt. His Agreement to publish that Book, is sufficient to prove that he owned it.

Mr. Conyers. My Lord, there is one Thing very considerable; the Discourse he had with this Man. Says he, *If you are question'd about it, I am the Author, I gave you the Copy, and directed the printing of it; and you are unjust to your self and your Family, if you do not discover me.* My Lord, they make this Objection: We did contract with Mr. How to make an *Observator*, but he made Alterations in it, as he thought fit; and sometimes he shew'd them to him, and sometimes not. Now it's clear, Mr. Tutchin did give him that Liberty; and he cannot say, that there was any one of these Papers that was altered.

Mr. Soll. Gen. And, my Lord, after there were an Hundred compos'd, he directs Mr. How to bind them up in a Volume, and puts a Preface and Index to them, and sets his Name to it. Now that is certainly a Publication and owning of them.

Mr. Weld. So far as, in that Book goes, there is Evidence that he is the Author and Publisher; and they have objected nothing to it: So that the only Question is concerning the other *Observators*. Now he says he had Leave from the *Observator* to make those Alterations.

L. C. J. Holt. No, he does not say so. Heark you, Sir, Did you ever add any thing?

Mr. How. Not that I know of, but a Word sometimes to make it Sense.

Mr. Weld. Did he ever allow you to do it?

Mr. How. He has often said, that Printer was a Blockhead that did not.

Mr. Mountague. My Lord, my Objection was singly, as to the reading the Papers, not of the Book. The Thing they offer'd as Evidence, was the Papers; and we say they ought to produce the Originals, which they have not done.

L. C. J. Holt. They offer the Book in Proof.

Mr. Mountague. Then, my Lord, I must beg Leave to oppose that likewise. For this Book is proved to be his, no otherwise, than by the Printer's swearing, that Mr. Tutchin order'd him to bind up Three Volumes of his *Observators*; and the Printer himself has put together these Papers, and Mr. Tutchin has writ a Preface before them; but whether the Papers thus put together were ever examined, *non constat*; or whether the Bookbinder has made no Alterations, *non constat*. And it does not appear, that Mr. Tutchin look'd over any of the Papers that are here bound up. So that the most the Queen's Council can make of this Evidence, is this: Here is a Book Mr. Tutchin took to be his Book upon the outward View of it, or at least upon the Credit of his Printer; and therefore every thing in it must be read against him, as his. Surely, my Lord, that ought not to be allowed of. When Dr. Drake was here tried for being the Author of a scandalous Book, it was sworn against him, That upon shewing him one of the Books he was charged with, he owned himself to be the Author of it. But a Question being ask'd, Whether the Book that was offer'd to be read in Evidence against him, was that very Book that had been shewn him, when he owned himself to be the Author? It was answered, No; But it was a Book of the same Impression, and therefore ought as much to be read against him, as the Book he owned. But, as I take it, that Evidence was disallowed.

Mr. Att. Gen. Mr. Mountague, You state it wrong; for that Book was read.

L. C. J. Holt. That Book was read, tho' it was not proved as that very Book that was deliver'd. It was the Bookseller that said the Book was print-

ed by Dr. Drake; but he would not say it was that very Book that was given in Evidence. He took a Book with such a Title! But was this the Book? But he could say, the other Book was never taken away. Now this Book is owned by Mr. Tutchin, by making the Preface and Index to it.

Mr. Mountague. It was a Book of the same Impression with that which Dr. Drake had own'd himself to be the Author of, that was offer'd in Evidence.

L. C. J. Holt. He took the Book from the Shop that was read, the other Book was in the Shop.

Mr. Att. Gen. The Bookseller said he knew who writ the Book, but not who writ the Preface.

Mr. Mountague. But, my Lord, be the Case one way or the other: The Thing we insist on is, That they cannot read the first Papers produced, because Mr. Tutchin has not owned that Paper in particular for his, that is inserted in the Book.

L. C. J. Holt. If the first Paper was printed by his Order, according to the Bargain made between them, it is reasonable it should be read. I do not know, says he, that I made any Alteration here; sometimes I did alter, and sometimes strike out, and made the Expression lower; but I know not that I made any Alteration here; and when I did, I oftentimes acquainted him with it; but that I made any Alteration here, I know not: I printed it by the Copy, and the Copy is lost. Now Mr. Tutchin would have him make up a Volume; and, says he, This Volume I bound up by his Order.

Mr. Mountague. My Lord, Here is a Paper offer'd, which they cannot prove to be a true Copy; and will you let them read it, because they produce another Paper like it, bound up in a Volume; which, by the way, is proved no otherwise to be his, than by his bespeaking a Set of *Observators* to be bound up for him?

L. C. J. Holt. It is the same.

Mr. Mountague. My Lord, I think, with Submission, they may not read any of the Papers, if they have not examined the first Copy sent to the Printer's.

L. C. J. Holt. A Man sends a Copy to print, which is a Libel, and the Print is produced that is said to be according to the Copy: There is another Print produced, that agrees with the first, which he hath owned.

Mr. Mountague. My Lord, I did hope that the Queen's Council would have given an Answer to that Part of my Objection, That these printed Papers are no more than Copies.

L. C. J. Holt. It is more than a Copy. Every Copy of a Libel is a Libel; and every Printer of a Libel is guilty of a Libel.

Mr. Mountague. My Lord, It's true, every Copy of a Libel is a Libel: But whose Libel is it?

Mr. Harris. My Lord, It is not proved that he ever perused that Copy.

Mr. Mountague. Pray, Mr. How, was it his Direction to put these very Sheets together, or to make up a Volume of *Observators*? I do ask you, Whether your Direction was to make up a Book of *Observators*, or to bind up these very Sheets?

Mr. How. He gave me Direction to make up a Set of *Observators*.

Mr. Mountague. Then you say, it was only to bind up a Set of *Observators*; and so on your own Head you bound up these *Observators*. But can you say, he has look'd over all the Papers in that Book, and owned them?

Mr. Weld.

Mr. Weld. My Lord, Here is a Man says, he order'd him to deliver them to my Lord Nottingham.

Mr. Mountague. How long is it since he gave you these Directions?

Mr. How. I believe it was about a Week after the Volume was published?

Mr. Mountague. How long since is it, that the Volume was published?

Mr. How. It was about April, 1703.

Mr. Mountague. How long after did you deliver them?

Mr. How. I deliver'd them within a Week after.

Mr. Att. Gen. There are but Two of the *Observers* we charge the Defendant with in that Book; and therefore we humbly insist on reading of the printed Papers, on the Evidence we have given, which we take to be sufficient to read them without the Book; these Papers being printed after this Agreement was made between them, and bound up by his Directions, he is answerable for them.

Mr. Mountague. My Lord, I do, with Submission, say it ought not to be read, tho' it be in that Book; for no Man has proved that Paper that is in it to be his. But if they lay any Weight on the owning the Book, the publishing the Book is a new Crime, for which he may be punished afterwards, and he is not charged with it in this Information.

Mr. Att. Gen. If a Man be indicted for being the Author of a Book; being indicted once, he is indicted once for the whole Book.

Mr. Whitaker. My Lord, We are indicted for a single Paper; and that Book is not the Matter of the Indictment.

Queen's Council. My Lord, We have done now. We desire the Papers may be read.

L. C. J. Holt. Read them both.

Then the First *Observer* was read.

Observer, May 30. 1702. "At the same time we consider the French King's Success in his Bribery and Corruption, we ought to lament the sad State of our own Country, which affords so many Instances of Treachery. If we may judge by our National Miscarriages, perhaps no Nation in Europe has felt the Influences of French Gold more than England; and worthy it is our greatest Lamentation, that our dear Country should be weaken'd by Men of mercenary Principles, when Countries inferior to us in Strength and Riches are secured from Attempts of this Nature, only by the Fidelity of their People. What is the Reason, that French Gold has not affected Holland, as well as England; but that their Ministry is such, as is entirely in the Interest of their Country, and altogether incorruptible: They prefer Men that are knowing in their Posts, and are active in Business. When in England we find Offices for Men, not Men for Offices; and a Title of Honour gives a Man a Title to a great Employment he is altogether ignorant of. By this, and by preferring of Men by Interest and Favour, has the Excise, the Customs, and other Branches of the Revenue, intolerably sunk; and by this Means has the Navy of England, our chief Support, been hitherto perfectly bewitch'd: And can Lewis spend his Money better, than in getting Men into Offices in England, who are either false or ignorant in the Business, or are his Friends?"

Mr. Soll. Gen. The next is N^o. 23. Saturday, July 11. 1702.
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"And this is a Prerogative of singular Advantage to the People of England, in that their Representatives are the Judges of the Male-Administration of their Governors, that they can call them in Question for the same, and can approve such to wear the Crown who are fit for Government, which they have often done, and indeed which is the Privilege of all free People, who are authorized by the Laws of God and Nature to chuse their own Governors.

Mr. Att. Gen. Now we will shew these Papers to Mr. How, for these are all that are in the Book. (They were shewn him.) Mr. How, pray tell us who was the Author of these Papers?

Mr. How. Mr. Tutchin.

L. C. J. Holt. How do you know that?

Mr. How. I had them of him.

Mr. Att. Gen. Did you pay him for them?

Mr. How. I paid him for these very Papers.

Mr. Mountague. What, these Papers that are now produced? You never shew'd them to him did you?

Mr. How. No, but I shew'd him the same Number.

Mr. Mountague. Have you read them to him?

Mr. How. He has owned them all; he has own'd them an Hundred and an Hundred times, all of them.

Mr. Mountague. Have you the Copy of these Papers by you?

Mr. How. No.

Mr. Mountague. Did you search for them?

Mr. How. No, I have not.

Mr. Harris. My Lord, If we had seen these Papers, then we might have seen what Alterations were made in them.

Mr. How. I believe he had them back again.

Mr. Mountague. I believe he has not been ask'd to search for them.

Mr. Att. Gen. Did not Mr. Borret send to you about the Original Papers?

Mr. How. Yes.

Mr. Att. Gen. Did you look out what you had?

Mr. How. Those that I had were look'd out.

Mr. Att. Gen. What became of them?

Mr. How. I know not, but he might have them back again.

Mr. Att. Gen. Those that you did find, what did you do with them?

Mr. How. Those that I have now, are but Two or Three.

Mr. Att. Gen. Did you carry all the Original Papers you had to Mr. Borret?

Mr. How. Yes, all that I know of.

Mr. Mountague. Have you no Copies? Did you not say you were not desired to look for these *Observers*?

Mr. How. I said, I did not know whether I was ordered to search for these particular *Observers*.

Mr. Mountague. Did Mr. Borret desire you to look after these Original *Observers*?

Mr. How. I am not positive.

L. C. J. Holt. Did you deliver all those that you had to Mr. Borret?

Mr. How. Yes, my Lord, all that I had at that Time; but I have had some since.

Mr. Att. Gen. He told you before, That till there was like to be a Prosecution, he did not keep them

them, but since he did; and now he look'd for what he had, and deliver'd them to Mr. Borret.

L. C. J. Holt. Then Mr. Borret must be sworn.

And he was Sworn accordingly.

Sir T. Powis. Mr. Borret, acquaint my Lord, and the Jury, whether you desired Mr. How to look out the Copies of the *Observers*.

Mr. Borret. I sent to desire Mr. How to look out all the written Copies of the *Observers*, which he had received from Mr. Tutchin; and he afterwards brought me a considerable Number of them, and said they were all he could find: And I have very carefully look'd them all over, but cannot find any one amongst them that relates to any of those *Observers* mentioned in the Information, except one, which is in May last, the which I have here in Court.

Mr. Mountague. Did you send to Mr. How, to ask for the Original of these Papers here named?

Mr. Borret. I did.

Mr. Mountague. Will you produce the Papers you have? My Lord, they have taken those Original Papers; and if they were produced, you would see how they are mangled.

Mr. Att. Gen. If they were nothing to the Matter, what did they signify? Only this is a popular Thing, and they must say a great deal.

Mr. Conyers. Read the *Observer* of the 12th of June, 1703, which contains these Words.

(Which the Clerk read, as follows.)

“ Take one Time with another, the Mismanagements of the Navy have been a greater Tax on the Merchants, than the Duties raised by Parliament. We never had a better Navy; but the Wisdom of the Managers thereof is like a Bottomless Pit, past finding out.

Mr. Conyers. Now go on to N^o. 20. the 16th of June 1703. (Which the Clerk read, as follows.)

“ What avails it a Man of Learning and Parts, to qualify himself for the Service of his Country on the Ocean? If he has Knowledge enough to advise Neptune himself, if he has no Interest, he shall have no Preferment. How much does it look to our Nation's Disadvantage, to have Men in Eminent Stations in the Navy, who have not so much as an Idea, a Notion, a Thought of Naval Affairs? To have Men to superintend the Building of our Floating Castles, who know not the Nature of any Part of the Management? To have Men employ'd in the Victualling, who qualify themselves for that Post by learning to write their Names, which is indeed a Post for a Philosopher bred to the Sea?

Then Mr. Tanner was Sworn, as to an Original Record, which he produced about Daniel De Foe's Tryal, to be compared with the Passage to be next read.

Mr. Conyers. Now read the *Observer*, N^o. 27. Saturday the 10th of July, 1703. (Which was read, as follows.)

“ Countryman. Truly, Master *Observer*, I have no very good News for you. Mr. Daniel De Foe has pleaded Guilty to the Indictment against him, for writing and publishing the *Shortest Way with the Dissenters*; and he is sentenc'd to stand Three Times in the Pillory, to pay a Fine of 200 Marks, and to find Security for his good Behaviour for Seven Years. *Observ.* The Court could do no otherwise than convict him, upon his pleading Guilty; *habemus confitentem reum* is very often the Voice of Courts of Judicature: 'Tis the Ease of Judges and Juries. If Daniel De Foe was in Expectation

“ of Coleman's Black Box, he has found a Pillory instead of it. I don't trouble my Head about the Custom of giving the Pillory to Authors, which is the Punishment of Bakers. You talked just now of turning Author, have a care of your Candle; you see which is the shortest Way with Authors: You must all enter your selves in the Regiment of Colonel Foe. The Law of England directs, That no Man shall be fined *ultra tene-mentum*; and I make no question, but the Justice of the Court has fined Mr. Foe answerable to his Estate: His Security for his good Behaviour for Seven Years, without doubt, was rationally consider'd, as to the Legality thereof. For my part, I am only acquainted with Old Laws of England, the Ancient Birthrights and Immunities of *Englishmen*: This I take to be the Foundation of New Laws.

Sir T. Powis. The last is of the 20th of May last; Mr. Borret, is the Original of that here?

Mr. Borret. Yes.

Sir T. Powis. Who had you this of?

Mr. Borret. I had it from Mr. How.

Sir T. Powis. Shew it to Mr. How. (Which was done.)

L. C. J. Holt. Whose Hand is that?

Mr. How. To the best of my Knowledge, it is Mr. Tutchin's.

L. C. J. Holt. Who had you it from?

Mr. How. From Mr. Tutchin, or his Order.

L. C. J. Holt. Did you pay him for it?

Mr. How. Yes, my Lord.

Mr. Att. Gen. Then that likewise was printed under the Title of the *Observer*?

Mr. How. Yes, Sir.

Then the Paragraph was read.

“ Countryman. Master *Observer*, there's another Plot against you. *Observ.* Prithee Man, there's a Plot against the Queen, and the whole Nation; is it any wonder then that there are Plots against me? The High-Fliers are now plotting against every honest Man in England. I'll tell you more of it the next Time we meet. Countryman. I fancy some Sort of People plot against you, because you endeavour to countermine their Plots against the Queen and Nation. *Observ.* You are right enough; but that shan't hinder me from detecting their Designs, and from opening the People's Eyes. But, prithee, what Plot is this? Countryman. Why, Sir, it is a Plot preparatory to your Tryal; and if they can't effect this Plot, I suppose you'll never be try'd. They insinuate into the Citizens of London, that you have lately written very scandalously, maliciously, and treasonably, and I don't know how many other Lies, against them the said Citizens; and by this Means they are minded to set your Jurors against you. *Obs.* This is likely enough; they'll leave no Stone unturn'd, to suppress the Truth. I understand, I should have been prosecuted by Bill the last Sessions, but that the High-Fliers did not like the Jury; nay, they say they don't like the Two Sheriffs, because they won't pack Juries to find innocent Men Guilty.

Mr. Mountague. Now, my Lord, we take it, there is a Variation between this Paper, and the Information. In the Copy, it is only C. in the Information, it is Countryman. Now when they describe any Paper, it must be as it is writ; and they cannot say Countryman, when it is but C.

L. C. J. Holt. He writes a Dialogue between the *Countryman* and the *Observer*; but now he makes C. for *Countryman*.

Mr. Mountague. My Lord, if they go upon the Libel, they must give it as it is under his own Hand.

Sir T. Powis. That Letter is to be understood *Countryman*.

L. C. J. Holt. When he us'd to write C. were you not to write *Countryman* at large?

Mr. How. At first we were; afterwards as it might be intelligible.

Mr. Mountague. Still we think they have not done enough: They have not proved this Thing sufficiently, by the Witnesses they have called. For, my Lord, we take it, that they must positively shew it was writ within the City. In the Tryal of the Bishops, it was proved to be all under their Hands: Yet it was required then, that they might make it appear, that that Paper was writ in the County of *Middlesex*.

Mr. Att. Gen. Mr. How, where do you live now?

Mr. How. In *Grace-Church-street*.

Mr. Att. Gen. Let that Agreement be made where it will, the Publishing was in *London*; and we may lay the Information here.

L. C. J. Holt. Where did you receive these Papers?

Mr. How. Most commonly they were sent to my House, in *Talbot-Court*, in *Grace-Church-street*.

Mr. Whitaker. Have you not fetch'd some of them from *Lambeth*?

Mr. How. Yes, some of them.

L. C. J. Holt. Suppose a Man draws up a Libel in *Middlesex*, and there agrees with a Printer who lives in *London* to print it: He takes it away, and prints it in *London*, and there publishes it. Now the Question is, Whether he that drew it, is not guilty of Composing and Publishing of it in *London*? Every Copy is a Libel of it self.

Mr. Mountague. Every Copy is a Libel; and the taking a Copy of a Libel, may be a Publication: But that is not the Thing laid to his Charge; it is, *Scriptit & Composuit*. Now the Writing is in the County of *Surrey*; there he writes, and there he composes.

L. C. J. Holt. He is charged with Writing, Composing and Publishing a Libel in *London*. Tho' he be not guilty of Writing there, yet he may be guilty of Composing it there.

Mr. Mountague. Now, my Lord, as to the Publishing, the Printing is not the Defendant's Publishing: That affects another Man. Therefore we think they should give some Evidence of his writing these Papers in *London*.

Sir T. Powis. My Lord, As to that, the Word *Composuit* is proper to relate to the Printing of it: (For the Printers have such a Term as Composing :) And that is fully proved to be in *London*. And for Writing, (whether that be a material Thing between us) I take it, that he that does write a Libel, and sends it to *London*; and there, by his Authority and Directions, it is composed again in another Paper, and printed; that Paper is still his Writing, wherever it goes. However, the other Words come up to the Case fully; because if that which he writes is so published, it may be said to be writ by him, wherever it is so published.

Mr. Att. Gen. We have proved his owning himself to be the Author, and his causing it to be printed in *London*.

L. C. J. Holt. That is not an Evidence of his writing it.

Mr. Att. Gen. My Lord, It is a Proof of his causing it to be printed.

L. C. J. Holt. If he be guilty of a Fact in one County, you cannot charge it in another. But if he caus'd it to be printed in *London*, no question it will be a Publication here.

Mr. Att. Gen. The Composing and Printing is a Publication; and that we have proved to be done in *London*, pursuant to his Agreement. And we also charged him with writing the same; and as a Proof of that, we have proved his owning himself to be the Author. If that be not an Evidence of his writing it, we can hardly ever prove that Part of the Charge of writing: For he that writes a Libel, will do it alone; and proving the Copies to be received in *London*, is an Evidence they were writ there first, if the Defendant doth not prove the contrary.

Mr. Whitaker. Mr. How swears, he had the Copy from *Lambeth*.

Mr. Att. Gen. Where was it composed?

Mr. How. At my House.

Mr. Att. Gen. Was he there at your House?

Mr. How. Yes; and I had them from him there.

L. C. J. Holt. Did he write any of them there?

Mr. How. Not that I know of.

Mr. Att. Gen. Is Mr. Tutchin in the Court?

Mr. Mountague. I believe not.

L. C. J. Holt. Why is he not here?

Mr. Mountague. May it please your Lordship, and you Gentlemen of the Jury, to spare me a few Words in Behalf of the Defendant. I can hardly say I am of Council with Mr. Tutchin, because I have never seen him, but upon Recording his Appearance in open Court; and he has not thought fit to send us any Instructions till this Morning, when we were just going down to *Westminster*. But I do suppose, this Remissness in his Temper, does proceed from his Innocency of the Accusation against him: And he has a Mind to let the World see, how easy it is to make his Defence; since he has pitch'd upon me for his Advocate, and given me so little Time to prepare my self for it. But as short Notice as I have had of this Information against him, thus much I will beg Leave to say to it in general; That it does by no means come up to what the Gentlemen on the other Side call it, *A Charge of Writing and Publishing a False and Scandalous Libel*. My Lord Coke has given us a Definition, or rather a Description of a Libel: Says he, "*Famosus Libellus, seu infamatoria Scriptura*, is made either against a private Man, or a Magistrate. If it be against a private Man, it does deserve to be punished; because it is likely to incite all the Family or Kindred of such Person, to revenge the Injury; which tends to the Breach of the Publick Peace. If it be against a Publick Person, as a Magistrate, it is a greater Offence: Because it concerns not only the Breach of the Peace, but it is a Scandal to the Government. And it matters not whether such private Man, or Magistrate, be dead or alive at the making of such Libel; because the Friends and Relations of such Persons, are incited thereby to disturb the Peace of the Kingdom. By all which Sayings of my Lord Coke, I do humbly suppose, That there can be no Libel, where no Person certain is reflected upon, or scandalized. A Libel that points at no body in particular,

is like a Shot at Random, that seldom does any Mischief. And therefore I do take it, with great Submission, That in this Case, Mr. Attorney should have shew'd us, what Person (either publick or private) these *Observers* have aspersed. My Lord Coke; in another place, does liken Libelling to Poison, which secretly destroys a Man's Reputation, as the other does his Life. But certainly it would be thought a strange Sort of Indictment, to charge a Man with being guilty of Murder; and not mention some one in particular, that has lost his Life thro' the Defendant's Means or Procurement. Now pray, my Lord, how much does this Information differ from such an Indictment? Here it is said, That the Defendant *Tutchin* has wrote and published a false and scandalous Libel, of and concerning this Kingdom of *England*, and the Officers and Ministers of the Queen. But a National Reflection, that equally concerns every individual Person in the Kingdom with the Reflector himself, cannot excite and stir up the People to quarrel one with the other. And to tell me, the Ministers and Officers of the Queen are particularly concern'd; does but give me Occasion to ask, what Officers and Ministers Mr. Attorney is taking care of? For I do not find any Minister of State, or other Great Officer, so much as mention'd throughout this Record. A Bailiff, or Constable, is one of the Queen's Officers; and yet very few will think, a Man ought to be punish'd for Scandal, that shall say of such Officers and Ministers, they commit frequent Misdemeanors, and are of Mercenary Principles. Would it not have been easy for Mr. Attorney to have assigned the Particulars, if he knows of any body that has been defamed by these *Observers*? But since the Information sets forth no Particulars, I hope the Jury will take it for granted, that nothing in these Papers can be affixed to any Man's Door: But whatever has been writ, is spent in the Air; and I hope this Accusation will vanish there likewise.

In the next place, my Lord, I would beg Leave to take notice of the particular Papers, which have been severally read in Evidence. And the first that has been produced, is one of the printed *Observers*, agreed on all Hands to have been publish'd so long ago as the 30th of May, which was in the first Year of Her present Majesty's Reign. And as to this, the Charge is, That the Defendant has Written, Compos'd and Published it. But how many of these Three Particulars have been made out, must be next observ'd. And as to the writing of it, Mr. How has sworn, That there was an Agreement made betwixt him and the Defendant, (but where, he cannot say) that Mr. *Tutchin* should write a Paper, sometimes once, sometimes twice a Week, of the Publick Transactions: And such a Paper has been writ by Mr. *Tutchin*; but where this Paper was wrote by Mr. *Tutchin*, or deliver'd, Mr. How cannot swear. However, so far he goes, that from these Papers of Mr. *Tutchin* he has printed at his House in *London*, these Papers are now produced. But on this Evidence, I must, with your Lordship's Favour, observe, That there are Two different Sorts of Libels spoken of: The one is in Writing; suppos'd to be written by Mr. *Tutchin*, but God knows where: The other in Print, own'd by Mr. How to be printed and published from the written Paper; which does not appear, and of which no true Copy has been proved. Now we hope, therefore, my Lord, that the Gentlemen of the Jury will rightly distinguish betwixt

this First and Second Libel, and make a Difference betwixt the Act of Mr. How, and that of Mr. *Tutchin*. The printed Papers here produc'd, are stil'd the *Observer*; so was not the written ones, if Mr. How be to be believed. The printed *Observers* are sold about, for the sole Benefit of Mr. How; and Mr. *Tutchin* receives only a small *Premium*, for the writing once or twice in a Week. Mr. *Tutchin* only earns his weekly Subsistence, by making Observations in the Country; and it does not appear, that he concerns himself further about the Printing or Publishing of them. If he gets his Money, Mr. How may do with his Papers as he thinks fit. So that I must humbly insist upon it, That what Mr. How has done within this City of *London*, can never reach Mr. *Tutchin* into *Surrey* or *Essex*. It has been said indeed, and I shall not contradict it, That the bare Transcribing of a Libel, will make a Man guilty of Libelling: But for this Reason I do say, That Mr. How only has been guilty of making and publishing these printed *Observers* in *London*: And Mr. *Tutchin*, if he be guilty, must be convicted of the making and publishing that, which can be sworn to be his written Observations; especially since it has plainly appear'd, that the Papers written by Mr. *Tutchin*, have been frequently alter'd by Mr. How, before they were printed off.

And if we consider the Passages that have been produced; the Gentlemen of the Jury will perceive, a very little Alteration will make these Papers quite different from what they are. However, as they be, I hope there is no great Matter in any of them. The First *Observer* says; "At the same time, if we consider the French King's Success, in his Bribery and Corruption, we ought to lament the sad State of our own Country, which affords so many Instances of Treachery, &c. Now, pray who is *We* in this Case? Says Mr. Attorney, in his *Innuendo*, The People of *England*. But I hope an *Innuendo* shall not make a Man guilty of a Crime, which otherwise can't be affixed upon him. But supposing this same Paper were in truth written with relation to *England*; will any one say, that (no Times whatsoever) this Country has afforded not any Instances of Treachery? And what Part of this Information does so much as fix the Time to which the *Observer* alludes? If all that is here set forth were written of a former Ministry, I do suppose there would not be so much Blame laid on the Author, as if he comes nearer the present Times: So the Time to which these Papers do refer, must certainly be material, and fit to be consider'd of, before any one can rightly judge of this Case. And for want of its being ascertain'd and determin'd whither these Reflections may extend, I hope the Jury will not very much regard them.

The next Charge does set forth a wicked Assertion to have been made, *de & concernen' Potestat. Populi Anglicani*. But we must be in your Lordship's Judgment, whether the Paper that is produced, does make out that Assertion to be just as it's laid. I take it, with Submission, that there is a manifest Variance betwixt the Charge and the Libel. The Charge makes him speak of the Power of the People at large; when the Paper comes to be read that speaks of our Representatives in Parliament. And surely there is a Difference, to say, The People at large can do so and so; and to say, Our Representatives in Parliament can do it. For instance; The making of Laws is not in the People

ple dispersed over *England*; but in their Representatives in Parliament, in Concurrence with the House of Lords, when the Royal Assent does likewise concur with them; therefore I think this Charge can't affect us, upon Account of this Variance. The next Article then to be taken notice of is that concerning the Navy.—

Mr. *Soll. Gen.* But Mr. *Mountague* says nothing of the Prerogative the People have, that the Representatives are the Judges of the Male-Administration of their Governors; that they can call them in Question for the same, and can appoint such to wear the Crown, who are fittest for Government; which they have often done. He passes by all this scandalous Matter.

Mr. *Mountague.* I did so, Mr. *Sollicitor*, and I did it on purpose, because I look'd upon it as a Matter not proper for you and I to talk of as Advocates in this Place. And I am apt to think, my Discretion in passing it by will be more easily justified, than theirs that shall bring such Points as these upon the Stage, to be talk'd on before this Assembly. I must declare for my own Part that I think the Rights of Princes and the Power of the People too high Topicks for me to meddle with; let others do as they think best. I shall pass over to the next Article concerning the Navy. "Take one Time with another, the Mismanagements of the Navy have been a greater Tax on the Merchants, than the "Duties raised by Parliament". Now how does this relate only to the Navy Royal; it is no where said, the Mismanagement of the King's Navy, or the Queen's Navy. And the Word Navy does, in my poor Understanding, signify no more than a Number of Ships got together; and therefore I do humbly conceive, there may be a Navy of Merchant Ships as well as a Navy of Men of War, 'tis altogether uncertain what Navy the Author does allude to.

L. C. J. *Holt.* Surely the Navy must be the Navy Royal.

Mr. *Mountague.* If it must, my Lord, yet no body can say that we never had any Mismanagements in the Royal Navy, and whenever that has happened the Merchants of *England*, in all Probability have suffered for it.

Mr. *Att. Gen.* My Lord, I think all this Discourse is such as is not to be allowed.

Mr. *Soll. Gen.* When a Man complains of the Mismanagement of the Government, and then comes after this, and says that the People have a Power inherent in them to call their Governors to an Account: What is this? Does it want an Expofition, thus to possess the People with an Opinion of the Power they have to call the King or Queen to an Account? What does such Things tend to, but to raise in the People an Indignation against the Government?

Mr. *Mountague.* My Lord, the Thing I was insisting upon was, that whatever is here set forth, is not brought within any Compass of Time, and there is no particular Reflection upon any Person whatsoever. Tho' mention is made of divers Mismanagements and of several Miscarriages; yet all these Things may be said of other Times long since. And therefore since this Exception goes to all the rest of the Charges in the Information, I shall pass by the other Particulars. And since I have taken up a great deal of your Lordship's Time already, I shall leave the rest to these Gentlemen that are to speak after me.

Mr. *Serj. Darnel.* Will you say they are true?

Mr. *Whitaker.* My Lord, here is an Accusation that we did write and compose and publish these Papers; now it appears that the first Author was often out of *London*, and that the Copy was often fetch'd from *Lambeth*, and other Places; and the Witnesses did apply the Title of *Observer* to every one of these Papers. Now that which they call Libellous is not in the Writing which we did write; and if we did not write it in *London*. I hope you will not find us Guilty of writing and publishing of a Libel.

Mr. *Mountague.* My Lord, we have not done any Thing as to the Printing at all; we had nothing to do with it.

L. C. J. *Holt.* Were not you concerned in printing it? I can't imagine how Mr. *How* came to pay for it else. Mr. *How*, what were you to give for every *Observer*?

Mr. *How.* For about Sixty six of the last, I paid Twenty Shillings a Time.

L. C. J. *Holt.* What did you give for them before?

Mr. *How.* Half a Guinea a Time.

L. C. J. *Holt.* Was it the same Thing to him whether you printed it or not?

Mr. *How.* Yes; but I would not have given it him, if it had not been to be published.

Mr. *Whitaker.* My Lord, we are in your Judgment as to this Matter, whether they can find us guilty of a Libel in *London*?

Mr. *Soll. Gen.* It was in *London*.

L. C. J. *Holt.* Where was the Agreement made?

Mr. *How.* I did think at first that it was in the City, and I do think so; but he says it was in *Surrey*. The Papers were delivered sometimes at my own House, and sometimes in the Country.

Mr. *Att. Gen.* Were they deliver'd to you to be printed?

Mr. *How.* Yes.

Mr. *Att. Gen.* You said you and he have mended the Papers, has that been done at your House in *London*; or in the Country?

Mr. *How.* I do not know which.

Mr. *Mountague.* Let me ask you one Question: Can you swear to any particular Paper, that he deliver'd that Paper in *London*?

Mr. *How.* I do not know where they were delivered.

Mr. *Weld.* It need not be insisted on to find him guilty of all; if they find him guilty of the Publication that will be enough; and that they cannot deny but he is guilty of that. When it is deliver'd to be printed, it is as much a Publication as the composing of it.

Mr. *Mountague.* But it does not appear that it was delivered in *London*.

Mr. *Weld.* But he owned it in *London*.

Sir T. *Powis.* He did cause these Papers to be printed in *London*.

L. C. J. *Holt.* He deliver'd them to be printed in *London*: *How* agrees to give him half a Guinea a Paper at first, and Twenty Shillings afterwards; and surely then he designed to have them printed.

Mr. *Mountague.* He cares not what he does with the Papers, he was only to have so much Money for them.

Mr. *Att. Gen.* My Lord, here they are setting up a Doctrine that will make libelling safe, so that no Man shall ever be punished for it. We have charged him with writing, composing and publishing

ing a Libel : We have proved the Agreement made with the Printer, be it in *London*, or out of *London*, is not very material. Now if there be an Agreement made out of *London*, for printing and publishing a Libel ; wherever that Libel is printed and published, he is guilty ; for whatever is done by his Agreement, he is guilty of it. As to the next Thing, I am much concerned to hear them say, that which I never before heard urged in any Court, that a Libel is not a Libel unless they assign some particular Person ; but I look upon it as the highest kind of Libels to reflect on publick Officers in general ; on the Administration of Justice in general. I believe every one knows a Libel is a Libel, tho' particular Persons are not named : If it reflect on Officers, in general as Ministers of State, or Judges, or the like. Mr. *Mountague* would have it, that Reflections on the Ministers of the Crown is not a Reflection on the Queen ; and he would have it, that we should have averr'd who these Ministers are that were meant in the Libels. As to the first, certainly they that reflect on the publick Administration of Justice by the Queen's Officers, do reflect on her Majesty who places and continues them in their Offices. And to the Second Reflection, being in general on the Ministry, we ought not, nor could aver, who in particular he meant in these Libels ; the whole Administration under the Queen is reflected on, in placing in Officers in general ; in the Management of the Navy, and placing in the Officers thereof ; and in the Administration of Justice in the Courts of Justice ; and what can be more scandalous ? There needs no Averment to explain these, in themselves they appear to be Libels ; and I hope such Discourses as have been made on this Occasion for the Defendant, will not meet with any Countenance ; but I am surprized to hear it justified here by a Council, That the People have Power to call their Governors to Account.

Mr. *Mountague*. I did not say so.

Mr. *Att. Gen.* Certainly what you did say, viz. That you shewed more Discretion in passing it by, than we did in questioning the Defendant for it, and that we wanted Discretion in bringing this Matter on the Stage ; could have no other Meaning, but that the Matter was justifiable, but you would not in Prudence do it ; which, I must say, is the greatest Liberty I have known taken by a Council.

L. C. J. *Holt*. I did not hear him say so.

Mr. *Mountague*. I did not say so, I said it was more discreet to pass it by than take notice of it.

Mr. *Att. Gen.* I will always prosecute any Man that shall assert such Doctrine. My Lord, I think my self obliged in Duty, being in the Station I am, always to take notice of such Discourses as these, which no Council ought to presume to make.

L. C. J. *Holt*. Gentlemen of the Jury. This is an Information that is preferred by the Queen's Attorney General against Mr. *Tutchin*, for writing, and composing, and publishing, or causing to be writ, composed, or published, several Libels against the Queen and Her Government ; and all these that are set forth as Libels, are entitled, *The Observer*, and they are in Number Six. The first is said to be made and published May 30. 1702. and in which Mr. *Tutchin* is charged with having this Libellous, scandalous Paragraph against the Government, and the Administration of it. The Words are these, " If we consider the *French King's*

" Success, in his Bribery and Corruption, we ought
 " to lament the sad State of our own Country,
 " which affords so many Instances of Treachery.
 " If we may judge by our National Miscarri-
 " ages, perhaps no Nation in *Europe* has felt
 " the Influences of *French Gold*, more than *Eng-
 " land* ; and worthy it is our greatest Lamenta-
 " tion, that our dear Country should be thus
 " weaken'd by Men of mercenary Principles, when
 " Countries inferior to ours in Strength and Riches
 " are secured from Attempts of this Nature, only
 " by the Fidelity of their People. What is the
 " Reason, that *French Gold* has not affected *Holland*,
 " as well as *England* ; but that their Ministry is
 " such as is entirely in the Interest of their Coun-
 " try, and altogether incorruptible : They prefer
 " Men that are knowing in their Posts, and are
 " active in Business. When in *England* we find
 " out Offices for Men, and not Men for Offices ; and
 " a Title of Honour gives a Man a Title to a great
 " Employment he is altogether ignorant of. By
 " this, and by preferring of Men by Interest and
 " Favour, has the Excise, the Customs, and other
 " Branches of the Revenue intolerably sunk ; and
 " by this Means has the Navy of *England*, our
 " chief Support, been hitherto perfectly bewitched :
 " And can *Lewis* spend his Money better than in
 " getting Men into Offices in *England*, who are ei-
 " ther false or ignorant in the Business, or are his
 " Friends" ? This now is charged on him as a De-
 " faming the Government, in employing corrupted
 " Officers, or ignorant Officers, when they are not
 " fit for their Places. There is another that has been
 " produced, which is the Second, that hath these
 " Words : " And this is a Prerogative of singular Ad-
 " vantage to the People of *England*, in that their
 " Representatives are the Judges of the Male-Admi-
 " nistration of their Governors ; that they can call
 " them in Question for the same, and can appoint
 " such to wear the Crown, who are fittest for Go-
 " vernment : Which they have often done, and in-
 " deed which is the Privilege of all free People,
 " who are authorized by the Laws of God and
 " Nature, to chuse their own Governors". This is
 " to possess the People, that they may at their Will
 " and Pleasure when they take a Fancy thereto, dis-
 " seise the Queen, and set up what Governor they
 " please. These Two, and the rest which I shall
 " mention by and by, are given in Evidence. And
 " it seems at first Mr. *Tutchin* came to Mr. *How*, the
 " Printer, and there is a Contract made between
 " them two, to print a Weekly Paper, and it was to
 " be entitled, *The Observer*, and he was to have
 " half a Guinea a Time. Mr. *Tutchin* was to write,
 " and the other was to print ; his Printing-House was
 " here in *London* : Accordingly he enters into this
 " Contract, and from Time to Time has received
 " Copies, and prints them, and has paid Mr. *Tutchin*
 " for them, and has printed all his *Observers*, even
 " to this very Day : Afterwards there came Two out
 " in a Week. Now it is most plain, that a Contract
 " was made between Mr. *Tutchin* and Mr. *How*, for
 " Mr. *Tutchin* to write and frame, and Mr. *How* to
 " print. And no body can imagine that Mr. *How*,
 " the Printer, would give him Money, unless that
 " written Copy were to be printed : But now say
 " they, was there no Alteration made ; but were
 " they printed exactly pursuant to the Copy of
 " Mr. *Tutchin* ? Yes, but these Two were not ; not
 " but that sometimes I made some Alterations ; for
 " says he, when I thought his Expressions were too
 " passionate and severe, I apprehended Danger, and
 " made

made some literal Alterations. But after this, these Two were read, and Mr. *Tutchin* owned them, and divers others, and ordered him to bind them in a Volume, and he does so, and Mr. *Tutchin* makes a Preface, and binds it to this Volume. It appears that his own Hand is to it, to the Preface, and was paid Money for them, and Mr. *Tutchin* owned this Number; so that there is a full Proof that these were composed by Mr. *Tutchin*, in order to be printed, and they were printed afterwards and he has received Money for them.

Now there are Four more which are charged in the Information, of the same Nature. One is thus: "Take one Time with another, the Mismanagements of the Navy have been a greater Tax on the Merchants, than the Duties raised by Parliament: We never had a better Navy; but the Wisdom of the Managers thereof is like a bottomless Pit, past finding out". A Fourth Paper hath these Expressions. "What avails it a Man of Learning and Parts, to qualify himself for the Service of his Country on the Ocean? If he has Knowledge enough to advise *Neptune* himself, if he has no Interest, he shall have no Preferment. How much does it look to our Nation's Disadvantage, to have Men in Eminent Stations in the Navy, who have not so much as an Idea, a Notion, a Thought of Naval Affairs? To have Men to superintend the Building of our Floating Castles, who know not the Nature of any one Part of the Management? To have Men employ'd in the Victualling, who qualify themselves for that Post by learning to write their Names, which is indeed a Post for a Philosopher bred to the Sea". This also charges the Government for employing unfit Ministers in the Navy. There is a Fifth and that hath these Words. "*Countryman*. Truly Master *Observer*, I have no very good News for you: Mr. *Daniel De Foe* has pleaded Guilty to the Indictment against him, for writing and publishing the *shortest Way with the Dissenters*; and he is sentenc'd to stand Three times in the Pillory, to pay a Fine of 200 Marks, and to find Security for his good Behaviour for Seven Years. *Observ*. The Court could do no otherwise than convict him, upon his pleading Guilty; *habemus confitentem reum*, is very often the Voice of Courts of Judicature, 'tis the Ease of Judges and Juries: If *Daniel De Foe* was in Expectation of *Coleman's* Black Box, he has found a Pillory instead of it. I don't trouble my Head about the Custom of giving the Pillory to Authors, which is the Punishment of Bakers. You talk'd just now of turning Author, have a care of your Candle; you see which is the shortest Way with Authors; you must all enter your selves in the Regiment of Colonel *Foe*. The Law of *England* directs, that no Man shall be fined *ultra tenementum*; and I make no question, but the Justice of the Court has fined Mr. *Foe* answerable to his Estate. His Security for his good Behaviour for Seven Years, without doubt, was rationally consider'd, as to the Legality thereof. For my part, I am only acquainted with Old Laws of *England*, the Ancient Birthrights and Immunities of *Englishmen*: This I take to be the Foundation of New Laws". And then here is the last which hath these Words. "*Countryman*. Master *Observer*, there's another Plot against you. *Observ*. Prithee Man, there's a Plot against the Queen, and the whole Nation; is it any Wonder then, that there are Plots against me?"

Vol. IV.

"The High-Fliers are now plotting against every honest Man in *England*. I'll tell you more of it, the next time we meet. *Countryman*. I fancy some Sort of People plot against you, because you endeavour to countermine their Plots against the Queen and Nation. *Observ*. You are right enough; but that shan't hinder me from detecting their Designs, and from opening the People's Eyes: But prithee, what Plot is this? *Countryman*. Why, Sir, it is a Plot preparatory to your Tryal; and if they can't effect this Plot, I suppose you'll never be try'd. They insinuate into the Citizens of *London*, that you have lately written very scandalously, maliciously, and treasonably, and I don't know how many other Lies, against them the said Citizens; and by this Means they are minded to set your Jurors against you. *Obs*. This is likely enough; they'll leave no Stone unturn'd, to suppress the Truth. I understand, I should have been prosecuted by Bill the last Sessions, but that the High-Fliers did not like the Jury; nay, they say, they don't like the Two Sheriffs, because they won't pack Juries to find innocent Men guilty".

This is the last of the Libels. Now whatever you admit concerning these, the same is proved concerning the other Two, except that of the Volume. These he did receive from Mr. *Tutchin*, or by his Agent. He also paid Mr. *Tutchin* upon the same Account that he paid for the rest, and they were printed here in *London*, and published. Now Mr. *Tutchin* did not at any Time complain that they were not printed according to the Copies sent. As to the Copies they are lost all of them but one of these Four. There are divers others, but they concern not this Information, but one, and that is Mr. *Tutchin's* Hand, the same Hand as the other Papers and by that Copy the Paper was printed, and Mr. *Tutchin* also received the Money for it. So that now you have heard this Evidence, you are to consider whether you are satisfied that Mr. *Tutchin* is guilty of Writing, Composing and Publishing these Libels. They say they are innocent Papers and no Libels, and they say nothing is a Libel but what reflects upon some particular Person. But this is a very strange Doctrine, to say, it is not a Libel reflecting on the Government, endeavouring to possess the People that the Government is Male-administrated by corrupt Persons that are employed in such or such Stations, either in the Navy or Army.

To say that corrupt Officers are appointed to administer Affairs, is certainly a Reflection on the Government. If People should not be called to account for possessing the People with an ill Opinion of the Government, no Government can subsist. For it is very necessary for all Governments that the People should have a good Opinion of it. And nothing can be worse to any Government, than to endeavour to procure Animosities; as to the Management of it, this has been always look'd upon as a Crime, and no Government can be safe without it be punished.

Now you are to consider, whether these Words I have read to you, do not tend to beget an ill Opinion of the Administration of the Government? To tell us, that those that are employed know nothing of the Matter, and those that do know are not employed. Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Interest, and not to their Fitness for the Places; this is the Purport of these Papers.

R r r r

Now

Now they on his behalf insist on these Things. First, they say you do not prove any Crime against him in *London*. Indeed it is not proved that he writ them in *London*; but the Question is, whether there is not Proof of the Composing and Publication in *London*? There is Proof that they were sent to Mr. *How*, in order to print them in *London*. Now whether he received them from him in *London* or no, (but suppose out of *London*) yet if he received them to print them in *London*, that is a Publication in *London*. If they scruple that Matter, it shall be specially found. If they were delivered to be printed at *London*, I must leave it to your Consideration, whether you will not find him Guilty of publishing them in *London*. They were some of them printed in *Fenchurch-street*, and others in *Gracechurch-street*. He knew where the Printer lived, the Contract was made, and he was paid for them. Gentlemen, I must leave it to you; if you are satisfied that he is guilty of Composing and Publishing these Papers at *London*, you are to find him Guilty.

Then the Jury withdrew, and about a Quarter of an Hour after return'd into Court.

Clerk. Answer to your Names, &c. How say you, Is *John Tutchin* Guilty of the Charge laid against him, or Not Guilty?

Foreman. Guilty of Composing and Publishing.

L. C. J. Holt. They appeal from my Opinion; they don't find the Writing in *London*, but they find him Guilty of Composing and Publishing in *London*, that is, supposing he did write them out of *London*, and deliver them in order to be printed in *London*.

Mr. Soll. Gen. Do you find that the Papers, the several Copies of these Six *Observators* were delivered to be printed in *London*?

Foreman. Yes, Guilty of Composing and Publishing, but not of Writing.

Mr. Soll. Gen. Do you find him Guilty of the whole Charge except the Writing?

Foreman. Yes.

Clerk. Gentlemen, hearken to your Verdict, you say *John Tutchin* is Guilty of the whole Information, except the Writing?

Foreman. Yes.

Clerk. And so you say all.

Jury. Yes.

The Arguments for and against Arresting Judgment, November 13.

Mr. Att. Gen. MY Lord, Mr. *Tutchin* has given me Notice that he will bring an Appeal in Arrest of Judgment; and indeed he has given publick Notice of it, for it is put into the News-Papers.

L. C. J. Holt. Is he here?

Mr. Mountague. Yes, my Lord, he is about the Court.

Mr. Att. Gen. Call him.

Cryer. *John Tutchin*, Gentleman.

[Then he came into Court.]

Mr. Mountague. May it please your Lordship to favour me a few Words in behalf of the Defendant, *John Tutchin*. He was tryed before your Lordship at the *Guild-hall*, *London*, on *Saturday* was *Sevensnight*, for being the Author, Composer and Publisher of some Papers entitled, *The Observer*; and there is a Verdict enter'd against him, and now he appears to submit to the Judgment of the Court, which he humbly hopes shall not be given against him. For, my Lord, in the first Place I beg leave to take notice that we think there is Cause why your Lordship should set aside the Tryal that has been had; for we look on all the Proceedings upon the Writ of *Distingas* on which the Verdict is taken, as null and void. This is an Information against Mr. *Tutchin* for a Libel; and the Facts laid in the Information are said to have been transacted within the City and County of *London*. To this Information he pleaded the last *Trinity* Term, and the *Venire Facias* was awarded the last Day of that Term, Return, *Die Lune proxima post tres Septimanas Sancti Michaelis*, which your Lordship knows was *October* 23, the first Day of the Term, and the *Distingas* should have issued the very same Day; but it so happens that the *Distingas* in this Case does appear to have been sued forth *October* 24, which is a Day after the Return of the *Venire*, and therefore we say the *Distingas* is naught,

and all the Proceedings thereupon are null, because there is no Award of the Court to warrant this *Distingas*. In the next Place we say that the Return, neither of the *Venire*, or the *Distingas*, are as by Law they ought to be; for the Return of the *Venire* is *Die Lune proxima post tres Septimanas Sancti Michaelis*, and the Jury are to be brought *coram Domina Regina apud Westm. Die Jovis prox. post*; and the return of the *Distingas* is *Craft. Anim. with an Hab. Corpora coram Regina apud Westm.* For both which Reasons we think it naught, because when any Proceedings in Criminal Matters are laid in a Foreign County, the Process must be made returnable at a Day certain. Day might be given *coram Regina ubicunq;*

L. C. J. Holt. You mean at a common Day; and it is so, whenever Indictments are remov'd hither by *Certiorari* out of foreign Counties.

Mr. Mountague. My Lord, we think there is no Difference to be made between the Proceedings in *London*, and other Counties more remote from *Westminster*.

L. C. J. Holt. In Informations exhibited by Mr. Att. Gen. in this Court for Crimes done in Foreign Counties, 'tis usual to return the Process upon Days certain.

Mr. Att. Gen. My Lord, Informations are of the Nature of a Bill.

L. C. J. Holt. Process on an Indictment may be made returnable on a certain Day, if it be found in this Court; but if it be removed hither by *Certiorari* it is otherwise.

Mr. Mountague. My Lord, we take it that the Process that has been hitherto taken out upon all Informations that charge Crimes on Defendants as done out of the County of *Middlesex*, has been made returnable on some common Return-Day, and not at a Day certain.

Mr. Att. Gen. It has always been allowed to be upon a Day certain, as well as upon a general

ral Return-Day ; and it is settled and declared so by the Court.

L. C. J. *Holt*. I am apt to think the Clerks have gone both Ways.

Mr. *Att. Gen.* A Man takes a long Day if he will.

Mr. *Mountague*. We have look'd over many Informations, and the Practice does not appear to have been so. But what does Mr. *Attorney* say to the first Exception we have taken? Here is a Discontinuance after the Return of the *Venire*, which was upon October 23. and the *Disfringas* bears *Teste vicesimo quarto die Octobris*.

L. C. J. *Holt*. Ay, what can you say to that, Mr. *Attorney*? That very Day the Writ is enter'd there must be a *Disfringas*.

Mr. *Att. Gen.* My Lord, I know not how it came to pass. I believe somebody has done it on Purpose. I desire the Clerk may give an Account of it. I never saw the Writ. I desire Time to know how this has been manag'd.

L. C. J. *Holt*. There must be a Continuance to that Day; if there be no Continuance, all is fallen.

Mr. *Att. Gen.* If they come again, we will see how this has pass'd.

L. C. J. *Holt*. If it be so, the Plea is discontinued, and you must plead *de Novo*.

Mr. *Mountague*. My Lord, seeing it is in Court, I desire it may be read now.

Mr. *Att. Gen.* What need you make that Reflection? Do you think we will make any Alteration in it?

Mr. *Mountague*. I hope I may ask that without making any Reflection: I am sure I did not intend it so.

[Then the Record was read.]

Mr. *Att. Gen.* Come again To-morrow.

Mr. *Mountague*. Mr. *Tutchin* then you may go for to Day, but be here again To-morrow.

L. C. J. *Holt*. Is the *Venire* made returnable *Die Lune*?

Mr. *Mountague*. Yes, my Lord, it is, I look'd upon it.

Mr. *Att. Gen.* I will see if it can't be found out.

November 20.

L. C. J. *Holt*. Mr. *Attorney*, will you go on?

Mr. *Att. Gen.* My Lord, we are ready, if they will maintain their Exceptions.

Mr. *Mountague*. My Lord, we think we have no Occasion to cite many Authorities and Precedents to maintain the Exception, when it is apparent that there is a Discontinuance; the Reading of it makes it appear, that the *Disfringas* was sued out a Day after the *Venire*, so that here is a *Nisi Prius* that has been issued out erroneously. The Statute says the Day and Place for taking Inquisitions must be in *Præsentia Partium*. And 'tis plain, the Day and Place mentioned in this Writ was appointed when the Defendant was not in Court, and therefore is null and void.

L. C. J. *Holt*. In *Præsentia Partium*, where is that required?

Mr. *Mountague*. By the Statute of *Nisi Prius*, which says, *nec alterminetur hujusmodi Inquisitiones coram aliquibus Jusficiarjjs de Banco nisi statuatur certus dies & Locus in Comitatu in Præsentia Partium*.

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L. C. J. *Holt*. Which Statute do you mean?

Mr. *Mountague*. The Statute of *Westminster the Second*, Cap. 30.

L. C. J. *Holt*. Call for that Statute.

Mr. *Att. Gen.* My Lord, I desire that they will maintain their Exception, for I am in the dark about it, and that they may maintain it by the Authority of the Law, and not only by an *ipse dixit*, and a Noise in the Town.

L. C. J. *Holt*. They say the Exception maintains it self.

Mr. *Att. Gen.* My Lord, let 'em go on first, and then we will answer them. If they will rely upon this Exception without Authority, then we must pray the Judgment of the Court; but if they will bring Authority for it, we do desire to hear 'em and shall give 'em an Answer.

Sir T. *Powis*. My Lord, if they have any other Exception to make, I desire they may make it now.

Mr. J. *Powel*. Mr. *Mountague* you have made one Exception, that is, of the Discontinuance of the Process; now if you have any other Exceptions to make, you may make them now.

Mr. *Mountague*. My Lord, the Exceptions I have hitherto taken have been to the Tryal. I mention'd this, and I mention'd another which I do not insist on; since I understand it has been otherwise settled, that is, about the Return of these Writs upon a Day certain; which, my Lord, I did look upon to have been wrong; because I did not think Mr. *Attorney* could shew any Precedents of any such Returns to warrant this; for I can find none, and I have searched in the Time of King *Charles I.* and in King *Charles II.* and King *James*.

L. C. J. *Holt*. If a Suit be commenced in the *Common Pleas* by Bill, as if an *Attorney* shall file a Bill there, the Process is made returnable at a Day certain, and here our Proceedings by Bill are always at a Day certain. Now an Information which is originally filed here, is in Nature of a Bill, and the Proceedings therefore may be confined to a Day certain; but if any Indictment be brought hither by *Certiorari*, the Process must be returned at a common Day, and not at a Day certain. We had this Matter under Consideration before upon another Occasion, and we thought it very reasonable the Proceedings on Informations here should be the same as the Proceedings by Bill, which are returnable on Days certain from any County of England.

Mr. *Mountague*. My Lord, if that be your Opinion, I have nothing to say to it. I have some Records here in my Hand, some in King *Charles's* Reign, and some in King *James's* Time, and all these are made returnable on the common Return, and one of these Records was settled by Sir *William Jones*. As to what the Officers say, they are divided I find, for some of them have told me, it is quite contrary to what Mr. *Harcourt* reports the Course of the Court to be.

Mr. *Att. Gen.* My Lord, I dare appeal to you whether this has not been argued Twenty Times.

Mr. *Mountague*. My Lord, let Mr. *Attorney* shew Precedents.

Mr. *Att. Gen.* You must shew Precedents.

Mr. J. *Powel*. It is otherwise when there is an original Proceeding.

L. C. J. *Holt*. Have you any more Exceptions?

Mr. Mountague. I rely on the first Exception. It lies on Mr. Attorney to answer this Exception.

Mr. Att. Gen. My Lord, I desire they may shew any Case or Resolution of Law, that the *Disstringas* should bear *Teste* the same Day the *Venire* is return'd upon. The *Disstringas* is awarded on the Roll upon the first Day of Term; and the *Venire* is return'd the first Day of Term: And at the same Time it is awarded, that there shall be a *Disstringas*, Day is given to the Party; that is the Warrant: For the *Disstringas* and the *Teste* never appear upon the Roll. If they have any Authority, I desire they may shew it. My Lord, I think we can satisfy you, that it is right; or that it is amendable. This is a Maxim of the Law, *There must be Authority*.

L. C. J. Holt. It may be the Thing is so plain, as to need no Authority.

Sir T. Powis. I desire to know, whether the Award of the *Disstringas* is right on the Roll. I take it, that the *Venire* is return'd the first Day of the Term; and that there is thereupon a *Disstringas* awarded returnable, *Die Jovis prox. post Crast. Anim.* I beg to know, whether it be so or no.

L. C. J. Holt. I have it in my Hand; and I was apprized of that before; and was going to state it. For the Continuance of the Roll is right. The *Venire Facias* is return'd, *Die Lune prox. post Tres Mich.* On which Day, the Attorney appears on the Queen's Behalf; and the Defendant appears likewise. What is then done? *Ideo preceptum est Vicecomitibus London, quod disstringant eos; itaque habeant Corpora eorum coram Domina Regina, Die Jovis prox. post Crast. Anim.* Now, on what Day must this Award be said to be? That must be that Day whereon the *Venire* is said to be return'd; which is, *Dies Lune prox. post Tres Mich.* The Award of the *Disstringas*, therefore, by the Roll, is that very Day, the 23d: But the *Disstringas* bears Date, not the 23d, but the 24th.

Sir T. Powis. Now do they rely on it, that notwithstanding the Roll has awarded it *Die Lune*, yet because the *Disstringas* is dated *Die Martis*, do they rely on it, that this is to prevail, without any more to be said to it?

L. C. J. Holt. This is the true State of the Matter. Now there is no Discontinuance on the Roll; for it appears on the Roll, that the *Disstringas* was awarded the 23d.

Mr. Broderick. The Objection is, That the *Disstringas* has been sued out without Warrant. They ask for Authorities. I believe, we might shew Twenty.

Mr. Att. Gen. My Lord, I desire they would cite some Authorities of the Twenty they speak of. I can shew them Cases, where the *Disstringas*'s have been *Teste'd* out of Term, or upon the *Sunday*: These are to be set right. I would be glad to see any Authority, wherein it appears the *Disstringas* must be the same Day. I would be glad they would do more than say it.

Mr. Mountague. My Lord, Before I answer this, I would ask, Whether that Roll be the *Nisi Prius* Roll, or the Plea Roll?

L. C. J. Holt. It is the *Nisi Prius* Roll.

Mr. Mountague. My Lord, The Plea Roll has been made right since I took my Exceptions. The *Nisi Prius* Roll ought to be a Transcript of the Plea Roll.

Mr. J. Powell. The *Nisi Prius* Roll is made out of the other: If the *Nisi Prius* Roll be good, it is well enough.

Mr. Mountague. My Lord, To have a Transcript of a Roll that has been made up since, is not right.

Mr. Att. Gen. My Lord, He strikes at the Root of the Court.

Mr. Broderick. My Lord, I would take notice, that it is the Course of the Court, that the *Disstringas* shall bear Date the Day of the Return of the *Venire*. The Clerks tell me, they never knew it otherwise.

Mr. J. Powell. The Award is right; but you have not taken out a Writ according to the Award of the Court: Whether that will be warranted?

Mr. Att. Gen. They have no Authority, but the Reason of the Thing; and then I think we may give this short Answer: We do affirm, That it is right as it is: But if it were not right, we say it is amendable.

L. C. J. Holt. All the Matter will be to prove that it is amendable.

Sir T. Powis. If need be, we may put the Matter into the right way: For if the *Disstringas* be not the same Day with the Award, we pray that it may be amended.

L. C. J. Holt. By what Law must it be amended? You are in the Affirmative: If you acknowledge it wants Amendment; by what Law must it be amended?

Sir T. Powis. It is amendable by the Common Law.

Mr. J. Powell. You say it is no Fault; and if it be, it is amendable by the Common Law.

L. C. J. Holt. First, let us know whether it needs Amendment? And then next, whether it can be amended?

Sir T. Powis. My Lord, Let them shew that it needs Amendment: For if they make Exceptions, and say no more, and we proceed to answer them; then they may come upon us again with new Matter, and so there will be no End.

Mr. Mountague. When we were in the Affirmative in our Exception, we did give some Reasons why we said it is not right.

Mr. J. Powell. The Party was in Court the 23d. Then they awarded the *Disstringas* in his Presence; so that the *Nisi Prius* was awarded in the Presence of the Party: The Award of it is *Die Lune*. But here's the Fault: They did not make a right *Teste* that Day; so that the Fault is, the *Disstringas* that is sued out.

Mr. Mountague. On Monday there is an Award of the *Nisi Prius*; but on Tuesday it is taken forth. Now we say, that it is not according to the Writ awarded: For the Writ bears *Teste* the Day after; and upon that Account we say, the Proceedings are null. My Lord, Mr. Attorney asks for Precedents for this: But, with Submission, we take it to be plain, that the Motion made for the amending this Thing, supposes it not to be right.

L. C. J. Holt. The first Question to be debated, is, Whether this be a right Tryal? Or if not, Whether it be a Discontinuance of the whole? The *Disstringas* bears Date the 24th of October; the Roll is the 23d of October; and there is no such Writ then taken out, but the Day after; so that the *Teste* is not according to the Roll. When a Writ is not awarded according to the Roll, what the Consequence will be, is another Matter.

Mr. Att. Gen. I beg your Lordship's Direction in this Matter. It deserves a great deal of Care; for there has been a great Noise in the Town about it.

it. However, we will go your way. Whether they begin first, or we, I am very easy.

L. C. J. *Holt*. It is not warranted by Award of the Court. This is a Matter of the greatest Consequence to the Government.

Mr. *Broderick*. Mr. *Attorney* speaks of a Noise about the Town: I concern not my self about that, nor any further in this Case, than as it may be the Case of every Subject of *England*.

L. C. J. *Holt*. He is found to be the Author of the *Observers*.

Mr. *Att. Gen.* I do not speak it now upon the Business of this Prosecution; for he is so inconsiderable, that it matters not much how it goes. But if this be not amendable, it will blow up all Proceedings. Every Man must have Justice; and God forbid but he should.

Sir T. *Powis*. My Lord, If it be thought proper, we will go on. Your Lordship observes, what Warrant there was for a *Disfringas*, and that it is rightly awarded on the Roll, which is a Warrant to the Clerk for a *Disfringas*; and by Consequence if the *Disfringas* be not made according to that Award, it is the Misprision of the Clerk. Now if we do admit this to be out of all the Statutes of Amendment (tho' it is fit to be considered whether some Statutes do not warrant it) but suppose it should be out of all the Statutes of Amendments; yet by the Common Law it may be amended.

There were Amendments at the Common Law before any Statute, both in Civil and Criminal Matters; and these Amendments chiefly regarded the Process of the Court, and such Errors as were occasioned by the Inadvertencies or Neglects of the Officers; but especially in the same Term, during which Time the Judges have the Records of the Court in *Scrinio Pectoris*.

So it is *Trin. 22. Edw. III. fol. 7. b. and 10. a.* a Discontinuance Amended. *29 Edw. III. f. 32. a. b.* a *Habeas Corpus Furat.* amended. *7 H. VI. f. 29.* *Brook Tit. Amendment 32. and 4 H. VI. f. 16. b.* by these Books it appears the Judges had by Common Law a Power of Amendment. So is *Fitz. Title Amendment. 12. 19. 22.* especially for the King; but more at large in *Blackmore's Case* in *8. Co. f. 156. b. and 157. a.* where many Cases are cited to this Purpose, and this Matter fully stated; and there it appears that the very Original Writ in a *Quare Impedit* was amended in the Case of the King, it being *Presentere* instead of *Præsentare*; which could not have been done in the Case of a Subject; so much was the King's Suit favoured in Amendments beyond the Case of a Subject.

But if this were not Amendable by the Common Law, it is Amendable by Statute.

The first Statutes for Amendments were *14 Edw. III. Cap. 6. 9 H. V. Cap. 4. and 4 H. VI. Cap. 3.* which extends to the Amendment of a Letter or a Syllable; but the Judges were wonder'd at in Parliament for their great Nicety, when they ask'd the Question there, whether they might not amend a whole Word; as appears in *39 Edw. 3. f. 21.* And *40 Edw. III. f. 34. b.* they were told that undoubtedly they might.

The Statutes most to our Purpose are *8 H. VI. c. 12.* whereby it is enacted, that the Judges may Reform and Amend all Defects in any Record, Process, Plea, Warrant, Writ, Pannel or Return (except Appeals, Indictments of Murder, and Out-law-

ries for the same; and Additions left out in Original Writs, Exigents, and other Writs of Proclamation, contrary to the Statute of *H. V.*) so that by such Misprision of Clerks, no Judgment shall be Reversed or Annul'd. And again the Statute of *8 H. VI. Cap. 15.* ordains, that the King's Justices before whom any Misprision or Default shall be found, be it in any Records and Processes depending before them, as well by way of Error, as otherwise, or in the Returns of the same, by Misprision of the Clerks, or other Officers or Ministers whatsoever, in minute Matters (such as this is) they shall have Power to Amend such Misprision, upon Examination thereof, according to their Discretion; except the Processes and Records of Felonies and Treasons and the Dependancies thereof.

Now by Reason of the particular Exceptions in these Statutes, and by reason that the following Statutes of *Jeofail*, in *32 H. VIII. 18 Eliz. 21 Jac. I. &c.* do not extend to criminal Cases, an Opinion hath been taken up among some Persons that no Amendment can be made in Criminal Matters by any Statute; which is a strange Mistake.

For these Two Statutes of *8 Hen. VI. Cap. 12. and Cap. 15.* being general Laws, and in general Words, they, in Cases not excepted, extend to Amendments to be made by the Judges in Criminal Prosecutions, as well as in Civil Causes, without Distinction: And the Special Exceptions, after the General Words, are the highest Proofs imaginable. For nothing could be more absurd and vain, than carefully to except, what the Words precedent, without such Exception, would not have reach'd or extended to; and that would highly reflect on the Wisdom of Parliament.

This will appear more fully by the following Series of Authorities, whereby the Judges have amended Discontinuances of this Nature, in Criminal Prosecutions at the Suit of the Crown.

In *2. Cro. f. 502.* in *Harris's Case*:

Harris was indicted for a Nuisance; He pleaded Not Guilty, and a Verdict was against him; and the Record removed hither by *Certiorari*: And it appear'd, that no Issue at all was joined; for the Clerk of Assize had omitted to enter the Joining thereof: And so a plain Discontinuance. But amended by the Court, and interlined, even in the Time of another Clerk of Assize.

2. Cro. f. 529, 530. Sir *John Curson*, and Dame *Magdalen* his Wife.

An Information for Recusancy was brought against Sir *John Curson*, and Dame *Magdalen* his Wife: The Issue joined, was, *Ipsa Magdalena dicit, quod ipsa non est inde culpabilis*; & *de hoc ponit se super Patriam*: And the Attorney General *similiter*; and a Trial and Verdict was had: And tho' this was no Issue, being only the Plea of the Feme Covert, yet amended, tho' in another Term; the Docket being right, and it being only the Misentry and Misprision of the Clerk; a *Fortiori* in this Case this is amendable in the same Term.

Cro. Car. f. 144. Sir *Humphry Tuston v. Sir John Ashley*:

In a *Quo Warranto* against the Coporation of *Maidstone*, for Claiming divers Liberties in the Parish of *Maidstone*; and a Judgment by Disclaimer was enter'd, *Virtute vel Prætextu Liter. Patent.* dated *17. Jac. I.* And the Words *gerent. dat. Anno 17. Jac.* were left out by Negligence of the Clerk, and held, tho' not within any of the Statutes

tutes of Amendments ; yet it was amendable by the Course of the Common Law, and amended accordingly, after great Opposition, even in another Term.

Siderfin (the Part which first came out) f. 243, 244. in the Case *Le Roy v. Pexival, Godfrey & Al.*

An Indictment for a Riot, and Not Guilty pleaded, and a *Venire Vicecomitibus* ; where there really was but One Sheriff, and he only made the Return ; and held amendable by the Common Law : And in this Case it was observed, that the Exceptions in the Statutes of *Jeofails* of Indictments and Informations, were only of such as were on Penal Statutes : But Indictments and Informations at the Common Law, were amendable within the Statutes of *Jeofail*. And with this Case of *Siderfin*, agrees our present Case ; for it is not an Indictment or Information upon any Penal Statute, but an Information at Common Law.

Now if this Opinion, as reported by *Siderfin*, be Law, then this Discontinuance is plainly made good by the Statutes of *Jeofail*.

So in the Case of *Dolphin and Clerk*, 2. Cro. f. 64, 65. The Appearance and Issue were in *Hillary Term*, 1 *Fac.* the *Venire* awarded did bear *Teste* 23. Jan. 1 *Fac.* so the *Venire* awarded before the Issue or Appearance ; but yet amended, for the Roll is the Warrant of the *Venire*, which was right. So where the *Teste* was upon a *Sunday*, it was amended ; for it was the Default of the Clerk, in the Mis-awarding of Process. So if *Teste* out of Term. So if it be *Vicecom.* and says not of what County : Or if the King's Reign be mistaken ; 2. Cro. f. 78. *Lea v. Lacon*. The Roll being right, and a Judicial Process, it may be amended.

So *Yelvert.* f. 64. *Nevill v. Bates*. The *Venire fac.* was made returnable *Quind. Hill.* and yet bore *Teste* 12. Feb. which is the last Day of the Term : And yet, *per Cur.* it shall be amended in the Date of the *Teste*, for it is but the Default of the Clerk. And other like Instances there put.

The like in *Cro. Car.* f. 38. *Aysleworth v. Chadwell*.

So in *Cro. Car.* f. 90, 91. *Moor v. Hodges*. The Issue was in *Trinity Term* ; and the *Venire* and *Disstringas* were of Days in *Easter Term* before ; and yet amended : For the Roll of awarding the *Venire Facias* was well enough ; and the misdating the *Venire Fac.* which is a Judicial Process, shall also be set right.

So in later Cases, *Trin* 2. *Fac.* II. the King *v. Edes*. The Defendant was convicted of a Misdemeanor, upon an Information exhibited *per Robertum Sawyer*, &c. The Continuance was, *Ideo dies datus est prefat. Sam. Astrey* ; resolved it might be amended.

And *Hill* 3. & 4. *Fac.* II. the King *v. Holmes*. Upon an Information for a Riot, and the Defendant convicted ; the Mistake of *Ostabis Martini*, instead of *Ostabis Hill*, amended.

We are here in a much stronger Case. The Defendant hath been found guilty upon a fair Tryal : And the Preamble of the Statute of 32. Hen. VIII. takes notice, That the setting aside of Verdicts, for Discontinuances and other Misprisions, is a great Slander to the Common Law and Judges. The *Venire* and *Disstringas* are duly awarded upon the Roll ; and the making the *Teste* of the *Disstringas* 24. Oct. instead of 23. Oct. is a plain Misprision : It is in a Judicial Process ; and it is in the same

Term. And we humbly insist upon it, That it is amendable, both by the Common and the Statute Law. For according to my Lord Coke, in *Blackmore's Case*, f. 156, b. 157, a. it is hard to say, what the Court cannot amend in the same Term. For, says he, at Common Law, the Judges might as well amend their Judgment, as any other Part of the Record, in the same Term. For during the Term, the Record is in the Breast of the Court, and of the Judges, and not in the Roll. And therefore we pray this Misprision may be amended, if it stand in need thereof.

Mr. Serj. Darnel. MY Lord, There has been so much said already, that I shall say very little. I shall only cite Two or Three Cases. The Question is only this : Whether a Misprision of the Clerk, is not amendable in the same Term ? For that we have 10 *Edw.* III. 201 there was an Error amended of 63 for 59. I think all the other Cases have been mention'd already. The 5th of *Edw.* III. has been cited, and it is strong. I have thought it always sufficient without any Statute of Amendments : And those that have been amended by Common Law, will be Authorities in this Case. Now that the Court have always taken on them, as their Duty, to amend the Faults of the Clerks in any Entry, or Process, or Continuance, the Books are full in it ; and I hope it will be amended here.

Mr. Broderick. I Pray your Lordship's Favour, to spare me a few Words on the other Side. I see so much *Warmth* in this Case, that I must beg Leave to preface something, before I speak to the Point of Law.

Mr. Att. Gen. You might have wav'd that.

Mr. Broderick. The Occasion of my saying that, was, that Mr. Attorney said, There had been a Noise about the Town concerning this Exception. And that a whole Party - - -

Mr. Att. Gen. There has been so - - -

Mr. Broderick. I would not be believ'd to concern my self any otherwise for this Man, more or less, than for any other Client. Nay, what I am concern'd in, and have to say at present, doth concern every Subject in England, as well as Mr. Tutchin. But when 'twas said, That there was a Discontinuance in the Case of the Warden of the Fleet, which, after the long Transaction of that Cause, was not observed by the Council for him ; and that they were clearer-sighted for the *Observer* ; I could not take that otherwise, than as meant to my self, who was Council for the Warden of the Fleet, and am now for this Defendant. I confess, I did not observe that Fault in the Case of the Warden of the Fleet, (nor ever had a perfect Copy of that Record, to enable me to do it :) And I must own at the same Time, that I had not the Fortune to make the Discovery in the present Case. The Exception was taken before I was any ways concerned in the Cause ; And when 'twas made, I thought it a good Exception ; and made no Difficulty of accepting my Fee to speak to it.

Mr. Att. Gen. I had another Meaning in it. I knew not that Mr. Broderick was Council for the Warden of the Fleet.

Mr. Mountague. My Lord, I believe Mr. Broderick is afraid of my Fate in this Case : I have been very much reflected upon for being Council in this Case ; and it has been spread about all the Coun-

Counties in *England*, by *Dyer* the News-Writer, That I broach'd seditious Principles at the Tryal, and was reprimanded by your Lordship for it: And I believe Mr. *Broderick* is afraid of the like Scandal.

L. C. J. *Holt*. You must not be afraid of Scandals. *Dyer* is very familiar with me too sometimes: But you need not fear such a little scandalous Paper of such a scandalous Author.

Mr. *Mountague*. My Lord, I am not much concern'd at it, seeing it comes from him.

Mr. *Broderick*. I must agree, That this is a Point of great Concern to the Crown; because all Prosecutions for the Crown may be affected by it, as Mr. *Attorney General* said: But on the other side, I beg Leave to say, That (whatever the Person now before the Court may be) it is of great Concern to the Subject too: For the Rule in this Case, will be a Rule in the Case of every other Subject of *England*; so that the Concern is great on both Sides.

I must beg Pardon of the Court, if in answering off-hand to very Learned and Elaborate Arguments, from the short Notes which I have been able to take of them, I happen to be disorder'd in Method: I must take Leave to offer such short Observations upon them, and give such Answers to them, as I can at present; as my Memory suggests the Objections to me, tho' not in the same Order in which they were deliver'd. But I will use my Endeavour, not to omit the taking some short Notice of the General Heads, under which I apprehend all the Objections will fall.

I would observe, (which I think will be an Answer to a great deal that has been said on the other Side,) That our Law-Books make a very great Difference between the King's Prosecutions in his own Name, as a Civil Right, and Prosecutions wholly in his Capacity of King; as he is Head of the Commonwealth; and in the Exercise of his Royal Office, to affect the Subject with, or punish him for Crimes thereby charged upon him. I agree, the Cases cited by Sir *Thomas Powys* and Mr. *Attorney General*, of Amendment of the King's Writ of *Qu. Impedit*, and some others; and that the Common Law gave greater Indulgences to the Crown, in the Prosecution of its Civil Rights, than to any Subject. The King was known to be employ'd in the Concerns of the whole Kingdom; to have the Care of all his People upon him: Whereas the Subject had only his personal and private Affairs to look after: And 'tis no wonder that the Law should adjudge, that great Allowances were to be made to the Crown; as to its own particular Rights; That it should not be ty'd up to so strict Rules as the Subject, who was supposed to attend his own Affairs only. (This is the Reason generally given, why the Crown had such a Prerogative, that greater and more favourable Allowances should be made in its Suits, than in those of the Subject.)

But it has hitherto (as far as I have been able to observe) been taken, That the Law was very nice and tender in all Prosecutions, that aim at the charging the Subject with Crimes and Penalties. It seems to be a new Light, sprung up of late, which has discover'd, that there is a greater Necessity for that Privilege in Criminal Prosecutions, than in Civil. The Opinion of the successive Ages, which have made favourable Acts for amending and curing of particular Defects in Legal Proceedings, seems to have been much otherwise. In many of

these, all Criminal Prosecutions, of all kinds, are expressly excepted: And where they are not, I must say I have not heard yet quoted; nor can find any Case of Authority, where those Statutes were interpreted to extend to Prosecutions for Crimes. I perceive, the Council for Her Majesty in this Cause, have in their Arguments relied very much upon Amendments made by the Common Law. I can't pretend to be now prepar'd to run thro' each particular Case: In general, it cannot be deny'd, that several Amendments were made, by a Power that the Court had at Common Law; but we think there never was any which came up to this Case. And indeed, if all the Amendments in the Multitude of Cases that have been cited in these elaborate Arguments, are allow'd as good at Common Law; it would make one wonder, where the Necessity was of making an express Statute, for the Amendment of a Letter or Syllable; (and of the nice Doubts upon that) or of the other subsequent Statutes of *Joefails* and Amendments. The Court, to me, by these Authorities, would seem to be arm'd with a sufficient Power to have done the Business, without the Help of any Statute.

Tho' Her Majesty's Council rely principally upon the Statute of 8 *Hen. VI.* yet in regard they do not wave, or give up the Aid of the Statute 32 *Hen. VIII.* (For Mr. *Attorney* takes notice, that there is a *Quere* in my Lord *Dyer*, (*Dyer*, 353.) Whether the King, in an *Information* of *Intrusion*, should not have the Advantage of that Act? And he has cited Lord *Dyer*, 346. of an *Information Qui tam*, &c. to be within the Act: And that Lord *Hales*, in Lord *Fitzwaters's* Case, held, That 'twas reasonable, that Criminal Prosecutions should be aided) I think it will be very proper to consider how the Law has been taken upon that Statute; and to see whether the Reason of those Cases, won't go as far backwards, as to the Statute 8 *Hen. VI.* The Words of the Statute, 32 *Hen. VIII. C. 30.* are not expressly restrain'd to Actions or Suits between Party and Party; tho' the Word *Party* be mention'd in the Statute, both as to the Plaintiffs or Demandants, as to the Tenants or Defendants. And the Enacting Clause is, *That from thenceforth, after Issue try'd for the Party Plaintiff or Demandant, or for the Party Tenant or Defendant, in any manner of Action or Suit at the Common Law; the Judges should proceed to give Judgment in the same, notwithstanding any of the Mistakes therein mention'd, in like Form as if no such Default or Negligence had been.* It is true, as Mr. *Attorney* has cited it, that 'tis left a *Quere*, as it stands printed in my Lord *Dyer*, which was in the 18th Year of Queen *Elizabeth*: But even in that very Case, 'twas held, 22 *Eliz.* that the Statute did not extend to it: As appears in 1, *Rolls Reports*, fol. 447. as well as by *Blackmore's* Case, 8 *Gr. 163.* where 'tis expressly said, That the Statute 32 *H. VIII.* extends not to *Pleas of the Crown*. And this Point is expressly agreed by the whole Court, in *Sherington Talbot's* Case, 1. *Gr. 312.*

A *Venire Facias* bearing *Tesse* out of the Term, and an Issue tried upon it, is a *Misconveyance of Process*, salv'd after Verdict, by those Words in the Statute of 32 *H. VIII.*

So a *Venire* awarded, which bears *Tesse* on a Sunday is adjudg'd to be aided within those Words.

Yet in *Theobald* and *Newton's* Case, *Style* 207. there was a Suit upon the Statute of *Immates*; and the *Disringus* bore *Tesse* on a Sunday, and out of Term. Exception was taken to this after Verdict, and

and held not to be aided by the Statutes of *Jeofails*. I thought it necessary, by mentioning the Two former Cases, to state which of the Statutes it was, which would have remedied the Fault, if the Statute had extended to the *Suit in self*; because the Reporter (which is no wonder in him) so far mistook the Sense of the Court, as to omit the Material Statute, and to mention the 18th of *Eliz.* and 21. *Jac.* in neither of which Laws there are any Words which reach the Case; tho' in this Act of 32 *H. VIII.* there are.

And in Lord Fitzwater's Case, cited by Mr. Attorney, tho' my Lord Hales does say, *The Case of the King will often stand in need of the Amendment of a wrong Venire*; and therefore he was of Opinion, to bring him within the Statute of 16 and 17 *Car. II.* which has very extensive Words; yet he allows the Distinction between his Criminal Prosecution, and Civil Action; as appears in 3. *Keb.* 485, 519.

In Percy's Case, 21 *Car. II.* 1. *Vent.* 17, 35. an Information of *Forgery* at Common Law, laid the Forging to be of a Release at *Sherborn*; and the giving it in Evidence, to be at *Dorchester*. The Defendant was convicted by a Jury *de Vicineto* of *Dorchester* only: 'Twas adjudg'd to be a Mistrial; and a New *Venire* was awarded. For the King, 'twas labour'd to support the Tryal by the Word *Suit*: For, say they, the Information is, *Se-cta Domini Regis*; so that the Word is extensive enough to reach this Prosecution: And 'tis plainly out of the Exception, which excepts no Information, but those upon Penal Statutes. But the Court held, Any Information, tho' at Common Law, was not remedied by the Words or Intent of the Act.

In the principal Case of *Sherington Talbot*, 1. *Cro.* 311. *Jones*, 320. 2. *Ro. Ab.* 619. Information, in nature of a *Quo Warranto*, for Claiming Liberty of Free Warren in Three Vill, in the Forest of D. Defendant disclaims in the Forest, and in all but one Vill; and says, That that Vill is Parcel of the Manor of S. and prescribes for Free Warren in his Manor; Issue on that Prescription, and the *Visne* is from the Vill, not from the Manor; held to be mis-tryed, and not aided by any of the Statutes of *Jeofails*: Tho' not within the Exception; because the Statutes do not extend to the King's Case, He not being named. The then Judges thought this a Reason; which will equally extend to the King's Case, upon the former Statutes of Amendments. And Mr. Noy, a very Learned Predecessor of Mr. Attorney General's, did not venture to carry the Point further for his Master, than to a Peradventure he might have the Advantage of those Acts, in case of a *Quare Impedit*, or other Civil Right, where the Suit is in the King's proper Name, and not by his Stile of King only.

Nothing is more plain, than the Difference which the Law makes between Cases where the King prosecutes his Right in his own Name, as for a Civil Right; and where the Prosecution is in his Capacity of King, and in the Exercise of the Royal Authority. If the King (*Henricus Rex*) brings a *Quare Impedit*, and dies before Judgment, the very Writ abates; because *Henricus Rex*, who was nam'd by his proper Name, ceases to be. But if the Prosecution be *pro Domino Rege*, tho' the King in individo be dead, yet *Dominus Rex* in genere not being dead, the Information or Indictment shall stand, to be prosecuted by the Successor. Yet all Process upon them, wherein his own Name is used,

and not his Name of Kingly Office only, shall fall; because the particular Person is dead.

According to this Distinction, I do agree, That where the King sues in his own Name for a Civil Right, his Suit has more Favour allow'd to it than that of a Common Person. And so far goes the Case in *Elackmore's Case*, 8. *Cro.* 156. before-mention'd, cited by Sir Thomas Powys; That a Writ of *Quare Impedit*, which was presentere for presentare, was amended; being the King's Case. Tho' had it been the Case of a common Person, it could not have been amended: For no Original Writ was at Common Law amendable in the Case of a common Person. But that an Information or Indictment ever found Favour beyond, or equal with a Civil Action, I never heard before; nor find any Authority quoted to warrant it now. I would take leave to mention the Case, 13 *Car. II.* in *Scan. Hardress*, 217. (9.) *Pitcher and Jones*: 'Twas an Information upon the Act of Navigation for Importing Spices, being the Growth of *Asia*, *Africa*, or *America*, from *Holland* beyond the Seas, not being the Place where such Goods were first and most usually shipp'd for Transportation, *contra Formam Statuti*. The Defendant pleaded, he did not import them *contra Formam Statuti*, and Issue upon it; and Verdict against the Defendant. He moved in Arrest of Judgment; That 'twas not laid, that these Commodities were not of the Growth of *Holland*. To this 'twas said, That the Verdict would help that, it necessarily implying it: For that they were laid to be of the Growth of *Asia*, *Africa*, or *America*, and imported from *Holland*; which shews those were distinct Places: And the Defendant could not else have been found guilty, *contra Formam Statuti*. Yet after long Debate, the Exception was held to be a good one, and the Judgment was arrested.

I must observe, That the Council for the Informer in this Case, had not the Courage so much as to hope for Aid from, or mention the Statutes of *Jeofails* in this Case. They cite there *Johnson's Case*, 2. *Cro.* 609. and *Cholmley's*, P. 1. *Cro.* 464. where in Criminal Prosecutions reasonable Intentments after a Verdict, are allowed at Common Law. But tho' nothing was wanting in this Case, but an Averment that *Holland* was not within *Asia*, *Africa*, or *America*, (which must necessarily be proved at the Tryal, else the Defendant could not have been convicted) they either did not know, that the want of an Averment of a Thing necessary to be averred, if Issue be taken upon another Point, is aided as a *Mispleading*, by the Statute 32 *Hen. VIII.* (tho' the Cases of it are numberless); or they did not think there was any Colour for offering to extend that Statute to a Penal Law, with regard to the Interest the King has in the Prosecution, tho' a common Person was the Informer; and tho' there is no Exception of Informations on Penal Laws.

As to the Cases cited on the other Side, of Amendments at the Common Law by the King's Prerogative; I must rely upon the Difference I have already taken between Criminal and Civil Cases; and that there are not any Instances of Amendments in Criminal Prosecutions. As to several other Cases, which have been cited by the other Side, of Amendments upon Returns to *Certiorari's*, Returns upon Writs of *Error*, &c. Those, with Submission, will not come up at all to the present Case. When a Record is certified upon a *Certiorari*, &c. the Parchment annexed to the Writ, is supposed to

to be the real Original Record ; and that remains in the Court here, and is become by the Return a Record of this Court. Where, by the Course of the Court, 'tis enter'd upon a Roll here, if in the Entry it varies from that that is the true Record, it is the Duty of the Court to take Care, that the Misentry be rectify'd ; and the Record, which is transcrib'd here, made agreeable to the Original. The rectifying such Misentries, or Miscopyings, are not Amendments of Faults in a Record, (for that faulty mistaken Entry is not really the Record) but making true Entries of the Record. And upon the like Reason was the Mistake rectified in Sir H. Tufton's Case, 1. Cro. 144. where there was a Consent of the Parties for Entering a Judgment by Disclaimer, by *Virtue or Pretence of Letters Patents, bearing Date 7. Jac.* which Words were inserted in the Paper-Book, by the Attorney General's own Hand ; yet omitted by the Clerk, in the Entering it upon the Roll : There, upon great Examination, and Consideration of the Circumstances, *all Parties consenting*, that Misentry was corrected ; being, as the Book says, *no more than when a Special Verdict is misenter'd ; which is rectified by the Notes of the Clerk of the Assize.* But it is very much insisted on, That the Statute 8. H. VI. c. 12. shall extend to this Case ; because there are particular Criminal Prosecutions excepted therein, of which this is not one. I do not find that there has been one Authority cited, when it was ever held, that that Law extended to any *Pleas of the Crown.* And I take the uniform Opinion of near Three Centuries, since that Statute, to be against it.

Mr. Attorney relies much upon the Case of the King against Percival and Godfrey, and others, *id.* 244. where the *Venire* for the Trying the Defendants, upon an Indictment for a Riot, was directed *Vicecomitibus de Canterbury*, and return'd by R. S. *Vicecomes* ; the City having in truth but one Sheriff : There, upon Examination of the Sheriff himself upon Oath, in Court, (who swore that City had but one Sheriff) there was an Amendment. But what was that ? Not of any Thing that was the Act of the Court : But the Sheriff adds to his Endorsement upon the Writ, (when he had answer'd single,) That there was not any other Sheriff ; as it appears in the same Book, and in 1. Keb. 900 (71), 901 (75) : And this the Court held to be well, upon the Authority of the Book of 39. H. VI. f. 40. where a Writ was directed *Coronatoribus*, and return'd by one Coroner only, yet held to be well : For, say the Court, we won't take notice there are more Coroners than one. And so Just. Wyndham said, in this Case, We shall intend but one Sheriff, unless more appear ; 1. Keb. 901.

A good Part of Mr. Attorney's Argument seems to tend to the making it not necessary, or at least disputable whether it be necessary, that the *Distingas* should be *Teste'd* on the same Day that the *Award* is. Won't that Argument turn another way than 'tis intended ? If it be a doubtful Thing, whether it be right or not ; I doubt it will be an Error in Judgment, like the making out an improper Writ in the *Debet* and *Detinet*, where it should be in the *Detinet* only : And then, tho' it is a Default of the Clerk, 'twill not be such a Default as will be within the Aid of the Statute, if that should be held to extend to the Case. If it were a doubtful Thing, it can't be said he had a certain Rule to walk by : But he ventur'd upon his own Judgment ; in which if he has chanced to mistake, 'tis not amendable as a Thing of Course. But in

truth, 'if it were to be enquir'd into, I believe 'twould be found not to be an Error in Judgment in the Clerk, but a Mistake of a Matter of Fact, in taking *Sunday* to be the first Day of the Term.

Mr. Att. Gen. That will not alter it.

Mr. Broderick. There has been another Case cited ; the King and Walcot ; where a Reversal of an *Attainder* was pronounced, and the Judgment of Reversal actually enter'd up ; yet being done by Surprise, the Entry of the Reversal was set aside, and razed out of the Record. Surely that cannot be an Authority for any. There the Entry was wholly irregular, contrary to the Rules of the Court : For the Judgment of the Court is not compleat, till the End of the Term.

L. C. J. Holt. 'Tis in the Breast of the Court during the whole Term.

Mr. Broderick. And if any one, within the Term, without the Direction of the Court, will enter a Thing as the Act of the Court ; shall not the Court have a Power to reform that Irregularity, and do themselves right ? This is not an Amendment of a Record, but a Reforming of an ill Practice ; a preventing of an Attempt to make that an Act and Record of the Court, which really is not so. Neither does my Lord Macclesfield's Case bear any Proportion to this.

There is no Question, but that a Court, which is intrusted with the Custody and Preservation of the Records wherein other Persons are concerned, may take care upon any Mischance ; and that they have a Power to put Things into their right State : As in case of Fire, or any inevitable Accidents, the Court, incident to their Trust of the Custody of the Records, and by the Authority they have to do Right and Justice to all Persons, must have a Power to supply such Losses.

As to the Case of the Warden of the Fleet, there was no Amendment made : But if there had, it would not have come up to this Case. I may, I am sure, safely affirm, that the Court did declare, That was not to be esteem'd a Criminal Prosecution ; in regard there was not to be a Judgment to punish the Party, but the Proceeding was only to transfer the Estate to the Crown by way of Forfeiture.

The Council who have argued for the Queen, have not cited any one Authority, of an Amendment in a Criminal Case, within the Statute of 14. E. III. or 8. H. VI. c. 12. or proving, that those Statutes extend to Cases of that kind : But they call upon us, since the Words seem to be large enough to reach both, (especially those of 8. H. VI. where there are some particular Criminal Prosecutions mention'd and excepted) to produce some Authority, to establish the Distinction between Criminal and Civil Cases. We think the daily Practice in Civil Cases, and the want of a single Instance in a Criminal one, carries a strong Argument, if we could go no further : But I think we do not want an express Authority in this Point too. *Ordre and Motion, Trin. 11. Jac. I. Ro. Ab. 281.* There a Writ of *Venire Facias* out of the B. R. was *Venire Fac. duodecim, &c. coram Nobis apud Westmonasterium, ubicunque fuerimus in Anglia* : But the Roll was well, omitting the Words *apud Westmonasterium.* 'Twas adjudg'd the Writ might be amended by the Roll ; for 'tis but Matter of Form. This was a Default in the Body of the Writ, and amended by the Statute of 8. H. VI. as a Default of the Clerk.

S f f f

Yet

Yet *Brigs* and *Thompson's*, &c. *Yel.* 60. 111. In an *Information* upon the Stat. 21 *H. VIII.* against *Spiritual Persons taking Farms*, the Award of the *Venire facias* upon the Roll was right, returnable *ubicuncunq;* but the Writ it self was returnable *coram nobis*, omitting *ubicunq;* and so it did not answer the Award upon the Roll. This certainly had been amendable in a *Civil Plea*, but the Report tells us, that Judgment was staid upon it. And, my Lord, I will beg the Liberty to make this Observation upon the Case of the King against *Percivale* and *Godfry*, (which is so much relied on.) There are some Cases of so odious a Nature, and move such Indignation, that there is a Danger of Things being passed over, unobserved, which would not have been admitted in another Case. That was the Case of One of the King's Messengers, employed in His Majesty's immediate Service, barbarously insulted and abused in his Inn at *Canterbury*, by the Defendants and a great Rabble of People: As the Offence was very flaming, the Resentment of the Court ran high; and they thought it reasonable to do in that Case, what perhaps in an ordinary one they might not easily have done: Yet what was then done, is now to be cited for a Precedent in every Criminal Case whatsoever. I must say the same in this Case; whatever my Client is charged with, the Rule given in his Case may affect every Man in *England*, who shall hereafter be charged criminally: And therefore I doubt not your Lordship will very well consider of it.

I hope, my Lord, I have given some Answer to most of the Things that have been insisted; and that upon the whole Matter, this Mistake will not be accounted a Thing amendable by Law.

Mr. Mountague. MY Lord, in Answer to what has been said, I shall not preface what I have to say with any Apology for being of Council with Mr. Tutchin, tho' I have been egregiously misrepresented in what I did, as Council for him at *Guild-Hall*. I know your Lordship is no Respector of Persons, but will have the same Regard to one Defendant as another.

Mr. Att. Gen. I am not concern'd at any Thing that has been Written or Printed about that Tryal.

L. C. J. Holt. We will take no Notice of that.

Mr. Mountague. My Lord, as to what Mr. Attorney General and Sir Thomas Powis have said, I beg leave in the first Place to take Notice wherein it is we agree, and in what we shall differ. First, we agree that this Cause is a Cause of the greatest Consequence. Mr. Attorney tells your Lordship, it concerns all the Proceedings of the Crown; and I hope I may be pardoned if I say, it is of no less Concern to the Defendant and the Subjects of *England*. I would therefore pay that Respect to the Court, not hastily to speak to a Point of this Moment, but shall desire to have Time to look on those Cases that have been mentioned.

L. C. J. Holt. If you will do this, you may consider the Statute of *H. VI.* for those Words are general and not relative either to Civil or Criminal Cases in particular. It remedies the Mischief between Plaintiff and Defendant generally.

Mr. J. Powel. Mr. Broderick has not taken Notice of that Objection that my Lord Coke takes

Notice of, Because they are not excepted, therefore they are included.

L. C. J. Holt. I would have you consider why it is not within the Words of the Statute. It is as plain that it is the Fault of the Clerk as can be; he had the Roll before him, therefore it must be the Mistake of the Clerk. The Award of the Writ is the Act of the Court, and that was the 23^d; now this Writ did bear Date the 24th, and I believe we did not award the Writ the 24th, therefore it is to be judged they mistook the Time of the Teste. For the Record says the 23^d, and this Writ says not till the 24th. Now why should not this be within the Statute of *H. VI.* For it is the Misprision of the Clerk? And then the Question is, whether that Statute does not extend to this Matter.

Mr. J. Powel. I do indeed question whether any Statute of *Jeofails* extends to it; but this Statute does not, as appears by 8 *Coke*, because they are excepted. There are Indictments of Felony and Treason that are excepted. Now that this is a Misprision of the Clerk is plain, because he had the Award of the Court.

Sir T. Powis. I think all agree it was perfectly a Mistake, and that makes it a disputable Case; I do not stand on it as if it were right, but grant it was a perfect Mistake; and then that Objection is clear, that Criminal Matters are not within the Statutes of *Jeofails*, and it is certain most of them are excepted, *viz.* Indictments, in this Statute of *H. VI.* where it is said what are excepted, &c. 'Tis true you cannot amend what are excepted, where the Party was in Danger of Life; but it leaves out in Inferior Matters; therefore it seems, that whatever was said of Criminal Matters, was intended of the greater Criminal Matters, and so was the Opinion in the Case of —

L. C. J. Holt. That was a Civil Cause, but we thought we could not amend it: For it would be contrary to our Duty as Judges, to alter a Record. And therefore we refused even in Point of Scandal in that Case; also on Examination we found that we could not amend it, contrary to Truth.

Sir T. Powis. My Lord, we had not in that Case any Thing to amend by; but here we have a Roll to direct us.

Mr. Att. Gen. If your Lordship indulge them from Time to Time to put it off, we shall never have done.

Mr. Mountague. My Lord, I am not prepared to answer what has been said, for I did not expect this Motion would have been made.

Mr. Att. Gen. That we may be once at an End, I would fain hear what they have to say, and whether they have any more Exceptions.

L. C. J. Holt. Have you any more Exceptions to make?

Mr. Mountague. My Lord, we have no more Exceptions to the Matter we are now upon, which is setting aside the Tryal. You know Mr. Attorney, there are Two Things incumbent on a Defendant's Council. One is to set aside the Tryal if he can, and that is the Thing we are now upon: The other is, to move in Arrest of Judgment. Now Mr. Attorney well knows 'twill be a Waiver of our Motion for a new Tryal to stir any Thing in Arrest of Judgment.

Mr. Att. Gen. He that makes Exceptions should be prepared to give all his Exceptions together.

Mr. J. Powel. This is not a Motion to set aside the Tryal?

Mr.

Mr. Mountague. Yes, my Lord, it is to set aside the Tryal: Not to arrest Judgment being given upon the Verdict.

Sir T. Powis. My Lord, if they have any more Exceptions to offer, I desire they may let us have them now.

Mr. J. Powel. If there be an Error in the Writ there must be a *Disfringas de novo*, there must be a new *Disfringas* only issued, you cannot make it a Discontinuance of the whole Proceedings; but there must be a new Award of a *Disfringas*, the Error wherein is the Cause of Exception; if we should give our Opinion that it is not amendable, we should try him next Week.

Mr. Att. Gen. My Lord, they should lay down all their Exceptions together.

Mr. Mountague. My Lord, I know you do not expect in this Case any Thing should be done otherwise than what is usual in all other Cases. Now I appeal to Mr. Attorney if it be not the constant Course here, to move first for a new Tryal; and if you object any Thing in Arrest of Judgment, it is generally said, you have waived your Motion for a new Tryal.

L. C. J. Holt. No, that is not so.

Mr. Mountague. My Lord, we are now in your Judgment whether this Man shall be tried again or not? And if we shall happen to prevail for a new Tryal, then it will be a Disadvantage to our Client to have told our Exceptions to the Information, for then Mr. Attorney will pray to amend.

L. C. J. Holt. You are so far in the right, if indeed here were a Verdict

that is unquestionable, that is your proper Time to move in Arrest of Judgment; but if this Verdict be not right, it is too soon to make Exceptions to the Information. Then we shall tell you what we have to do.

Mr. Att. Gen. I am content they should keep their Learning to themselves; but, my Lord, if they will not do that, I hope you will not give them further Time.

L. C. J. Holt. We shall give 'em but till to Morrow.

Mr. J. Powel. Mr. Mountague, it is a strange Thing that you shall make an Exception, and not be ready to maintain it; at this Rate any Prosecution whatsoever may be hung up and delayed. If this be the way, we must give you the less Time.

Mr. Mountague. My Lord, I shall entirely submit to what the Court shall think fit to order; but 'tis now pretty late in the Day, and your Lordship knows 'tis a Sitting this Afternoon in *Middlesex*, and to Morrow is another Sitting in *London* where I am already retained to be, and I know not how late your Lordship may keep us in both Places: Your Lordship seldom discharges us till late at Night, and it will be impossible for me to look into the Authorities which have been quoted, much less to consider of any Thing that will be fit to offer in answer to both these learned Arguments in a Matter which I must profess is altogether new to me.

Mr. J. Powel. There are Amendments made every Day.

Mr. Mountague. My Lord, I hope I shall shew you it has not been done yet, in any such Case as this, neither can it be done, with Submission.

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L. C. J. Holt. You should have prepared for it. I will tell you of a Case at *Hicks's Hall*, where I myself took the like Exception, but it was over-ruled by Sir William Smith the then Chairman of the Sessions. In an Indictment against --- for a wrongful Entry, &c. there was a Mistake in the Time of the Entry alledged, &c. And they amended the Fault by the Statute of E. VI.

Mr. Att. Gen. My Lord, I hope you will give them but till To-morrow.

Mr. Mountague. I hope you will not press that, Mr. Attorney, who have been so lately a *Nisi prius* Practicer.

Mr. J. Powel. You are not press'd in it; none can imagine you came here in this Case, and that you were not provided to defend it. I hope you are as ready as Mr. Broderick, he is but your Assistant, and yet he was ready.

Mr. Mountague. It will be impossible for me to be more ready To-morrow. I will rather go on with it now, than do it To-morrow. This is a new Motion, and I did not in the least expect it.

Mr. Att. Gen. This is no new Motion, I believe none would believe but it would be made.

Mr. J. Powis. Why can't you be as ready as Mr. Broderick is?

Mr. Mountague. I do not pretend to set myself upon the same Level with Mr. Broderick: Tho' he be ready to give an Answer *extempore* to the Arguments that have been made, I hope your Lordship will indulge me with a Day or Two more to consider of what has been said, since the Question now before the Court is of that Concern to all the Subjects of *England*. My Lord, I desire we may have but till *Thursday* next, and by that Time I will undertake to be ready.

Mr. J. Powel. When you make an Exception, you ought to be ready to defend it.

Mr. Mountague. It was impossible for me to foresee what Course the Attorney General would take to obviate the Objections I have made. I must own I did not expect this Motion for an Amendment; I thought of that the least of any Thing, because I never knew the like Attempt in a Criminal Prosecution. And since Mr. Attorney General has been pleased to countenance the Exception I have taken, with a Weeks Consideration of it; I ought in Civility to pay as much Respect to the Arguments he has made in Answer to it. And therefore I must beg a little Time of your Lordship, as well to shew my Respect to Mr. Attorney General as to discharge my Duty to my Client.

Mr. Att. Gen. I desire none of your Respect.

Mr. Mountague. I hope, Mr. Attorney, you are not angry because I would pay Respect to you.

Cur. Well, Take Time till *Thursday*.

November 23. 1704.

L. C. J. Holt. Mr. Attorney, have your any Thing to move?

Mr. Att. Gen. My Lord, I attend here only upon the Account of Mr. Tutchin.

L. C. J. Holt. Who is for Mr. Tutchin.

Mr. Mountague. My Lord, I am of Council for Mr. Tutchin, and I am to Day to shew your Lordship Cause why the Motion made the other Day by the Council for the Queen to amend the *Teste* of the Writ of *Disfringas* cannot be

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allow'd

allow'd. And since the Court hath been pleas'd to indulge me with a little Time to think of the learned Arguments that have been made both by Sir T. Pows, and Mr. Attorney General; and to look into the Authorities which have been cited, I hope I shall take up less of your Lordship's Time than if I had been put to answer *extempore* to the several Matters that have been insisted upon. For I must beg leave to say, that upon Consideration of what was then offer'd, I do find that a great many Things that were then said, do not carry that Weight along with them as I did then apprehend. And tho' I do not Question but every Thing that can be thought of has been said for the obtaining such an Amendment, yet I have the Satisfaction at last to find that there is but one Case, and that is what your Lordship was pleas'd to mention, of the Judgment of Sir William Smith, that looks like a Precedent for this Amendment. My Lord, in speaking to this Matter I shall not trouble the Court with many new Citations out of *Fitzherbert* and *Brook's* Abridgment, Title *Amendment*; for I perceive the Gentlemen on the other Side have look'd over the Bed-Roll of Cases which are to be met with there, and find, that they have taken notice of every Thing that will make to their Purposè; my Business therefore shall be, closely to apply my self to the Consideration of what they on the other Side did insist on; and I hope I shall be able to shew to your Lordship that nothing they have said will warrant this Amendment.

But before I enter upon the Argumentative Part, I must beg leave shordly to state the Case it self, and shew how it now stands before the Court; and if I mistake in giving an Account of the least Matter of Fact, I desire Mr. Attorney General would interrupt me so far as to set me right; for if we do not agree in the State of the Case, our arguing will be to very little Purposè.

Mr. Att. Gen. It is the Record that is in Dispute, it is not Matter of Fact.

Mr. Mountague. Mr. Attorney, there is something of Fact besides the Record, which is now before the Court. This Information was exhibited in *Easter* Term last, and the Defendant pleaded to it in *Trinity* Term; and Issue being then joyned, a *Venerable Factis* was awarded, and made returnable the first Day of this *Michaelmas* Term. On that Day (the Roll says) all the Parties did appear; but none of the Jury came, and thereupon the Court did order, that a *Distringas* should issue, and he returned hither *Die Jovis proxime post Crastin. Animarum*: On the Return of the Writ of *Distringas*, which is now before the Court, the Defendant appear'd in Court, and by his Council took Exception to the *Teste* of this Writ, because it was not issued as the Roll hath awarded, on the Day he was present in Court, which was the 21st Day of *October*; but on the next Day which was the 22nd Day of *October*, when he is supposed to be out of Court; so that the Award has plainly not been complied with, and therefore the Writ which is now before the Court was taken without any Authority from the Court, and the Tryal cannot be supported, because the Day and Place mentioned in the *Distringas*, was not appointed *per formam Statuti*, in the Presence of the Parties. For these and other Reasons, it was prayed in his behalf that all the Proceedings upon this *Distringas* should be vacated.

Mr. Att. Gen. The Day is right when the Persons are to appear, and the Award of the *Nisi prius* is as it should be.

Mr. Mountague. The Return is *Die Jovis prox. post Crastin. Animarum*, as it is in the Roll, but the *Teste* of the Writ is the Day after it was awarded.

L. C. J. Holt. The Award is right.

Mr. Mountague. My Lord, we own the Award is right on the Roll.

L. C. J. Holt. But the Question is, whether the *Teste* of the Writ be as it should be.

Mr. Mountague. My Lord the Writ that is now before you being *Teste'd* on the 24th of *October* cannot be said to be taken out upon any other Day than the 24th of *October*, and in that it is not pursuant to the Roll. Upon the taking of this Exception Mr. Attorney was surprized, and could not then say much to it; but desired Time to enquire how it came to be so.

Mr. Att. Gen. I could have said as much to it then, as after Four Days; it became you to have been as ready.

Mr. Mountague. My Lord, Mr. Attorney is a little too hasty for me in this Matter. I intend to do him right, if he'll have Patience to hear me out.

L. C. J. Holt. Come to the Point.

Mr. Att. Gen. This is a popular Argument, and spoken *ad captandum Populum*.

Mr. Mountague. Mr. Attorney did ask some Time to have this Matter enquired into, and that Request was agreed to: And upon Examination it appears that this Writ was actually taken out after the First Day of the Term; and the Clerk being doubtful with himself how to make the *Teste*, ask'd the Master how to *Teste* it, and he directed it to be *Teste'd* the 24th of *October*; and upon this arises this Motion. The Gentlemen that are of the Queen's Council pray that it may be amended, and the Question is, whether it can be set right; and with Submission, I think it cannot, and that no such Obliteration ought to be made, though the Defendant were found Guilty of Six Times as many Crimes as he stands now charged with. I must agree with Mr. Attorney, in what he says with relation to the Consequence of the Determination of this Point, that it will be a Precedent that will affect all the Proceedings of the Crown in all such Cases. And this it is that makes it to be a Matter of wonderful Consequence to the People, as well as to the Crown; for tho' under the present Administration of Affairs innocent Men may think themselves very safe, yet no body can be sure in after Ages that they shall not fall under violent Prosecutions; and then Slips and Mistakes may be of Service. My Lord, hitherto I may say, all Advantages of this kind have been allowed to Defendants in Criminal Cases; and upon this Occasion it may be observed, that even Actions *Qui tam* upon Penal Statutes, have always been excepted out of the Statutes of *Juvenis*; and from hence, I think, arises an Argument *a Fortiori*, that the *Joinders* of Clerks in Prosecutions more penal, are not to be amended. Sir Thomas Fowles in his Argument did, as I remember, insist upon these Two Propositions, and as I take it he was seconded in them by Mr. Attorney; First, That the *Teste* of this Writ is amendable by the Common Law, and if not that, Secondly,

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It is to be amended by the Statutes of Amendments either by that of 14 E. III. or that of 8 H. VI. And Two Reasons were given for this Opinion; First, Because it appears to be a plain Mistake in the Clerk; and Secondly, because they come to move for the Amendment in the same Term wherein the Writ was sued forth and return'd.

Now, my Lord, in Answer to both these Reasons and Assertions, I hope I shall make it appear in the first Place, that this *Teste* cannot be alter'd, either by the Common Law, or by the Statute Law: And in the next Place I hope to shew your Lordship that the making the *Teste* of this Writ to be upon *October 24* is not purely a Slip in the Clerk, but does proceed from the Nescience of him that was advis'd with about it. And altho' this Motion for an Amendment be made the same Term the Error has been committed in; yet it is not in the Power of the Court to set it right.

As to the first of these Particulars, I shall readily agree with Sir Thomas Powis and Mr. Attorney General, That by the Common Law many Things were to be amended without the Help of any Act of Parliament; but the Thing that I deny, and which, with Submission, has not yet been proved by any Authority that has been quoted, is, That no Error in the *Teste* of any Process that does issue out of the Court and is returned back again by the Sheriff, can be alter'd by the Rules of the Common Law, and I hope by and by to make it appear, not by any Act of Parliament neither. My Lord Coke in *Blackmore's Case Lib. 8. Fol. 156. b.* and *157. a.* does say, as has been observed, that the Judges by the Common Law may amend the Entry of their own Judgment, or any other Part of the Record, the same Term; but he does not there say that they may amend any Writ made out and returned by any Officer or Minister of the Court. And the Reason given why they may amend their own Judgments and the Continuance entred upon the Roll is, because such Things as they themselves do, are said to remain in their own Breasts till the End of the Term: But surely the Actions of another Person, his disobedience to the Order of the Court, can never be look'd upon as an Act of the Judges. And I cannot see how a Writ taken out *in Pais* which is never in Court till it be brought thither by the Hands of the Sheriff, can be said to remain in the Breasts of the Judges. The Instances of Amendments by the Common Law which are given by my Lord Coke, are in the Entries of *Essoigns* and *Continuances* and such like *Misprisions del Court Mesme*: As for Instance in 5 E. III. *Fol. 25. W.* brought a *Præcipe* against B. who vouches C. to warranty and he enters into the Warranty and pleads to Issue and a *Venire facias* is awarded and the Jury is afterward put in respite and the Entry of that upon the Roll was in this Manner *jurata inter B. and C.* that is between the Tenant, and the Vouchee *ponitur in Respectum*, and so it appears on the Roll, whereas it should have been *inter W. the Demandant, and C. quem B. vocavit ad Warrantum*. Now this was look'd on as the Clerk's Mistake in the Entry of the Order of the Court, and so it was amended, *Coke's 8th Report, f. 157. b.*

Now my Lord, with Submission, this Case and all the rest of the Cases that have been mentioned for Amendments at the Common Law will only

justify an Amendment of the Roll. And indeed had there been an Error in the Entry of the Award of the *Distingas*, I should rather think that amendable than this; for 'tis certainly more reasonable that the Court should intermeddle with their own Acts than with the Acts of another. Till this Writ was return'd, annex'd to the *Nisi prius* Roll the Court had nothing to do with it. And now this Writ is before the Court your Lordship is only to judge, whether it be pursuant to your Award or not; if it be not made right it must be imputed to the Fault of the Person that made it out, and the Court can never be said to be in Fault; if the Clerk employed makes out a Writ contrary to direction; and if the Party concerned suffer by such Mistake he may thank himself for employing such an Agent. But Sir Thomas Powis says, that this Amendment is pray'd on behalf of the Queen, whose Prerogative it is to have many Advantages, in Pleading which the Subject shall not have. My Lord, with Submission to better Judgments, I conceive that for this very Reason the Queen's Council have the less Reason to pray an Amendment. For since they have other Prerogatives to have recourse to they ought not to ask this besides. Your Lordships will often hearken to us when we move for new Tryals in Actions of Debt upon a Bond where the Verdict and Judgment are conclusive: When you will not give ear to such a Motion in Ejectment, where the losing Side may have fresh Actions if they will. But, my Lord, not to rely altogether on this Answer I shall add this one Word further, that according to my small Observation these Advantages in Pleading do not belong to the Throne in the Pleas of the Crown, but in such Actions as *Quare impedit*, and the like, As to the particular Instances that have been mentioned, I conceive they do not come up to the Case in the Question. The first Case which I have taken down as cited by Sir Thomas Powis, is *Brook's Abridgment, Title Amendments, f. 32.* and that is, That if Judgment be entred otherwise than the Truth is, it shall be amended in the same Term, because the Record is, *in les Cores des Justices mesme le term & nemy in le Roll*. This Case is one of the Authorities taken Notice of in the 8th Report to warrant the Amendments of the Acts of the Court, but does not in the least relate to the Amendment of Writs and Process which are sued out and executed *in Pais*.

The next Case was 4 H. VI. *f. 16.* which is only whether he that casts an *Essoign* for a Tenant in a *Formedon* shall be permitted to take Exception to the Writ which appears to be vicious. The Demandant there was the Ward of the Crown and he that cast the *Essoign* for the Tenant, took Exception to the Writ. The Exception was this, That in the Style of the King he is said to be *Dux Hibernie* instead of *Dominus*, and he would have had the Writ for that Reason to be quash'd, And there Martin demands whether the Writ shall not be amended *sicome le Roy mesme soit party*, and the Case concludes with *quare Legem*.

As to the Case of *Fitzberbert, Title Amendment f. 19.* that is what my Lord Coke takes notice of in *Blackmore's Case* when he says, that in a *quare impedit* brought for the King, the Word *presentere* was put instead of *presentare*, and it was held that it should be amended, but how does the Book say it was amended? Why the

the Writ it self was brought into Chancery & *la suit Amend.* Now I take that to be *tantamount* to the issuing of a new Writ. Most of the other Cases mentioned out of the old Year Books, are relating to Amendments in Civil Cases, and therefore I shall spend no more Time in taking notice of them particularly.

My Lord, the next Thing to be consider'd is, Whether any Statutes do direct such an Amendment as this; and I hold they do not. Indeed the first, of these which is 14 E. 3. Chap. 6. is pretty home; the Words are, that by the Misprision of a Clerk in any Place wheresoever it be, no Process shall be annull'd, or discontinued, by Mistake in writing one Letter, or one Syllable, too much, or too little; but as soon as it shall be perceived by Challenge of the Party, or in any other Manner, it shall instantly be amended in due Form. Now here are as large Words to fit the Purpose, as Mr. Attorney can desire, and if he were now to frame an Act of Parliament, I don't know how Mr. Attorney could make it fuller; and I must confess, if I were to argue this Point within a Year after the making of such an Act of Parliament, I should reckon my self to have a difficult Province to maintain, that this Misprision does not come within the Purview of such an Act: All therefore that I shall say to it is, that it is now a great many Years since this and all Statutes of Amendments have been made, and no one adjudged Case as I know of, does say, that Criminal Proceedings are within the Purview of this Statute. Mr. Attorney General as I remember, did, in his Argument admit that this Statute of 14 E. III. Cap. 6. did not extend to Criminal Cases.

Mr. Att. Gen. I deny that; I did enforce it.

L. C. J. Holt. I do not remember he did admit that.

Mr. Mountague. Then I acquit him of it, and to shew him that I meant him no wrong by supposing he said so, I will mention some Authorities that are express in this Point.

Mr. Att. Gen. I did enforce that Statute by subsequent Statutes, particularly by the Statute of 8 Hen. VI. Cap. 12. for there the Word Process is included.

Mr. Mountague. Perhaps Mr. Attorney General did so; but if he had admitted it, he would not have been in the wrong, if my Lord Coke be in the right in what he says. For in the same Case of *Blackmore*, fol. 157. speaking of the Extent of the Word *Process*, he says, "This Statute must be understood to mean Process in all Actions, Real, Personal, and Mix'd; and not Process in Pleas of the Crown. And my Lord Coke does not here assign it for a Reason, because they are excepted; for in this Statute of 14 Edw. III. C. 6. there is no Exception: And therefore speaking of this Statute, he could not say, Pleas of the Crown are there excepted; yet he is positive this Statute does not extend to any other Process, than what issues in Actions Real, Personal and Mix'd. Now what can be the Reason, that Process in all Criminal Cases should be excepted out of this Statute, by the Interpretation of the Judges in all Ages; when the Words are so full, that no Process whatsoever shall be annull'd by any Misprision, wheresoever it be? Truly, I can't conceive otherwise, but that the Judges in all Ages have thought it reasonable, all Advantages should be allow'd to People under such Prosecutions.

Mr. Attorney General did seem to give another Reason, That the Crown not being named, was a great Argument that it did not want the Aid of such an Act of Parliament; but that the King had a Right by the Common Law to make Amendments. And for this he cited *Hardress*, fol. 504. That before Judgment, there can be no Discontinuance in the Case of the King; and 2 Cro. fol. 211. *Beecher's Case*. Now if this be so as he would have it, that all Process in the King's Case is amendable by the Common Law, and all other Process by this Statute; how comes there to be any Occasion for my Lord Coke to caution us about the Extent of this Act of Parliament, by saying, it extends to Process in Pleas Real, Personal, and Mix'd; but not in Pleas of the Crown? What does it signify, whether this Process be amendable at Common Law, or by the Statute, if it be amendable? But on the other side, one may strongly infer, that if no Process were amendable before the Statute 14 Edw. III. and that Statute says, all Process hereafter shall be amended; it was then fit for my Lord Coke to tell us, That tho' these Words in the Statute seem very extensive, yet it has been the Opinion of all Ages since, that no Process, but what issues in Actions Real, Personal and Mix'd, are meant by it.

I do take it therefore, with great Submission to Mr. Attorney, that the right Inference to be made from this *Notamen* of my Lord Coke, is to caution the Reader not to conclude over-hastily, from the Comprehensiveness of the Words of the Statute, that Process may be amended in Criminal Cases. That way his Admonition may be of Service: But the other way with great Respect to his Memory I speak it; it will signify little. As to the Case of *Beecher*, and the other Quotation out of *Hardress*, nothing more can be infer'd from them than what already has been taken Notice of; that after the Term they may enter Continuances before Judgments. This appears by the Case in 3d *Levin* 430. where all the Cases cited by Mr. Attorney to this Purpose are taken notice of.

Now we come to the next Act of 8 H. VI. The Words of which Statute as I apprehend, Mr. Attorney did strongly rely on: For there, says he, are Exceptions of Appeals, Indictments of Treason, and of Felonies, and of Out-lawries for the same; and nothing is said of Informations; and the King's Judges have thereby Power to amend all that they think the Misprision of any Clerk, in any Writ, Warrant of Attorney or Panel in Affirmance of Judgments. Now the Answer that I would offer to this Statute, is, That the Words in the enacting Part, are not larger than the Words are in the 14th of Edw. III. that is, they are not larger as to this Purpose. The Words indeed of this Act are, That all Misprisions of Clerks, in all Writs, shall be amended. The Words in the Act of Edw. III. are, That all Misprisions, in all Processes whatsoever, shall be amended. And I take the Words, *all Process whatsoever*, to be as extensive to the present Case, as to say, All Writs shall be amended. Therefore I cannot see, from the enacting Part, why one Act, to wit, that of Henry VI. should include Criminal Proceedings, when that of Edw. III. does not include them. Thus much for the enacting Part.

Now I shall take notice of the Exceptions. There are indeed some Things mention'd to be excepted out of the Purview of this Act of Hen. VI.

which

which are not excepted out of the former in Edward III.'s Time; as Appeals and Indictments: But I think they were put in *ex abundanti Cautela*, to shew, that the Law Makers did not intend to include Criminal Proceedings. And tho' some Particulars are only mention'd; yet I hope the Rule of *Expressio unius*, sha'n't hold in the Exposition of Acts of Parliament, to exclude every Thing else that is not named.

By *Littleton*, Sect. 21. it appears, there are many *Estate Tails*, besides those that are particularly mention'd by the Statute of *West. 2. de Donis Conditionalibus*. And there are many Offices not within the Purview of the Statute of 5 and 6 Edw. VI. Cap. 16. that are of more Consideration than the Park-Keeper's Place, which are not mention'd in the Exceptions of that Statute, against the Buying and Selling Offices. And therefore I can't think any great Weight is to be laid upon the Statutes mentioning Appeals and Indictments; especially since the Opinion of all Ages, since the making the Statutes of Amendments, seems to concur against extending the Power of Amending to Criminal Cases.

My Lord, It would be an endless Thing to enumerate the several Indictments and Informations, that have been quash'd within the Compass of my Memory, by reason of Clerks Mistakes. I shall instance but in one, and that is the Case of the Queen and *Frankling*; where no longer ago than the Beginning of this Term, your Lordship and the whole Court quash'd an Indictment, because the Clerk had writ in the Caption, *Presentant Existit*, instead of *Presentat Existit*. Here was but a Letter to amend; and this must plainly be the Clerk's Mistake, not his Fault in wanting Skill in such Cases. But I take it, the Case now before the Court is of a different Nature. The *Testeing* of this Writ the 24th of *October*, cannot be accounted a Slip of the Clerk, but did proceed from wrong Advice. And this is the Third Thing I propos'd to speak to: If this Writ with the *Teste* had been enter'd upon the Roll, and transcrib'd only thence to deliver to the Sheriff; perhaps the varying from the Day mention'd in the Roll, might be accounted a Slip of the Clerk; But when this Writ was made out, it was certainly a Day after the Time it ought to have issued; and upon Advice ask'd, it was directed so to be *Teste'd*. So this is not a Slip.

If it be insist'd upon, That this Mistake happen'd thro' Forgetfulness of the Day the Term did begin on; to that I must answer, That all Knowledge is said to be nothing but *Reminiscentia*. If a Man forget any Thing that he has read or heard of, he may be said to be as ignorant of that, as if he had never known it. Now it plainly appears, that they who were advis'd with about the *Teste* of this Writ, did not then know on what Day the Term did begin, and therefore *Teste'd* the Writ the 24th, instead of the 23d. I must therefore, in Behalf of my Client, insist upon it, that this Error proceeds from the Nescience of the Adviser, and not from the Slip of the Writer. And this Point will set us clear of all the Statutes of Amendments, if they did extend to Criminal Cases.

As to the grand Case of *Harris*, reported in *Crooke James*, fol. 502. that has been so very much relied on, I hope, upon Consideration, it will not appear to be so great a *Goliath* as it was represented to be. There was an Indictment for a Nuisance

remov'd hither by *Certiorari*; and the Record that was transmitted, was found imperfect, in a Point which was inconsistent with the Verdict: For in truth the Plea of Not Guilty was omitted. And what did the Court do hereupon? Why, they sent for the Clerk of Assize, in whose Time the Record was filed below; and he was order'd to amend that which was come hither by the *Certiorari*, and set it right: I suppose, by making it agree with the Original Proceedings, which remain'd upon the File below. Now, does Mr. Attorney think this is like the Amendment he would make, supposing all in *Harris's* Case were rightly done? Does Mr. Attorney think, that this will justify the Amendment now propos'd? Which is, indeed, making this Writ to be another Writ than it is: For a Writ that is *Teste'd* on the *Monday*, does as much differ from a Writ *Teste'd* on a *Tuesday*, as one Day differs from another. And I take it, with Submission, that the Amendment now pray'd, will alter this Writ, as much as the Amendment that is so much taken notice of by Justice *Ingham*, 2. *Rich. III.* fol. 10. did the Amercement in that Case. There was an Amercement recorded of Thirteen Shillings Four-pence; and because it was a Poor Man's Case, it was afterwards agreed to make it Six Shillings and Eight-pence. There was a Diminution in the Sum. And here Mr. Attorney would have a Diminution of a Day.

L. C. J. *Holt*. Was that done judicially, or clandestinely?

Mr. *Mountague*. My Lord, How it was done, does not appear: But it is said to have been done out of Pity and Commiseration to the Poverty of the Defendant. And yet that Amendment was look'd upon to be illegal.

Mr. J. *Powel*. That was not done by the Court.

Mr. *Mountague*. It comes to be mention'd in King *Richard III.*'s Days, upon a Question that was put to the Judges by the King, when they were together in the *Star Chamber*: "What if a Justice of Peace shall procure an Indictment, not found by the Jury, to be filed among other Indictments, as if it really had been found by the Grand Jury; what Punishment ought to be inflicted upon him hereupon? They take notice of that Obliteration that had been made in a Record by Justice *Ingham*, and of the Punishment he underwent for it.

But to come to the present Case. Suppose it were *Teste'd* the 14th Day of *October*, instead of the 4th; would Mr. Attorney then say it were to be amended? Suppose the Return was out before the *Teste* of this *Distingas*, that would come nearer to *Gage's* Case in the Fifth Report. There was a Writ of Covenant, *Teste* the 24th of *April*, and made returnable the 15th of *April*. The Lord *Coke* indeed says in his Reports, It is a Misprision in the Clerk, that is amendable: But your Lordship knows, in his own Book of *Entries*, fol. 250. Part 9. the contrary to that appears; and that it was not permitted to be amended.

Another Thing they have said, is, That this Writ shall be amended by the Award of the Roll in Court. But, with Submission, there is nothing there to amend the *Teste* by. We know there is a right Order of a *Distingas* on the Roll; but that will not help an Error in the *Teste* of the Writ issued forth; And for that I will cite a Case out of *Crooke's Eliz.* fol. 825. *Carew v. Marler*; and another Case was tried before your Lordship in *Michaelmas*

chaelmas Term, in the 11th of King William, between *Child* and *Harvey*. There the *Distingas* was made returnable *Die Jovis prox. post tres Septimanas Sanctæ Trin.* instead of *Sancti Michaelis*: So the Day of the Return happen'd to be the same Day that the Cause was to be tried upon, before your Lordship, at the *Nisi Prius*.

L. C. J. *Holt*. It was actually tried at another Day.

Mr. *Mountague*. We came afterwards to the Court, and pray'd the *Distingas* might be amended by the Award on the Roll, which was right, *Die Jovis prox. post tres Septimanas Sancti Michaelis*: But the Court denied our Motion; and we were forc'd to take out a new *Venire Facias*, and try the Cause again.

The next great Case is that of *Curson*, which is in *Crooke James's Reports*, fol. 529. There is an Information upon the Statute of *Recusancy*, against *Baron* and *Feme*; and the Declaration demands 220 *l.* for Ten Months *Recusancy*. But the Wife was charged for being absent Thirteen Months from Church. There the Wife only pleaded Not Guilty; and after a Verdict, this Mis-joining of the Issue was amended by the Docket. How agreeable to Law this Case is, must be left to your Lordship's Consideration. There less is demanded, than (of the Plaintiff's own shewing) appears to be due: For 'tis laid, that she had been absent Thirteen Months, and yet 220 *l.* is only demanded; so it does not appear how the rest was satisfy'd. And besides this, it may be observ'd, that Mr. *Hughes*, who has abridg'd the Three *Crooks*, in his Abridgment of this Case, has not thought this Resolution worthy his taking notice of.

L. C. J. *Holt*. A good Authority indeed! Did you know him?

Mr. *Mountague*. I did not know him; but I have heard him accounted a Learned Man: And he did not, belike, think this Point worth his remembering. Whether he had any Scruple in the Case, I know not; but he omits it.

Then there is the Case of Sir *Humph. Tuston*, in *Crooke Charles*, 144. There was a *Quo Warranto* brought by Sir *Humph. Tuston* against the Corporation of *Maidstone*; and there a Judgment is enter'd by Disclaimer, with Consent of Parties, says the Book. And that Disclaimer is afterwards amended, and made of less Consequence than it was before. But how was that Amendment made? Why, upon the Certificate of the Attorney General, that he with his own Hands had inserted in the Paper-Book from which the Record was transcrib'd, the Words which the Clerk had omitted; now upon this Case I may observe, That the Judgment had been enter'd by Consent, tho' the Amendment pray'd was to the Disadvantage of the Crown: Tho' that Amendment was pray'd in the Case of a *Quo Warranto*, which is in Nature of a Civil Action. Tho' Mr. Attorney General did consent, yet a Difficulty was made in doing it. For all which Reasons, I do humbly conceive, that that Case is for me, rather than against me: Especially since so Great a Man as Mr. *Noy* does there assert, That none of the Statutes of Amendments extend to Cases of *Quo Warranto*, or Suits where the King is Party. Now tho' this Saying of Mr. *Noy's* were only as he was of Council for those that oppos'd the Amendment; yet this must have been look'd upon as a strange Assertion, by the Judges at that Time, if they had been as clear of Opinion as Mr. Attorney is, that the Statute of *Harry VI.* did

extend to Criminal Prosecutions: And the Learned Judge that reports that Saying of Mr. *Noy*, would hardly have let it pass, without taking some Notice that the Law was otherwise; if he had thought so.

As to the Case of 1 *Siderfin*, fol. 244. it was answer'd by your Lordship the other Day: For tho' the Writ is *Vicecomitibus*, where there was but one Sheriff; yet the Return is help'd by a Suggestion that was enter'd, that there is but one Sheriff.

The Cases out of *Dyer*, 353, 346. have been taken notice of by Mr. *Broderick*; and the Query is, Whether any Discontinuance in *Casu Regine* be aided by any of the Statutes of *Jeofails*? Now I cannot but think, that the Makers of those Laws would have taken as much care to except *Criminal Informations*, as well as Actions *Qui tam*, if there had been Occasion. And to shew your Lordship, that none of these Statutes do extend to Informations at the Common Law, I would mention a Case out of 1 *Vent. f. 17*. It is *Perry's Case*. There is an Information for a Forgery: There happen'd a Mis-tryal; and it was adjudg'd that it could not be help'd by any of those Statutes. The Error was, That the Defendant is charg'd to have forg'd a Lease in *Sherborn*, and to have given it in Evidence at *Dorset*: And the *Venire* was awarded only to *Dorset*. And this Case puts me in mind of the late Case of *Paul Tracy*; where the Tryal was set aside, because the Defendant himself had sued out a wrong *Venire*; tho' the Prosecutor there, at the same Time, had sued out a right one, in order to have try'd him thereupon, if he had not put in his wrong Writ.

L. C. J. *Holt*. How was that Writ?

Mr. *Mountague*. The *Venire* was to the Parish of *St. Clement's Danes* only; whereas it should have been to the Parish of *St. Giles in the Fields* as well.

L. C. J. *Holt*. Was it try'd on that Writ?

Mr. *Mountague*. The Tryal was had upon the Writ the Defendant had taken out, and for that Reason set aside.

As to the other Case, in 1 *Siderfin*, fol. 259. the Case of the King against *Glover*; an Amendment was made of an Inquisition *post Mortem*; but that is of no Consequence. For in all these Cases, that Inquisition is to be travers'd afterwards: And the Jury, when they deliver such Inquisitions in, are ask'd, Whether the Clerk shall not have Leave to amend any Defect in Form, or false *Latin*; and it is always allow'd, provided nothing in Substance be alter'd. And in this Case of *Glover*, the Amendment was of a Matter of Form: For the Inquisition said, the Deceas'd *seipsum submersus fuit*; but did not say he threw himself into the Water.

The Case of *Sampson*, in 1 *Jones* 420. tho' it has been cited on the other Side, yet I take it to be a strong Case on our Side. That Case plainly shews, that it was the Opinion of the Judges, that there was no such Thing as an Amendment of Indictments by Common Law. Both *Jones*, and *Keeling*, who (I suppose) was Clerk of the Crown, do affirm, no President can be shewn of any such Amendment made. And therefore I may question the Authority of *Harris's Case*, which is said to be adjudg'd *Mich. 16. of K. James's*; and this Case of *Sampson* was in the 14th of *K. Charles I.* And there *Jones* says expressly, That if a Record be certify'd by the Clerk of Assize that is faulty, it can-

not

not be amended, either by the Common Law, or by the Statute Law.

My Lord, I doubt I have taken up too much of your Time. There are other Cases that have been mention'd out of *Brook* and *Fitzherbert*; but I hope none of them will any ways affect the present Case. I have taken notice of those which I think the most material; and I hope I have made it appear, that the Error in the *Teste* of this Writ can neither be amended by Common Law, nor by the Statute Law. And that this Mistake of a Day is not only a Slip of the Clerk, but an Error in Judgment: And I humbly pray, there may be no Rule made for an Amendment.

MR. *Whitaker*. My Lord, I beg the Favour of a Word or two on the same Side: After so much has been said for the Defendant, I shall only mention a Case or two, to shew that such an Amendment as this has not been allow'd by the Statute of 8 *Henry VI. Cap. 12.* in any Civil Action between Party and Party.

28 *Hen. VI. 3.* There was an Action of Debt, and the Parties were at Issue. The *Venire* was return'd; upon which the Plaintiff had a *Habeas Corpora* with a *Nisi Prius*: And instead of saying in the *Habeas Corpora*, in *Placito Debiti*, it was made in *Placito Compoti*, &c. on Motion in Arrest of Judgment. The Council for the Plaintiff desir'd to amend this, after Verdict for the Plaintiff: The Court did indeed not give any Rule, as appears by that Book, only that they would consider of it; but nothing was done further, as appears by that Book just after.

In the Case 34 *Hen. VI. 20.* In an Action of Debt brought by the Prior of *St. Bartholomew's*, the Parties were at Issue, and a *Venire* return'd; and on the Return of the *Venire*, there were Twenty four Persons return'd: But in making out the *Habeas Corpora*, the Clerk omits one of the Names of the Twenty four. This appear'd to be the Misprision of the Clerk. He had the *Venire* and the Return before him; as the Clerk had here in the Case now before your Lordship. He had the Roll and the *Venire*; but this was held not to be amendable: And this was in few Years after the Statute of *Henry VI.*

I shall mention another Case in 2 *Siderfin 7. 12.* A Writ of *Capias ad faciend.* for a Debt, was made returnable a Day after the Term. It appear'd to the Court, the Attorney for the Plaintiff had given the Clerk that made the Writ, true and right Directions to make it returnable the last Day of the Term; but though it was his Misprision, yet the Court would not amend it: So it is adjudg'd in that Case.

I shall not mention any more Cases; but answer the Case of *Plume*, in *Palmer 480.* cited by the Queen's Council. I have had particular Occasion to look into that Case this Term, in a Cause which hath been in the Paper this Term. We did search for that Rule express'd in *Palmer's Reports*, in order to amend an Outlawry after Judgment, in an Action of Debt in the *Common Pleas*; but on producing that Rule, the Court of *Common Pleas* did not take it as an Authority to amend our Outlawry, which wanted an Amendment in the Return of the Exigent.

L. C. J. Holt. What was that Amendment?

Mr. Whitaker. *Ad Com. meum*, the Book says: And upon this, says the Book, they did grant a Rule, to award a *Certiorari* to the Coroner. The

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Rule mention'd in *Palmer* was search'd for; and, as I am inform'd, my Client did produce it in the *Common Pleas*; and yet they would not let us amend our Outlawry: And my Client, for want of an Amendment of the Return of the Exigent, is likely to lose an honest Debt by the Reversal thereof.

The Council for the Queen have relied on the Statute of the 8th of *Henry VI.* that this Fault of the Clerk is amendable within that Statute. By the Books I have cited, the Misprisions of the Clerks, tho' in Civil Actions, have not been allow'd to be amendable. Above Two Hundred Years are past, before any Thing of this kind was done, to amend such a Misprision of a Clerk as this is, in Criminal Cases.

How far the Queen's Council would go on with Amendments, I cannot tell: But in the Case cited by the Queen's Council, *Sampson's Case*, 1 *Rolls 196.* there was the same Mistake of a want of Continuance; as in this Case. No Man can believe, the Clerk of Assize knew not what Days the Commissioners of *Oyer and Terminer*, and Gaol-Delivery did sit, and continue their Sessions on such Commissions. And yet, on a Writ of Error to reverse that Judgment (in *Sampson's Case*) being brought; the Court of *King's-Bench* would not amend this apparent Misprision of the Clerk of Assize's want of Adjournment from Day to Day.

This Matter of Amending in Criminal Proceedings such a Misprision of a Clerk as this is that is now desired, has not been thought of since the Time of the 8th of *Henry VI.* until now. And if the Queen's Council can shew no Precedent in all this Time, wherein such an Amendment, even in a Civil Cause, by virtue of the 8th of *Hen. VI.* hath been; much less in a Criminal Case. I humbly hope, your Lordships will not let them amend this Writ of *Distingas*.

MR. *Parker*. My Lord, *Mr. Mountague* has spoken fully to the particular Cases that have been offer'd on the other Side; therefore I will not go thro' them again: But I beg Leave to take notice of some General Heads, from which they have argued, and to which most of their Cases are reducible; and to distinguish them shortly from the present Case.

1. In the first place, I take it, that the Cases of Captions of Indictments, removed hither by *Certiorari*, and amended the same Term they are brought in, come not up to the present Case. For the *Certiorari* commands the Return, not of a Copy of the Indictment, but the very Record it self: And the Indictment return'd, is, in Judgment of Law, the individual Parchment that was in the Court below. And so it is in Writs of Error: Except Writs of Error to the Court of *King's-Bench* in *Ireland*; and in that Case, the Books take notice, that only a Transcript is to be sent, by reason of the Hazard of losing the Original by the Danger of the Seas: And in case the Transcript arrive here safe, it is then said to become, in Consideration of Law, the very Record. And tho' it be found expedient, for the Convenience of keeping the Records, and is now become the General Practice in other Cases, to make a Transcript in another Parchment, and file that; yet if in Transcribing there be a Mistake made, your Lordship will amend it, if it be discover'd in the same Term:

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For in truth, that's not amending the real Indictment, but only amending the Return of the Justices to whom the *Certiorari* was directed; and providing that a false Indictment be not foisted in amongst the Records, instead of the true. Which cannot justify the mending the very Writ it self; the Thing prayed in the present Case.

2. Their Cases of Amendments of Judgments in the same Term they are given, and so of other Inrollments of what's done in Court, will not make any Thing in this Case. The Reasons given in those Cases, are, That the whole Term is, in Judgment of Law, but one Day: And the Judgments and Determinations of the Court are, that whole Day, in the Breast of the Court. And these being only Amendments of what themselves do in Court, which is not compleat till the Term be ended; they are not so tied up by the Clerk's hasty Entry of it, but that the Thing may be alter'd as they see Cause. But this is not applicable to a Writ which has pass'd the Seal of the Court, and thereby receiv'd all the Sanction it can have, and has then issued out to a proper Officer, and is by him return'd back to the Court. The Term is, in the Judgment of Law, but one Day, with respect of what is the Act of the Court, and passes perfectly in the Court. But it is impossible to say, without manifest Absurdity, that the Term is to be consider'd as but one Day, in respect of a Writ that is issued out one Day in the Term, to command Jurors to appear at another; or that the Day when the Officer comes into Court, to give an Account of his Obedience to a Writ, is the very Day of issuing it. And therefore a Distinction is to be made between Things done in Court, which are incompleat during the Term; and the Court's giving Directions to an Officer out of Court by Writ, which is perfect, and gone out from them in order to be obeyed.

3. I should think likewise, that the Cases they have mention'd, of the Favour allow'd the Crown, do not come up to this Case; because, tho' in Suits for the Recovery of Right, there be great Favour allow'd to the Crown; and by the Statutes of Amendments and *Jeofails*, much Indulgence is given to the Subject, for the Recovery of Right; yet it is not so in Prosecution of Criminals, which is a Matter *stricti Juris*: And no Argument can be drawn from the Favour shewn in one Case, to infer, that the like Favour is to be allow'd in the other; for they stand on quite different Grounds.

4. I think, with Submission, in the next place, that the Instances of Amendments of Process, where nothing is done upon it, but barely to entitle the Party to some Process farther; as of a *Capias*, in order to an *Exigem*, &c. will not come up to this Case, where the Writ is executed and returned, and the Tryal had upon it.

In the Case of *Rogers* and *Bird*, that was cited on the other Side, 3 Cro. 572. there was a *Venire Facias* returnable *Die Sab. prox. post Octab. Trin.* but on the Roll, it was awarded returnable *Cro. Trin.* And because that was the Authority for making it out, it was amended in the Return; because the Tryal was not had upon it, only it was return'd in order to the *Distingas*. But *Popham* there expressly says, that if the Tryal had been upon the *Venire Facias*, it were erroneous, and would not have been amendable.

Mr. J. *Powel*. Where is that, Sir?

Mr. *Parker*. 3 Cro. 572. There is likewise the Case of 34 H. VI. 20 *Brook's* Amendments, *Placit.* 10. There were Twenty four Jurors return'd upon the *Venire Facias*, and in the *Hab. Corp.* one of them omitted: And there the Opinion of the Court was, That they should make out a new *Hab. Corp.* And tho' there it was plainly the Mistake of the Clerk, that mention'd only Twenty three, instead of Twenty four; yet the Court was of Opinion that it could not be amended, but they must begin again where the Fault was made. 19 H. VI. 39. A Juror was return'd upon the *Venire Facias*, by the Name of *J. Hod*; and in the *Distingas* he is named *J. Hord*; and upon him the Sheriff return'd *Nihil*, &c. And there was a new *Habeas Corpus* awarded. Which Cases seem to prove, that where there is something done upon the Process, more than a mere formal Return, that it is not amendable within the Statutes of *Edw. III.* and *Hen. VI.* which were both of them made before these Cases.

5. In the next place, I beg Leave to observe, That there is a Difference between such Cases as have been cited, where the Thing was really done right, but by Mistake enter'd wrong; and this Case, where really it was not done right. As where upon a *Distingas* a right Jurymen is really sworn, but set down by a wrong Name, the Name shall there be amended; because the Thing done was really right, and only the Mention of it wrong. But in this Case it cannot be said, that the *Distingas* was really taken out right. The Writ was awarded the 23d of *October*, on which Day they would have it bear *Teste*: But it is not pretended that it was really taken out till the next Day, when it now bears *Teste*. - - - And as to what has been already offer'd, that the *Nisi Prius* ought to be awarded in *Presentia Partium*; and therefore not upon any other Day than the 23d, when the *Venire Facias* was returnable, and the Parties in Court: I might here, I hope not improperly, add this farther; That that must be understood, that the making of the Writ should be in the Presence of the Parties: For the Entry upon the Roll, tho' commonly called an Award of the Writ, is really an Entry of a Writ supposed to be then actually made; it is not so properly a Direction to the Clerk to make a Writ, as an Entry or *Memorandum* upon the Roll, or a Recording that there is a Command to the Sheriff, to distrein the Jurors to appear at a certain Day, &c. And therefore if the *Nisi Prius* is to be awarded in the Presence of the Parties, the Writ is to be made in their Presence.

Mr. J. *Powel*. Do you mean, that they should be in the *Crown-Office*?

Mr. *Parker*. The Writ is in Judgment of Law issued in Court, tho' actually wrote and sealed in the Office; and if *Teste'd* of that Day, is understood to be made in Court that Day; which is in Presence of the Parties; that being the Day given 'em in Court, and their Appearance then enter'd. And we apprehend, that the Court does not command, by the Entry of the *præceptum est* in the Roll, but by the Writ. The Sheriff, who is absent, cannot be commanded by the Roll, but by the Writ which is sent to him: Therefore the Court then commands, when the Writ is made: And therefore the Entry upon the Roll, *præceptum est Vic.* is an Entry that there is such a Command, which

which this Writ, on which this Tryal was had, cannot be, because it bears *Teste* after. But this is only by the by : For howevert taking the Entry as an Award of the Writ, yet the Writ must be taken out as the Court awards it, and when the Court awards it ; or else it is without Warrant, and void. Indeed if it should in Fact be made at a subsequent Day, and not actually wrote and sealed the same Day it is awarded ; yet if it bear *Teste* upon that Day, your Lordship will not enquire into that Matter : But finding such a Writ was awarded, and that it appears by the *Teste* to issue the same Day ; will presume it did really issue that Day, and that it is right. But the Writ being here awarded the 23d, and bearing *Teste* the 24th ; if it did not issue the 23d Day, to alter the *Teste*, so as to make it appear to issue that Day, were to make it contrary to the Truth.

This we take to have some Resemblance to the late Case of the Warden of the *Fleet* ; where your Lordship was against altering the Day of bringing in the Record, when the Alteration would have been against the Truth of the Fact. And to make the Amendment here desired, would be to make the Writ appear to have issued the 23d of *October* ; when the Writ it self imports it was the 24th ; and this was the Truth of the Fact.

SIR T. Powis. My Lord, Having heard what has been said on the other Side, I beg Leave to trouble you a little by way of Reply.

Mr. Broderick and Mr. Mountague make a Distinction, which they think will govern this Case. They say, that the Crown has a great many Privileges, beyond what the Subject hath, where the Case concerns Civil Rights : But they will not allow the same Privileges to the Crown, where there is a Criminal Prosecution. I know of no such Distinction. For if this Privilege belongs to the Crown, in the Case of the Revenue ; surely the restraining of Crimes is much more for the Publick Benefit : And by consequence, the same Reason that gives the Crown a Privilege in a lesser Matter, ought to carry it further in a greater Thing.

In the next place, they do admit, that all the Acts of the Court may be amended ; as being in the Breast of the Court, during the same Term. And they deny not, but that the Judgment of the Court, which is the highest Act of the Court, may be revers'd, or any way alter'd or chang'd in the same Term, without any Danger of building Clock-Houses. And can any one say, that if these highest Acts of the Court may be alter'd, that the Acts of their Clerks may not be alter'd ? That the greater Things may be done, but not the inferior, when there is a pure Mistake ?

No Man can but think it strange, that a Mistake of a Clerk may not be alter'd ; but a Mistake even in the Judgment of the Court may.

We come next to another Distinction. They say, an Original Writ may be amended in the Case of the Crown ; as in the *Quare impedit*, in *Blackmore's* Case. For which they assign Two Reasons : First, It was a Writ of the Crown, for Recovery of a Civil Right ; for it was a *Quare impedit*. And Secondly, The Judges observing the Fault in the Writ, did (as it seems) carry it to the Court of *Chancery*, and there it was amended. From whence they would infer, as if it were a new Writ. But that cannot be supposed ; for it was agreed, that it was the same Writ amended, and not a new Writ.

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Now see if that will not come to our Case. For if the Court of *Chancery* could amend a *Quare impedit*, as coming from thence ; cannot this Court amend a Writ that comes from hence ? Here we are in the Case of a judicial Writ that comes from hence ; and therefore it may be amended here, as well as that could be amended in the Court of *Chancery*.

But the great Matters endeavour'd to be avoided, are the Two Acts of Parliament of *Edw. III.* and *Hen. VI.* for the Cases cited : I will not go over them again. And I do believe it is very true, what these Gentlemen insist on ; That it has been the common Opinion, that these Acts, or other Acts of Amendments, do not extend to Cases of the Crown. And generally speaking it is right ; because all the later Acts of Amendments except Prosecutions on Penal Laws : And the Statute of *Henry VI.* has so many Exceptions in Criminal Matters, that a Mistake might from thence arise, that all are excepted.

It is certainly true what my Lord Chief Justice *Vaughan* says, fol. 169, 170, and 419. That upon doubtful Words of an Act of Parliament, that are dark and dubious ; an Ancient Interpretation, submitted to for a long Time, is fit and reasonable to be relied on in a doubtful Case. But a Thousand Resolutions, against a plain Act of Parliament, cannot prevail. Tho' it would be good Reason, well to consider such a Law, and to weigh it well ; but no such Resolutions can alter the Act.

Here are Two Acts of Parliament : That of *Edward III.* is in general Words of All : And how can any one say then, that it shall mean and extend only to Some ?

As to the Act in the 8th of *Henry VI.* to say that the Words shall not go to every Thing that is not excepted, is to overthrow all Rules of Construction. They have offer'd nothing against that Statute ; but that it has been thought it did not extend to these Cases.

The Case of *Siderfin* shews, that we do not advance a mere new Notion, with respect to that Act. Therefore I say, we have the Acts of Parliament on our Side ; We have the Privilege of the Crown on our Side : The Award of the Roll is right, and with us ; and the Error was purely the Mistake of the Clerk : For no Man can think it otherwise.

We have this likewise on our Side, That we desire it may be amended in the same Term. For as the Court can set right their own Judgment in the same Term, much more what is the Act and Mistake of the Clerk.

Therefore we insist upon it, That our Cases we have cited, are of good Authority for us ; and we hope we shall have an Amendment, if it be necessary.

Mr. Attorney General. **M**Y Lord, we humbly hope, that notwithstanding what these Learned Gentlemen have urged, our Assertions by Law and Authority will prevail ; and that this Mistake is amendable.

What has been said before by Mr. Broderick and Mr. Mountague, they have laid it down for a Rule, That there is a great Difference between the Privileges belonging to the Crown in Matters of a Civil Nature upon the Statute, and Criminal Prosecutions : And that all those Favours for the Crown, were only for Matters relating to the Right of the Crown in Civil Cases, and not what

belongs to the Crown in its Politick Capacity. Tho' Mr. Broderick did not consider: For sure, by the Common Law, there was a greater Latitude for the Crown in Criminal Prosecutions, than for the Subject.

In Cases of Treason, they had no Benefit of Council; and that was far more to their Disadvantage, than in Civil Cases. It's true, that Inconvenience has been regulated by the late Statute, That in the Cases of Treason, the Party may have a Copy of the Pannel and Indictment. But you see what the Difficulties were formerly in Criminal Prosecutions for the People: All they had to do, was merely to plead Guilty or Not guilty. I think that answers their Objection as to that.

Now there is in the next place to be consider'd, what Mr. Mountague says, That no Error in Process was amendable by Common Law; and cites Lord Coke for it. He should have gone on with that Citation; for it is certainly otherwise. 8 Coke 156, says, Their own Acts are amendable by the Common Law, in the same Term; but at the Common Law, the Misprisions of Clerks in another Term, were not amendable. But we are in the same Term; and sure they are amendable before Judgment. And Lord Coke tells you, they are amendable in the same Term.

Now Mr. Mountague has gone a great way. He agrees, if it were a Misaward of the Roll, you would amend it, but not the Writ. Now for that the Law is quite contrary: If you are wrong in the Roll, you cannot set it right; but if it be in the Writ or Process, you may amend it by the Roll. Now here the Roll is right; and we desire the Writ may be amended by it.

If it had been in the Roll, I cannot tell whether we should have applied to amend that. For if you have any Thing amiss, you cannot amend it, but by something to amend it by. But it may be amended in Case of the Crown, better than in that of the Subject. And tho' Mr. Mountague says, you may make use of them in Civil Cases, but not in Criminal; yet we make use of this Argument, that the Crown has a Privilege more than the People. We rely on that; tho' Mr. Mountague says, that is not to be relied on.

In the next place, Mr. Mountague says, This is within none of the Statutes of Amendments, either of Edward III. or of Henry VI. And that my Lord Coke says, fol. 157, b. That the Statute of Edward III. does not extend to Pleas of the Crown. And therefore Mr. Mountague's Opinion is, to go quite through, and exclude this Case from all the Statutes of Amendments.

Now I can give an Argument, why it should not be amended by the Statute of Hen. VI. tho' by the Statute of Edw. III. it is amendable. But why is it not amendable by the Statutes of Henry VI. Cap. 12, and 15. which go further than the Statute of 14 Edw. III. does?

I do agree, there is an Objection against the Statute of Edward III. For there is the Word Party, which seems to imply Civil Cases only. But even by that Statute, so soon as the Slip appears by Challenge, or any other way, it shall be amended. The Lord Coke might well on these Words make a Doubt, whether the 14th of Edw. III. did extend to amend Cases relating to the Crown: But the Opinion of Coke in the Statute of 14 Edw. III. is absolute; but the other of 8 Hen. VI. is with a Reason. And why is it? Because it is excepted. Now

they should have shewn us some Reason, why the Statute of Henry VI. Cap. 12. should not extend to Amendments in Cases of the Crown.

And there is not that Objection to the Statute of Hen. VI. Cap. 15. For it follows the Words of the Statute of Edw. III. and says, *That no Man shall have*, &c.

Now Mr. Mountague says, the Exception was put in *ex abundanti*; and it may be intended they were but Instances of like Cases. Now I have hardly ever heard, that Instances of Treason and Felony should extend to other Cases of an inferior Nature: There is no Reason to carry it further than what is express'd. So that we think these Statutes stand for us; and are applicable to all Records, as well for the Crown, as any else.

Mr. Mountague says, They have the Opinion of all Ages against it. But, my Lord, I deny that; because there were Exceptions in many Statutes before and after the Statutes of *Jeofails*, that were not consider'd: But when they come to be consider'd, this must be determin'd by considering the Words of the Statute; and not by general Opinions, taken up without Consideration.

There was in *Cro. Car.* 25. a Case on the Statute 32 Hen. VIII. where the Question was, If Assignees of Copyhold Lands were within that Statute. And till a little before the *Revolution*, it was a received Opinion, that the Assignee of a Copyholder was not within the Statute of Henry VIII. And there is a Case in *Yelverton*, 223. wherein it was so resolved: But when that Statute came afterwards to be consider'd, it was settled here, and has prevail'd ever since, that the Statute did extend to it; tho' before it was the prevailing Opinion that it did not. And accordingly the Practice has since been. So that Opinions that pass *sub Silentio*, that is, without Consideration, may be alter'd when they come to be stated and consider'd. And therefore I hope this Point will not prevail.

My Lord, I agree that this Thing is of very great Consequence: For if their Plea be allow'd, it will follow, that Criminals will escape for little Slips in all Cases. And I know that even in Perjury, and other Crimes, few that have been convicted, but have got off, by reason of Errors in the Proceedings, tho' I have seen a great many convicted thereof. This is a great Inconvenience and Mischief: And sure Criminals are not to be the Favourites of the Law.

But as to these Prosecutions, there is another Consideration; That it is more for the Honour of Justice, to have the Advantage to lay aside this Slip, than to suffer a Criminal to escape. But however, every one must have Justice: And if we rely on the Statute of Henry VI. no Construction can avoid it.

Then Mr. Broderick cites the Case of ----- Where it is said, that the Statutes of *Jeofails* do not extend to Cases of the Crown. Now sure that is not a Reason: It is contrary to all the Reasons of Statutes. Where Statutes are to promote Justice, the Crown is bound as well as the Subject; it is for the Publick Good. Now Mr. Broderick has cited a Case against that; and that is in *Styler*, fol. 107. (*Vid.* Fol. 307.) the Case of *Theobalds* and *Newton*. There that Case was on the Statutes of 18 Eliz. and of 21 Jac. Now it's plain, they had no Consideration of any Thing else: And why? Because in Prosecutions on Penal Statutes, the Court often rely on Exceptions: But however the Authority goes no further, but they rely on the
Excepti-

Exceptions. Now if they had said it was excepted by the Statute of *Hen. VI.* and that all the Books go on it as excepted by that Statute; if they say it is excepted by the Statute of *Hen. VI.* would that be taken as an Objection to the Statutes of 18 *Eliz.* and 21 *Jac.*? No; it is a Mistake.

He has also cited *Yelverton, fol. 60. Brigg's and Thompson's Case.* Now there was an Information on the Statute of 21 *Hen. VIII.* against a Clergyman, for Farming Lands; and a *Venire* was awarded returnable *ubicunque*: But the *Venire* it self, and the *Disfringas*, were made returnable *caram nobis*, &c. which was said to be erroneous. An Exception was taken, and *per Cur'* Let it stay. But it appears not that it was consider'd.

These Authorities are no Authorities. The first is not within either of those Statutes we are now upon: And the other was never determin'd by any Thing, as appears in the Case. And there is a great Difference between the Statutes on which they were founded, and our Case.

Mr. Mountague has gone a new way. He would have this to be not a Misprision of the Clerk; because he is afraid that a Misprision is amendable: For the Clerk had enquir'd, whether the Writ should be *Teste'd* the 24th of *October*; so that he says it is a Forgetfulness, or Negligence, but not a Misprision.

Now I would fain know what he means by that? Whether all Forgetfulness of the Clerks, is not a Misprision of the Clerk? That is, any Negligence, whatever it be, it is the Misprision of the Clerk. *Coke* says, it is a Misprision of the Clerk, under the Word *Negligence*: And Negligence and Misprision are by him frequently put for the same Thing. See 8 *Co. 159. b. 160. b.*

So upon one Part of it; that is, suppose the Clerk steal it away; he says, that is under the Word *Misprision*; and an involuntary Negligence of the Clerk, is a Misprision. So this Clerk's Negligence is a Misprision, because he did not look on the Almanack and the Roll. These are Misprisions by the Statute of *Henry VI.*

As to the Cases that have been cited, Mr. Mountague has answer'd but some of them.

As to that of *Percival* and *Godfrey, Siderfin, fol. 43.* he says, that was not such an Amendment, but a Suggestion of the Roll. But if the Roll could amend that which is a stronger Amendment, to present a Verdict; the rectifying of that makes it stronger for us, than it would be otherwise.

He says, As to *Harvey's Case*, he denies it to be Law: But I believe the Authority of the Judges is to be prefer'd before his Opinion.

And then for the next Case, *Parker* and *Curson*, he questions that Opinion, because not taken notice of by *Hughs*. Now I believe the Judges that reported it, did understand it better than he that abridg'd it. But whether he understood it or no, it alters not the Case.

And then for *Tuston's Case*, he says it is a Civil Case. But, my Lord, it is a Criminal Case. A *Qua Warranto* is brought: They must plead Not guilty to the Usurpation. So that these Cases are under the same Consideration as this is.

Then there is the Case of *King* and *Glover*: That was, where a Coroner was to amend an Inquisition of Murder: But it was not proved that he did murder himself, &c.

Mr. Mountague admits, the Jury may amend Matters of Form: But in that Case, when it is

brought into Court, it is not the same Verdict as before.

He cited the Case of - - - - - and *Harvey*: But your Lordship gave him another Reason for that Case.

And for the Case of *Paul Tracy*, that Point was never determined.

L. C. J. *Holt.* The *Venire Facias* never mentions the Time of, &c.

Mr. *Att. Gen.* Now that is not within the Statute of *Henry VI.* So that we have nothing to do with it.

And as to the Case of *Dyer, fol.* that does not concern the Statutes of *Jeofails*. And in *Fitzherbert's Case*, the Court was of Opinion, they could not amend, by reason of the Exception. Whereby they shew plainly, they thought the Statutes would have extended to that Case, had it not been particularly excepted.

I do not observe any other Matter, but that of the *Nisi Prius*. If the Writ must be made out in the Presence of the Parties; they say, that immediately, when the Persons appear, the Writ is to be issued. But that is impossible, and contrary to Reason and Authority.

We think, on these Reasons we have troubled you with, we have the Law on our Side. Only one Thing I must beg Leave to answer to what Mr. *Broderick* says as to *Percival's Case*: It was a crying Thing, and it might be an extraordinary Judgment. Where Judgments are given, they are to go according to the Course of Law: Justice is to be done to all. And as no extraordinary Method is to be made use of against a Criminal, so none is to be used to save him.

My Lord, We think the Statute of *Henry VI.* does allow such an Amendment as we desire; and that no Statute does restrain it: And therefore, I hope, we shall be allow'd to amend this Error.

There is one Matter more. Lord *Coke*, in his 8th Report, 163. *a.* says, The Statutes of *Henry VIII.* and that of 41 *Eliz.* do not extend to Pleas of the Crown; because they are excepted in the Act *Eliz.* and that of *Hen. VIII.* does not extend to 'em.

We agree with the Lord *Coke* in every Thing, that the King can't amend by that of *Hen. VIII.* tho' there is no Exception; And the Reason is, because it speaks only of Suits between Party and Party. And the other Statute of 18 *Eliz.* is not large enough, extending only to Treason or Felony, because they only are excepted.

My Lord, We think we have my Lord *Coke's* Authority with us, and even the very Words of the Act of 8 *Hen. VI.* And tho' this Case has not been so fully consider'd before; yet we hope it will be consider'd now; and that we shall be allow'd this Amendment.

Mr. *Broderick.* I thought not to have said any Thing more; But because I have been named two or three times by Mr. *Attorney*, I desire - - - - -

Mr. *Att. Gen.* The Reply is ours.

Mr. *Broderick.* My Lord, I beg Leave to explain my self in something that has been misunderstood. I think I did not say what I am charged with. Mr. *Attorney* tells you I said, that none of the Queen's Prerogatives extend to Criminal Prosecutions.

Mr. *Att. Gen.* I say, you said, there is great Difference betwⁿ Civil and Criminal Cases: And that the Queen's Prerogative is intended only

ly of Amendments in Civil Cafes, but not applicable to Criminal Prosecutions.

L. C. J. *Holt*. Mr. *Broderick* said it did extend to Amendments in Civil Cafes, but not in Criminal.

Mr. *Broderick*. And I do make a Difference between 'em. For in Criminal Prosecutions by the Crown, an Amendment can't be : But in the Case of a *Quare impedit*, which is a Civil Case, there it might.

Mr. *Att. Gen.* The Reply is ours ; and they ought not to break in upon us.

L. C. J. *Holt*. If you will say any thing as to what has been mistaken, you may. The Case of *Sherret and Talbot* is not to the Point : That was an Amendment, not in Behalf of the Crown, but of the Subject ; and in a Civil Case. 'Twas in a *Quo Warranto* ; wherein if the Subject take a limited Disclaimer, and the Officer on the Roll enter a general Disclaimer without Limitation, God forbid but that should be amended. But then even on the King's Side, if the Original Indictment be right, and the Plea Roll be mistaken ; sure the Plea Roll shall be rectified by the Indictment ; and the Plea is to be made according to that.

The Cafes of *Tufton* and *Harris* are strong Cafes. In that of *Harris* there was an actual Tryal ; and yet no Issue joined. He was indeed indicted as Criminal, and the Issue was enter'd ; & *de hoc ponit se super Patriam*, but without any Joinder thereupon ; and so no compleat Issue. 'Tis true, in Capital Cafes, they are free to join Issue or not : But in other Criminal Cafes 'tis otherwise ; there must be a Joinder. And as to the Case of *Tufton*, that was an Amendment that went very far. That was an Information for Recusancy against the Husband and Wife, for Recusancy of the Wife. The Wife comes in, and she alone (whereas it should have been the Husband and Wife) pleads Not guilty ; and Issue join'd thereon : And it was mended by the Docket ; for that was right. It has been held, that the Statute of *Henry VI.* did not extend to Criminal Matters ; as Lord *Coke* (in *Blackmore's Case*) is expressly.

Mr. *Att. Gen.* But, my Lord, he gives the Reason of that Exception.

L. C. J. *Holt*. Now the 8th of *Henry VI.* has this Exception : And in *Stiles*, 304. no Mention is made of the Statute of 8 *Hen. VI.* but that was by reason they thought it would not help them. And then the Query is, Whether this Case be within that Exception, and (as in Civil Cafes) may be amended ? But this is a Case of a different Nature ; and I will not say any thing now in the Point of this Case, because of the Consequence : Tho' I suppose it is not excepted by the Statutes : And I believe you don't desire our present Opinion.

Mr. *Att. Gen.* Yes, my Lord, I desire the Opinion of the Court in this Case ; and I think it is of great Consequence to us to have it now.

L. C. J. *Holt*. If you insist on it, I must see if I can form an Opinion ; but I would willingly defer it.

Mr. *Att. Gen.* My Lord, I lay it before you with Submission.

Mr. J. *Powel*. It is a new Thing, and taken up against the current Opinion. Perhaps they might take it on Lord *Coke's* Opinion ; and did not examine it, as they should have done.

Mr. *Att. Gen.* My Lord *Coke* does not say so himself.

Mr. J. *Powel*. No : But because he says it is excepted, they gave Credit to his Words, and did not examine into the Business : And I believe that was the Foundation of this Opinion. But if you think it is amendable in the same Term, because the Court may amend their own Judgments the same Term ; you must speak to that Point.

I do not know that they can amend their own Judgment in this Term : Tho' indeed, if it be amendable at all, it is amendable this Term. Besides, I should make no Difficulty but that it is a Misprision of the Clerk ; and it was his Negligence not to do it by the Warrant. And if this were in a Civil Process, I believe it might be amended in any other Term : But this being in a Criminal Matter ; and the current Opinion being that none of the Statutes did extend to Criminal Matters, it ought to be well consider'd ; for the current Opinion is a great Thing.

Mr. *Att. Gen.* There is no doubt of it, it ought to be consider'd : But it is fit for me to desire your Opinion.

Mr. J. *Powis*. I believe these Statutes were never so scann'd before ; and I believe this Matter has been more search'd into now, than ever it has been before. But it has been the general Opinion, that none of the Statutes of *Jeofails* did extend to Criminal Cafes : That may arise, because all the Statutes take in so large a Compass. All Indictments and Informations, and no doubt the latter Statutes, do not extend to such Cafes : And the Opinion might arise from that.

But now this Statute of the 8th of *Hen. VI.* has Exception of Felonies and Treasons, and none else ; and you cannot extend the Exception further. It is a Case of Difficulty, but it arises from the common Opinion ; otherwise we might give our Opinion now without Difficulty : For the Words are as clear as may be ; and it is against Reason, to except Things that that Statute did not except. But being a Thing that is not so particularly confin'd to this Term, (for the Statute mentions nothing of Terms) if it be amendable, it may be amended in another Term.

But indeed, for Matter of Judgment, because the Judgment must be in the same Term, in the Case of the Amendment, we may as well do it in this Term : And we may take some Time to consider of it, and tell you what our Opinion is.

Mr. J. *Gould*. I shall not now say any thing in this Case, but reserve my self entirely till the Court give their Opinion.

But as to that Case you were citing, *Perry's Case*, the Case was *Perry* and *Munday* ; for I was of Council in the Case. There was an Information against *Perry* and *Munday* for forging a Bond : They laid their Forgery at *Sherburn*. The Publication was at *Dorchester* ; and the *Venire* was *Dorchester*. The Verdict was for the King. They brought an Arrest of Judgment afterwards ; and the Question was debated on the Statute of 16 and 17 of *K. Charles II.* whether this were not within the Statute. Now there they agreed, that that Information, because at Common Law, was without the Purview of the Statute.

L. C. J. *Holt*. That was an Information upon a Penal Law. They question'd whether it was within the Purview of the Statute ; and they thought it was not help'd by any Statute. That shews the Opinion of the Lawyers : They thought it not within any of the Statutes of *Jeofails* ; and the Verdict was set aside.

Mr. *Bro-*

Mr. Broderick. Yes, my Lord : And the Court awarded a new *Venire Facias*.

L. C. J. Holt. There is a great Regard to be had to Practice. There were Great Men at the Bar at that Time ; and they did not think at that Time that it was within the Statute.

As to what you say of Copyholds, it has indeed been held, that the Statute did not extend to an Assignee of Copyhold Lands, or to a Covenant on the Alienation of the Copyhold by Lease.

Mr. Att. Gen. It was here argued that.

L. C. J. Holt. It was my Opinion, that all Statutes extend to Copyholds, if it be for the Benefit of the Copyholder, and not one Jot to the Prejudice of the Owner : And therefore the Resolution of *Jobbin's* Case was that we went on. You must stay till the last Day of the Term.

Mr. Att. Gen. My Lord, I think we have shewn that it is amendable by the Statutes ; and if not so, by the Common Law. And we have all Points with us.

Sir T. Powis. My Lord, I doubt it will be insisted on, that in another Term it cannot be amended.

L. C. J. Holt. Move us the last Day of the Term. It is certainly the Misprision of the Clerk.

November 28. i. e. The Last Day of Michaelmas Term.

Sir T. Powis. My Lord, We come in the Case of the Queen and Mr. Tutchin, if your Lordship be ready to give your Opinion.

Mr. Att. Gen. Call Mr. Tutchin.

[Who appeared.]

L. C. J. Holt. I must desire you to stay in this Matter till the First Day of the next Term.

Mr. Att. Gen. My Lord, We did expect your Lordship would have given your Opinion now.

L. C. J. Holt. For my Part, I should rather desire Time till the next Term : But if you are not willing to stay till then, you must take such an Opinion as we can give.

Mr. Att. Gen. I submit to what your Lordship shall determine.

L. C. J. Holt. It may be, I may be then of the same Opinion I am now ; but then I may defend my Opinion better. I would only put it off to the first Day of the next Term.

Mr. Att. Gen. My Lord, I have laid the Matter before you ; and I acquiesce in what you shall think fit.

Sir T. Powis. Upon the Observation of *Blackmore's* Case, where Lord Coke says, the Court cannot amend Misprisions of Clerks in Process in another Term ; if we have not Judgment this Term, we shall lose that Advantage.

Mr. Att. Gen. There are Two Points in this Case : One is, that it is amendable by Common Law ; the other, that it is not excepted by the Statute of Henry VI.

Now my Lord Coke says, Error in Process is amendable in another Term. But we submit to the Court : I press nothing.

Mr. J. Powell. Coke says so : But I believe no Man will say, that ever a mistaken Writ was amended in another Term. Therefore he must intend the subsequent Proceedings, or Process : It may be the Proceedings of the Original Entry on

their Award, that may be amended in another Term ; and Coke must mean that. There have been Entries of Awards amended in another Term ; but the Mistake of a Writ was never amended in another Term, that I can find.

L. C. J. Holt. If we put it off to the next Term, and our Opinion should be against the Amendment, he cannot be try'd in that Term.

Mr. Att. Gen. My Lord, I submit it to you.

Mr. J. Powell. We cannot now give so full Reasons ; yet I have center'd my Opinion in the Case.

Mr. J. Gould. I was sometime of Opinion, that it was amendable by the Statute ; but really looking on the Cases that have been cited, that is, the Cases that are in Pleas of the Crown, it is not amendable by the Statute of Henry VI. I say, I formerly thought it might be amended by virtue of the Statute : But upon Perusal of *Blackmore's* Case, &c. it seems to alter my Judgment. But notwithstanding, I hold, that at Common Law it may be amended. For what means all the Cases that are now extant ; the Cases of Informations, as the Case of Sir Humphry Bond, &c. ?

The Case cited by *Telverton*, in 2 *Bulstrode* 35. is very strong. There were Two indicted for Felony, and found guilty. The Judge saw that it was in the singular Number, and stay'd Judgment : And they moved afterwards in another Term ; and there, by the Judgment of Nine or Ten Judges, it was amended ; and the Men were both hang'd.

Why now, it must be by the Statute Law, or by the Common Law, that it was amended in that Case. By the Common Law, I say, it is amendable.

There is a Case in *Raymond's* Reports, 440. It is an Indictment on a Certificate of a Justice of Peace, that *Inglefield* being a reputed Papist, had refused to take the Oath of Supremacy, &c. Upon Not guilty pleaded, the Jury found the Committion *in hæc verba*, &c.

It was objected, That the Certificate was not found under Seal of the Justices, but only *in hæc verba* : And they did amend it.

This is the same Case. And I take it, that such a Fault, as does not alter the Issue, nor the Tryal, or Crime, is a Thing that is amendable.

Now there is Sir *John Curson's* Case, in 2 *Cro.* It is a strong Case. There is an Information against him and his Wife for Recusancy. The Wife only pleaded Not Guilty. The Question was, Whether this were right ? And whether they should amend it ? And it was resolved, that it should be amended.

The Case in *Siderfin*, that is (1 *Siderfin*, 243.) the Case of *Percival* and *Godfrey*, I do not doubt, for my part, but it is amendable ; and take it as strong as this is. They were indicted for a Riot : A *Venire Facias* issued *Vicecomitibus Cantaburiae* ; and it was return'd by One Sheriff. They examin'd into the Truth of the Case, and they found there was but One Sheriff : And the Question was, whether this was amendable ? And it was resolved it should be amended ; and also that it was amendable at Common Law.

I must confess, I do not see that there is any Reason in the World against it. There is but only one Case that seems to be against it ; that is the Case of *Theobald* and *Newton*, *Styles* 307. There indeed, by *Rolls* Opinion, it was not amendable,

ble, &c. But that is only a single Opinion.

And as to the Case between the King, and Read and Dawson, (it should have been Two Cases) there 'twas held, That the Statute of *Jeofails* does not extend to Informations of Intrusions; and yet it was ruled, that it should be amended.

Indeed, my Lord *Hales*, in *Keble*, 191, 215. [He means *Twifden*; *Vid. Keble*, 191, 198, 215.] did hold, that it was amendable within the Statute; and that the Amendment would stand in need of it: But it was ruled *Contra*; and that it needed not the Help of the Statute of *Jeofails*. And I must needs say, if the Case of *Bradley* and *Banks*, in 2 *Croke*, 283. and in *Yelverton*, 204. were not in the way, I think the Writ had been good enough; for it is a Continuance from Day to Day, tho' the *Teste* is the 24th, and the Award the 23d.

Now in my Mind, an Award the 23d of a Writ the 24th, is a perfect Continuance. And the Case of *Bradley*, &c. as it is in 2 *Croke*, 283. does not contradict this; tho' indeed that Case of *Bradley*, as it is in *Yelverton*, is contrary; but that seems mistaken. So that I do think, on the whole Matter, it is amendable at Common Law.

Note, Powis accorded with Gould, that it was Amendable; but Powel argued contra, that it was not.

L. C. J. *Holt*. I should have been glad to have had Time till next Term, to consider of this Matter: For tho' I am satisfied in my Opinion, yet perhaps I may not give others that Satisfaction concerning it, as I might have done if I had had a longer Time.

I am of Opinion, That this is not amendable, neither by the Common Law, nor by the Statutes.

First, It must be admitted, that this is a Fault in the Writ, in a Point that is material: That is, The *Teste*, which should have been *Die Lune*, the 23d of *October*, and it is the 24th: For the 23d is the Day that the Defendant has in Court on the Return; and that being the Day he has in Court, the *Teste* of the Writ to continue the Process should have been that very Day.

Now I do not understand what my Brother *Powis* says, That there is no Interval between one Day and another. I would fain know, if a Day be appointed for a Man to appear on; and then he has another Day given him, when he appears not: As, if a Man appears the 23d of *October*, and there is a Day given, the 24th; will not this be a Discontinuance? No question but it is: Because he being in Court the 23d, and having no Direction the 23d when to come again, he is out of Court. Then shall you give another Day behind his Back? That cannot be in Reason. His Day in Court is the 23d of *October*; and that Day he should have another Day appointed. He has a Day in the Roll, but not in the Writ: That is issued behind his Back, the 24th; at which Time he is not in Court. Then if this be so, here is a Writ issued behind the Defendant's Back, and without any Award of the Court: For the Award is, *Die Lune Sancti Michaelis*, which is the 23d of *October*; then there is a *Præceptum est* that Day. Now when this Writ issues the

24th; is this Writ warranted by the Roll? No, it is not; but another Sort of Writ, different from that which the Court awarded: Therefore being another Writ than what was awarded; where is there any Authority for it? Or how can the Jury be distrein'd upon it?

The Writ that issued the 24th, is another Writ: For there is a material Varying between the Writ that issues, and the Award of the Roll; one is the 23d, the other is the 24th.

The Day of the Writ is material: And when it bears *Teste*, it is in the Judgment of the Law a Writ of that very Day; as it was adjudg'd in the Case of *Owen vers. Bailly*, 17. Ch. 2. in a Trover and Conversion.

A Defendant, that is condemn'd in Debt and Damages, sells his Goods *bona fide*, between the last Day of *Trinity Term* and the first of *August*. After he had sold his Goods, the Plaintiff takes out a *Fieri Facias*, *Teste'd* the first Day of *Trinity Term*; which was before the Sale, tho' taken out after; setting forth, That the 4th or 5th of *July*, he had seized these Goods in the Hand of the Vendee: Tho' the Writ was not taken out actually in *Trinity Term*, yet bearing Date then, and the first of *August* the Goods were sold; yet the Writ being *Teste'd* the first Day of *Trinity Term*, 'twas held not amendable; and that the Hands of the Vendee were bound by it.

Now this Writ here is, in the Judgment of the Law, issuing out of this Court the 24th of *October*. If we should amend this, what Alteration should we make? We must make it another Writ: For a Writ that issues out of this Court the 24th, cannot be a Writ that issues out the 23d; and if we amend it, we make it as different as possibly can be.

Now why should we amend it? As we now take it, by the Statute of *Henry VI.* the Writ is good in it self; but it is not, as the Court awarded it. The Meaning of the Statute was not to mend mistaken Writs, but Mistakes in Writs: The Statutes meant nothing but that. Not that you should amend a Writ that was good in it self, and fit it to your particular Purpose.

Now here is a Writ executed in the same Term: Yet to make this Tryal to be good, what must you do by this Amendment? You must make it to be another Writ: For you must make the Writ, even contrary to Truth, to be the 23d, which was the 24th: And therefore it cannot be made good; nor can the Tryal be made good. You would make it the 23d, where it is indeed the 24th; and so you would change the Nature and Substance of the Writ. Is not this a material Variance, and different from the Award of the Court?

Before the Statute of *Jeofails*, if it had been in a Civil Case, it is help'd by the Statute of the 8th of *Henry VI.* Because it is a Discontinuance of Process, it is help'd by that Statute; but that Statute extends not to this Case. I would fain know, whether there has been any Amendment, in any Case of this Nature, since the Statute of *Henry the VIth*? It's true, *Testes* of Writs have been often amended; but that was, where it was a void *Teste*; as on a *Sunday*, or out of Term; or where it is impossible, as after the Return, &c. That is a void *Teste*, if it bear Date on a *Sunday*, or in the Vacation.

In Civil Cases it is amendable; because it is the Fault of the Clerk by mistaking a Day; as in making

making it on a *Sunday*, or in a Vacation-Time : There may be Reason for it ; and it may be amended by the Statute of *Henry VI.* because plainly a Mistake of the Clerk. And on this Reason is that Case in *Yelverton*, 64. and the Case of *Bradley and Banks*, 204. There was a *Venire* returnable one Day ; and the *Teste* of the *Distingas* was of the same Date, and the same Day with the *Teste* of the *Venire* ; and that was held amendable, because it is impossible you shall distrain before the Return of the *Venire* ; and the *Distingas* bore *Teste* the same Day with the *Venire* : So that the *Teste* was repugnant to the Writ it self ; and therefore the Writ is naught in it self, because it was to distrain a Jury that was not summon'd. But the Law has always been, That if upon the Return of one Writ, there is to be another Writ awarded ; that other Writ must be *Teste'd* on the very Day upon which it was awarded, and the Return of the former.

And that Case of *Bradley and Banks*, in 2 *Cro.* and *Yelv.* is very strong to this Purpose. There the Person came in on the Exigent, and pray'd *Oyer* of the Writ and all Mesne Process : And therein appeared a Gap, the first Process being returnable *Decimo sexto Octobris*, and the Appeal being returnable *Quindena Sancti Michaelis*, that is, the 16th of *October*, were well. But the *alias Capias* goes out *Teste'd* the 23d of *October*, which being Seven Days after the Return of the former, that was wrong ; for it should have born *Teste* the 16th of *October*, then it had been right ; but being the 23d, there was a Gap ; and therefore it was held a Discontinuance.

And this is the Practice of the *Common-Pleas*, tho' not so much observed here in this Court, in Writs of Enquiry of Damages : But enquire of them in the *Common-Pleas*, and they will tell you, the subsequent Process ought always to bear *Teste* the Day of the Return of the former Writ. If you go to a *Capias*, either in Outlawry, or to distrain a Man ; the Second *Distingas* is always *Teste'd* the Day of the Return of the First ; and the Third is always *Teste'd* the Day of the Return of the Second : And if it bear *Teste* the next Day, all Process is discontinued.

Ay, but you say, it is a Mistake of the Clerk. It is so : But we are to judge of the Thing it self, whether it is by way of Negligence, or for want of Skill. For ought I know, it may be for want of Skill, that it is *Teste'd* another Day : But every Clerk does not know this. Nay, some have pretended to know, that it need not bear Date the Day of the precedent Writ's Return. Why then might it not be an Error in Skill ? If he thinks it a right Writ, and says it must be *Teste'd* the 24th, this is want of Skill ; and then it is not amendable. And then this being a wrong Writ, the *Teste* is material ; and its being *Teste'd* the 24th, is a Mistake so material, that if it had been a Civil Case, I should have been against the Amendment ; and therefore much more in this Case, I think, it ought to be quash'd, and a new *Venire* awarded.

Mr. Att. Gen. If the Court decide it, I cannot tell what to say.

Mr. J. Powis. What have you to say ?

Mr. Att. Gen. The Court is divided, and there it hangs.

L. C. J. Holt. I would not be understood otherwise than thus : I do not say, this Case is within the Statute ; but I look on it to be so material a Variance, that it is not amendable.

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Mr. Att. Gen. The Court being divided in their Opinion, I know not any Rule to stop Judgment.

Mr. J. Powis. I know not how far it may go in Criminal Cases. That which sway'd with me, was, to see so many bold Amendments in many Cases ; that went with me very far ; and which were said to be done by Common Law.

What I said as to coming the next Day, I did not rely on it ; tho' it did seem to alleviate the Thing. But I was so tender in the Case, that I did think it might be better to have a new Tryal. I have held, in my Opinion, with my Lord Chief Justice Holt and Mr. Justice Powell a great deal. I was tender before in the Point : And I do join with my Lord Chief Justice Holt and Mr. Justice Powell, that there ought to be a new Tryal, and a new *Distingas*.

Mr. Att. Gen. With a Rule, I submit ; but without a Rule, I would have signed Judgment.

Mr. Mountague. My Lord, We move to set aside this Tryal, because it is irregular.

Mr. Att. Gen. If you make a Rule, we need not dispute it.

Mr. J. Powell. Judgment goes of course, unless you stop it.

Mr. Att. Gen. There is no Rule to stop it : And then I can sign my Judgment.

Mr. Mountague. My Lord, Tho' the Court can make no Rule for an Amendment, because the Judges are divided about that Point ; yet I humbly conceive, your Lordship, and the rest of the Judges do agree, that the Writ, as it now is, is naught ; and therefore I hope, you will let us have a Rule to stay Judgment.

L. C. J. Holt. Mr. Attorney, They have been moving to have a new Tryal.

Mr. Att. Gen. 'Twould be a Breach of Duty in me, not to sign my Judgment, if you don't make a Rule while it is under Consideration.

L. C. J. Holt. Here was Leave given to move in Arrest of Judgment ; and there is no Rule for signing Judgment.

Mr. Att. Gen. There is no Rule to stop it.

Mr. Mountague. What is the Rule that was made upon my first Motion ?

Clerk reads, *Die Martis proximo*, &c.

Mr. Mountague. We take it, that tho' the Court be divided about the Amendment ; yet since there can be no Amendment, the Writ being naught, we ought to go to a new Tryal.

Mr. J. Powell. By all means, go to a new Tryal.

Mr. J. Powis. It is in a Case that was never so much look'd into before.

Mr. Att. Gen. If we must have a new Tryal in this Case, we are in a worse Case than I thought we were ; for we are to begin Process again. But if a Rule be made, we must submit.

Mr. Mountague. There was a Rule made at the Side Bar, upon my Motion there ; That all Things should stay.

Mr. Att. Gen. That was not a Place to move for a Rule.

L. C. J. Holt. That is to stay *in statu quo* they were then. There is no Rule for Judgment to stay.

Mr. Att. Gen. If on Motion to arrest Judgment, the Judges of the Court are divided, I have heard it said, that Judgment may be enter'd.

U u u

Mr. J. Pow-

Mr. J. Powis. I said at the beginning, I was inclinable to have a new Tryal.

L. C. J. Holt. I know not what you mean. You said, you were inclinable to have it amended: I would have it amended, if I had followed my Fancy.

Mr. J. Powel. If my Brother has changed his Opinion, he may: For we have been arguing, that we may change our Judgments.

L. C. J. Holt. You have any Time to-day to move it again. Put us in mind of it: I may change my Mind too, it may be.

Mr. J. Powis. I judge not how it may go in Criminal Matters: But all are of Opinion, that it should not stand as it does.

L. C. J. Holt. The Court is divided that it should be amended; but not that it is well as it is: And that is Mr. Attorney's Motion, to alter what is to be amended.

Mr. J. Powel. Mr. Attorney makes no Motion, for a Rule; but would have it stay as it does.

L. C. J. Holt. That it may remain in statu quo.

Mr. Att. Gen. If you cannot agree in your Judgment, I submit it to you, whether I may not enter Judgment for the Queen, tho' it be not amended.

Mr. Mountague. We hope Mr. Attorney shall not be permitted to sign Judgment in this Case: For tho' 'tis true, that there can be no Amendment, because the Court is divided; yet I do not apprehend that it is right as it is.

Mr. Att. Gen. If the Court be divided, no Rule can be made.

Mr. J. Powis. Let there be a new Tryal.

Mr. Mountague. Mr. Attorney, The Court would have a new Tryal: And I think you had better do so.

Mr. Att. Gen. I want none of your Directions.

Mr. Mountague. I may take notice of what the Judges say.

L. C. J. Holt. And he will make use of what we say, as far as is convenient for him.

Mr. Att. Gen. But Mr. Mountague must not pretend to give Direction what I am to do.

Mr. Mountague. I don't give you Directions; but I hope I may take notice of what the Court says.

L. C. J. Holt. Mr. Attorney, We believe you don't want their Advice.

Mr. Att. Gen. But they are very ready to give it.

Mr. Mountague. I only took notice to Mr. Attorney, how far the Court was agreed: And only moved, that the Rule, which I did conceive was pronounced by the Court, might be taken.

Mr. Att. Gen. You moved to no Purpose.

Mr. Mountague. I take it, that Mr. Justice Powis is for a new Tryal.

Mr. J. Powis. Yes, I am so. It is a nice Case, and has never been consider'd fully before.

Mr. Mountague. I hope now we have done.

Mr. Att. Gen. If I hear what Rule the Court makes, I shall submit.

Mr. Mountague. I hear, the Pleasure of the Court is, that the Rule shall be for a new Tryal.

L. C. J. Holt. You must have a new *Venire Facias*.

Mr. Att. Gen. That cannot be, with Submission: A new *Venire* we cannot have.

L. C. J. Holt. You must have a new Tryal: The Jury have given their Verdict; whereas they appeared to a wrong Writ, and so the former Tryal is not warranted.

Mr. Att. Gen. I think they are warranted to appear by the Return of the *Venire*; and that we must go back but where the Fault is, which is only but where the *Disfringas* is made out: So that a *Disfringas de novo* is to be for the same Jury: But I will meddle no more in it, without particular Order.

L. C. J. Holt. Do what you will; we will give you no Direction. We quash this Tryal.

Sir T. Powis. My Lord, If you quash this Tryal, then we are to begin again.

Mr. Att. Gen. If the Court is of Opinion that there ought only to be a new *Disfringas* issued, and we can go back no further; I am afraid we shall never come right.

Mr. J. Powel. The Difficulty is in right awarding the *Disfringas*, because it does not bear Date with the Return of the *Venire*. But then consider where you are: If you bring him on a new Tryal, he can challenge any one that has given a Verdict before.

L. C. J. Holt. It is a *Disfringas* to summon that Jury, but it is without *Teste*: And that Jury having given their Verdict, they are not to serve again.

Mr. Att. Gen. I am sure, according to Authorities, they must begin where the Fault was.

L. C. J. Holt. I should have thought the *Venire de novo* had been proper: For this *Disfringas* bearing *Teste* out of Time, and that being erroneously executed, there ought to be a new *Disfringas*, which is to be founded on a new *Venire*.

Mr. Att. Gen. If you do quash this Tryal, I suppose your Lordship will make some Award for a new one.

L. C. J. Holt. We leave it to you.

Mr. Att. Gen. I cannot enter it.

Mr. J. Powel. We must grant a *Venire de novo*, which we cannot do without quashing this Verdict; and that is the way to try him again.

Mr. Att. Gen. My Lord, I am far from thinking I can alter your Rule; but I can't tell how to follow it.

L. C. J. Holt. What we do is *ex abundanti*, more than we are bound to. We can leave you to do what you can: The taking out the *Venire* and *Disfringas*, are Things of course.

Mr. Att. Gen. I think there is a Necessity to explain my Meaning. I don't pretend to direct what you must do; but you must direct what is to be done: I cannot award a *Venire*.

L. C. J. Holt. It is taken out of course: You may award that as well as the first, if it may be done.

Mr. Att. Gen. How can that be done, seeing you quash the *Disfringas*?

Mr. J. Powel. That is the Award of the Court, and does not hinder you from taking out a new *Venire*.

Mr. Att. Gen. I cannot do it without the Court. When you quash this, you must award another.

L. C. J. Holt. We do award it.

Mr. Att. Gen. I remember in the Case of *Fenzwalter*, when they quash'd the Tryal, they order'd a new one should be had, &c.

L. C. J. Holt. If we make an Award, and you don't like it, you will not comply with it: Therefore we leave you to take it out as you will.

Mr. Att.

Mr. Att. Gen. You must order a new *Venire* ; I cannot award a new one else.

L. C. J. Holt. You must have a *Venire Facias*.

Mr. Att. Gen. That must be the Judgment of the Court then : For if I award it, it must be by Order of Court.

Mr. J. Gould. You had better declare *de novo*.

Mr. Att. Gen. I am fearful of what I do. I hope the Court will discharge me.

L. C. J. Holt. When a Tryal is quash'd, and set aside for any Irregularity of the Tryal, that Jury is discharg'd : All the Pannel is discharg'd, and there must be a new Pannel.

Mr. Att. Gen. How will that appear ?

L. C. J. Holt. If it appear that the *Disfringas* did not issue as it ought, every Thing shall be enter'd at large on the Rule : That the *Disfringas* did not issue till the 24th of October ; therefore they will consider, that the Verdict shall be set aside.

Mr. Att. Gen. And that we shall have Leave to go to a new Tryal.

L. C. J. Holt. *Presumptum est*.

Mr. Att. Gen. If you please to make the Rule then, I submit.

L. C. J. Holt. We will advise how to make the Rule.

Note, This and the following Argument should have been inserted Pag. 678. before that of Mr. Serj. Darnel ; and that of Mr. Parker ante P. 689. should have been plac'd before Mr. Whitaker's, *ibid*.

Mr. Attorney General. **M**Y Lord, Because this Matter has been press'd with so much Warmth, I must beg Leave to observe some few Things, in Answer to what has been said.

This is a Thing that not only concerns this single Prosecution, but it concerns all the Prosecutions for the Crown ; and in all Cases, not only Criminal, but Civil. And, my Lord, if the Statutes of Amendments extend not to any other Cases but what they urge, the Case of the Crown is worse than that of the Subject. It is worthy of Consideration, what Things are amendable by Common Law ; for if the Crown be left to the Mercy of the Clerks, it cannot but be of very ill Consequence. Therefore I hope we may take the Benefit of the Common Law.

My Lord, I would beg Leave to recite some few Presidents, to shew how the Common Law formerly stood. And the first I shall take notice of, is the Preamble of the Statute, 32 Hen. VIII. Cap. 30. There it is said, The staying of Judgment after the Verdict, is a great Scandal to the Common Law, and the Ministers of the same. And, my Lord, there is another Thing to be consider'd ; That admitting the Common Law stood as it did before, there is a great Difference between the Proceedings of the Crown at the Common Law, and Civil Cases. The Crown had many Privileges at Common Law, which the Subject had not. And it will sound very harsh, that the Crown shall be left without those Helps by the Statutes of Amendments, when so many of the inferior Subjects did not want the Help of them. For it is impossible this should not be thought of in Parliament, that

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some Care should be taken for the Crown in those Matters where it needed.

Now there is, in all our Books, Notice taken of a greater Privilege that belongs to the Crown, than to the Subject. There shall not be a Demurrer to the Evidence in the Case of the Queen, without her Council's Assent ; yet in the Case of a Subject, there may be a Demurrer to the Evidence. So the Crown may either insist on a Demurrer, or waive it, and take Issue at Pleasure.

There is this likewise : Before Judgment, in a Criminal Case, the Queen may amend, but the Subject not.

Also by *Hardres's Reports*, fol. 504. before Judgment, no Discontinuance may be in the Queen's Case, altho' the Issue was tried. The Attorney takes Issue to one Part ; and it is pleaded, that this is a Discontinuance to the other. Now there can be no Discontinuance before the Verdict. And that Book goes further, and says, That the want of Continuance in that Case, cannot be objected before Judgment, &c. And in 2 *Buls*, 35. an Indictment is said to be amended even after Verdict.

Now there is great Reason, that such Misprisions in Writs at the Queen's Suit shall be amended by the Common Law. And in *Fitzherbert's Abridgment*, Tit. Amendment, Placita 22. if the King bring any Writ which wants Form, &c. it shall be amended. But it is otherwise in the Case of the Subject. So says 8 *Coke* expressly, fol. 156. An Original Writ is not amendable in the Case of a common Person, but it is amendable in the Case of the King.

Now it has been the constant Practice, that these Privileges have been preserved to the Crown. The Queen may at any time amend her Information after Tryal, but a Subject cannot.

These Privileges have been preserved to the Crown, even at the Day of Tryal : And many Mistakes of Clerks, in Informations and Indictments, have been so amended. This is a Right of the Crown by the Common Law.

In the next place, my Lord, I would observe, what is the Matter we are going to amend. It is not what alters the Party's Defence. It alters not the Issue, or Tryal ; nor is it any Thing that tends to his Prejudice : And by the Common Law, that may be amended, which is not a Prejudice to the Party.

The Defendant has a Day given by the Roll ; and the same Day the *Disfringas* is awarded, he appeared : Every one must own, there was no Prejudice to him, whether the *Disfringas* be of one *Teste* or another. 'Tis true, there is the Year-Book, 20 Hen. VI. fol. 18. which is also in *Brook's Abridgment*, Tit. Amendment, Placit. 4. There was a *Misnomer* in the *Capias* and subsequent Process, and in the *Exigent* : And the Court held, that the *Capias*, &c. might be amended, but not the *Exigent* ; because of the Prejudice, if one might be outlaw'd on such Process, to which he never appear'd ; and therefore it might not be amended for that Reason. But this Case stands clear of all Objections of that kind. He had a Day to appear, and make his Defence : He came in, and did appear accordingly ; and no Prejudice happen'd to him.

Now, my Lord, as to the Exception they make, I must beg Leave to say, it can be of no weight. I agree, the Award of the *Disfringas* must be according to the Writ of *Venire* : But, with Submission, I observe not the Necessity that the *Disfringas* should be *Teste'd* the same Day. No Authority

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of Law requires it, and by Reason it should be otherwise. For suppose the Award is made by the Court the first of *January*, the Clerk has all that Day at least to make it. For after the Court has made the Award, the Award is to be drawn up and delivered to the Clerk to make the Writ, and it cannot be supposed to be made at the same Time as the Award is. The Court awards one Day, and the *Disstringas* is made the next Day, which is as proper and convenient a Time as can be; I see nothing in the Reason of the Thing against it.

My Lord, the Authorities they cite, that where Process issues another Day, and not the same 'tis awarded, do not prove it a Discontinuance; and many Cases are otherwise; as an Award to give notice of Tryal, &c. Also there is the Book of *Fitzherbert's Natura Brevium* 20 G. & *Brook Title Discontinuance* 59. which says, if the Plaintiff does not assign Error the same Term, then it is a Discontinuance. Now tho' a Writ of Error is returnable at a Day certain, yet he has all that Term to assign Error; but if he omits it a whole Term, it is a Discontinuance.

My Lord, I do not see but this is a regular Prosecution on a Writ not liable to Exception. There is another Book, 21 *Ed. IV.* that says, There shall be the same Day given to the Jury by the *Disstringas*; but I see not the Necessity that the *Teste* should be that Day. *Brook Discontinuance* 53. At the Return of the *Venire Facias* the Defendant was *essoyn'd*, and the *Essoyn* adjourn'd: Now the *Habeas Corpus* shall have the same Day as the *Essoyn* had by Adjournment, and so not the same Day with the Return of the *Venire*; for, says the Book, you shall continue the *Venire* to the same Day of Adjournment; but that does not shew that the Process shall be issued that Day, but rather the contrary. Now in this Case there is all done that is necessary, the Process is continued, the Jury is adjourn'd to that Day that it is by the Roll, the Parties are continued to that Day. I know no Case that shews a Necessity of the Writ bearing Date the same Day, but one, and that, I think, is against them: 'Tis the Case of *Bradley and Banks*, in *Yelverton* 204. and that was in an Appeal, and that it was so, there was a Discontinuance in an Appeal, if there be any Time between the Return and the *Capias*, tho' the Defendant hath appear'd, yet all the Process are discontinued; for in that Case the *Teste* ought to be the same Day as the Process was. Now if that were a general Rule, it would be against us; but that was founded on a special Reason and does them no Service. For all Appeals are to be without Intermission, and if they are intermitted any Time the Appeal is lost; for the Common Law is not alter'd by the Statute of *Gloucester*, therefore there can be no Imparllance after Appeal; for if an Imparllance be thereon, it is a Discontinuance, and therefore that Case will be of no Authority to them.

But there is a Case in *Crook. Eliz.* (N. B. The Case intended seems that of *Rogers vers. Bird. Cro. Eliz.* 572. *sed vide ib.* 433. *contra.*) where this Process is taken notice of as good, and that is, that the Process is the very next Day. There a *Venire Facias* was awarded *Craft. Trin.* the *Disstringas* was issued the Day after, and by that it ought to be so; and the Return was amended, and the Process was the next Day after the Return. Now that being so particularly stated, seems to be an Authority that it may be so.

L. C. J. *Holt.* How does it appear to be a Day after?

Mr. Att. Gen. The *Venire Facias* was *Craft. Trin.*

the *Disstringas* was *Die Veneris*, &c. which was the Day after. (*Quere Cro. El.* 433.)

Mr. Broderick. In a Criminal Case it is not allow'd.

Mr. Att. Gen. I do not tell you whether it was a Criminal or a Civil Case, but the Exception was taken notice of, and it was amended; but this I only premise. Now my Lord, with great Submission, I don't know that there is any Necessity (it being a Process at the Suit of the Crown) to have it *Tested* on any Day certain; for it seems to be well on any Day. If it be in the same Term, and notice having been given to the Jury, and they and the Party appearing thereon, I cannot see why it may not be well. In Criminal Cases the Course of the Court is to amend Errors (of Form) in Indictments and Informations the very Day of the Tryal, and that has always had its Weight in Criminal Prosecutions; but, with Submission, if it be not right, it is to be made right; if it be a Mistake of the Clerk it may be amended. If you award a Writ it is the Clerk's Duty to make it out; and if he mistakes in Form or varies from his Instructions, &c. all these Matters are amendable by the Common Law, and therefore need not the Aid of any Statute. But I cannot give up that neither; for the Crown has certainly the Benefit of the Statutes of Amendments, and I think *Coke* is of that Opinion too, on the Statute of 14 *E. III.* That Statute is general, and to say it comes only to Causes between Party and Party and not to Causes of the Crown, I cannot understand, for there is nothing in it that leads that way. And yet because it speaks of Causes between Party and Party, this Rule has been laid down that it extends not to the Crown; this Rule has indeed prevailed: But where a Statute is in general, and the End of it is to suppress Fraud, according to all the Rules laid down for expounding Statutes, the Crown ought to have the Benefit of it. It is to take off the Scandal of the Law, and the Ministers thereof, as the Statute 32 *H. 8.* says. Now the Statute of 14 *E. 3.* is general, that by the Misprision of a Clerk no Process shall be annulled or discontinued by mistaking a Letter or Syllable, but as soon as it is perceived it shall be amended. Now I think there is no Reason to be given why it should not extend to Processes of the Crown as well as of the Subject, unless they thought the Subject only wanted it. I do not understand why a general Law may not extend to the King, as well as the Subject. Now as this Statute is general, I mean the Statute of *E. III.* so there is the Statute 16, 17 *Car. II. Cap. 8.* which is likewise general, and yet it has been always taken to concern the Crown, as well as the Subject. And why not one Statute as well as the other I cannot conceive. Now my Lord, we are not without good Opinion that the Benefit of the Statute 16 and 17 *C. II.* does belong to the Crown. 'Twas the Opinion of the L. C. J. *Hale* in the Case of the Lord *Fitzwater*, there the *Venire* was directed to one Place, when it should have been to two; and the Question was, whether this could be help'd by the Statute of 14 *Car. 2.* He adher'd to that Opinion, and the Jury thereupon gave their Verdict. It was indeed set aside, but Judge *Hales* always abode by that Opinion. And so is first *Syderfin* 148. The King against *Wright*. There it is said the Statute of *Jeofail* does extend to it; and even by the Rule in *Blackmore's* Case the Statute does extend to it; For there says my Lord *Coke*, that Statute does not extend to Appeals, or Indictments, Pleas of the Crown or any Proceedings thereon, for they are excepted. That is his Opinion, where they are excepted, it does not extend to them. Now all Pleas of

of the Crown are not excepted, but only Appeals, Indictments, &c. And therefore Informations on particular Statutes are not excepted. Now on the reading of the Act, no Pleas of the Crown are excepted, but only Appeals and Indictments; therefore my Lord *Coke's* Opinion must be, that that Act extends to all Things that are not excepted therein, and consequently to this Case. In *Dyer fol. 153.* there is indeed another Question, whether it be a Discontinuance in the King's Case on the Statute of 32 H. VIII. (*Vide Dyer 353.*)

Now if he make a Query on that Statute, I cannot imagine why he should not have doubted in other like Cases. But when he came after to *Fol. 346, 347.* In an Information on the Statute of Usury, the Book says the misconveying of Process and the misjoining of Issues, are amendable by the Statute of *Jeofails*, and accordingly Judgment was given against the Defendant, notwithstanding divers Errors in the Proceedings; so that the Judges were of Opinion in that Case that the Statute did extend to Cases of the Crown.

L. C. J. Holt. The Judges there did not directly consider the Statute of *Jeofails*, 'twas but an Opinion *obiter*.

Mr. Att. Gen. These are the Words of the Book, *Tandem propter Statutum de Jeofails que parle de misconveying de Process, &c.* Judgment was given against the Defendant. But I shall have Occasion afterwards to take notice, that a great deal of the Practice of the Courts goes on the amending of the Returns. That Statute is for amending of Returns, and I think we are within the Statute, or if not, That the Common Law will help us: But be that as it will, we are now on the first Point, and I think it is amendable by the Common Law; and I think I can give you an Account of much greater Amendments made by the Court at Common Law, than this which we now ask. Now for *Blackmore's* Case, if we had left it there, we might have done it by that Case; for it appears by the 8th Rep. 156 b without doubt there were Amendments by Common Law; and my Lord *Coke* gives Instances of it. Now I yield it was there in a Civil Case; but I think no Man can pretend that at the Common Law there were any Rules to distinguish between Cases of the Crown, and Cases of the Subject, unless the Crown had a much greater Power to amend than the Subject had, and that so it was, appears by many of our antient Books. And there are Authorities in the Statute Law likewise that the Crown could amend further than the Subject. For *Coke* in *Blackmore's* Case says, That Variance of the Writ from the Original was amendable by the Common Law, and any Part of the Record in the same Term; for that during the Term it is in the Breast of the Judges but Misprisions of Clerks in another Term in Processes were not amendable by the Court. But I shall plainly shew, that Misprisions of Clerks were amendable at Common Law in Cases of the Crown; and this is prov'd by all the old Authorities. The old Books say they shall be amendable in the same Term, and we are now within the same Term, and so hope we shall be deliver'd from that Question. Now that Rule of my Lord *Coke*, and the Reason of it, extends to Criminal Cases as well as Civil, and both Cases are within the Power of the Court to amend. For if a Fine be set within the Term, the Court may in the same Term amend it or discharge it. This is allow'd to be in the Power of the Court by the Common Law in the Case of the Crown. In *Trinity Term, vide 4 Mod. 395.* between the King and *Wal-*

cot, there was an Error in the Writ of Attainder, and an Exception was taken, and it was amended in the same Term. For the Court finding the Form of Entry to be erroneous, they did the same Term order the Record to be razed, and made a Rule for the next Term; and this was done by the Power of the Court at Common Law. For while the Process and the Record is in the Breast of the Court, they have a Power by the Common Law to make a new Judgment.

My Lord, the next Matter I would observe is, That all Misprisions of Clerks or their Assistants in the Caption of the Judgment, may be amended in the same Term. For that there is *Saunders Reports fol. 209. Faulkners Case.* If an Indictment be mistaken in the Stile of the Court, &c. the Court may amend any Thing to make the Caption right, first *Synderfin 259.* King against *Glover*, and this was to amend a material Point. There is the like Case in 2d *Coke.* These are Criminal Cases. It was an Inquisition taken *apud - - -* it was not said in *Portibus Londini.* The Clerk of the Peace was order'd to amend it. And in *Jones's Rep. Stafford's Case*, first Abridgment 196. there was an Error in the Reversion of an Attainder. The Certificate was, that he was arraign'd the 18th of *March*, and convicted the 20th of - - - In that Case Judge *Barclay* was of Opinion it might be amended by Common Law, and the Lord *Coke* agreed; but Judge *Jones* was of another Opinion, and he gave it for a Reason, especially where the King had signified his Pleasure of desiring it; and afterwards it was not amended; but two Judges were of Opinion it might be amended. In *Palmer's Rep. 480.* in *Plums Case*, there was an Indictment in *Essex*, and it is *Exactus est ad Comitatum*, without *meum*, and a *Certiorari* was awarded to the Coroners, to certify whether it was exact *ad Com. meum*, and amended accordingly. So 7 E. IV. 15. The *Nisi Prius* was *Mens. Mich.* and the Roll was *Quinden Mich.* and that was amended. Now this seems likewise to be warranted by the Statute of E. III. and whether that Statute extend to it or not, yet the other Statutes extend to all.

For the old Books, I would only trouble you with some Cases that were before the Statutes of Amendments; and there 'tis plain, both as to Civil and Criminal Actions, it was the same Thing. For in both Cases it was frequently amended; so in 5 E. III. 25. an Entry of a Continuance was mistaken, and it was amended by the Court: So in the Case of *Chamber* against *Barrow - - - 430.* there was a *Scire Facias* obtain'd, and it was returnable *Sexto* and the Entry is *Septimo*. This upon a Demurrer was objected, and that all was thereby discontinu'd; it was answer'd, the Court might do it at all Times by the Common Law, and this may be amended by the Common Law.

My Lord, this is an express Authority for us, that the Process is amendable at any Time before the End of the Term, and the Judgment is in the same Term. In the Book 9 Ed. 3. *Placita 3.* The Default in Process may be amended at any Time before Judgment; wherever the Roll is contrary to the Writ, it shall be amended by it. After Issue joined, the *Disstringas* was awarded, where no *Tales* was awarded; the Clerk found the Award of the *Venire Facias*; and there it is said it is amendable, being in the Breast of the Court.

So *Bro. Title Amendm. Placita 62.* The Original was in *Sussex*, and the Prosecution in *Essex*; yet 'twas held amendable, and no Discontinuance. These are all by Common Law. So 40 Ed. III. *Placita 13.* and *Brooks Amend. Placita 17.* There was a Writ issued against Three: Two appear'd; and one made

made Default; against whom Process issued, and the next Day he appear'd; and this was amended because it was amendable by Common Law. Likewise *Fitzherberts Amendment* 6. There was a Variance by the Default of the Defendant, and it was amended, and it was after a Default. So 39 E. 3. In the Record it was --- and in the *Nisi Prius* it was --- and it was amended. Now there is a modern Case, *Croke Eliz.* 222, 256, &c. in the *Venire* one of the Jurors was called *Samuel Sutton*, and in the *Disfringas Saul*; but it appearing to be the Misprision of the Clerk, and that the Writ was right, they held it was amendable by Common Law. And *Brook's Amend. Placita* 27. the Count or Declaration was *ad damnum* an Hundred Pounds, the *Nisi Prius* was to the Damage only of an Hundred Shillings, and the Court ordered the *Nisi Prius* to be amended, as being only the Misprision of the Clerk. Now that goes a great Way, for the *Teste* there had no Writ to try it; but yet that is adjudged to be amendable. And so in that Book *Placita* 24. and in divers other Places. So that it hath been always observed in common Practice as amendable, as being *Vitium Clerici*, *Brooks Placita* 26 and 29. *Fitzherbert* 16, 17 and 29. These are all Cases at Common Law, and so far will justify the Amendment in our Case. And in *Fitz. Amend.* 43. There is a Case to shew that where there is a Prejudice of the Party an Error may be amended, a *Disfringas* is return'd, where there was a Default in the *Teste* and the Jurors Names. The *Teste*, &c. was amended, for they took it before the Roll was made up. There is another Case the 40th of E. III. the Process was discontinu'd after the Appearance of the Defendant, and it was amended. There is likewise 44 E. III. (For I meddle not with those since the Statutes of Amendments.) There was a Writ awarded against M. and G. the Process was against M. only; and afterwards it was amended; and there it is said both the Roll and the Writ may afterwards be amended, and they were amended accordingly.

My Lord, I cite these Cases to shew that Amendments were made by the Common Law, and the Statutes cannot make any Alteration, tho' they should not extend to the Crown. I believe there are not in the old Books many Instances of Proceedings by Information; but that seems a great Argument to me, that this Nicety that hath crept into these Proceedings are not by Common Law; in our old Books they are very little taken notice of; but it seems these Exceptions were not taken then, if they had we should have found them; but the Books are quite otherwise. Now if the Amendments were allowed at Common Law, I believe none can distinguish and say, That it shall not be amended in our Case, for I think they cannot be distinguished.

There are some other Modern Cases wherein greater Things have been done. First the Case of Sir *John Ashly*, that has been cited (*ante* 677.) that it is an Amendment of a Judgment that was entred by Disclaimer. In the *Nisi Prius* it was right, but all was left out in the Judgment. And it was objected that it was not amendable, because it was not in the same Term, and that none of the Statutes of Amendments extended to such Cases; yet upon Examination it was amended, because it was only a Misprision of the Clerk by mistaking his Book, there it was thought to be in the Power of the Court by Common Law to do right. Then in the Reversal of the Attainder of the Lord *Stafford*, there were Proceedings in Court fourteen or fifteen Years; but by Neglect of the Clerk there were no Footsteps of any Thing appear'd, and yet there was a Rule for a Record to be

made, whereby there was a Judgment of Reversal enter'd. Now this Court did think they had a Power to set the Records right, and they gave them leave to make a Record, in order to make a Reversal of that Attainder; and if it may be done against the Crown, no doubt it may be done for the Crown, for that it is but setting Things right. There have been other Cases cited, as *Harris's Case* in *Cro. Jac.* 502. *post* 704. and that was a very extraordinary Amendment. It was an Indictment for a Nuisance. Not Guilty was pleaded indeed, but the Clerk who entred it join'd not Issue, and the Verdict was against the Defendant, and no Issue join'd; that was omitted; but the Return was allow'd. Now if we had done so, we should have had a great Noise about it. But here the Court allow'd an Amendment to be made; and it was amended, as being done by the Clerk's Negligence, and this in the Time of another Clerk: And these Words were inserted for it.

And it was said, if such Faults should not be amended, many Courts would be deprived of their Jurisdiction. And I am sure, if the Courts will not amend these Matters, it will overturn many Tryals.

There is another Case: 'Tis in *Crooke James*, 529. *Parker vers. Sir John Curson & Ux.* And that was a Tryal at Bar. The Issue was enter'd, *Et predict. Johannes Curson & Magdalena veniunt, & predicta Magdalena dicit, quod non est inde culpabilis; & de hoc ponit se super Patriam, & Attornatus Domini Regis similiter.* After the Tryal at Bar, it was amended by the Docket; and there it was only, *Quod J. Curson, Mil. & Magdalena Ux. ejus, placent non Cul.* which was only a short *Memorandum*: Which, I think, goes a great way further than that we labour for.

There is that Case too, 1 *Siderfin* 243. between the King and *Godfrey*. There the Award was *Viccomitibus*, when it should have been *Vicecomiti*; for there was but one Sheriff: But upon Examination, they found it was the Misprision of the Clerk; and they set it right.

L. C. J. *Holt*. They indeed set it right; but how? Not by Amendment: But it was inserted as a *Memorandum* on the Roll, that there was but one Sheriff.

Mr. *Att. Gen.* My Lord, With Submission, that's as well: For we do not do so much; for that was done after the Tryal.

L. C. J. *Holt*. There was no altering the Writ.

Mr. *Att. Gen.* If we should ask the Court to alter what we did before the Tryal, it would be said we should have mov'd it before, and not after. Now to enter that after the Tryal, was much more than we ask.

There is another Case which had the Opinion of the Court, the Case of the Warden of the *Fleet*; where you were of Opinion, to amend, &c.

L. C. J. *Holt*. It is not amended yet.

Mr. *Att. Gen.* My Lord, I cite it as an Authority, that you would have amended it, if you had any Thing to amend it by.

L. C. J. *Holt*. I did not tell you what I would have done.

Mr. *Att. Gen.* My Lord, I was not in Court, but I heard it was so. If it was not, I was misinformed. There was a Commission taken out against him, as being guilty of several voluntary Escapes; and a Day was given to appear at the *King's Bench* the 8th of *January*. The Appearance

ance was the 20th of *January*; but the Record was not enter'd it self till the 3^d of *February* following; so that there was a perfect Discontinuance.

This was not seen at first; but on Consideration of the Court, they found it out; and the Council moved the Court to set it right. The Court made a Doubt of their Power; but they enquir'd when it came in, whether in Time or not; and what Minutes were for it. It seems, the proper Minutes were not to be found. Now that being so, it would be strange for the Court to make any Amendments, without any Copy to amend by. If the Clerk's Man had come in, and produc'd the Minutes, I take it, the Sense of the Court was, that they would amend it; tho' that was agreed to be a Discontinuance.

Now I cite that Case, not that you did amend it; but would have done it, if you had any Thing to amend it by: And there was a Discontinuance of the Party. Now if they could have amended that, this may be done here for a much better Reason. There was a Discontinuance, both before and after the Tryal. I think we have much stronger Reason for Amendment, than was in that Case: Tho' I must say, as to that Case, the Bar were of Opinion, that the Clerk might have enter'd it as on that Day, and ought to have done it; and therefore they thought it was amendable. And if that were true, no question it was amendable. But however the Opinion of that Case was, it is an Argument to me, that the Court would have amended it, had they any Thing to amend it by: For it was the Opinion of this Court it is amendable. But I think that Case is no Authority for them: And whether that be done by the Help of the Statute or no, is not material: And the Court would have amended it, if it had been the first Day of the Term.

This I take to be the Opinion of the Court, and that they did not amend it, because they had no Authority to amend it by.

There is one Matter more, which is, That this Slip is the Fault of the Clerk: For that the Mistaking of the Writ is the plain Act of the Clerk; and in all the Cases it has been held, Acts of the Clerk to be amendable by the Common Law: And for that there are a Thousand Cases. This is in Point of Law.

I would beg Leave to cite a few Authorities in *Crooke's Eliz.* 'Twas agreed, a *Venire Trespas* out of Term, is a Misprision of the Clerk.

L. C. J. Holt. There are Abundance of the like Cases.

Mr. Att. Gen. I believe a Thousand, therefore I will not cite them.

We submit it to your Lordship, whether it be right, and wants no Amendment: Or if it be not right, whether it be not amendable by Statute or Common Law. And I hope we shall have the Benefit of the Verdict.

Note, *The following Argument seems to be made by Sir T. Powis, and is here misplaced.*

MY Lord, If the *Distingas* needs an Amendment, we pray, on the Behalf of the Queen, that it may be amended. And therein we think we are very proper.

1. The Award upon the Roll is right; which is the Warrant to the Clerk for the making out the

Distingas. And if the Award be right, which is the Warrant for the Writ, but the Writ is wrong, and that only in the Date; it is merely the Mistake and Misprision of the Clerk, and ought to be amended.

1. It is amendable by the Common Law.
2. It is amendable by Statute.

That there were Amendments at Common Law before any of the Statutes of *Jeofails*, cannot be denied.

My Lord *Coke* says so expressly: And so was the Opinion of the Court in *Blackmore's Case*, in the Eighth Report, fol. 156, 157, which is the great Case of Amendments.

That Book says, fol. 156. b. Without question, at Common Law, the Default of Entry of a Continuance, or of an *Essoign*, (which was the Misprision of the Court it self in the Form of the Entry) was amendable by the Court. And the Objection here is, that there is a Discontinuance: And the Instance there given from the Case in 5 *Ed. III.* fol. 25. is very considerable; where, after a *Venire Facias* issued, and an Award, *Quod jurat ponitur in respectum*, in the Entry whereof there was a great Mistake of the Parties, which made a Discontinuance; and yet amended at the Common Law.

The Instances of Amendments at Common Law, out of the Old Books are many: 22 *Edw. III.* fol. 7. b. and 10. a. where a Discontinuance was amended. 29 *Edw. III.* fol. 32. b. a *Habeas Corp. Furator.* amended. 7 *Hen. VI.* 29. *Brake, Tit. Amendment*, 32. 4 *Hen. VI.* 16. b. By which Books it appears, that the Judges had Power to amend in many Cases at the Common Law, in the Case of a common Person. And if in the Case of a Subject, much more in the Case of the King: For by the Common Law, the King had many Privileges and Advantages in Legal Proceedings, which a Subject had not: And the King, in his Suits, hath many great Prerogatives. The King may plead one Title, and afterwards wave it, and plead another. He may wave a Demurrer, and afterwards take Issue. And many other Privileges belong to the Crown, of this Nature, which a Subject hath not.

And particularly, in the Matter of Amendments by the Common Law, the King had a Privilege, which a Subject had not.

An Original Writ was not amendable for a Subject at the Common Law, but in the Case of the King it was.

Therefore in *Blackmore's Case*, fol. 156. b. it is said, That if a *Quare impedit* be sued forth on the Behalf of the King, and the Writ is *presentare* instead of *presentare*; it may be amended in the Case of the King, after Exception taken; but not so in the Case of a Subject.

And so in *Fin. Amendment*, 12, 19, 22. several Amendments at Common Law, especially in the Case of the King.

Another Advantage which we have in this Case, is, That we are in the same Term wherein the *Distingas* was awarded and made forth.

And in the same Case of *Blackmore*, fol. 156, b. 157. a. it is said, That at the Common Law, the Judges may amend as well their Judgment, as any other Part of the Record, in the same Term. For during the Term, the Record is in the Heart or Breast of the Court, or of the Judges, and not in the

the Roll: But in another Term, by the Common Law, Misprisions of Clerks in Process were not amendable by the Court; for in another Term, the Roll is the Record. So says that Book.

But here we are in the same Term: And it is the Misprision of the Clerk in Process, and in the making out a judicial Writ, which is in the Power of this Court, as issuing out from hence; whereas Original Writs issue out of Chancery: And Judicial Writs are often amended, where Originals are not. *Vide Brook's Amendments*, 20, 22. Owen, 62.

2. If this is not amendable by the Common Law, it is amendable by Statute.

The first Statute of Amendment was 14 *Edw. III. Cap. 6.* which extended to Misprisions of Clerks, in a Letter, or a Syllable, too much or too little. And in 40 *Edw. III.* the Judges were so nice, as to doubt whether they might amend a Word; because the Statute spoke of a Letter, or a Syllable. And when some of the Judges went to the House of Lords, to know whether by this Act they might amend a whole Word; they were look'd upon as unreasonably scrupulous, and had an Answer accordingly.

Now here is nothing to be amended but a Figure: And this Statute being general, seems to extend to our Case.

But the Statute we rely upon, is the Statute of 8 *Hen. VI. Cap. 12. and Cap. 15.* which is the great Statute of Amendments; and which hath Words very full and general, extending to enable the Court to amend, as well for the Crown as the Subject. For the Words are general in the Beginning, and strengthen'd by an Exception of Indictments of Treason, and Felony, and Outlawries thereupon: For the Rule is, *Exceptio firmat Regulam, in Casibus non exceptis.* This Information is not one of the Cases excepted; and therefore we may more strongly conclude, that it is within the Purview of that Act.

If this Act did not extend to Pleas of the Crown, to what Purpose was that particular Exception inserted? And yet, I know not how, an Opinion hath been taken up, that this Act doth not extend to Criminal Causes. To many Criminal Causes it doth not extend, by reason of the Exception: And therefore, perhaps, for want of a close and strict Observation, the Opinion obtained, that it extended to none. But a positive Law is not so to be born down. 'Tis true, all the later Statutes of *Jeofails*, in the Time of *Henry VIII.* and so downwards, do not extend to Informations, by reason of express Exceptions, or plain Words: But this Statute of *Hen. VI.* is full for us, and we pray the Benefit of it.

It is not merely a new Motion, that this Statute of *Hen. VI.* doth extend to such like Cases with this; because I shall cite some Cases of Amendments in Criminal Prosecutions, in some of which this Statute hath been taken notice of.

As I have cited some old Authorities for Amendments in Cases of the Crown, so I shall cite some Cases of more modern Authority for that Purpose.

2 *Gro. fol. 502.* *Harris's Case.* An Indictment for a Nuisance was prosecuted against *Harris*; and a Tryal was had, and a Verdict against him. Afterwards it was removed by *Certiorari*; and upon

View of the Record, it was found, that no Issue was joined: For the Clerk of Assize had omitted to enter the Issue, and so the Verdict was without an Issue. And upon Motion, the Court of *King's Bench* order'd it to be amended; for it was the Default of the Clerk. And this was done divers Years afterwards, and in the Time of another Clerk of Assize. And it was order'd, that the Clerk of Assize which then was, (for the former was removed) should amend it; which was done by inserting these Words, *Et Richardus Warer* (who was the former Clerk of Assize) *qui pro Dom. Rege sequitur similiter*, &c. And it was there said by the Court, That if such Faults should not be amended, many Tryals upon Indictments should be overthrown.

There is another Case in the same Book: 'Tis in 2 *Gro. fol. 529.* *Parker vers. Sir John Carson & Ux.* It was an Information against *Sir John Carson* and his Wife for Recusancy; and the Issue was, *Quod præd. Magdalena dicit, quod ipsa non est inde culpabilis*; & *de hoc ponit se super Patriam, & Attornatus Domini Regis similiter.* Upon a Tryal at Bar, a Verdict was given against the Defendants. It was afterwards moved in Arrest of Judgment, that here was no Issue joined; for it was only the Plea of the *Feme Covert*, and no Issue joined, or Plea pleaded for the Husband. And yet in *Regnard*, the Docket was right, which was the Warrant for the Roll; and the Omission of the Husband was the Misprision of the Clerk: Therefore it was amended in so material a Part, even in another Term.

Another Case is in *Gro. Car. fol. 144.* *Sir Humphry Tuston's Case.* A *Quo Warranto* was brought against the Corporation of *Maidstone*, for claiming divers Liberties. Judgment was enter'd by Disclaimer; and it was intended to have been only a special Disclaimer of all Privileges, by Pretence of a Charter bearing Date 17 *Jac. Regis*: But the Clerk in entering the Judgment had omitted those Words, *Virtute vel Prætextu Literar. Patent. geren. dat. Anno decimo sept. Jac. Regis*: But upon Examination, the Court finding that it was merely the Misprision of the Clerk, the Court was of Opinion that it was amendable by the Common Law, as well in the King's Case, as in the Case of a Common Person; and in another Term too; for so it was, and it was amended accordingly.

There is a Case in *Siderfin, fol. 243, 244.* The *King v. Percival, Godfrey, & al.*

Upon an Indictment for a Riot and a Battery, and Not Guilty pleaded; a *Venire Fac.* was awarded *Vicecomitibus* of the City of *Canterbury*; and upon a Tryal at Bar, a Verdict was given against the Defendants: And it was moved in Arrest of Judgment, that the *Venire Fac.* and other Process, was directed *Vicecomitibus* of *Canterbury*, and the Return was made by one Sheriff only; but the Court amended it, by endorsing upon the Writ that there was but one Sheriff of *Canterbury*. And this Amendment was made by the Common Law, and not by the Statutes of *Jeofails*; altho' it was said at the Bar, that it was amendable within the Statute, because it was not a Case within any of the Exceptions; it being an Information at the Common Law. And the Case of *Sherington* and *Talbot* was cited, and the Book of 39 *Hen. VI. 40.* for the same Purpose.

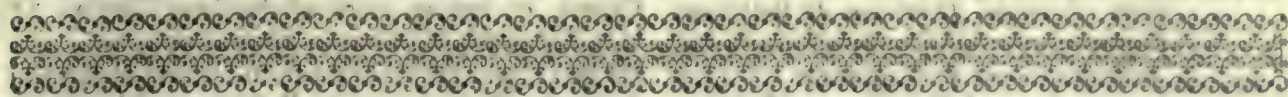
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Upon the whole, we think, since the Matter objected was merely the Misprision and Negligence of the Clerk, that it is amendable by the Common Law; because the Award upon the Roll is right: Or if not by the Common Law, it is amendable by the Statute of 8 Hen. VI. since this is not a Case excepted out of it. And if this Statute extends to it, there are infinite Authorities for amending the wrong *Teste* of a *Distingas*, in Civil

Causes, between Party and Party: As where the *Teste* hath been of a Day impossible, or upon a *Sunday*, or before the Issue joined, and the like.

The Books are so full of those Instances, that it is to no Purpose to cite them.

And lastly, We have this Advantage for an Amendment, That we are in the same Term wherein the Mistake was made by the Clerk; and therefore I pray it may be amended.



*The Tryal of Captain THOMAS GREEN, and his Crew,
before the Judge of the High Court of Admiralty of Scotland.
Publish'd by Authority.*

* Examination before band.



HE Lords of Her Majesties Privy Council having taken * Precognition of the Grounds of the Information against Captain Thomas Green, and

others of his Crew; they thought fit, and ordered, That the said Captain Thomas, &c. should be put to a Tryal upon the Crimes informed, before the Judge of the High Court of Admiralty. As also, the Lords of the Privy Council thought fit at the same Time, to appoint Assistants to the Procurator-Fiscal of the High Court of Admiralty, for the better ordering and carrying on of the said Tryal, according to the Tenor of their Act following.

* about. † present. * Treasurer. **A**T Edinburgh, the Thirteenth Day of February, 1705 Years. Committee * anent Captain Green and his Crew, † Sederunt Lord Chancellor, Marquis of Anandale, Earls of Haddingtoun, Leven, Ruglen, Lords Yester, Belhaven, Advocat, * Thesaurer-Deput, Anstruther, Sir John Home, and Ormiston Toun-ger. It's the Opinion of the Committee, That my Lord Chancellor should write to Court, for Remissions to Charles May, Chyrurgeon, Antonio Ferdinando, Cook's Mate, Antonio Francisco, Captain's Man, George Haines, Stewart, George Glen, Quarter-Master, Alexander Taylor, Fore-Mast-Man: And that the Tryal against Captain Green and his Crew, should be pursued before the Admiral-Court; and that Assessors should be named to the Judges, and Assistants to the Procurator-Fiscal.

Sic subscribitur,

TWEEDALE, Cancel. J.P.C.

* about. † these. * same. † approved. The above-Report of the Committee, * anent Captain Green, Commander of the Ship the Worcester, being upon the Day and Date of † thir Presents, read in Presence of the Lords of Her Majesties Privy Council, and the * samen was Voted and † Approven. And the said Lords did thereby Nominate and Appoint Sir James Stuart, Her

Majesties Advocat, Sir David Dalrymple, and Mr. William Carmichael, Her Majesties Solicitors; Sir Patrick Home, Sir Gilbert Eliot, Mr. Alexander Mackleod, and Mr. Francis Grant, to be Assistants to Mr. Alexander Higgins, Procurator-Fiscal to the High Court of Admiralty, in prosecuting the Libel and Indictment to be given at his Instance, against the said Captain Green and his Crew, before the said Court, to the final End and Decision thereof. And the said Lords declared, That they would next Council-Day name Five of their own Number, to be Assessors to the Judges of Admiralty, during the Dependence of the aforesaid

* Process: And recommended to the * Tryal. Lords of † Thesaury, to pay the Law- † Treasury. yers that are employed to be Assistants accordingly.

Extracted by me,

GILB. ELIOT, Cl. St. Concilii.

Whereupon the Judge of the High Court of Admiralty did present to the Lords of Council a Petition; 'That since the Tryal was order'd to be made before him, of the foresaid Crimes informed against Captain Green and his Crew; and that the Matter appear'd to be of great Importance; he might have, according to Custom in the like Cases, Assessors appointed and joined with him, by the Authority of Council, for his Assistance in the said Tryal. Whereupon the Lords of Her Majesties most Honourable Privy Council did Nominate and Appoint, the Earl of Loudoun, Lord Belhaven, Lord Arnistoun, Sir John Home of Blackadder, and John Cockburn younger of Ormiston, to be Assessors to the foresaid Judge; and assist and vote with him in the Tryal, at the Procurator-Fiscal's Instance against Captain Thomas Green, Commander of the Ship the Worcester, and others of his Ship's Crew, before the said High Court of Admiralty; for their being guilty of Piracy, and other Crimes; and that to the final End and Decision thereof; as an Act extracted and signed by the Clerk of Council, extant in the Records of the said High Court, bears.

X x x x

Follows

Follows the Court of Justiciary of the High Court of Admiralty, with the whole Tryal, as it proceeded before the Judge of Admiralty, and the Assessors above appointed.

CURIA JUSTICIARIA *supreme Curie Admiralitatis tenta in Prætorio, vel novâ Sessionis Domo Burgi de Edinburgh, quinto die Mensis Martii, 1705. per Judicem dictæ Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnistoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston, Assessores.*
Curia legitime affirmata.

The said Day, the said Earl of Loudoun, Lord Eelhaven, &c. produced the Act of her Majesty's Privy Council above-mentioned, appointing them to be the Assessors to the said Judge.

Thereafter the said Assessors took the Oath of Allegiance and signed the same, with the Assurance, and took the Oath *de fidei administratione*, and were thereupon admitted and received.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worcester*, now in *Bruntisland* Harbour.

Captain *John Madder*, chief Mate of the said Ship.

John Reynolds, second Mate of the said Ship.

Thomas Linstead, Assistant to the deceased *Super-cargo* of the said Ship.

James Burn, Boat-swain of the said Ship the *Worcester*.

James Sympson, Gunner.

Andrew Robertson, Gunner's-Mate.

John Brucklie, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter.

Samuel Urlines, his Mate.

George Haines, Stewart of the said Ship.

Daniel Siringman, Cook.

Samuel Wilcocks, Chyrurgeon's Mate.

George Glen, Seaman there.

Henry Barnes, Seaman there.

Alexander Taylor, Seaman there.

And *John Bannantyne*, Seaman there.

All of them Indicted and Accused at the Instance of Mr. *Alexander Higgins*, Advocate Procurator-Fiscal to the High Court of Admiralty, for the Crimes of *Piracy*, *Robbery* and *Murder*, in Manner mentioned in the two several Indictments

* *Concerning the same.* raised against them * thereanent, and and whereof the † Tenor follows: Captain *Thomas Green*, Commander of the Ship called the *Worcester*, now in *Bruntisland* Harbour, Captain *John Madder* chief Mate of the said Ship, *John Reynolds* second Mate of the said Ship, *Thomas Linstead* Assistant to the deceased *Super-cargo* of the said Ship, *James Burn* Boat-swain of the said Ship, *James Sympson* Gunner of the said Ship, *Andrew Robertson* Gunner's Mate, *John Brucklie* Seaman there, and *George Kitchen* Seaman there, all Prisoners;

† *Contents.* * *Everyone.* You, and * ilk one of you are accused and indicted at the Instance of Mr. *Alexander Higgins*, Advocate Procurator-Fiscal to the High Court of Admiralty, of the Crimes of *Piracy*, *Robbery* and *Murder*, in manner after-mentioned,

viz. That by the Law of GOD, the Laws of Nations, of this, and of all well-govern'd Realms, the Crimes of *Piracy*, *Robbery* and *Murder*, are prohibited, under all highest Pains; and that by the Laws of this Realm, the said Crimes are prohibit under Pain of Death, and † escheat of † *Forfeiture*.

Moveables. *Nevertheless* it is of Verity, that Captain *Thomas Green*, Commander of the Ship called the *Worcester*, now in *Bruntisland* Harbour, and his Crew, are * *Of contriving and* guilty, * Art and Part of the said Crimes, or one or other of the same, *Acting*.

in so far as the said Captain *Thomas* or his said Crew, having sailed from *England*, in the said Vessel the *Worcester*, upon Pretence of Merchandizing towards the *East-Indies*; the foresaid Captain, and his said Crew belonging to the said Vessel, did, upon one or other of the Days of the Months of *February*, *March*, *April* or *May*, in the Year 1703. rencounter, or meet with another Ship or Vessel, sailed by its own Men or Crew, upon the Coast of *Malabar*, near *Calecute*; and the said Vessel bearing a red Flag, and having *English* or *Scots* aboard, at least such as spoke the *English* Language; the said Captain *Thomas Green* and his Crew, after some * *Intercommuning with* * *Discourse* them, did, without any Lawful War-

rant, or a just Cause, attack the said other Vessel, or Ship, while expecting no such Treatment; and invading her first by their Sloup, which they had manned with Guns and other Arms for that Purpose, they fell upon the said other Vessel in an Hostile manner, by shooting of Guns and otherways; and after some Time spent in Fighting against her by their Sloup, and partly by the approaching of the said *Thomas Green's* Ship the *Worcester*, they overcame, and Boarded the said other Vessel, and having seized their Men, they killed them, and threw them overboard, and then carried, or caused carry away the Goods that were aboard the said other Vessel, to their said Ship the *Worcester*; and then disposed upon the said Ship, by selling her ashore on the said Coast. Which Crime, being a wicked *Piracy* committed by Surprise in Parts so remote, and probably with all the Caution the Committers could use for concealing thereof, and for preventing Discoveries, comes now to be discovered in the several Parts and Circumstances of the Action, and by such as were present thereat; which being all conjoyn'd, does make up and infer the foresaid Crime objected, and are as follows, *viz.* That the foresaid Rencounter and Fight betwixt Captain *Green* and his Crew, and the said Vessel the *Worcester*, and the foresaid other Vessel taken by her, hapned on the said Coast as above:

Likeas, at the same Time, one or more of the said Ship the *Worcester*, her Crew being on Shore, and at some distance from the Sea, heard the said Shooting, which brought the said Persons to the Shore, where they, at least the Chyrurgeon of the said Ship the *Worcester* one of them, saw her riding at a good distance from the Shore upon her Birth (as they speak) and having the other Ship at the Stern, as it were tyed or towed to her, as being the Vessel they had master'd or overcome, as said is: *Likeas*, the said Chyrurgeon did see the Boat belonging to the said Ship the *Worcester* coming ashore from her, and the Chyrurgeon † de- † *asking*.

manding at such of the Crew as were in her, what had brought them ashore: They answer'd that they had been *Busking*, (a Sea-Term used for fitting and trimming a Ship for fighting) and they had Drunk, Spilt or Staved all their Water, and they

were come for a new Supply: And when a little Time thereafter the said Chyrurgeon went aboard the said Ship the *Worcester*, he perceived the Deck thereof lumber'd and cover'd, and in a confus'd Manner, with Balls, Boxes and Goods; whereof when

he asked the Reason, *John Madder*, one of the * Pannels, and a principal Actor in the Engagement, answer'd,

Damn you, what have you to do to enquire, meddle with your Plaister-Box. And when the Chyrurgeon went down to his Station and Chest, he called for one of the Blacks *Antonio Ferdinando*, and one *Duncan Mokay* now Dead, and another in order to dress them; but when he asked what way they came by their Wounds, they declined to answer; whereupon the Chyrurgeon refusing to dress them, if they would not tell him how they got their Wounds, the said *John Madder* came to the Chyrurgeon in a Passion, and asked what was his business to ask so many Questions, when he did see the Wounds so plain before him, calling him a Block-head for not dressing them; and at length the Contest was so warm betwixt the said *Madder* and Chyrurgeon, that *Madder* charged him to ask no more Questions, and he charged the Men wounded, not to answer a Word: And further order'd him back to the Shore, which the Chyrurgeon was forced to comply with; where the Chyrurgeon

meeting with *Francisco de Olivera* the † Linguister, asked him whether he saw any of the *Worcester's* Men that had carried the fore-said Ship so taken into *Keilon River*, and the Linguister answered, that he had not, but that they were some of the *Worcester's* Company, who as soon as they had brought her in and made her fast, took their Boat and went directly on Board: The Ship taken being carried into *Keilon River* as said is, where she was left with her Yards and Top-masts down, all unrigged: And the said Linguister told the Chyrurgeon further, that one *Coge Commodo* complained he had bought the said Ship taken too dear; whereby it appears that the said Ship taken by Violence, was sold in manner aforesaid. *Likeas*, for further Evidence of the said Piracy, since the Time that *John Reynolds* one of the Pannels was seized with the rest, for his Accession thereto, there was found a Letter wrote to him by one *Sarah Newlands*, bearing Date *January* the 6th, wherein she tells him, *That tho' he had been basely wicked, yet she should be sorry to hear he were guilty of any thing that might bring him to the Gallows; and therefore advises him to confess; adding, that in his own Letter which she had seen, he says, That some of their Men had basely confessed (which says he) implies that they were guilty.* And when *Reynolds* was questioned upon his Letter, he acknowledged that he had wrote a Letter to his Wife the said *Sarah's* Sister, which had occasioned her writing the said Letter to him; and thereupon he produced the Copy of the said Letter to his Wife, which agrees with what *Sarah* says, as the said Copy and *Sarah's* Letter both put in the Clerk of the Admiralty's Hands, to be seen by the Pannels, bear. And further, *George Haines* one of the Crew of the said *Worcester*, since his coming to *Scotland*, and when at *Bruntisland*, being ask'd by one † Citizen. *James Wilkie Taylor*, † Burgeiss of *Edinburgh*, some Day in *October* last, about his Brother *Andrew Wilkie*, who went Chyrurgeon in Captain *Drummond's* Ship, if ever the said *Haines* had seen the said *Andrew Wilkie* in his Voyage, he flew in a Passion, and said, *what Devil was his concern with Captain Drummond?* Upon which

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James Wilkie forbearing a little till he should be calmer, asked the said *Haines*, whether he had heard or seen any *Scots Ship* coming to or from the *East-Indies* during their Voyage? *Haines* answered, that when they were upon the Coast of *Malabar*, a *Dutch Ship* informed them, that one Captain *Drummond*, Commanding a *Scots Ship*, and having a Sloop in Company, was turned Pirate. Upon which *Haines* and they manned their Ship to be in readiness, but saw him not; only a little thereafter *Haines* added, that he had in his Custody, the Time the said Ship the *Worcester* was seized, which he would not have fallen into the Seizer's Hands for twice the Value of the Ship, but that he had thrown it over-board; adding further, that there was still in the Ship what would never be found by the Seizers, unless they pulled her Board from Board, tho' he knew where the Thing lay. *Likeas*, when after the said *James Wilkie* departed, one *Anna Seaton* in *Bruntisland*, did at his Desire further enquire at *Haines* about Captain *Drummond's* Ship; he answered, that he saw they had a Design to pump him, but that they should not be the wiser of him: At all which Passages, *Kenneth Mackenzie* * * Inhabitant, Indweller in *Cannongate* was a present Witness. And the said *Anna Seaton* did further tell the said *Kenneth Mackenzie*, that when she expostulat with *Haines* for his being in Passion, as said is; he answered, that he knew more of Captain *Drummond* than he would tell at that Time; and that if the said *Andrew Wilkie* was with Captain *Drummond*, he would not be seen again. And further, the said *Anna Seaton* heard the said *Haines* own and declare their said Wickedness; and she and *William Wood*, one of the Gunners of her Majesty's Artillery, with one *John Henderson* † Writer in *Edinburgh*, being in *September* last, in *Anna Seaton's* Law Bust-Mother's House, after having drunk one Health or two; the said *Haines*, who was there present, fell in a Melancholy Fit, and express'd himself, *That it's a Wonder, that since we did not sink at Sea, G O D doth not make the Ground to swallow us up for the Wickedness that has been committed during the last Voyage, on Board of that Old Bitch Bess*, pointing to Captain *Green's* Ship. And further, the said *Haines* said, That if what the said *John Madder* had done in the said Voyage were well known, he deserved as much as his Uncle *Madder* met with at *Amsterdam*, who was there burnt in Oil, for attempting to burn their Ships. And when at another Time, the said *Anna Seaton* told *Haines*, that she had an old Sweet-heart who went away with Captain *Drummond*, and would gladly hear some Tidings, whether he was dead or alive; the said *Haines*, who was then a * Suiter to *Anna Seaton*, assured her, * Sweet-she would never see him again, if he heart, or was in *Drummond's* Ship. And *Wooer*. for a further Confirmation of the Truth of the said Piracy, when a Committee of Council was sent to *Bruntisland*, to cause search and unload the said Vessel, it was found by the Skippers and Seamen employed, that the Goods aboard her were not stow'd as Merchant Goods used to be, but were found in the Hold in such Confusion, as if taken by Piracy, and no otherways. *Likeas*, when the said Ship the *Worcester* was seized, the said *John Madder* being questioned about Captain *Drummond's* Ship, he took out of his Pocket, or at least shew'd in his Hand, the Seal of the *African Company*, which he could never lawfully have got. By all which, they

X x x x 2

they being joyned and connected together (as a Discovery of such a Wickedness practised in such remote Parts, and so industriously and obstinately endeavour'd to be concealed, deserves to be) the same in all the Points and Circumstances thereof, at least

such, and so many of them as are
 † *Sufficient to bear an Indictment.* † relevant, and are offered to be proven by a cumulative Probation, do plainly amount to such a plenary Evidence, as may fully convince all impar-

tial Men, that the foresaid Captain Green and his said Crew, are all and each of them guilty, Art and Part, of the foresaid Crimes of *Piracy, Robbery and Murder*, or one or other of them above charged;

which being found by a Verdict of
 † *Fury.* an † Assize before the Judge of the Admiralty, and the Lords Assessors ap-

pointed by the Lords of the Privy Council, the forenamed Persons, and each of them, ought to be punish'd by Sentence of the said Court, with the Pain of Death, and Confiscation of their Moveables, to the Example and Terror of others, to do or commit the like in Time coming.

Additional Conclusion to the Indictment, at the Instance of Mr. Alexander Higgins Procurator-Fiscal to the Court of Admiralty, against Captain Green, &c.

viz. **T**HAT the Conclusion of the said Indictment given on *Saturday* the seventeenth Instant, bearing the Pain of Death, and of Escheat and Confiscation of Moveables, should extend to the Escheat and Confiscation of the said Ship and Cargo, by reason of the foresaid Crime and Piracy; and that the said Captain *Thomas Green, &c.* should answer to the foresaid Conclusion, as thus explained, and extended to the Confiscation of the said Ship and Cargo, as in Case of Piracy, the

† *Appearance.* 5th of *March*, which is the Day of † Compearance assigned to the said Pannels, or at least upon the 6, 7, 8, or

9 Days of *March* thereafter, as the true Import, or at least a clear Consequent of the foresaid Crime and Indictment given thereupon: The List

* *Jurors.* of Witnesses and * Assizers remaining the same, as subjoined to the foresaid principal Indictment. *Sic subscribitur* ALEXANDER HIGGINS.

Henry Keigle Carpenter in the Ship called *Worcester*, now in *Bruntisland* Harbour, *Samuel Urlines* his Mate, *George Haines* Steward of the said Ship, *Daniel Stringman* Cook of the said Ship, *Samuel Wilcocks* Chyrurgeon's Mate, *George Glen* Seaman there, *Henry Barnes* Seaman there, *Alex. Taylor* Seaman there, and *John Bannantine* Seaman there, all of Captain *Thomas Green* Commander of the said Ship his Crew; You, and ilk one of you, are accused and indicted at the Instance of Mr. *Alexander Higgins* Advocate, Procurator-Fiscal to the High Court of Admiralty, of the Crimes of *Piracy, Robbery and Murder*, in manner after-mentioned, *viz.* That by the Law of GOD, the Laws of Nations, of this, and of all other well-governed Realms, the Crimes of *Piracy, Robbery and Murder*, are prohibite under all highest Pains: And that by the Laws of this Realm, the said Crimes are prohibite, under Pain of Death, and Escheat of Moveables. *Nevertheless*, it is of Verity, that Captain *Thomas Green*, Commander of the Ship called the *Worcester*, now in *Bruntisland* Harbour, and his Crew, are guilty, Art and Part, of the said Crimes, or one or other of the Sea-

men, in so far as the said Captain *Thomas*, or his said Crew, having sailed from *England* in the said Vessel the *Worcester*, upon pretence of Merchandizing towards the *East-Indies*, the foresaid Captain and his said Crew belonging to the said Vessel, did upon one or other of the Days of the Months of *February, March, April, or May*, in the Year 1703: rencounter and met with another Ship or Vessel, sailed by its own Men or Crew, upon the Coast of *Malabar* near *Calecute*; and the said Vessel bearing a red Flag, and having *English* or *Scots* aboard, at least such as spoke the *English* Language, the said Captain *Thomas Green* and his Crew, after some intercommuning with them, did without any lawful Warrant, or just Cause, attack the said other Vessel or Ship, while expecting no such Treatment; and invading her first by their Sloop, which they had manned, and furnished with Guns and other Arms for that Purpose; They fell upon the said other Vessel in an hostile Manner, by shooting of Guns and otherways; and after some Time spent in fighting against her by their Sloop, and partly by the approaching of the said *Thomas Green's* Ship the *Worcester*, they overcame, and boarded the said other Vessel, and having seized their Men, they killed them, and threw them over-board, and then carried, or caused carry away the Goods that were aboard of the said other Vessel to their said Ship the *Worcester*, and then disposed upon the said Ship, by selling her ashore on the said Coast. Which Crime being a wicked Piracy, committed by Surprise in Parts so remote, and probably with all the Caution the Committers could use for concealing thereof, and for preventing Discoveries, comes now to be discovered in the several Parts and Circumstances of the Action, and by such as were present thereat: Which being all conjoyned, does make up and infer the foresaid Crime objected, and are as follows, *viz.* That the foresaid Rencounter and Fight between Captain *Green* and his Crew, and the said Vessel the *Worcester*, and the foresaid other Vessel taken by her, happen'd on the said Coast as above: *Likeas*, at the same Time, one or more of the said Ship the *Worcester*, her Crew being on Shore, and at some Distance from the Sea, heard the said shooting, which brought the said Persons to the Shore, where they, at least the Chyrurgeon of the said Ship the *Worcester* one of them, saw her riding at a good Distance from the Shore upon her Birth (as they speak) and having the other Ship at her Stern, as it were tyed or towed to her, as being the Vessel they had master'd or overcame, as said is. *Likeas*, the said Chyrurgeon did see the Boat belonging to the said Ship the *Worcester* coming ashore from her, and the Chyrurgeon demanding at such of the Crew as were in her, what had brought them ashore: They answer'd, that they had been *Busking* (a Sea-Term used for sitting and trimming a Ship for fighting) and that they had drunk, split or staved all their Water, and they were come for a new Supply; and when a little Time thereafter the said Chyrurgeon went aboard the said Ship the *Worcester*, he perceived the Deck thereof lumber'd and cover'd, and in a confused Manner, with Balls, Boxes and Goods; whereof when he ask'd the Reason, *John Madder* one of the Pannels, and a principal Actor in the Engagement, answered,--- *Damn you, what have you to do to enquire, meddle with your Plaister-Box.* And when the Chyrurgeon went down to his Station and Chest, he called for one of the Blacks *Antonio Ferdinando*, and one *Duncan Mackay* now dead, and another in order to dress them; but when he asked what way they came by their Wounds, they declined to answer: Where-

Whereupon the Chyrurgeon refusing to dress them, if they would not tell him how they got their Wounds; the said *John Madder* came to the Chyrurgeon in a Passion, and asked what was his Business to ask so many Questions, when he did see the Wounds so plain before him? Calling him a Blockhead for not dressing them. And at length the Contest was so warm betwixt the said *Madder* and Chyrurgeon, that *Madder* charged him to ask no more Questions; and he charged the Men wounded not to answer a word: And further, order'd him back to the Shore; which the Chyrurgeon was forced to comply with. Where the Chyrurgeon meeting with *Francisco de Olivera*, their Linguister, asked him, whether he saw any of the *Worcester's* Men, that had carried the foresaid Ship so taken into *Keilon River*? And the Linguister answered, that he had not; but that they were some of the *Worcester's* Company, who as soon as they had brought her in, and made her fast, took their Boat, and went directly on Board: The Ship taken being carried into *Keilon River*, as said is, where she was left, with her Yards and Top-Masts down, all unrigged. And the said Linguister told the Chyrurgeon further, That one *Coge Commodo* complained he had bought the said taken Ship too dear: Whereby it appears, that the said Ship taken by Violence, was sold in manner foresaid.

Likeas, for further Evidence of the said Piracy, since the Time that *John Reynolds*, one of the Pannels, was seized with the rest, for his Accession thereto; there was found a Letter wrote to him by one *Sarah Newlands*, bearing Date the 6th of *January*; wherein she tells him, That tho' he had been basely wicked, yet she should be sorry to hear he were guilty of any Thing that might bring him to the Gallows: And therefore advises him to confess; adding, That in his own Letter, which she had seen, he says, that some of their Men had basely confessed; which, says she, implies, that they were guilty. And when *Reynolds* was questioned upon his Letter, he acknowledged that he had wrote a Letter to his Wife, the said *Sarah's* Sister, which had occasioned her writing the said Letter to him: And thereupon he produced the Copy of the said Letter to his Wife, which agrees with what *Sarah* says; as the said Copy, and *Sarah's* Letter, (both put in the Clerk of the *Admiralty's* Hands, to be seen by the Pannels) bear.

And further: *George Haines*, one of the Crew of the said *Worcester*, since his coming to *Scotland*, and when at *Bruntisland*, being asked by one *James Wilkie*, Taylor, Burgess of *Edinburgh*, some Day in *October* last, about his Brother *Andrew Wilkie*, who went Chyrurgeon in Captain *Drummond's* Ship; if ever the said *Haines* had seen the said *Andrew Wilkie* in his Voyage? He flew in a Passion, and said, *What Devil was his Concern with Captain Drummond?* Upon which, *James Wilkie* forbearing a little, till he should be calmer, ask'd the said *Haines* again, Whether he had heard or seen any *Scots* Ships, coming to or from the *East-Indies*, during their Voyage? *Haines* answered, That when they were upon the Coast of *Malabar*, a *Dutch* Ship inform'd them, That one Captain *Drummond*, commanding a *Scots* Ship, and having a Sloop in Company, was turn'd Pirate: Upon which *Haines* said, they mann'd their Sloop to be in Readiness, but saw him not: Only a little thereafter *Haines* added, that he had in his Custody the Time the said Ship the *Worcester* was seized, which he would not have fallen into the Seizer's

Hands for Twice the Value of the Ship; but that he had thrown it overboard. Adding further, That there was still in the Ship what would never be found by the Seizers, unless they pull'd her Board from Board, tho' he knew where the Thing lay.

Likeas when after the said *James Wilkie's* Departure, one *Anna Seaton* did, at his Desire, further enquire at *Haines* about Captain *Drummond's* Ship; he answered, That they had a Design to pump him, but that they should not be the wiser of him. At all which Passages, *Kenneth Mackenzie*, an In-dweller in *Cannongate*, was a present Witness. And the said *Anna Seaton* did further tell the said *Kenneth Mackenzie*, That when she expostulat with *Haines* for his being in a Passion, as said is; he answered, That he knew more of Captain *Drummond* than he would tell at that Time: And that if the said *Andrew Wilkie* was with Captain *Drummond*, he would not be seen again.

And further, The said *Anna Seaton* heard the said *Haines* own and declare their said Wickedness. And she, and *William Wood*, one of the Gunners of Her Majesties Artillery, with one *John Henderson* Writer in *Edinburgh*, being in *September* last at *Anna Seaton's* Mother's House; after having drunk a Health or two, the said *Haines*, who was there present, fell in a melancholy Fit; and express'd himself, *That it's a wonder that since we did not sink at Sea, God doth not make the Ground to swallow us up, for the Wickedness that has been committed during the last Voyage on Board of that Old Bitch Bess*; pointing to Captain *Green's* Ship. And further, the said *Haines* said, That if what the said *John Madder* had done in the said Voyage were well known, he deserved as much as his Uncle *Madder* met with at *Amsterdam*; who was there burnt in Oyl, for attempting to burn their Ships. And when, at another Time, the said *Anna Seaton* told *Haines*, That she had an old Sweetheart who went away with Captain *Drummond*; and would gladly hear some Tidings, whether he was dead or alive: The said *Haines*, who was then a Suitor of *Anna Seaton's*, assur'd her, she would never see him again, if he was in *Drummond's* Ship.

And for a further Confirmation of the Truth of the said Piracy; when a Committee of Council was sent to *Bruntisland*, to cause Search and unload the said Vessel; it was found, by the Skippers and Seamen employ'd, that the Goods aboard her were not stowed as Merchant Goods used to be; but were found in the Hold in such Confusion, as if taken by Piracy, and no otherways. *Like as* when the said Ship the *Worcester* was seized, the said *John Madder* being question'd about Captain *Drummond's* Ship; he took out of his Pocket, or at least shewed in his Hand, the Seal of the *African Company*; which he could never have lawfully got.

By all which, they being joined and connected together, (as a Discovery of such a Wickedness practised in such remote Parts, and so industriously and obstinately endeavour'd to be concealed, deserves to be) the samen, in all the Points and Circumstances thereof; at least such, and so many of them as are relevant, and are offer'd to be proven by a cumulative Probation; do plainly amount to such a plenary Evidence, as may fully convince all impartial Men, that the foresaid Captain *Green* and his said Crew, are all and each of them guilty, Art and Part, of the foresaid Crimes of Piracy, Robbery and Murder, or one or other of them above charged. Which being found by a Verdict of

of an Assize before the Judge of the Admiralty, and the Lords Assessors appointed by the Lords of Privy Council; the forenamed Persons, and each of them, ought to be punish'd by Sentence of the said Court, with the Pain of Death, and Confiscation of their Moveables; to the Examples, and Terror of others, to do or commit the like in Time coming.

Additional Conclusion of the Indictment, at the Instance of Mr. Alexander Higgins, Procurator-Fiscal to the Court of Admiralty, against Captain Tho. Green, &c.

Viz. THAT the Conclusion of the said Indictment given on Saturday, the Seventeenth Instant, bearing the Pain of Death, and of Escheat and Confiscation of Moveables, should extend to the Escheat and Confiscation of the said Ship and Cargo, by reason of the foresaid Crime of Piracy: And that the said Captain Thomas Green, &c. should answer to the foresaid Conclusion, as thus explained, and extended to the Confiscation of the said Ship and Cargo, as in the Case of Piracy, the foresaid Fifth of March, which is the Day of * Compearance assign-
* *Appearance.* ed to the said Pannels, or at least upon the 6th, 7th, 8th, or 9th Days of March thereafter; as the true Import, or at least a clear Consequent of the foresaid Crime and Indictment given thereupon: The List of Witnesses and Assizers remaining the same, as subjoined to the foresaid principal Indictment.

Sic subscribitur,

ALEXANDER HIGGINS.

PURSUERS.

Mr. Alexander Higgins, Procurator-Fiscal.
Sir James Stuart, Her Majesties Advocat.
Sir David Dalrymple, and Mr. William Carmichael, Her Majesties Solicitors.
Sir Patrick Home.
Sir Gilbert Eliot.
Mr. Francis Grant.
Advocats.

Procurators in DEFENCE.

Sir David Cunningham.
Sir David Thoirs.
Sir Walter Pringle.
Mr. David Forbes.
Mr. George Alexander.
Mr. John Spotswood.
Mr. John Elphinston.
Advocats.

* *had nothing against.* The Procurator-Fiscal declared judicially, he * passed from Samuel Ur-
lines, Carpenter's-Mate of the Ship the Worcester, Henry Barnes Seaman, and Daniel Stringman, Cook of the said Ship; whereupon they were dismissed from the Bar.

Alexander Higgins.

† *Time of Prosecution.* Her Majesties Advocat for the Pursuers craved, that the † Dyet against Captain Thomas Green and others, contained in that Indictment with him, might be continued.

It was objected by the Pannel's Procurators, that the Dyet could not be continued against them; being contrair to the Act of Parliament for preventing wrongous Imprisonment, and contrair to an express Clause therein.

It was replied for the Pursuers, that the Act of Parliament is opposed; which only requires the Dyet of the Tryal to be fixed within Sixty Days after Intimation, which was done; but then allows to the Pursuers to insist, and to the Judge to determine by a final Sentence, within Forty Days, if before the Lords of Justiciary, and Thirty Days, if before any other Judge.

*Which Objection, with the Answers and Replies made thereto, being considered by the Judge and Assessors, they * repelled the Objection, and * rejected, or continued the Dyet against over-rul'd, the said Captain Green and others, contained in the Indictment against him, till Wednesday next at Nine of the Clock; and ordained the Pannels to be carried back to Prison.*

JAMES GRAHAM, I. P. A.

It was alledg'd by the Procurators for the Pannels, that the Crime † libelled † indicted, being alledg'd to be committed upon the Coast of Malabar, and by Englishmen; they ought to be remitted to be tried in England; and cannot be judged by the Judge of the High Court of Admiralty and Assessors, who are not Judges competent.

The Procurator-Fiscal and Pursuers Procurators answer'd, That they opposed the Act of Parliament, 1681. which founds the Admiral's Jurisdiction in the Case libelled: Declaring expressly, That the High Admiral hath the sole Privilege and Jurisdiction in all Maritime and Sea-faring Causes, Foreign and Domestick, whether Civil or Criminal whatsoever, within this Realm; and over all Persons, as they are concerned in the same: And that he is His Majesties Lieutenant and Justice-General upon the Seas, &c.

*Which * Alledgeance and Answer, † Allegation, with the other Replies and † Dupli- † further plices, being considered by the Answer. Judge and Assessors; they repelled the Alledgeance in respect of the Answer; and found that the Judge Admiral and Assessors are competent and proper Judges; to † cognosce † inquire in and determine in the Case and to. Crimes libelled.*

JAMES GRAHAM, I. P. A.

THE Grounds of the Indictment, at the Instance of the Procurator-Fiscal, against Henry Keigle, George Haines, Samuel Wilcocks, George Glen, Alexander Taylor, and John Bannantyne here present, being fully debated *voà voce*; The Judge of the High Court of Admiralty and Assessors continue the Dyet, at the said Mr. Alexander Higgins's Instance, against the said Henry Keigle, and other Pannels above-named, till Tuesday the 13th Instant, at Nine a Clock in the Forenoon; and ordain both Parties to give in their * In-
* *Pleas, or Briefs.* formations betwixt and that Time; the Pursuer to give in his betwixt and

Thursday next, at Twelve a Clock of the Day ; and the Pannels to give in theirs betwixt and Saturday next, at Twelve Afternoon thereafter ; in order to be recorded in the Court-Books : And ordains the Affizers and Witnesses to attend then, and at the other Dyet upon Wednesday next, against Captain Green and others, * ilk Person under the Pain of One Hundred Merks ; and the Pannels to be carried back to the respective Prisons.

JAMES GRAHAM, I. P. A.

CURIA JUSTICIARIA, *Supreme Curia Admiralitatis tenta in Pretorio, vel nova Domo Sessionis Burgi de Edinburgh, septimo Die Mensis Martii, 1705. per Judicem dicta Curia, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnestoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston, Assessores.*

Curia Legitimè Affirmata.

Intran.

Captain Thomas Green, Commander of the Ship called the Worcester, now in Bruntisland Harbour.
Captain John Madder, Chief-Mate of the said Ship.

John Reynolds, Second-Mate of the said Ship.
Thomas Linstead, Assistant to the deceas'd Supercargo of the said Ship.

James Burn, Boatswain of the said Ship.

James Simpson, Gunner.

Andrew Robertson, Gunner's-Mate.

John Bruckley, Seaman.

George Kitchen, Seaman.

All of them indicted and accused at the Instance of Mr. Alexander Higgins, Advocat, Procurator-Fiscal to the High Court of Admiralty ; for the Crimes of Piracy, Robbery and Murder, in manner mentioned in the Indictment raised against them thereanent, before insert in the Court holden the Fifth of March Instant.

PURSUERS.

Mr. Alexander Higgins, Procurator-Fiscal.

Sir James Stuart, Her Majesties Advocat.

Sir David Dalrymple, and Mr. William Carmichael, Her Majesties Solicitors.

Sir Patrick Home.

Sir Gilbert Eliot.

Mr. Alexander Mackleod.

Mr. Francis Grant.

Advocats.

Procurators in DEFENCE.

Sir David Thoires.

Sir Walter Pringle.

Mr. David Forbes.

Mr. George Alexander.

Mr. John Elphinston.

Mr. John Spotswood.

Advocats.

The Grounds of the Indictment at the Instance of the Procurator-Fiscal, against Captain Green and

other Pannels here present, and the Reasons why John Reynolds, one of the Pannels, who is a Witness cited in the † Exculpation, at the Instance of the other Pannels, should be tried first upon the Libel, to the effect, that if * assolizied, he may be adduced as a Witness for the said other Pannels in the foresaid Exculpation, being debated. *viva voce*. The Judge of the High Court of Admiralty, and Assessors, continue the Dyet at the said Mr. Alexander Higgins Instance, against the saids hail Pannels, till Tuesday the Thirteenth Instant, at Nine a Clock in the Forenoon : And ordains both Parties to give in their Informations betwixt and that Time ; the Pursuer to give in his betwixt and To-morrow ; and the Pannels to give in theirs betwixt and Saturday thereafter, in order to be recorded in the Court-Books : And ordains the Affizers and Witnesses to attend with ilk Person, under the Pain of Two Hundred Merks ; and the Pannels to be carried back to Prison.

J. A. GRAHAM, I. P. A.

* INFORMATION

* Plea, or Brief.

For Mr. Alexander Higgins, Procurator-Fiscal of the High Court of Admiralty :

AGAINST

Captain Thomas Green, Commander of the Worcester, and his Crew and Complices.

There being Two † Libels raised † Indictment. before the High Court of Admiralty, and the Lords Assessors appointed by the Lords of Privy Council, both at the Instance of the said Mr. Alexander Higgins ; but the first against Henry Keigle, Carpenter in the Ship called the Worcester, now in Bruntisland Harbour ; Samuel Urline, his Mate ; George Haines, Stewart of the said Ship ; Daniel Stringman, Cook in the said Ship ; Samuel Wilcocks, Chyrurgeon's Mate ; George Glen, Seaman there ; Henry Barnes, Seaman there ; Alexander Taylor, Seaman there ; and John Ballantyne, Seaman there : And the Second against the said Captain Thomas Green, Commander of the said Ship the Worcester ; Captain John Madder, Chief Mate of the said Ship ; John Reynolds, Second Mate of the said Ship ; Thomas Linstead, Assistant to the deceas'd Supercargo of the said Ship ; James Burn, Boatswain of the said Ship ; James Simpson, Gunner of the said Ship ; Andrew Robertson, Gunner's Mate ; John Bruckley, Seaman there ; and George Kitchen, Seaman there ; all Prisoners.

Both the Libels being the same, the Tenor thereof prefixt to the Information is *verbatim* conform to the Indictments on the preceding Pages, in the Court holden the Fifth of March, 1705. and whereto this refers.

When the * haild foresaid Pannels * whole. were brought to the Bar, and the saids Libels read against them ; the Procurator-Fiscal declared, That he insisted first upon the first Libel, viz. against the saids Henry Keigle, Carpenter,

penter, Samuel Urlane, George Haines, Daniel Stringman, Samuel Wilcocks, George Glen, Henry Barnes, Alexander Taylor, and John Ballantyne; and after some Debate moved by the Pannels Procurators, that the Pannels having used the Method prescribed by the Act of Parliament, to bring themselves to a Tryal within sixty Days, they ought now all of them to be infisted against; and it being answered, That all that the Act of Parliament required was, That a Day should be fix'd for the Tryal within sixty Days after the Charge given for that Effect, the same was done, and also the whole Pannels so far infisted against, that their Libels were read, which fully satisfies that Part of the Act; and that as to further infisting, prosecuting and concluding, the Act of Parliament allowed forty Days further before the Commission of Justiciary, and thirty Days before any other Inferior Judicature: So that the Procurator-Fiscal might very well proceed against these contained in the first Libel this Day, and continue these contained in the second Libel till the next Court Day. The Lord High Admiral repelled the foresaid Alledgeance made for all the Pannels, and allowed the Procurator-Fiscal to insist against these in the first Libel, the foresaid 5th of March, and continued the Dyet against these in the second Libel, till the 7th of the said Month.

It was then alledged for these in the first Libel, No Process, in regard the Crimes charged were libelled to have been done in the *East-Indies* in *Malabar*, far without the *Scottish-Seas*, nor was there any Accuser either of the Owners of the Ship and Goods, or of the nearest of Kin of the Persons alledged, Murder'd; so that the Admiral was incompetent

to this Tryal; For the *competentia fori* † Criminal (Competency of the Court,) † in Criminal Cases, being founded either in the *locus delicti*, (the Place where the Crime was

committed) or in the *locus domicilii* (the Place of Habitation of the Pannels,) or in the *locus originis* (place of Birth) neither of these could be subsumed upon in this Case: The Pannels *Englishmen* and Strangers, and the Crimes libelled to have been committed in the *East-Indies*, as said is. And

* allowing. * *esto*, that the Crime of Piracy may be tryed any where, where the Pirates are found, yet that is only where the accused are notoriously such. And farther, tho' the Pannels could

be accused here in *Scotland*, yet they † Court for Criminal Cases. could be only accused before the † Commission of Justiciary, and not before the High Admiral, whose Jurisdiction extends no further than the Seas within the Compass of Her Majesty's Sovereignty.

To all which it is answer'd by the Pursuer. 1. That tho' the Competency of the Judge in Criminals be ordinarily said, to be found either in *loco delicti*, (the Place where Crime was committed) or in *loco domicilii* (Place of Habitation of the Delinquents,) or in *loco originis* (the Place of their Birth) yet there is a superior Consideration, and that is the *locus deprehensionis*, (Place where they were taken,) where the Criminal is found and deprehended, which doth so over-rule in this Matter, that neither the *locus domicilii* (Place of Habitation,) nor the

* Justify or make good. *locus originis*, (Place of Birth,) doth * found the Judges Competency, *nisi ibi reus deprehendatur*, (except the Criminal be apprehended there.) And so it is that here the Pannels were and are deprehended, which happening in the Cause of Piracy, a Crime against the Law of Nations, and which all Mankind have an In-

terest to pursue, wherever the Pirates can be found; the Procurator-Fiscal's Interest to pursue is thereby manifest, and the Pannels being here deprehended, cannot decline the Admiral's Jurisdiction as incompetent. 2. As to what is alledg'd, that the Pannels are not libelled to be habitual and notorious Pirates, but on the contrary, had and do produce a Commission, which frees them of that Suspicion.

It's answered, That Piracy being † libelled, as to the Particular charged, † mentioned even habitual Piracy is thence presumed in the Indictment; but a single Act of Piracy libelled doth both give the Pursuer a sufficient Title and Interest, and likewise founds the Admiral's Jurisdiction, in respect the Pannels charged for Piracy are here found. And 3. The Lord High Admiral is most proper for this Cognition and Tryal, because by the Act of Parliament, 1681.

he is declared to be * Justice-General * Lord upon the Seas, which albeit it be limited inwardly towards the Land, yet outwardly is not limited; so that the Lord High Admiral is there declared to have the sole Jurisdiction in all Maritime and Sea-faring Causes, Foreign and Domestick, whether Civil or Criminal, within this Realm, and over all Persons, as they are concerned in the same, which as to the Seas and all Maritime Crimes whatsoever, makes the High Admiral Justice-General, as said is, without Limitation; and therefore it is in vain for the Pannels to pretend, that if their Cause be cognoscible here, it must at least be tryed before the Commission of Justiciary, since the Lord High-Admiral is in this Case fully vested with the Justice-General's Power; and as for what may be the Custom of *England*, it doth not concern, nor can be any Rule for us.

And the Lord High Admiral and Assessors having * advised the Debates, * considered, they repelled the Declinator †, and † declining the Jurisdiction of the Court. found the Court competent.

Thereafter it was alledged for these in the first Lybel, That they were convened*, as having been of Captain Green's Crew, and his Complices in the Crimes libelled; so that he being their Commander and Captain, they could not be put to answer, unless the Captain himself were infisted against; seeing first, it was obvious, that he being their Commander and Captain, ought first to be answerable. And 2. That they being under his Command, could not be charged for any Thing alledged done by them as his Crew, unless he were first tryed, seeing that he might have Defences both for himself and them, which probably they could not make for themselves.

To which it was answered by the Pursuer, That the Captain and his Crew * brought were not * convened for any Thing before the alledged acted by him as their Captain, Court. and by them as his Crew, but were all convened as Complices and *socii*, (i. e. Fellow-Criminals) and Partakers of the foresaid wicked Crimes of Piracy, Robbery and Murder; which Crimes as they could be warranted by no Commission or Character the Captain did or could pretend, so could they be as little warranted by their Condition of being subject to him as his Crew; for here the saying holds, That they were all *hic socii & facinus quos inquinat aequat*, i. e. (they were Fellows in this Case, and being defiled with the said Crime, were in that respect equal.) As also the other Maxim, That † Wrong has no Warrant; † Injustice. and therefore, seeing that neither the

Captain's Character, nor their Condition as his Crew, could be pretended as a Defence either to him or them; and that the Libel of the foresaid Crimes did charge them all, as being *Socii*, and together involved therein; and that without Question, in the Case of such an Accusation for such horrid

* *regarded*. Crimes, every one must answer for himself; the Alledgeance could not be * respected. Besides that it was evident,

that if Captain *Green*, and these in the Second Libel, were all confessing and pardon'd; yet the first Libel against these of his Crew therein contained, would still lawfully proceed; and Captain *Green* himself, and those joined with him in his Libel, might be made use of as Witnesses against these contained in the first Libel. By all which it was evident, that the Tryal ought to proceed against these in the first Libel, without respect to the foresaid dilatory Defence. This being the dilatory Defence

† *positive*. objected against the first Libel, and answered above; and the † peremptory Defences against both Libels being common and coincident, for the more clear Method; the dilatory Defence proponed also for these contained in the Second Libel, with the Answers thereto, are hereunto subjoined.

The Dilatory then propos'd for Captain *Green*, and others, (in the Second Libel) was, The foresaid *John Reynolds* was convened and † impannelled with him;

† *indicted*. whereas it was acknowledged by the Pursuer, that *Reynolds* was athore the Time of the Piracy, and other Crimes libelled to have been committed by Captain *Green*, and the rest of his Complices; whereby *Reynolds* appeared, even by the Pursuer's Acknowledgment, to be innocent.

* *a Form of Law for vindicating any Person*. Like as Captain *Green*, and the other Pannels, had rais'd an * Exculpation, and therein had cited *Reynolds* for a Witness: So that according to the Method practis'd in Criminals, Captain *Green* and the other

Pannels had good Ground to demand, that *Reynolds* might be first tried, and so purged from being *Socius Criminis*, (a *Fellow Criminal*)

† *Condition*. and put in † Case to be a Witness, for the Captain and the other Pannels to prove their Grounds of Exculpation. For there could be nothing more reasonable, as it was also ordinary, than that when a Pursuer did raise a Libel against several Persons, (whereof some were innocent, and might be Witnesses for the other Criminals and Pannels) these other Pannels might justly crave, that such as they alledged to be innocent, might be first tried and purged, and so made capable to be Witnesses; since otherways any malicious Pursuer might include both the Defenders and all their Witnesses in one Libel: And thus by making the Witnesses *Socii Criminis* (*Fellow Criminals*) in the Libel, prejudice the Defenders of all their Evidences and Defences.

To which it was answer'd for the Pursuer, That he acknowledged, that when such a Course was taken, to include both Actors and Witnesses in one Libel, with a Design to make the Witnesses (which the Actors were to use) *Socii Criminis*, (*Fellow Criminals*) and so to deprive the Actors of their Defence, and the Probation thereof; these Actors might, and were allow'd to † condescend upon those whom

† *name*. they intended to use as Witnesses, and at the same Time to propose a Ground of Ex-

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culpation for them; and so crave that they might be first tried upon the foresaid Ground, to the effect that if thereupon acquit, they might be in Case to be Witnesses. But this could never be pretended to by any of the Pannels: For an antecedent Tryal of such of their *Socii* as they alledged were innocent, and to be their Witnesses, unless at the same Time the Pannels did condescend upon the Ground of their Innocence, or upon the Ground of their Exculpation, whereupon they desired them to be first tried: For otherways there could be nothing more groundless, and (in effect) manifestly tending to elude all Criminal Proceeding against Complices of the same Crime, than to allow any of them at random to crave others to be first tried; and so the Tryal to proceed of one

single Person after another, until all should be † assilzied. Whereas the true and plain Method was, and is, That the Pursuer insists against such as he pleases, either singly or jointly; and unless some * Speciality be alledged, why the Tryal of one should

† *acquitted*.

* *Special Cause*.

proceed before the Tryal of another, it never was, nor could be left to the Arbitriment of the Pannels. And thus it was practis'd in all the Instances alledged by the Pannels, of trying such as were impannelled for *Socii Criminis*, (*Fellow Criminals*) to be first purged, in order to be Witnesses; viz. That the same was never allowed, unless some Ground of Exculpation was positively alledged for clearing of their Innocence. And therefore, unless Captain *Green*, and the other Pannels, will positively offer to prove, that *Reynolds* (whom they would have first tried) was *alibi*, (*elsewhere*) and not present in the Action; their Arbitrary Demand of having him tried in the first place, without any Reason assigned, cannot be regarded. Which Debate being heard, the Lord High Admiral and Assessors † superseded

† *delay'd*.

to give Answer, until the Defenders should give in their other Defences, and all should be informed upon together.

These being the Preliminary Defences, separately proponed by the Persons convened in the First and Second Libels; the following Defences were proponed in common, by the Defenders in both Libels.

And 1. That the Libel was informal and insufficient, as being too general and indefinite. And 2. That it did not * condescend upon Day and Place. And 3. That the Qualifications whereupon the Relevancy appeared to be founded, were wholly † irrelevant. And 4. That the Additional Conclusion was groundless and unwarrantable.

* *name*.

† *insufficient, or not to be sustain'd*.

And as to the first of these Defences, it was alledged, That the Libel was informal and insufficient, as being too general and indefinite; not condescending upon the Name and Designation of the Ship * wrongously attacked, nor upon the Persons and Designations of these alledged to be murdered, nor upon the Quantity and Quality of the Goods alledged to be robbed and spoiled: All which ought to be done, seeing that Criminal Libels ought to be certain, and not general and indefinite; whereby also the Defenders might be prejudged of Defences, that might arise to them upon

* *wrongfully*.

Y y y

a par-

a particular Condescendence. As for Example ; if the Name and Designation of the Ship were condescended on, they might prove the same Ship to be yet existing : And so of the Persons alledged murdered, they might prove them to be yet alive : As also, that the Goods alledged robb'd, were yet extant, and lawfully disposed on by their Owners.

To which it was answered by the Pursuer, That he opposed his Libel, which was libelled as definitely as the Thing would allow : For it being libelled, that the Pannels did, without any lawful Cause or Warrant, attacke a Ship sailed by her own Crew, and having her own Cargo aboard, and that they over-master'd the said Ship in hostile manner, and murder'd the Men, and robb'd their Goods. These were certainly Crimes manifest in themselves ; and if the Pannels had acted them in such manner, as to destroy the Ship and the Men, and embazled the Cargo, so as no farther Knowledge could be had thereof ; it was only an Aggravation of their Villany and Wickedness, but could never hinder the Accusation to proceed ; seeing that whatever the Ship, or Men, or Goods were, it was

† *In hostile manner.* certainly Piracy, Robbery and Murder, to attacke a Ship * hostilely, and to destroy the Men, and rob the Goods. And further, A Condescendence was not at all in this Case necessary, seeing that any such Condescendence could be no Ground of Exculpation. For whether the Ship was of such a Name and Designation, or of another ; or whatever the Men and the Goods were, yet the Crime was still the same ; viz. To attack and invade a free Ship, without any Cause or Warrant, and to kill her Men, and rob her Goods.

And further, It's very well known in our Criminal Practice, that Robberies and Depredations are sustained, albeit neither the Quality of the Goods nor their Owners be condescended on : And in effect, the Pannels their Defence of Indefiniteness upon the Ground forefaid is such, that if even in the Road of *Leith*, before Hundreds of Spectators from both Coasts, one Ship should attack another, and hostilely invading her, should destroy her Men, seize her Goods, and sink the Vessel, without suffering either Vessel, Men or Goods to be known ; there could be no Criminal Libel upon it ; because forsooth, tho' Hundreds see the whole Action, yet it could not be more definitely libelled ; save that the Commander and Crew of the one Ship attack'd the other hostilely, and destroyed her Men, and seized her Goods, and sunk her without further Condescendence ; which were most absurd. And therefore, the Libel, as it's libelled, both as to Ship, Men and Goods attack'd, murdered and robbed, without any just Cause or Provocation, is both sufficiently definit and most relevant.

And whereas the Defenders alledged, this Indefinit libelled should the rather be rejected, because that the Pannels were cloathed with Commission ; which tho' they did not plead to exculpat the particular Charge brought against them, yet was always a Ground of Presumption that they acted lawfully ; unless the contrair were made appear, by a particular Condescendence.

It was answered, That nothing did charge the Pannels more home than the pleading of this Commission ; in so far as first, They neither could, nor durst plead it, to exculpat the Piracy, Murder and Robbery charged. 2. It did not so much as make any Presumption for the Pannels ; because the very Tenor of the Commission obliged them to

keep a particular Journal of whatsoever Vessel they should attack hostilely ; and their Journals were produced by themselves, and no such Thing appeared in their Journals. And therefore it was manifest, that their Pretence of a Commission, is only the more wickedly to cover their Villany ; since they can alledge nothing acted suitably to their Commission, but that their own Journals † redargues them. † *refutes.*

The Second Defence alledged by the Pannels in both Libels, was, That the Libel was still defective and imperfect, wanting Day and Place ; in so far as the Place was generally designed the Coast of *Malabar*, which is of a long and vast Tract ; and the Day was one or other of the Days of *February, March, April, May*, which is indefinit, and as good as no Day. And Day and Place were not only requir'd to be condescended on by our Old Law * *Quon.* * *a Book so attach, but the Condescendence is al- called.* so necessary for the Defender's Exculpation ; seeing that if Day and Place were condescended on, he might then prove himself *alibi*, (*elsewhere*) and so elude the Libel, which now he cannot do.

To which it was answered, That the Condescendence in the Libel, as to Day and Place, is sufficient ; because the Facts objected are thereby declared.

2. Day and Place are never essential to a Libel, except where either the Nature of the Crime, or its particular Specification requires it ; for then indeed it must be distinctly and positively libelled. As if a Man either charge another, or aggravat his Crime, by its being a Breach of the LORD's Day ; then the LORD's Day must be condescended on. Or if a Man libel another for beating, or drawing his Sword within the King's Palace ; where the Place is also essential. But as to other Crimes, which of their own Nature are Crimes at all Times ; for what can the Mention of Day or Place signify in such Crimes, as at all Times, and in every Place, are Crimes without Exception. And such are the Crimes libelled. But,

3. If it be said, that the Condescending on Day and Place, is necessary to afford the Defender his just Exculpation of *alibi*, (*being elsewhere*) : It's answered, That in that Case, the Defender may put the Pursuer to condescend on Day and Place, for proving his Exception of *alibi*, (*being elsewhere*) as said is. But then, in common Sense and Law, it must be upon this Condition ; That the Defender acknowledge the Crime charged to have been committed ; and only endeavours to exculpat himself by offering to prove *alibi*, (*being elsewhere*) and that more pregnantly than the Pursuer offers to prove his Indictment. For what Sense or Reason is there, that the Pursuer should be put to condescend positively on Day and Place, in Crimes that are Crimes at all Times, and every where ; unless it be for this very Reason, that the Defender acknowledging the Crime, offers to purge himself by the Exception of *alibi*, (*being elsewhere*) ? And therefore, since Day and Place are libelled in such a just Latitude, as may declare the Facts and Crimes charged ; and that the Defender, on the other hand, doth not acknowledge the Facts and Crimes themselves, and offer to clear themselves by the Exception of *alibi*, (*being elsewhere*) there needs no further Condescendence. And this is the constant Opinion of Lawyers, and the perpetual Custom of our Practique.

The Third Defence proponed for the Pannels, was, as to the Qualifications of the Libel, That they were no ways relevant, nor could be regarded to infer the Conclusion of the Libel, in as much as, 1. There was here no *corpus delicti*, visible Effect or Subject of the Crime, offered to be proven, which is always necessary, and principally where the Crime is offered to be proven *per presumptiones & indicia*, by Presumptions and Tokens: For there *cum constet de corpore delicti*, when the Subject of the Crime is visible, this sustains the Presumptions, and gives the *indicia*, Tokens or Signs, their just Weight.

To which it was answered, That the Pannels Procurators appear to be in a Mistake, either as to what is the *Corpus delicti*, the Subject of the Crime, or as to what is meant by it: And for clearing of this Point, it is to be considered, that Crimes are of two Natures, some *cum effectu permanente*, with permanent Effects, as the killing of a Man, or the burning of a House; in which Cases, the dead Body, and the Rubbish, are permanent Effects: But other Crimes have no such permanent Effects, as treasonable Plottings, Falshoods, Blasphemies, and the like, where indeed there is no such *corpus delicti*, Subject of the Crime, as in the former Crimes; but here all the Crime consists in *facto & animo*, in the Fact and Way of doing it; and the Fact, tho' transient, yet if *dolo*se, unjustly done, makes the Crime. And therefore, according to this Distinction, the *corpus delicti*, Subject of the Crime, is never requisite to be proven. But in the foresaid Crimes that leave permanent Effects; and neither then also, unless the Crimes be libelled with these Effects: For if it should be libelled, for Example, that a Murderer not only killed, but burned the Body to Ashes, or drowned it in the Sea, there would be no farther need to prove this *corpus delicti*, Subject of the Crime, but only to prove the Fact of killing, and killing *dolo*se, unjustly, in which indeed the Essence of the Crime consists. And thus in Confessions, as well as in Libels; if a Man confess a Murder, and yet the Body murdered no where appears; then the Confession is not rashly to be laid hold upon, because it may proceed from Design, or Melancholy: But yet even in this Case, that the Confession should bear not only the Murder, but the destroying of the Body murdered, by Fire or Water, as said is, then all the Enquiry would be, whether the Fact of Murder be proven or not? Which Things, if applied to our present Case, where it is expressly libelled, not only that the Pannels invaded the Ship by Piracy, but that they threw the Men murdered over-board into the Sea, and also sold the Ship; all the Enquiry that remains is, whether this Fact was so done or not? And the Libel is most relevant, tho' neither Ship or Men appear. And yet farther,

if the Pannels Procurators will still be so * grassier as to require a *corpus delicti*, Subject of the Crime, when it's expressly libelled, that the Effect of the Delict was destroyed and put out of the way, they may satisfy themselves, that the Goods robbed are still extant, and were found on Board of Captain Green's Ship: And therefore 'tis plain, that in this Case, and to sustain the *Indicia*, Tokens and Qualifications libelled on, there needs no farther either Condescendance or Proof of the *corpus delicti*, Subject of the Crime, which was industriously destroyed.

But, Secondly, It was objected, That all the Qualifications are insufficient and remote, and at best but probable: Whereas the known Rule is, that Crimes must be proven either *per Testes*, by Witness above Exception, or *per documenta clarissima*, very clear

Proofs, or *per indicia indubitata*, undoubted Tokens: None of which hold in this Case; for as for the *Indicia*, Tokens, there is not one of them, but take the same singly, as the hearing of Shooting on the Shore, the seeing the Ship *Worcester*, having another lying at her Stern, the Boats coming alhore for Water, and the Crew saying, *they had been a Busking & sic de ceteris*, and so of the rest; but take them singly, and they may all have a good and innocent Construction: Nor can it be said, that jointly they become stronger, and fortifie one another, as single Arrows easily broken when apart, yet cannot be broken in a Sheaf, because that all the Qualifications and *Indicia*, Tokens in the Libel, with the foresaid Constructions, may be put upon them, the Constructions will still take off the Face; besides that, it's well known, that there are some *Indicia* only *probabilia*, some Tokens only probable, and that the Law requires *Indicia indubitata*, undoubted Signs; it being still the safer side to spare doubtful Innocents, than to condemn only presumed and probable Guilt. To all which is to be added, That it's the common Opinion of Doctors, that Presumptions can scarce ever conclude *ad penam ordinariam*, to ordinary Punishment, but at the most only *ad penam arbitariam*, to Punishment at Pleasure of the Judge: And *Mackenzie* in his * *Criminals*, says, "Presumptions are * *A Book so* only founded on *may be's*, which may *called* not be; and to allow Crimes to be proven by Presumptions, would leave Judges to be "Arbitrary". So that the common Opinion runs against Presumptions. But,

To all this it's answered, That yet it is clear Law, that Crimes may be proven *per indicia indubitata*, by undoubted Tokens, which in Law are no more than violent Presumptions, *que fidem extorquent*, that force a Belief: But the Truth is, that in this Case the Pursuer hath not only *indicia indubitata*, undoubted Tokens, but likewise positive Witnesses, and also Documents in Writing; which all being conjoyned, do make a satisfying Evidence, and fix a clear Conviction; which is the utmost Design of Probation. But Secondly, it's most certain, both in Law and † *Pratique*, that many Crimes † *Practice* are only discovered and proven *per presumptiones & indicia*, by Presumptions and Tokens; and that the Doctors in several Crimes, especially these more atrocious, as Treason, Piracy, Forgery, and the like, where Wickedness endeavours most industriously to hide it self, do allow and approve Probation *per Indicia*, by Tokens, as most necessary for the punishing of these Crimes. It were needless to multiply the Citations both from the Law and Doctors, that might be adduced in this Case, as *l. 3. §. 2. D. de Testib.* where the Rescript bears, *Quæ argumenta ad quem modum probande, cuique rei sufficiant nullo certo modo satis definiri potest*: "The Arguments to be us'd, and the Manner of proving every Thing sufficiently, can't certainly be defin'd and so forth: And so concludes, *Non utiq; ad unam probationis speciem cognitionem statim alligari debere, sed ex sententia animi tui, te æstimare oportere, quid aut credas aut parum probatum tibi opinaris. Item, l. 22. cod. ad legem Corneliam de falsis, ubi falsi examen inciderit tunc acerima fiat indago, argumentis testibus scripturarum collatione, aliisque vestigiis veritatis, &c.* "You are not to be tied in taking Cognizance of a Matter to one Method of Probation, but you must act according to your own Judgment, and consider what you are to believe, and what you think not fully prov'd. *Item, &c.* when the Falshod of a Thing is to be enquired into, then a "most

" most strict Search is to be made, by Arguments, " Witnesses, comparing of Hands, and other Signs " of Truth, &c. By which Law it's plain, that *Indicia & Presumptiones*, Tokens and Presumptions, have place, and may make full Faith; and how can it be otherwise, since first, it is certainly the Interest of Mankind that Crimes be punished. 2. It's no less certain, that Crimes endeavour to cover themselves. 3. That Proof or Probation is only to make an Evidence for Discovery. 4. That the End and Standard of this Discovery, and of all Probation, is the satisfying Conviction of the Judge that has Power to punish. Now if most Crimes be committed without Witnesses, and yet do otherways appear certainly to be committed; and if this Certainty arise from Presumptions, and be withal satisfying, it is just the same as if the Crime was proven by many Witnesses. And thus *Matheus de Criminibus*, *Tit. de Probationib. cap. 6. per totum*, and *Gail. lib. 2. Obs. 149. Numb. 9.* where he reasons most justly upon Probation by Presumptions, where there is a Difficulty by reason of the Want of Witnesses; and still brings the Matter to this true Period, That whatever way Faith be fully made to the Judge, either *per Testes*, or *per Indicia*, or *per Presumptiones*, either by Witnesses, Tokens, or Presumptions, the End of Probation is attained, and so the Evidence sufficient.

The Procurators for the Pannels alledged, That this were to make Judges too Arbitrary; but tho' it hath indeed been the Care of all Lawyers to prevent Arbitrariness, yet it's most certain, that where Evidence doth only rise as Providence offers, and Circumstances concur, the Arbitriment of the Judge must take Place, and the Safety of Mankind doth precisely lie here in the Integrity and Discretion of the Judge, helped indeed by some Rules of Law, but no ways bounded or fix'd to precise Rules, which the Matter will not bear. And therefore we see, that even in the most certain Manner of Probation, *viz.* by Witnesses, and the highest Law of it, *that in the Mouth of two or three Witnesses shall every Thing be established*: There is still an Arbitriment insinuate, as to the Discretion of the Judge, or otherways the Law would not have said, two or three, but would have fixed the Number precisely; whence it is most certain, that in all Probation there is an Arbitriment of Discretion, and that tho' this Arbitriment may be bounded by some Rules, yet the ultimate and true Standard of all Probation, is the satisfying Conviction of the Judge, according to his best discerning.

These Things then premised, *viz.* That a Proof may be sufficient, *per Indicia & Presumptiones*, by Tokens and Presumptions, the Application to the present Case is plain; for where the Procurators for the Pannels would take off the Qualifications, as separately inconcludent, and at best probable, it is clearly captious; it being certain, that many *indicia*, Tokens, conjoined and connected, as in this Case, may make a sufficient Evidence, and that here *quæ non prosunt singula multa juvant*, i. e. " Those Things " which taken singly, are of no Effect, yet many " of 'em together are. And thus, if first the Probation that shall be offer'd, of the Hostile invading the other Ship, by the Pannels belaid down and thereto added, the Surgeon's Declaration of other Circumstances, with all the other Qualifications in the Libel, they will certainly force a Faith and full Perswasion upon all rational Men, tho' separately they cannot have that Weight; one Witness proves not, yet two prove, and in some Cases two are scarce sufficient, but three are beyond Exception. If then even in

Witnesses there be a mutual and fortifying Concurrency, the same must also be admitted in Presumptions & *Indicia*. So that upon the whole, the Pursuer craves no more, than that every Man that hears this Libel, and shall hear its Proof, lay himself fairly open, without any Prejudice to the Light arising naturally from the Matter it self, and its Circumstances, and the Proofs and Confirmations thereof, as they are set down in the Libel; and if he do not wilfully resist, he will certainly be satisfied to a full Conviction. There are indeed hidden Crimes, and such as are said to be of * difficult Probation, and the most atrocious, as Treason, Assassinations, Piracy, Forgery, are ordinarily most hid; and Doctors say with Reason, that their Presumptions ought to be examined, *acerrima indagine*, with the strictest Scrutiny; but all this should be far from impressing any with the Prejudice, as if a satisfying Evidence may not be found in these Cases. And therefore since all pleaded by the Pursuer, is, that first his complex Probation *per Testes & Indicia*, by Witnesses and Tokens, may be fairly received. 2. That concurring and coming together, they may be allowed their just Weight. And 3. That if that just Weight, and the Evidence that attends it, be satisfying, it may be held as concludent. It's clear as the Sun-Light, that no Stretch is intended, but Justice fairly prosecuted; and tho' in this Case of such an extraordinary Crime, and where so much Evidence appears, the Pursuer might even, according to the Claim of Right, press the Supplement of Torture, yet he contents himself to insinuate, that tho' this may be both just and necessary, yet he is hopeful, the Force of his Evidence may otherways prevail.

The Fourth Particular is the additional Conclusion; but as to that Conclusion, it is so natural in it self, and so well fortified by the Authority of Doctors, and so certain, not only in the Case of Counterband, but even of other forbidden Goods, that nothing needs be added; for since every Pirate is presumed to have the Ship and all in it at his Command, as his own; and since the Ship is certainly the Instrument, as well as the Goods are presumed to be the Effect of his Piracy, it follows naturally, that the Confiscation of both Ship and Goods should be a Part of the Pains concluded.

In respect whereof, &c.

Here follows the Laws, and some other Quotations used in the Debate, where they are also *English'd* in their proper Places.

L. 2. §. 2. *Ejusdem quoq; Principis extat rescriptum ad Valerium verum de excutienda fide testium, in hæc verba: Quæ argumenta ad quem modum probanda cuique rei sufficiant, nullo certo modo satis definiri potest, sicut non semper, ita sæpe sine publicis monumentis cujusque rei veritas deprehenditur, alias numerus testium alias dignitas & auctoritas, alias veluti consentiens fama confirmat rei de qua queritur fidem, hoc ergo solum tibi rescribere possum summam, non utique ad unam probationis speciem cognitionem statim alligari debere, sed ex sententia animi tui, te æstimare oportere, quid aut credas aut parum probatum tibi opinaris.* — The true Rescript of that Prince to 'Valerius, about enquiring into the Credibility of 'Witnesses, is also extant as follows. What Arguments are sufficient to prove any Thing, cannot 'certainly be determin'd; for tho' not always, yet it 'many times happens, that the Truth of a Matter is

' is found out without publick Monuments. Sometimes the Number, sometimes the Dignity and Authority of the Witnesses, and at other times common Fame confirms the Truth of the Thing in Question. I can only therefore enjoin you, in short, that in your Enquiry, or Examination into a Matter, you are not to be tied to any one Sort of Proof; but you must judge according to your own Conscience, what you think to be prov'd, or not prov'd to you.

L. 22. C. ad Legem Corneliam de falsis. Ubi falsi examen inciderit, tunc acerrima fiat indago argumentis, testibus, scripturarum collatione, aliisque vestigiis veritatis: Nec accusatori tantum questio incumbat, nec probationis ei tota necessitas indicatur; sed inter utramque personam sit Judex medius: Nec ulla interlocutione divulget quæ sentiat; sed tanquam ad imitationem relationis, quæ solum audiendi mandat officium, præbeat notionem: Postrema sententia, quid sibi liqueat, proditurus: --- When you are to enquire into the Falshood of Evidence, you must make the strictest Inquisition that's possible, by Arguments, Witnesses, comparing of Hands, and other Signs of Truth. Neither must the Accuser only be question'd, or the whole Charge of the Proof be laid upon him: But the Judge must act an indifferent Part betwixt the Plaintiff and Defendant; and by no means divulge his Opinion, but give both Parties the Hearing, and at last pronounce according to his own Judgment.

Mathæus de Criminibus, Lib. 48. Dig. Tit. 17. de Probationibus, Pag. 675. Itaque si cum uno illo Teste nulla concurrant argumenta, nequaquam audiendus erit; sed cum Paulo dicendum in Lege duo 30 d. de Testam. tut. non Jus deficit, sed Probatio. At si argumenta alia concurrant, audiendus: Non enim necesse est unum Crimen, uno & eo Probationis genere ostendi, veluti testibus tantum vel tabulis, vel argumentis. Possunt & diversa genera præconiungi, ut quæ singula non nocerent, ea universa tanquam grando reum opprimant. L. 3. Sect. 3. ejusdem d. de Testib. Hoc est, quod aliis verbis dicitur plures Probationes imperfectas posse coniungi. --- Therefore if with that one Witness there be no concurring Arguments, he is not at all to be regarded: But we must say with Paulus, in Lege duo 30 d. de Testam. tut. The Law is not defective, but the Proof. But if other Arguments concur, he is to be regarded: For it is not necessary that one Crime be made evident by one manner of Proof only; as by Witnesses, by Writing, or by Arguments only: For several Sorts of Proof may be so conjoin'd, that those which taken alone, would not affect the Criminal, yet being put all together, come upon him, and overwhelm him like a Storm of Hail. L. 3. Sect. 3. of the same D. concerning Witnesses; ' That is, as it is expressed in other Words, Several imperfect Proofs may be join'd together.

Gail. Obs. 66. Num. 12. P. 416. Et regulariter Testes singulares plenam Fidem faciunt, quando aliquid in genere probandum est; puta Titium esse infamem aut furiosum, quo licet singulares sint respectu actuum, tamen si ratione suis conveniant, integrè probant. --- And regularly single Witnesses make full Proof, when any Thing is to be proven in general; for instance, that Titius is an infamous Person, or a Madman: For tho' the Witnesses be single in respect of the Acts, yet if they agree in the End, the Proof is full.

It may be easily granted, that regulariter Indicia debent esse indubitata, ad condemnandum reum:

' That regularly Presumptions ought to be uncontrovertible, when a Criminal is to be condemn'd upon them. But at that same Time it must always be owned, that there are Crimes excepted from the Rule, by the general Opinion of the Doctors; such as Crimen Læsæ Majestatis, & Crimen Assassinii, Treason and Assassination; of which last sort, the Crime of Piracy is the most atrocious. And therefore Giurba, in Consil. 22. Num. 5. saith, Sed Assassinii qualitas homicidio adjecta, novam constituit Delicti Speciem: --- The Quality of Assassination added to Murder, forms a new Sort of Crime. Num. 17. In Assassinio omnia procedant quæ in Criminibus exceptis: --- In Assassination, all Things are to proceed as in excepted Crimes. And Num. 18. Assassinii Crimen, ob illius Atrocitatem, æquiparatur Crimini Læsæ Majestatis: --- The Crime of Assassination, because of its Atrociousness and Enormity, is made equal to Treason. And then Num. 22. he concludes, That in Probatione Assassinii, probabilia sufficiunt Argumenta: --- In the Proof of Assassination, probable Arguments are sufficient. And Mascard, de Probationibus, Conclus. 1228. Num. 77. In Crimine Assassinii probabilibus Argumentis probari potest: Assassination may be prov'd by probable Arguments. And Num. 78, 79, 80, and 83. he names the other atrocious Crimes, where the like Probation is sufficient; and in that same Conclusion, Num. 51. Quod ex multis Indiciis simul junctis, resultat plena Probatio etiam ad quem criminaliter condemnandum: --- Many Presumptions joined together, make full Proof to condemn any Man in a Criminal Case. And Quest. 8. Num. 8. Probatio per Evidentiam omnibus est potentior, & inter omnes ejus generis major est illa, quæ fit per Testes de visu: --- Proof by Evidence is the strongest of all Proof, and especially by Eye-witnesses. And Conclus. 831. Num. 4. Probatio per Conjecturas & Indicia, in his quæ difficilia sunt probatu, & clandestinè committuntur, habentur pro evidenti & clara Probatione: --- Probation by Conjectures and Presumptions, in Things hard to be proven, and clandestinely committed, are held to be good and evident Proof.

Carpzovius, Quest. 223. Num. 57. Secus tamen Res se habet, si plura Indicia concurrant, & conjunctim reum aggravent, quorum unumquodque per testem singularem probetur; nam una Presumptio aliam juvat, plurimæque Indicia conjuncta fidem faciunt: --- But the Matter is otherwise, if many Presumptions concur, and load the Defendant; of which any one may be prov'd by a single Witness: For one Presumption strengthens another; and many of them join'd together, make Proof.

And in the Tryal of John Swintoun for Murdering of his Wife, there was no direct Proof by Witnesses; but the Libel being qualified, the Proof was by a young Girl of 14 or 15 Years, who left John Swintoun and his Wife alone in the House, and went to the Smith's Shop, to enquire for Letters; but returning, found the Door shut, and therefore went away for a little Space; and then coming back and knocking, her Master opened, and she perceived some Red, like Blood, upon his Shoes. And when she came in, she found her Mistress dead in the † Spence; † Buttery. which was all she could say. And then another Man declared, that he saw John Swintoun go from his House to a * Stank, and there wash his Shoes. Which Indicia, Presump-

* Ditch.

tions,

tions, being joined with the Proofs of their ill Agreement, and frequent Quarrellings

* *Jury.* before, did determine the * Affize.

And tho' it was strictly objected, that in the Mouth of Two or Three Witnesses, every Thing should be established; and that in the aforesaid Case there was no direct Witness at all, far less Two or Three; and that even the aforesaid Circumstances were only proven by single Witnesses;

† *Tokens.* yet the Affize found that Evidence in the Presumptions and † *Indicia* laid together, that they brought in their

Verdict proven; and Swintoun thereafter confessed, and was executed.

And in effect, unless that *Indicia* and Presumptions be sustained, and even single Witnesses for proving these several Presumptions and *Indicia*; which is called a *Cumulative Probation*, when all the Witnesses and Testimonies concur in *idem Crimen*, & *ad eundem Finem*, in the same Crime, and to the same End; Crimes, and these the most atrocious, would escape unpunished.

And therefore, upon the whole, it is most certain, when Presumptions, Qualifications, and † *Indicia* concur, and make a full perswasive Evidence; the Probation should be held for as fully sufficient, as the most direct Witnesses; since all that the Witnesses can do, is only to make full Faith in the Matter, which may be otherwise supplied, as said is.

* *observed.* As to the Additional Conclusion, it may be * noticed, that *Molloy, de Jure Maritimo, Lib. 1. Cap. 3. Sect. 19. Pag. 60.* saith, That when a Merchant procures Letters of Mark or Reprize, and then delivers the Commission to Persons to endeavour a Satisfaction; if such Persons commit Piracy, the Vessel is forfeited without Controversy.

INFORMATION for Captain Thomas Green, Commander of the Worcester, Captain John Madder, his Chief Mate, and others; against Mr. Alexander Higgins, Advocate, Procurator-Fiscal of the High Court of Admiralty.

THE said Captain Thomas Green, Captain John Madder, and others belonging to the Ship called the Worcester, being pursued at the Instance of the said Mr. Higgins, Procurator-Fiscal, before the High Court of Admiralty, and the Lords Assessors appointed by the Privy Council; for the Crimes of Piracy, Robbery and Murder, conform to Two Criminal Indictments, raised at the Instance of the said Fiscal. The Case being fully pleaded before the Honourable Judges of Admiralty, and the Lords Assessors; both the Accuser and Accused were ordained severally to inform, as Use is in such Cases.

The Criminal Indictments being * *are the same.* holden as repeated, which * coincide both as to the Conclusion, and *Media concludendi*, way of concluding; and denied it is needless to repeat some preliminary Defences that

were proponed, seeing it seemed just to the Honourable Court to repel the same: And therefore the Pannels proceed to their Defences, whereupon they were ordained to inform. These are of Two Sorts; First, * *Dilator*; * *for putting off, or delay.* and Secondly, † *Peremptor*. † *Positive.*

And first, it was proponed for Henry Keigle, Carpenter, and others of the Pannels in the same Indictment with him, That they could not be put to answer, unless the Captain himself were first insisted against; because they being his Crew, and under his Command, they could not be charged with any Thing done by them, unless he were first tried.

It was answered for the Pursuer, That they were not * convened for * *call'd to the Bar.* any Thing alledged acted by their Captain, and by them as his Crew; but that they were convened as *Socii*, Fellow Criminals, and Partakers of the Crimes libelled; which could be warranted by no Commission nor Character the Captain did, or could pretend to: And that they were all charged as being *Socii*, Fellows, and involved together in one Crime; and so every one must answer for himself.

It was replied for the said Henry Keigle, and the other Pannels with him, That the Pannels are libelled against as the Crew of the Worcester, under the Command of Captain Thomas Green; and that under his Command they did attack a Ship, &c. So that they are here libelled only as Complices, and Accessaries to the Crime alledged; and therefore, according to the Principles of Law, the principal Delinquent ought to be first try'd; especially where the Captain was in Custody, and might be brought to his Tryal; and that by the Commission produced under the Great Seal of England, superscribed by King William, the said Thomas Green was cloathed with a Power, authorizing him to attack and suppress Pirates, which is a Military Power, and consequently implies an Authority and Command over the Crew of the Ship, to give ready Obedience in all these Matters: So that the poor Pannels, who are of the Crew, have all Reason in the World to contend, That the Captain, whose Actings in these Matters they could hardly well debate, should first pass the Tryal upon the Crimes alledged; who might, by Virtue of his Commission, and otherways, † exculpate, and defend himself against the Crimes libelled; and consequently, all the Crew that were in Subjection under him.

This Defence the Pannel might perhaps plead, to a further Extent to absolve them entirely; but at present they conceive, it can hardly be denied, the Captain should first undergo the Tryal. And there is a great Difference betwixt *Socii Criminis*, Fellow Criminals, which are either independent upon one another, or if associate under one Head, as *Banditti* and Pirates usually are, (which is an illegal and unwarrantable Authority taken up) and Persons accused as *Socii Criminis*, Fellow Criminals, who by Legal Authority are subjected to the Command of others: In which Case, if the Person trusted with the Authority, has transgressed, or abused it; if it does not plead an absolute Exemption from the Punishment of the Transgression, at least it should have this Effect, That the Head and Chieftain should be obliged first to his Defence; which it is hoped the Honourable Judges will find just and reasonable.

The other dilatory Defence, proposed for the Captain and others in the Second Libel, was, That whereas *John Reynolds*, Second Mate, was conveyed and pannelled with him, as also some others, as *Socii Criminis*, Fellow Criminals, whom the Captain and other Pannels had cited as

* Defence. Witnesses in their * Exculpation; it was both ordinary and absolutely necessary, that these Persons so cited for Exculpation, should be first tried; to the end, that being purged of the Imputation of any Crimes, they might be capable to be Witnesses, for proving the Defences of Exculpation, that the Captain and other Pannels did propose and insist upon, for the Vindication of their Innocency.

It was answer'd for the Fiscal, That * Alters. he owned, when both * Actors and † Indictment. Witnesses were included in one † Libel, of Design to deprive the Actors of their Defences; the Actors might, and were allowed to condescend upon those, whom they intended to use as Witnesses: But then at the same Time, they were obliged to propose a Ground of Exculpation for them, and so crave that they might be first tried upon the foresaid Ground; other-

* alter. ways they could not, without such a special Condescendance, * intervert the Form of Tryal. And there could

be nothing more groundless, tending to elude all Criminal Proceedings against Complices of the same Crimes, than to allow any of them at random to crave others to be first tried; and so the Tryal to proceed of one single Person after another: Whereas the true and plain Method were, that the Pursuer insist against such as he pleases, either singly or jointly. And unless some † Specialty be alledged, why the † Specialty Cause. Tryal of one should proceed before the Tryal of another; it never was, nor could be left to the Arbitriment of the Pannels. And therefore, unless the Captain will offer to prove, that *Reynolds*, and others whom they would have first tried, were *alibi*, elsewhere; their arbitrary Demand of having them tried in the first place, without any Reason, cannot be regarded.

It was answered for the Captain, and the other Pannels, That their Demand upon this Point was most consonant to Reason, Law and Form, in Criminal Procedures: That Exculpation, which tends to the Proof of Innocence, and Freedom from Guilt, was most favourable; because it is still presumed, till the Crime be proved. And therefore it is, that Witnesses who are not regularly admitted for proving of a Crime, because of some Exception, will be allowed to prove the Defender's Innocence. And upon this Account it is, that several Things in Form are remitted in Exculpation: And there is nothing more material for Defence of Persons accused, against the Prosecutor, (who ordinarily is prejudged and prepossessed) to guard them against all the indirect Methods that may be taken by the Pursuer; to preclude the Accused from the usual Means of proving of their Defences, than what is now demanded. And since none can be more proper Witnesses for proving a Pannel's Defence, (as for Instance; *Moderamen inculpatæ Tutela*, i. e. the Rule of blameless Self-Defence, as Persons said to be present) therefore a violent Pursuer might, in such a Case of Design to preclude the Pannel from his Defence, crave those present as accessary. Upon which Account it is, that both Reason and Law provides, that if the Pannel does

offer to prove a relevant Defence, by the *Socii Criminis*, Partakers of the Crime accused with him; the Pursuer must necessarily first proceed to the Tryal of these *Socii*, Partakers, who otherwise would have been led as † habile † Legal, or Witnesses; to the end, that being good. purged, they may be yet habile.

This is so plain in Reason, and has been look'd upon as the constant Practice in all Criminal Procedures in the Justiciary Courts of *Scotland*, that it is admired the Fiscal should make any Opposition to it.

He so far owns in his Pleading, that it is Form and just upon the Matter; but would shift it in this particular Case, unless the Pannels would alledge and * found upon * insist upon. a particular Ground of Exculpation, and

offer to prove and instruct the same, as that their *Socii*, Companions, cited as Witnesses, were *alibi*, elsewhere; but this is altogether without Foundation. For in all criminal Prosecutions, the Accused are not put to prove their Defences, because the denying of the Libel is a Defence sufficient of it self; and if the Libel be not proved, the Pannel goes free by the Rule *Actore non probante absolvitur reus*, the Plaintiff failing in his Proof, the Defendant is absolv'd.

so that when there are Persons accused as *Socii Criminis*, Fellow-Criminals, who might be very habile Witnesses for exculpating the rest, if they did not lie under the Imputation, when their Tryal is first required, that they may be purged of the Imputation, there is no Necessity to propound for them any special Defence, * elide- * Making the Libel; seeing the very Denial of void the the Libel is enough, and their Inno- Indictment. cence is presumed, except Guilt be proved.

And if the Fiscal will have the Captain, and the other Pannels, to condescend upon what Ground their other *Socii*, Companions, cited as Witnesses, should be acquit; they need say no more, but that they ought to be acquit, because the Libel is not true. And is there not the same Reason to acquit Pannels, because the Libel is not proved; and consequently, to render them habile Witnesses for other Persons accused, as if the said Persons were acquit upon a Defence proponed, elideing the Libel; whereby it plainly appears, the Answer given is strained, and does mightily increase the Suspicion against the Fiscal, that he has indicted the Witnesses cited by the Captain, and the other Persons in their Exculpation, of Purpose to preclude them from their Means of Defence; and the rather, that the Pannels appeal to the Honourable Judges, if it was not owned by the Pursuer in the Debate, that Mr. *Reynolds* was ashore at the Time of the pretended Attack; besides that, the Libel bears the Chyrurgeon, and others of the Crew, were ashore the Time of the pretended Action, which frees the Pannels of all Calumny. There can be innumerable Instances given before the High-Court of Justiciary in criminal Matters, that where there are several Complices indicted, if any of them have Grounds of Exculpation, which they can prove by others of the Pannels, their Tryal proceeds first. This is plainly asserted as uncontested by Sir *George Mackenzie*, in his Book of the Laws and Customs of *Scotland*, in Matters Criminal, *Tit. Excul. Par. 9.* nor does he make any Distinction, or requires that any special Defence should be condescended upon for purging *Socii Criminis*, the Fellow-Criminals, to render them habile Witnesses. The Rule is plain in the Prosecution of † Delicts, before Civil Courts, in order to repair Da-

images, that if more Persons be cited, as *Co-rei ejusdem delicti*, guilty of the same Crime, and that some of them are necessary Witnesses for proving the Defences proponed for others; the Proof must first proceed against these. And so it was found by the Lords of Session the 24th of February, 1662, *Mac-kartney* against *Irving*, much more ought it to be in criminal Cases, as lately in the Case of *Ross* of *Auchnacloch* against Captain *Monre*, before the Lords Justiciary. Nor is there any Inconvenience from what is alledged, that this should tend to elude all criminal Proceeding against Complices, and occasion the lengthning out of the Tryal, to proceed to one single Person after another; for as no Time is to be grudged in the Enquiry of such Matters, which concerns the Life of Man, so the Pannels do not propone this preliminary Defence to protract or delay the Tryal, and therefore are satisfied, that not only *Reynolds*, but their other *Socii*, Companions, indicted, who are likewise cited in their Exculpation, go to the Tryal at one and the same Time. The Captain, and other Pannels with him, do plainly argue thus; Either *Reynolds*, and the other Persons cited in the Exculpation, are guilty or not; if they be guilty, it ought to be found so, for till that be, they are presumed innocent; if not guilty, what Law or Reason is there to preclude them from being Witnesses for the Captain, and the other Pannels Defence; or what Law is there that can oblige them to condescend upon, and propone a particular Defence eliding the Libel, when the Libel is not owned to be true, and that the Pannels have all denied the same? So it is hoped the Honourable Judges, and the Lords-Asseffors, will not preclude them from the ordinary Privilege, which, hitherto, has not been denied to any Pannel.

For if this was allowed, a violent Pursuer might prevent Probation, and render it impracticable. For, suppose one Man kill another in Self-Defence, two Gentlemen walking can testify this; but to prevent the Probation of *inculcata tutela*, unblameable Self-Defence, they are cited as Parties; and they can prove by other two Persons, at a greater Distance, their *alibi*, being elsewhere, which when the Pursuer gets notice of, they are made Parties also; and so *in infinitum*. So that the said violent Pursuer might prevent all Probation, if the Defender were obliged to alledge *alibi*, being elsewhere, for the Witnesses of his Exculpation.

The * *peremptory Defences* proponed for the whole Pannels in both Libels, as totally excluding the same as ** *Irrelevant*, are as follows.

* *Positive.*

** *Not good or sufficient in Law.*

I. THAT the Libel was irrelevant, as being general and indefinite, not condescending upon the Name, Designation, or any other Sign or Evidence, by which the Ship alledged to be seized might be particularly distinguished, nor yet the Persons Names alledged to be murdered, or to whom the Ship and Goods robbed did belong; which seemed to be absolutely necessary in all such criminal Indictments, not only as a Requisite in Form, but in Equity and Reason; without which, Persons accused

should be in great Hazard from general and indefinite Libels, and precluded from their Means of Defence, which otherways are obvious, when the Accusation is certain, special, and pointed.

It was answered by the Pursuer, That he had libelled as definitely and closely, as the Thing would allow; for it being libelled, that the Pannels did, without any lawful Cause or Warrant, attack a Ship, sailed by her own Crew, and having her own Cargo aboard, and that they over-mastered the Ship, in an hostile Manner, and robbed the Goods: These were certain Crimes manifest in themselves, and if the Pannels acted them in such a Manner, as to destroy the Ship and the Men, and imbezzelled the Cargo, so as no further Knowledge could be had thereof, it was only an Aggravation of the Crime, and could not hinder the Accusation to proceed; nor was any * Conde- * *Particular* scendance here necessary for Exculpation: for of whatever Designation the Ship was, and whatever the Men and Goods were, yet the Crime was still the same; and that it was known in our Practice, Robberies and Depredations are sustained, albeit neither the Quality of the Goods nor Owners be condescended upon; and in effect, the Pannels Defence of Indefiniteness is such, that if in the Road of *Leith*, before hundreds of Spectators, one Ship should invade another, destroy her Men, seize her Goods, and sink the Vessel, whereby none of all these could be condescended upon, there could be no criminal Libel upon it, because of the Defence of Indefiniteness, which were most absurd.

It was replied for the Pannels, That what was said, did not take off the Objection of the Indefiniteness of the Libel, which by our Form and Law can be the Ground of no criminal Accusation; for in all such Procedures, *debet constare de corpore delicti*, the visible Effect or Matter of the Crime ought to appear; that is, that such a Ship is taken by Piracy, such Men murdered, and the like. It is inconsistent with the Nature of a criminal Accusation, that Men should be alledged to be murdered, Ships seized, and these not condescended upon, and by our constant Practice it is so required: Nor can it be instanced, that ever any such indefinite Libel was sustained. There are no Questions whatsoever, that are more nice than these concerning the Life of Man, and therefore the *Englishman Coke*, 7 Rep. *Calvin's Case*, observes, that an Indictment should be most curiously and certainly penned; and the † *Old Books of the Majesty*, re- † *A Law-*quires several Things to be specially *Book so cal-*expres'd, as the Names of the Parties, led. Day, Year, Place, Cause of Complaint, and Damage; and as it is necessary in Form, so this Form has been founded upon just Reason, for otherways these Inconveniences should plainly follow from general and indefinite Libels.

First, A Person indefinitely accused of a Crime, as for Example, of Murder, without expressing the Person alledged to be murdered, can never be safe from any Absolution or Acquittal in Courts; for how can he oppose his * * *His being* Sentence Absolviture to a special Accusation that afterwards may be raised, *acquitted* seeing he cannot make the one meet *by the* the other. And if Captain *Green*, and the other Pannels, shall be now † † *Absolved.* Absolvied, this should not be a good Defence to them, neither in *Scotland* nor *England*, if they should be afterwards criminally pursued, for

for attacking a Ship, and murdering of Men, specially condescended upon, because it is not clear, that the present Indictment, as drawn, did concern these special Accusations; and therefore Accusations of that Nature should be so special, as that afterwards the accused be not brought to any further Disturbance. 2. The Reason why such Accusations should be special and definite, is, That the Pannels be not precluded from the obvious Defences, that tend to elide the Libel; as here in this Case, if the Libel were special and circumstantiate, and some Designation given of the Ship and Crew, it might be in their Power to prove the obvious Defence, that such a Ship was at the Time libelled, in such another Part of the World; that such a Ship was either cast away by Storm, or taken by Pyrates in such a Place; or that the Ship is yet extant, and the Crew alive: From all which, the Pannels are precluded by a general and indefinite Libel; and therefore Law has fixed the Forms in these Cases, that such Accusations be not vagrant and loose.

It will not be denied, but that the Time and Place must be express'd: The same Parity of Reason obliges to a special Condescendence of the Party injured, Damage sustained, as relating to such particular Persons. And the above-cited Sir George Mackenzie, in his Title of Libels, and the Forms thereof, does set down, That if the Defender crave the Pursuer to express the Day, because he offers to prove *alibi*, being elsewhere; then the Judge should force the Pursuer to express the Day, or else the Defender would be precluded from proving his Innocence. The same Reason is, that the Pursuer here should be particular, as to the Ship alleged to be seized, &c. because the Pannel might offer to prove that that Ship was *alibi*, elsewhere, at the Time: And many more Defences arise from the condescending upon the *Corpus delicti*, the visible Effect of the Crime, than from the Circumstance of either Time or Place. And this is not laid down conditionally, that these are not the Requisites of a Criminal Indictment; except first the accused propound their Defence, *verbi gratia*, *alibi*, for instance, elsewhere: But it is laid down as a Rule, That these are the Requisites of all Criminal Libels; and the Reason given is, That the Pannels be not precluded from their

* *observ'd*. Defences: So that it is not more * noticed, whether in this or that particular

Case this Defect is prejudicial, because Necessity has first induced the Form; and then this Form turns to be a Law in all such Cases. And the forecited Sir George Mackenzie, in the same Paragraph, thinks it so far a Requisite of a Criminal Libel that the Crime should be

† *instanc'd, or* particularly † *subsum'd*, that he *argued from*. brings it as an Argument why it

should be so, that it is declared by the 148th *Act Parl.* 12 K. James VI. That a Libel bearing common Regrating, or Foretelling, in the general, shall be relevant, without condescending on the Time or Way of committing the same: And therefore concludes, that seeing this was an Act dispensing with the regular way; *Exceptio firmat Regulam in non exceptis*, an Exception confirms the Rule in Things not excepted. And hence it is not a good Argument, that the Pursuer has libelled as definitely and closely as he could in the present Matter: For better an Inconvenience should be suffer'd in a particular Case, than that a dangerous Preparative be laid down, of admitting indefinite and general Criminal Libels, whereby poor Pannels may

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be precluded from their Means of Defence. And this will serve to obviate the Argument drawn from a very infeasible Chance, supposed to fall out in the Road of *Leith*; which as proponed, will likewise be otherwise circumstantiate as to a positive Probation, and not founded upon Conjectures and Presumptions, as this Case is.

Nor can the Fiscal altogether excuse his indefinite Libel, seeing the Means was not wanting of his coming to the Knowledge of the Ship, if it be true what is libelled; seeing the Ship was not sunk, but sold to a particular Person; and by some Evidence of the Ship, the Crew might likewise have been known.

3. As Law and Form require such Libels to be definite and special, so more especially in this Case; because Captain Green was clothed with a Commission under the Broad Seal of *England*, which empower'd him to act in Hostility against all Pirates: And therefore a general and indefinite Libel, upon attacking and seizing a Ship in his Case, would seem very improper: For the Presumption must run in his Favours, That if any Acts of Hostility were done by him, they must be presumed in Prosecution of his Commission. This is not pleaded as a separate Defence, to elide the Libel; nor is it pleaded to have given him full Liberty to have ranged *impune*, with Impunity, but as a Specialty in this Case; that as it is a Defect in all Criminal Libels to be general and indefinite, so much more in this Libel, he being clothed with a Commission, and having Power to † *assail*. And therefore the Pre- † *attack*.

sumption runs in his Favours; except the particular Ship were condescended upon, known to be a Merchant and Trading Ship, and consequently he out of his Duty in attacking the same. And therefore it is frivolous to object, that the Commission obliged him to keep a particular Journal of whatsoever Vessel he should attack hostilely; seeing the attacking of any Vessel whatsoever is denied, and the Argument from the Commission only pressed to this End, That no indefinite Libel of attacking Ships, is relevant against a Person clothed with a Power to attack in certain Cases; and which the Accuser was so far convinced of, that for supplying that Defect in his Libel, he in his Pleading and Information, is pleased to condescend upon this special Qualification, and Mark of the Ship attacked, that she was a free Ship; which therefore he is obliged to prove.

The Pursuer was at the Pains to defend his Libels from an Objection, as if they had wanted Time and Place. The Pannels did indeed conjoin this with the other; That as the determining the Time and Place seem to be absolutely requisite; so likewise the Condescendence upon the particular Names, and Designations of the Ship and Person, both being equally and necessarily requir'd, that Pannels be not precluded from their just Defences. And the Time libelled comprehending the Space of Four Months, being too indefinite; it is likewise reasonable in such a Case, that the Accuser should be more special; which the Pannels humbly remit to the Honourable Admirals, and Lords Assessors.

The Second Peremptory Defence proponed for the Pannels, was, That this being a Libel founded upon several Qualifications and Presumptions, the same was no ways relevant, to infer the Conclu-

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sion of the Libel. A Proof of Crimes from Presumptions, is very hazardous : And hence it is, that some Foreign Nations do not condemn to Death upon *Indicia*, Tokens, but * *Torture*. make them only Ground to * put to the Question. And many Lawyers are of Opinion, that the ordinary Pain of Death is not to be inflicted upon a Proof arising from *Indicia*, Tokens, tho' never so pregnant. Of this Opinion is *Pharinacius*, a great Criminalist, and many others ; and so is *Brunemanus*, ad L. ult. Cod. de Prob.

But in the next place, whatever the Diversities of Opinions and Practices of Nations may be in this Point, yet it is certain, where *Indicia*, Tokens, are taken as a Proof, in order to Punishment by Death, they must be such as amount to a full Proof, and leave no room for any Scruple or Doubt. This cannot be better express'd, than in the Words of that Excellent Constitution of *Theodosius* the Emperor, L. ult. Cod. de Prob. *Sciant cuncti accusatores eam se rem deferre in publicam notitiam debere, quæ munita sibi idoneis testibus, vel instructa apertissimis documentis, vel Indiciis ad Probationem indubitatis, & luce clarioribus expedita* : - - - Let all Pursuers take notice, that when they bring a Matter into Publick Judgment, it ought to be supported by proper Witnesses, or plain Proofs, or undoubted Signs and Tokens, as clear as the Sun at Noon. And it will plainly appear from the Libel, that the Qualifications therein narrated, are not such *Indicia*, Tokens, as that Excellent Constitution requires ; *indubitata*, undoubted, *apertissima*, *luce clariora*, most evident, clearer than Sunshine. There must always Difference be made : Some have a probable Shew, and incline the Mind of the Judge ; and yet cannot go the Length of a full Proof. L. 5. in Principio Pand. de Pœnis - - - *Sed nec de Suspicionibus debere aliquem damnare ; satius enim est impunitum relinqui facinus nocentis, quam innocentem damnare* : Nor ought any Man to be condemn'd upon Suspicion ; for it is better that a guilty Man pass unpunished, than that an innocent Man should be condemned. *Indicia* & *Presumptiones*, Tokens and Presumptions, have much easier Place, where *constat de Corpore delicti*, where the Subject of the Crime is visible ; because this helps to sustain the Presumption ; and gives indeed the *Indicia*, Tokens, their just Weight. But these, in such a Case as this, *ubi non constat de Corpore delicti*, where the Subject of the Crime is not certain, are hardly receivable, seeing they want to be applied to a particular Crime.

This so necessary a Qualification of a Criminal Libel, *at constat de Corpore delicti*, that the Subject of the Crime should be visible, the Pursuer endeavoured to evade, by distinguishing betwixt Crimes that are *cum Effectu permanente*, have permanent Effects, and such as have no permanent Effects. In the first, the *Corpus delicti*, visible Effect of the Crime, was necessary, not in the latter ; † *argues*. and therefore † subsumes that in the Cases libelled, there could be no permanent Effects ; because all are libelled to be destroyed, and put out of Reach : But plainly this Distinction is against the Pursuer ; because certainly Piracy, Robbery and Murder, are such Crimes as have permanent Effects.

By the *Corpus delicti*, Subject of the Crime, is not meant, that the Subject of the Crime must be so extant, as to fall under the Senses ; but that the Loss sustained is felt and known. As for Example :

In the Crime of Murder, tho' the Body cannot be reached, yet the particular Loss is known : It is notorious the Queen wants a Subject ; Friends want a Relation, whom they can point out : In Piracy and Robbery, Merchants want their Ships and Goods : So that the Loss is felt and known, tho' (*de facto*) the Subject cannot be pointed out. Whereas in this Case, no such particular Evidences can be given : None can complain of any particular Loss, either Queen or Subject. And this is the true Meaning of what is *Corpus delicti*, a Subject of the Crime. And whatever be the Import of the Objection against the Libel, yet it is certain, to alledge Qualifications as the Proof of a Crime, *ubi non constat de Corpore delicti*, where the Subject of the Crime does not appear, is most incongruous. And granting, as the Pursuer does further contend, that he has libelled a *Corpus delicti*, a Subject of the Crime ; in so far as he has libelled a Criminal Fact, and Deed of Piracy, Robbery and Murder ; which still being general, is not that *Corpus delicti*, Subject of the Crime, that Law requires. Yet it was never heard, nor can there be any Lawyer whatsoever adduced, that owns the *Corpus delicti*, Subject of the Crime, can be made out by Presumptions and Qualifications. When once it is known that a Crime is committed, it may be owned that *Indicia indubitata*, undoubted Tokens, such as Law requires, may be a Ground to fix the Guilt upon particular Persons ; because there the Certainty of a Crime committed, does negatively inforce and give weight to the Presumptions adduced : But when it is not known that a Crime is committed, and that this is first to be made out ; it is positively contended, this cannot be but by a positive Probation of concurring † *habile Wit- † legal.* nesses : For Presumptions may be apt to fix a Guilt, *quando constat de Corpore delicti*, when the Subject of the Crime appears, or that the Fact was done, but not before.

In the Third Place, the Presumptions libelled are very far from being of that nature, as to be concluding to a Conviction ; and of that Certainty and Clearness as Law requires. All Probations in Criminal Cases should be infallible and certain ; and if there be any Meaning put upon Presumptions founded upon for proving a Crime, other than to infer a Crime ; that is to be laid hold upon, according to the manifest Principles of Law and Humanity.

Now the Qualifications libelled, are either such as not only can bear an obvious Sense, different from what is imposed, but even a probable one ; or are such as are vagrant Expressions and Hear-says, importing little or nothing, and cannot be applied to the Crimes libelled.

1. The Chirurgeon his having heard Shooting at a Distance, while in the mean time he saw no Engagement ; can easily be applied either to Shooting from other Ships, or Shooting upon Salutation, &c.

2. That he did see the *Worcester* riding in her Birth, and another Ship (as it were) towed to her Stern. 1. It is only Conjecture, being at such a Distance. 2. It is improbable, because it is not the ordinary way ; and hazards the Ships falling foul of one another, in such common Roads ; which might be a Ground to the Chirurgeon's Mistake at such a Distance.

3. That

3. That he did see the Goods lying lumber'd upon the Deck when he came aboard. 1. It is usual in Coast-Trading, that the Goods are brought by Sloops, and so laid upon the Deck till they be stowed. 2. This might be occasioned by the Ship's drawing Water. And to what concerns the Word Busking, and bringing Water from the Shore, it is taken notice of in the Exculpation.

4. That when the Doctor enquired what was the occasion of the Goods lying in confusion, Captain Madder should have answered, *Damn you, &c.* might proceed from the said Captain Madder's being in a Passion, and concerned for the Goods being damaged, and a Tarpauling-Temper, very usual among Seamen.

5. That the Chyrurgeon did dress two wounded Men; first, one is dead, another is not named in the Libel; and the *Black* as the other two also, might have got their Wounds by fighting among themselves, which is not unusual; and the rather, that they appeared unwilling to tell the Chyrurgeon, of purpose to conceal their Quarrel from the Captain.

6. As to what is alledged to have occurred betwixt the Doctor and the Linguister, *First*, It is only Hear-say; in the *second* Place, there might be a Ship sold to *Coge Commodo*, but not taken by Captain *Green*, and it is improbable he would have bought any Ship taken by Piracy upon that Coast.

7. What is libelled about *Reynolds* and his Sister, their missive Letters, is far from being any Qualification: For, *First*, *Reynolds's* Letter is only a † Double. It is strained to put such a Gloss upon the Expression (*basely confess*) to imply a Guilt, and a Guilt confessed; seeing the Words may easily bear the Meaning of a false Accusation, and is explained by a subsequent Expression, That he would rather die innocent, than accuse any Man falsely; and in the beginning of the Letter, declares, he knew nothing of the Matter.

8. What relates to *Haines* his Intercourse with *Anna Seaton*, and others, are nothing but general and ambiguous Expressions, from which nothing can be gathered of the Crimes libelled, and infers no more, than that he was using some Stratagems to gain his Mistress.

And as to the Expression of the Wickedness committed aboard their Ship, it may easily relate to other Crimes, which are but too frequent in such Voyages; as also, as to what was done aboard after the Ship was in the Harbour; and as to the libelled Expression used by *Haines* against Captain *Madder*, as the same is general and indefinite, relating to no particular Crime, so this might arise from some particular Pique and Prejudice

* *About.* against Captain *Madder*: As to what follows * anent the Condition of the Cargo, when the Committee of the Council unloaded the Ship, it is sufficiently taken off in the Exculpation.

Lastly, As to what is libelled anent the *African* Company's Seal; *First*, It will not be pretended, that the Company were in use to give their Seal to any Ship whatsoever trading by their Commission. 2. If any had casually gotten the Seal, there are an hundred Ways whereby the same might have come to the *Worcester's* Crew without Piracy. And 3. The Seal found aboard, and which is lying in the Clerk's Hands, which has a Ship for its Crest, might have given occasion to this Mistake.

It being plain, that the Qualifications libelled, are not of that Import to give a full Conviction;
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the Pursuer's Argument, adduced from the End of Probation, which is to find out the Guilt, and convince of the Truth, may be plainly taken off; that there is no such convincing Proof, as can fully and certainly determine any Judge, but, at most, resolves in a conjectural Proof, never to be admitted to take away the Life of Man.

The Pursuer allows, that if every one of the Circumstances should be taken separately, they would not be sufficient; but being taken jointly, and according to the Series of the Thing, they amount to a full Proof and Conviction; and this is the Nature of all cumulative Probations, which is not to be disjoined, *Quæ non prosunt singula multa juvant*: The Pursuer does likewise adduce Arguments and Authorities for a cumulative Probation to be of this Nature, that there needs not two concurring Witnesses for every Circumstance. In answer to which, the Pannels do still plead, there is a great Difference to be made betwixt Cases where previously *constat de corpore delicti*, the Subject of the Crime appears, and that Presumptions are only fixed upon to find out the guilty; and these Cases where in general a Crime is libelled, altho' Presumptions may be admitted in the first, yet never in the other, as is already observed. 2. In all Cases, Presumptions must be such as leave no room to doubt, and must not only have a Probability with them, but a concluding Certainty, which does not give ground to Suspicion, but plainly and firmly convinces; which Certainty cannot be inferred from the Qualifications libelled; all which either can bear a different Construction, or are such vagrant Hear-says, and indefinite Expressions, as amount to no certain and special Crime. 3. Such Presumptions cannot be conjoined, which particularly taken, are either of small weight, or amount to very little, or that they can probably bear another Sense and Meaning, as has been demonstrated. And, 4. As to the Conjunction of a cumulative Probation, there is a difference to be made betwixt Crimes that are continued, and where the Proof may be had from the Reiteration of the Acts, and those other Crimes which consist only in Fact or Deed.

In the first, a cumulative Probation may be admitted; as in a Libel of Bribery, one Witness may be admitted for one Fact, another for another, and so a Third, which may conjoin, altho' there be not Two concurring for every particular Fact, if there be other concurring Evidences and Arguments: But where there is one positive Fact libelled, this does not so easily admit of a cumulative Probation, especially which is always to be taken along, where the Crime is not specified and determined, as in this Case, and that the *ipsum corpus delicti*, the Subject of the Crime it self, is still to be made out: So that the Texts of the Law, and Authorities made use of by the Pursuer, may be easily cleared, that either they relate to civil Cases, as *l. 3. par. 2. digest. de testibus*, where there must be a Preference of a Civil Right of the one to the other: Or if the Texts and Authorities relate to Crimes, the *Indicia*, Tokens, allowed by them, must be *indubitata & luce clariora*, undoubted, and clearer than Sun-shine; and presupposes a Crime committed, & *corpus delicti*, the Subject of the Crime, and tends only to fix the Guilt. And it is positively denied, that there is any Law, or Lawyers, allowing any cumulative Probation to prove a Crime in general, *ubi non constat de corpore delicti*, where the Subject of the Crime does not appear; and this is a Speciality in the Case of the present Pannels; and the Honourable Judges, and

Lords-Assessors, are earnestly intreated to consider it; which does really distinguish them from the other

Cases mentioned by Lawyers; all * Crimes, which relates to * Delicts actually committed, and that the Presumptions deduced tend only to fix the Guilt: But when a Crime is alledged in general to be committed, and no special Condescendence upon what Subject, upon whom, and against whom, Presumptions there are not sufficient, without concurring habile Testimonies; even supposing such a general indefinite Libel could be relevant, against which there are abundance of Arguments already given; for unless a Fact be proved, even Confession is not sufficient to fix a Guilt, as must be acknowledged by all; much less Presumptions, except the Fact be once known.

The Grounds of Exculpation.

As the Pannels are confident, the Lords Judges will not find the Libels so general and so qualified, relevant to infer the Pains of Death; So for further clearing their Innocence, they offer the Grounds of Exculpation following, which are either instantly instructed, or offered to be proved.

And this may be laid down, which cannot be denied, that *Presumptio non delicti excludit presumptiones delicti*, the Presumption of a Crime not committed excludes the Presumption of a Crime; to which Purpose, *Carptz. Part. 3. 2. 123. Num. 69.* and in the same Place, in *dubio semper in mitiorem partem est presumendum*, In a doubtful Case we must always take the more charitable side; where he cites Multitudes of Lawyers.

1. There is no reason to suspect the Pannels of the Crimes libelled, being Persons of entire Fame, without any Imputation as to their antecedent Life.

2. That they were under a Charter-Party, commissioned to a Trading Voyage, and Insurance made upon Ship and Cargo, which does remove all Suspicion of Piracy, seeing such do ordinarily associate, and out-ridge themselves for that end.

3. A strong Argument of the Pannels Innocence as to Piracy, is, That they were upon their Voyage homeward, to make account to their Fraughters and Owners of their outward Cargo and Returns; of all which they have exact Journals and Accompts, and upon their coming to *Frazenburgh* gave Advice to their Owners of their Arrival, which was insert in the Publick Prints from *London*, as is usual, and likewise sent a Packet over Land from *Frazenburgh* to the *African Company* in *Scotland*, from Mr. *Innes* their Correspondent in the *East-Indies*, which is not to be supposed a Pirate would be entrusted with: Whereas, when such turn Pirates, it is usually for their own Profit, and so not only rob others, but begin first with their Owners, and are not found to return to make any such Accounts; which is a stronger Proof of the Pannels Innocence, than any Circumstance libelled to the contrary.

4. *Menocheus de presumptionibus, lib. 5. Pres. 59.* treating of the Presumptions of Innocence, lays down two very pregnant, First, That if the guilty Person could flee and did not, that very Presumption washes away the Guilt; and gives account of a Case out of *Lucian de amicitia*, that *Antiphilus* and *Demetrius* being accused of Sacrilege, were dismissed by the *Prator*, because when they could have fled, they did not. A second, when the accused Party offers himself to the Judge, it is a strong Presumption of his Innocence, since the Innocent fear nothing, and the Guilty have always the Punish-

ment before their Eyes: Both these favour the present Pannels; for the Rumour was spread, and came to their Ears some Weeks before they were imprisoned, and yet none of them offered to flee; and one *Ballantine* being at full liberty amongst his Friends the Time of the * * Imprisonment. Incarceration of the rest, did of his own accord offer himself to Prison.

5. That the alledged Confession made by the Chyrurgeon, must certainly labour under some Mistake, because, altho' he mentions the Attack to have been at *Callicut*, and that he heard the Ship was sold at *Keilon*, which are at least Fifty Leagues distant: And altho' he was aboard all the Time; yet he makes no mention how the Ship was brought along, or any Thing relating to it.

6. It is offered to be proven, that the *Black* who is alledged to be wounded in the Action, was not aboard Forty eight Hours before the *Worcester* sailed from the Coast of *Malabar*. And further, that the *Black* declared when he came aboard, that he got the Wound in his Arm by the Bite of a Snake. And further, it can be instructed by Chyrurgeons, that the Wound, as it well appears, is more probable to have been got that way than by Gun-shot.

7. Whereas it is libelled, That the Ship was attacked by the *Worcester's* Sloop upon the one side, and her coming up upon the other:

It is impossible a Piracy of that Nature could have been committed upon the Coast of *Malabar*, and not certainly known in *England* long before the Arrival of the Ship, such is the exact Correspondence, especially as to such Matters; nor could the Captain either have traded upon the Coast, or been received by the Factories and Governors there, if he had committed any such Piracy; whereas it is offered to be proven, that after the Time libelled, he was ashore kindly entertained, exchanging Letters with the Governor of *Anjango*, and had Instructions and Recommendation from thence to the Governor of *Fort-William* upon the Coast of *Bengal*, whither he was obliged to go for re-fitting his Ship, and stopping the Leak, which he could not conveniently do at *Malabar*, because of the want of Timber, Cordage and Money to be taken up upon Bottomry.

8. It was asserted by the Fiscal in the Time of the Tryal, that the Action lasted two Days and a half, which is a most improbable Story; for either the Night would have separated them, or the Ship attacked might rather have run ashore, than fall into the Hands of the Pirates.

9. That the Word *Busking*, libelled as a Term signifying a Ship preparing to fight, has a quite different Construction in the ordinar Acception among Seamen, and signifies, bearing close upon the Wind by a press Sail.

10. It is offered to be proven, that their Water was staved on the Coast of *Malabar* in a Storm, and not by *Busking* as is libelled.

11. And to * redargue the Circum- * Refute. stance libelled, that the Goods were not right stowed; it's acknowledg'd the Ship was six Months in a Harbour at *Bengal* after the libelled Engagement, and there loaded and unloaded: So that they had all opportunity to stow the Goods as they thought fit, and certainly they were stowed as such Goods usually are, which cannot be press'd without Damage.

12. That

12. That the whole inward Loading does not amount to a Value beyond what might be reasonably expected from the outward Cargo, in a Trading Voyage to these Places.

And Lastly, That in January preceeding, the Time of the alledged Action, there was a Protest taken by the Pannels against the Governor of Cochin, for not allowing the Ship *Worcester* to be refitted there, which she extremely needed before she could return to Europe; and so was in no Capacity, either to fight or take a Ship, as is libelled, in the Months of February, March, April, or May thereafter; and was a Ship sheathed with Lead, and therefore altogether unfit for such Action; as also a slow Sailer, and has not the least Mark of any Gunshot upon her.

So that upon the whole Matter, The Qualifications libelled being so weak and conjectural, and the Presumptions of Innocency so strong upon the other Hand; it is confidently expected, that the Honourable Judges and Lords Assessors will reject the Libel, and let the Pannels go free; which they expect from the Justice of the Nation, and the † Humanity with which they are in use to treat all Strangers.

An ANSWER to the Fiscal's Citations: With the Counter-Citations for the Pannels.

THO' the Doctors differ about the Force of Presumptions, and the Effect of Probation, *ab Indiciis & Argumentis*, from Presumptions and Arguments; yet they all agree, that Parallels drawn from Civil Causes to Criminal ones, are not universally to be admitted. Now the Fiscal cites L. 3. §. 2. *de Testibus*, for evincing that Presumptions, *Indicia & Argumenta*, Tokens and Arguments, are to be received.

This Law is taken out of the Fourth Book *de Cognitionibus*, written by *Callistratus*; the which Book only treats of Civil Cases, as is manifest from the Title of that Book, dispers'd in the ff. and * collected by *Labritus*, to which I refer. Wherefore this being a Rescript of the Emperor *Hadrian*, in a Civil Cause, can never be applied in a Criminal one.

The next Citation is, L. 22. C. *ad l. Cor. de falsis*, which is a Rescript of the Emperor *Constantine* to the Governor of *Rome*, about a forged Writ.

Now as the Law says, such Forgeries can only be discover'd by † Collation of Writs, Arguments inferr'd from thence, and Witnesses. And it is well known, that in our Law we

* Disproving. have Two Ways of * Improbation; the Direct, and the Indirect. Now to apply that to the Crime of Robbery or Murder, which must be

† most clear. proven † *liquidissime*, and not by * Writing. † Writs, seems very || anomalous. || irregular. Besides, Crimes, according to their different Nature, must be diversly proven; some by Ear-witnesses, as Blasphemy, Heresy, Cursing of Parents, &c. Others by Eye-wit-

nesses; as Robbery, Murder, &c. And the Witnesses competent for proving the one Crime, are not so in the other.

The Third Citation is out of *Antonius Mathæus de Criminibus*, ad Lib. ff. 48. Tu. 15. C. 3. N. 4. The Fiscal cites the latter End of this Section; but omits to set down what the Author refers to in the C. 6. of that Title; the doing whereof will serve for an Answer. The Position is, *Unus Testis non est audiendus; at si Argumenta alia concurrant, audiendus est*: One Witness is not to be regarded; but if other Arguments concur, he is to be regarded. Now these *Argumenta* must be taken out of the C. 6. of that Title. *Argumentum nihil est aliud, quam Ratio quæ rei dubiæ facit fidem; & est vel necessarium, vel contingens. Necessarium, cujus Consequentia necessaria est; veluti corripisse eum quæ peperit, furtum fecisse, qui rem furtivam efferens deprehensus est. Contingens, cujus Consequentia probabilis est; veluti, eadem fecisse, qui cruentatus est*: "An Argument is only a Reason which

"proves a doubtful Thing; and is either necessary, or contingent. That is a necessary Argument, whose Consequence is necessary: As for instance, That she who has brought forth a Child, has certainly known a Man; or that he who is taken in the Fact carrying off stolen Goods, has certainly committed Theft. A contingent Argument, is that whose Consequence is only probable: As for instance, That the Man who is bloody, has committed Slaughter." The necessary Argument obtains in Criminal as well as in Civil Cases; but the contingent one, which the Lawyers call a Presumption, is not of such Force. However, our Author is of Opinion, that *Contingentia Argumenta quanquam singula fidei non faciunt, plura tamen conjuncta crimen manifestare possunt. Rem uno atque altero exemplo declarabimus. Occisus est Calendis Mævius; Titius perempti inimicus fuit; eidem sapius non solum interminatus, sed & insidiatus est: Cum deprehenderetur isdem Calendis in loca cedis, cruentatus, cum gladio cruento, ad mensuram vulneris facto, toto vultu expalluit; interrogatus, nihil respondit, trepide fugit. Hic singula quidem Argumenta infirmiora sunt, universa tamen cedis autorem Titium evidenter designant. Simile est illud, Clodius cum Pompeia: Nudus cum nuda reperti sunt in eodem Cubili; preterit id momentum quo turpitudine perfici potuit. Jam olim ille mulierem deperibat, ad stuprum per literas sollicitaverat. Quis dubitet utrumque Adulterii damnare?* "Tho' contingent Arguments singly by themselves make no Proof; yet several of them join'd together, may make the Crime evident. We shall make it plain by an Instance or two. *Mævius* was kill'd on the first Day of the Month; *Titius* was an Enemy to the Person kill'd, and not only frequently threaten'd him, but way-laid him. And when he was found on that same Day of the Month in the Place of Slaughter, bloody, with a bloody Sword, answerable to the Dimensions of the Wound; he look'd as pale as Death: Being examin'd, gave no Answer, but run away in a Fright. In this Case, indeed, the Arguments singly consider'd don't say much; but taken all together, they plainly prove *Titius* to have been the Author of the Murder. What follows is such another Instance. *Clodius* and *Pompeia* were found naked in the same Bed, but not in the Act; the Time for that was past: But he had long courted the Woman, and solicited her to Lewdness by Letters:

“ters : Then who can make any Doubt to charge
“them both with Adultery ?” Now there being
in the present Case no such Presumptions as these
are ; the Rules laid down by this Lawyer *Matheus*, shew the Circumstances li-
belled are not * relevant.

† *sufficient*. The Fourth Citation is from *Gail. L. 2. Obs. 66. N. 12.* The setting down of the Title of the Observation, which is, *Fus venandi an Servitus sit realis vel personalis*, Whether Hunting be a real or personal Service ; and also the Apostile of the Section, which is, *In Materia Decimarum, testes singulares probant* ; In Matter of Tythes, single Witnesses are good ; does shew, that the Matter there treated is Civil, and not Criminal. And many Things are allowed in Civil Cases, which are not in Criminal. *A. Matheus ad Lib. ff. 48. Tit. 15. de Probationibus, Cap. 2. Num. 1. Quicumque Testes in Causis civilibus esse non possunt, iis nec in Criminalibus Testimonii dictio est. At non contra ; quicumque in Causis civilibus audiuntur, ii etiam in criminalibus audiendi sunt. Graviora enim criminalia Judicia civilibus sunt, ideoque & Testium major defectus adhibendus est.* “Whosoever cannot be Witnesses in Civil Causes, are not to be admitted in Criminal Causes. But the contrary does not hold ; viz. That whoever may be Witnesses in Civil Causes, may also be admitted in Criminal Causes : For Criminal Causes are of more Weight than Civil Causes ; and therefore in Criminal Causes, we ought to be more nice in the Choice of Witnesses.” And the Author illustrates this Doctrine, by Examples set down in that Chapter.

What has been said, will serve to answer what is cited out of *Giurba*, and *Mascardus*.

The Citation from *Carpzovius's Criminal Practicks*, 2. 123. N. 57. is imperfectly excerpted : For I shall give no other Answer, than what is in the same Place, from N. 55, to N. 59. *Probantur etiam Indicia ad Torturam per unicum Testem, in casu quo plura Indicia simul concurrunt, super quibus Testes examinati diversimode deponunt ; ac unus de uno, alter de alio, tertius etiam de alio testificatur : Tum enim omnium Testificatio simul juncta, verisimiliter facit de Reo, qui propterea sub Tormentis interrogari potest. Esi enim hac de re non omni ex parte Interpp. conveniant, nec desint qui Assertionem hanc simpliciter rejiciant : Testesque hosce, ut singulares conjungendos non esse autem, eo quod singuli Testes haudquaquam fidem faciant. Verissimum tamen est, plures imperfectas Probationes in Causis capitalibus conjungendas esse ad plenam Probationem faciendam, quoad effectum torquendi : Quod communiter Dd. placuisse, licet namque unicum Indicium ab uno Teste probatum, semiplenam Probationem & Fidem, ad Questionem de Reo habendam non faciat : Secus tamen res se habet, si plura Indicia concurrant, & conjunctim reum aggravent, quorum unumquodque per Testem singularem probetur. Nam una Presumptio aliam adjuvat ; plurimæque Indicia conjuncta Fidem faciunt. Quod ipsum tamen non aliter accipi velim, quam hisce tribus concurrentibus. Primò, Ut Testes sint omni exceptione majores & idonei, ac Vitæ probatæ. Secundò, Ut deponant super Indiciis proximis delicto, non etiam super valde remotis Indicis. Tertiò, Indicia super quibus Testes isti singulares deponunt sunt plura, & talia quæ reddunt animum Judicis quasi certum quod Reus deliquerit : Quorum alterutrum si deficiat, nullum in Jure habeant Effectum.* “Presumptions make
“Torture lawful, when there is but one Wit-

ness, in a Case where several Presumptions con-
cur, upon which Witnesses being examined swear
in a different Manner, and one witnesses as to
one Presumption, another as to another, and a
third concerning a Third. Then all their Evi-
dence being joined together, makes the Charge
against the Person probable, who therefore may
be examin'd by Torture. For tho' Interpreters
don't all agree in this Point, and that some of
them do absolutely reject this Opinion, and think
these Testimonies are not to be joined, because
single Witnesses don't make Proof ; yet it is a
certain Truth, that in Capital Cases several im-
perfect Proofs are to be joined together in order
to make a full Proof as to the Effect of Torture.
This is the common Opinion of the Doctors ; for
tho' one Presumption prov'd by one Witness, does
not make half Proof in order to examine the
Prisoner by Torture, yet the Matter is other-
wise, if several Presumptions concur jointly to
charge the Prisoner, of which any one may be pro-
ved by a single Witness ; for one Presumption
strengthens another, and many of them joined
together make up a Proof. But I would not
have this to be understood to be so, except when
those three Things concur : 1. That the Wit-
nesses be above all Exception, proper in the Case,
and of a good Life. 2. That they swear as to
Circumstances immediately relating to the Crime,
and not as to those which are very remote. 3.
That the Presumptions upon which those single
Witnesses swear, be several and such as in a
Manner may satisfy the Judge, that the Prisoner
is guilty of the Crime. But if any of those
Things be wanting, they can have no Effect in Law.

The Presumptions in *Swinton's Case* were not in the Indictment, but in the Probation, and seem to have been very pregnant and near, whereas these libelled against Captain *Green* are most remote.

But to put this Matter in its true Light, the Honourable Judge and Assessors are desired to remember, That Presumptions never respect the Delict, or the *Corpus delicti*, but the Delinquent, and the Person of the Accused : For as *Menoch. de Presumpt. L. 1. 2. 8. N. 2.* very well says, *Presumptio versatur circa id quod gestum est, sed ignoratur qualiter gestum* ; a Presumption relates to the Thing done, but not to the Manner of doing it. Now, in the Opinion of all Lawyers, *Delictum debet esse manifestum*, a Crime ought to be manifest. *Julius Clarus, Sententiarum Lib. 5. 2. 4.* *Sciendum est autem quod in omnem Casum nunquam debet Judex procedere ad aliquem actum, nisi prius illi constet Delictum ipsum fuisse commissum* : “But you must know, that a Judge in no Case ought to proceed to any Act of Court, except it appear to him before-hand that the Crime was committed. And in that Place, illustrates this Doctrine by Examples, and the Authority of other Lawyers, to which I refer. His Sentiment in the End of that Question being, *Et ubi constet Scelus non intervenisse, silebii Processus* : And where it appears that no Crime has been committed, Proceedings must stop.

So that *ubi constat de delicto*, where the Crime is certain, the Doubt and Controversy arises about the Delinquent, so as it is uncertain who is the Person guilty, or the Committer of this Crime, whether it be Robbery, Piracy, or Murder. Those who admit of Probation, *per Indicia & Argumenta*, by Presumptions and Arguments, distinguish these into *Proxima & Remota*, near and remote ; and to each of them give a different Effect in Law. *Carpr. 2.*

120. N. 6. *Indicium definitur argumentum delicti perpetrati demonstrativum, seu Indicativum. Idem, 2.*

121. N. 1. *Indicia propinqua ac certa, quorum unumquodque per se sufficit ad Torturam. Illius generis indicia non verisimilia ac probabilia sed certa, non levia aut perfunctoria sed urgentia; non dubia aut equivoca, quæ multipliciter interpretari queunt, sed concludentia, & ad Delictum inferentia sunt, & Crimini quasi inherent, ita ut iis apparentibus, nihil nisi Rei Confessio decesse videatur. And N. 14. & seqq. ut Indicium semiplena Probationis per se solum sufficiens & idoneum sit ad Torturam, tria requiruntur, 1. Ut Testis ille unicus sit omni exceptione major. 2. Ut hic Testis deponat de actu immediato, quod fieri intelligitur, si Testis suæ assertionis rationem per sensum corporeum rei convenientem reddat, quod nempe ipsemet Delictum ab accusato perpetrari videri vel presens interfuerit. Quare, si Testis non de ipso crimine deponat, sed de aliquo actu ad delictum proxime accedente, Indicium sufficiens non facit. Sicuti nec illius Testimonium idoneum ac sufficiens est, qui deponit de Delicto quod in oculos cadit, & rationem reddit de alio sensu. 3. Ut Testis verbis dilucidis & indubitatis de Crimine testificetur.*

" A Presumption is defined to be a demonstrative
" or declarative Argument of a Crime committed.
" 2. 121. N. 1. Near and certain Presumptions,
" of which every one is sufficient of it self to justify Torture. Presumptions of this kind, ought
" not to be likely or probable, but certain; not flight
" or trifling, but urgent; not doubtful or equivocal,
" that may admit of many Interpretations, but
" concluding, really inferring the Crime, and so inseparable from it, that those Presumptions appearing, there seems to be nothing wanting but
" the Confession of the Criminal, & N. 14. and following. To make the Presumption of half full
" Proof sufficient to justify Torture, there are three
" Things required. 1. That that one Witness be
" beyond all Exception. 2. That the Witness
" swear as to the immediate Act, which must be
" understood, that the Witness give for the Reason of his Assertion, some bodily Sense proper
" to the Thing; as for Instance, that he saw the
" Crime committed by the Prisoner, or was present at the Time: Therefore if the Witness don't
" swear concerning the Crime it self, but concerning some Act that comes next to the Crime, it
" is not a sufficient Presumption. So neither is his
" Evidence proper and sufficient, who swears concerning a Crime that is the Object of Sight, and
" gives an Account of it from some other Sense.
" 3. That the Evidence concerning the Crime be
" in clear and not doubtful Expressions. After which our Author gives Examples; and it is to be observed, That these *Indicia*, Presumptions, are requir'd in order to torture; for they are not, in this Author's Opinion, sufficient to condemn, unless they be *Certissima*, *Indubitatissima*, & *Luce Meridiana Clariora*, most certain, undoubted, and as clear as the Sun at Noon, in which Case they have the Effect of a compleat Probation.

The *Indicia remota*, remote Presumptions, which are also term'd, *Dubitata*, *Semiplena*, quæ rem veram esse arguunt, non semper sed plerumque tantum, unde etiam non dicuntur simpliciter certa indicia, sed verisimilia & probabilia, seu veluti certa *Indicia*: " Doubtful, half full; which don't always
" argue the Matter to be true; but almost always;
" whence it comes, that they are not simply called certain Presumptions, but likely; probable,
" or almost certain Presumptions. And these cu-

mulative and in great Number concurring, may bring a Person to Torture, but never to Condemnation.

Now, by applying this general Doctrine to the Indictment, it is *Juris Incontraversi*, uncontravertible Law, that the *Delictum*, Crime it self, cannot be proven per *Indicia & Presumptiones*, by Tokens and Presumptions. And as to the Pannels, tho' a Delict Crime were proven per *Testes omni exceptione majores*, by unexceptionable Witnesses, yet it will appear, That the Circumstances libelled, do not deserve the Name of *Indicia*, Presumptions; and tho' they should be allowed that * *Compellation*, yet they are *Remotissima*, very * *Name*. remote, and by Consequence can have no Effect as to Condemnation.

As to the additional Conclusion, that the Ship and Cargo should be † *elcheared* † *Forfeited*. ed, the Fiscal cites a wrong Place, and supposes the Case to be what it is not: But seeing he values Mr. *Melley's* Authority so much, his Opinion in this Matter, as express'd in the same Treatise, C. 4. §. 21, 22. is thus: By the Law Marine, if Goods are taken by a Pirate, and afterwards the Pirate attacks another Ship, but in the Attempt is conquered, the Prize becomes absolutely the Captors, saving the Account to be rendered to the Admiral; and it is accounted in Law a just Caption of whatsoever may be got or taken from such Beasts of Prey, be the same in their own or in their Successor's Possession. But then an Account ought to be rendered to the Admiral, who may (if they happen to be the Goods of the Fellow Subject of the Captors, or of Nations in Amity with his own Sovereign) make Restitution to the Owner; the Costs and Charges, and what other Things in Equity shall be decreed to the Captor, first considered and deducted.

§ 22. By the Statute 27 *Edward III. Cap. 13.* If a Merchant lose his Goods at Sea, by Piracy or Tempest (not being wreck'd) and they afterwards come to Land, if he can make Proof they are his Goods, they shall be restored to him in Places guildable by the King's Officers, and Six Men of the Country.

This Law hath a very near Relation with that of the Romans, called *de Usucapione*, or the *Atinian* Law; for *Atinius* enacted, That the Plea of Prescription or long Possession, should not avail in Things that had been stolen, but the Interest that the right Owner had, should remain perpetual: The Words of the Law are these, *Quod surreptum est, ejus rei Aeterna auctoritas esset*. Where by, *Auctoritas*, Authority, is meant *Jus Domini*, the Right of the Proprietor remains perpetual, tho' a Thing be stole.

CURIA JUSTICIARIA *supreme Curie Admiralitatis tenta in Prætorio, vel novâ Domo Sessionis Burgi de Edinburgo, decimo tertio die Mensis Martii, 1705. per Judicem dictæ Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dandas de Arnistoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston, Assessores.*

Curia legitime affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worcester*, now in *Bruntisland* Harbour.

Captain

Captain *John Madder*, chief Mate of the said Ship.

John Reynolds, second Mate of the said Ship.

Thomas Linstead, Assistant to the deceas'd *Super-cargo* of the said Ship.

James Burn, Boat-swain of the said Ship.

James Sympson, Gunner.

Andrew Robertson, Gunner's-Mate.

John Brucklie, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter of the said Ship.

George Haines, Steward of the said Ship.

Samuel Wilcocks, Chyrurgeon's Mate.

George Glen, Seaman.

Alexander Taylor, Seaman.

And *John Bannantyne*, Seaman in the said Ship.

All of them indicted and accused at the Instance of Mr. *Alexander Higgins*, Procurator-Fiscal to the High Court of *Admiralty*; for the Crimes of *Piracy*, *Robbery* and *Murder*, in manner mentioned in the Two several Indictments raised against them thereanent, before insert in the Court holden the Fifth of *March* Instant.

P U R S U E R S.

Mr. *Alexander Higgins*, Procurator-Fiscal.

Sir *James Stuart*, Her Majesties Advocat.

Sir *David Dalrymple*, and Mr. *William Carmichael*, Her Majesties Solicitors.

Sir *Patrick Home*.

Sir *Gilbert Eliot*.

Mr. *Alexander Mackleod*.

Mr. *Francis Grant*.

Advocats.

Procurators in D E F E N C E.

Sir *David Thoirs*.

Sir *Walter Pringle*.

Mr. *David Forbes*.

Mr. *George Alexander*.

Mr. *John Elphinston*.

Mr. *John Spotswood*.

Advocats.

The Libels and Informations for both Parties being read over in Presence of the said Judge and Assessors, and in Presence of the Pannels and Affizers.

The Judge and Assessors having advised both the Indictments pursued by Mr. *Alexander Higgins*, Procurator-Fiscal of the High Court of *Admiralty*, against Captain *Thomas Green*, and the hail Pannels in both Indictments, with the foregoing Debate thereupon; they find, That *Keigle*, and the other Pannels in the first Indictment, cannot be delay'd in their Tryal, on Pretence that Captain *Green*, as their Commander, ought to be first discuss'd; and therefore repel the first Dilatory Defence: And find, that *Reynolds* being libelled against as *Socius Griminis*, a Fellow-Criminal; and there being no Speciality, or particular Ground of Exculpation proponed, why he should be previously tried; therefore * repel the Second Dilatory Defence proponed for

Captain *Green*, and these in the Indictment with him; and repel the Objection against the † Generality of the Indictments, in regard of the Nature of the Crimes; and find the Crimes of *Piracy*, or *Robbery*, or *Murder*, as libelled, being proven by clear and plain Evidence, * relevant to infer the Pains of Death, and Confiscation of Moveables: Reserving the Consideration of the Additional Conclusion of the Libels, until the Verdict of the Assize be returned; and repel the other Defences proponed for the Pannels; and remit the whole to the Knowledge of an Assize.

R O T. F O R B E S, I. P. A.

The Judge of the High Court of *Admiralty* and Assessors continue the Dyet at the said Mr. *Alexander Higgins*'s Instance, against the foresaid * hail Pannels, till Tomorrow, being the 14th Instant, at Eight a Clock in the Morning; and ordains the Affizers and Witnesses to attend then, † ilk Person under the Pain of 200 Merks; and the Pannels to be carried back to Prison.

CURIA JUSTICIARIA, *Supreme Curia Admiralitatis tenta in Pratorio, vel nova Domo Sessionis Burgi de Edinburgo, decimo quarto Die Mensis Martii, 1705. per Judicem dictæ Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnestoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston, Assessores.*

Curia Legitimè Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worcester*, now in *Bruntisland* Harbour.

Captain *John Madder*, Chief-Mate of the said Ship.

John Reynolds, Second-Mate of the said Ship.

Thomas Linstead, Assistant to the deceas'd *Super-cargo* of the said Ship.

James Burn, Boatswain of the said Ship.

James Simpson, Gunner.

Andrew Robertson, Gunner's-Mate.

John Bruckley, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter of the said Ship.

George Haines, Steward of the said Ship.

Samuel Wilcocks, Chyrurgeon's Mate.

George Glen, Seaman.

Alexander Taylor, Seaman: And

John Bannantyne, Seaman in the said Ship.

P U R S U E R S.

Mr. *Alexander Higgins*, Procurator-Fiscal.

Sir *James Stuart*, Her Majesties Advocat.

Sir *David Dalrymple*, and Mr. *William Carmichael*, Her Majesties Solicitors.

Sir *Patrick Home*.

Sir *Gilbert Eliot*.

Mr. *Alexander Mackleod*.

Mr. *Francis Grant*.

Advocats.

P R O C U.

Procurators in DEFENCE.

Sir David Thoirs.
 Sir Walter Pringle.
 Mr. David Forbes.
 Mr. George Alexander.
 Mr. John Elphinston.
 Mr. John Spotswood.
 Advocats.

* Affize.

* Jury.

Archibald Drummond :	James Marjoribanks, Mer-
Skipper in Leith.	chant in Edinburgh.
John Findlayson, Skipper	Edward Marjoribanks, †
in Borrostownness.	of Halyards.
Mark Stark, Skipper	Sir James Fleeming of
there.	Rathobyres.
James Jamison, Skipper	James Gordon Senior ;
in Queensferry.	and
John Mathie, Skipper in	Robert Forrest, Merchants
Prestounpans.	in Edinburgh.

Robert Innes,
 Robert Walwood,
 William Blackwood.
 George Clark, and
 William Neilson, Merchants in
 [Edinburgh.]

The Affize lawfully sworn, and no Objection
 of the Law in the contrary.

Mr. Alexander Higgins the Pursuer, for
 Probation, adduced the Witnesses af-
 ter Deponing, viz.

* **C**ompeared Antonio Ferdinando
 * Appeared. Cook's Mate of the Ship the
 Worcester, which was commanded by
 Captain Thomas Green, aged twenty four Years,
 or thereby, unmarried; with Captain George Yea-
 man, Merchant in Dundee, sworn Interpreter : And
 the said Antonio Ferdinando being solemnly sworn,
 || purged of partial Counsel, examined and interro-
 gate upon the Libels, or Indictments. And being
 interrogate if he believed in GOD, and if he was
 a Christian: Depones, That he believes in GOD,
 and that he was born of Christian Parents, and is
 a Christian himself. And being interrogate upon
 the Indictment, Depones, That at Callicoiloan upon
 the Coast of Malabar, the Deponent did come
 aboard the Sloop belonging to Captain Green's
 Ship called the Worcester; at which Time the
 Deponent did enter to the Service of Mr. Love-
 day Purser of the said Ship; and the Deponent
 cannot be positive of the Time of his coming
 aboard, but believes it was about Two Years and
 a half since; and went in the said Sloop from
 Callicoiloan to Keilon, from thence to Cocheene, and
 from Cocheene to Calecut, and from that to

Tillicherry : And Depones, That upon the Coast of
 Malabar thereafter, he did see an Engagement be-
 twixt the said Sloop, the Ship the Worcester,
 and another Ship sailed by White-men, speaking
 English, and the said Ship did bear English Co-
 lours. And being interrogate by the
 † Pannels, what were the Colours the † Prisoners.
 said Ship did bear: Depones, That
 they were of White, Red and Black, like to these
 that the said Captain Green's Ship did bear; and
 that first the said Captain Green, the Merchant and
 Mr. Loveday went aboard the said Strangers Ship,
 and stayed for about the Space of a Glass, and
 then returned aboard the Worcester, and then did
 man the Sloop of the said Ship the Worcester,
 with about Twenty Men, whereof were Captain
 Green himself, † Loveday, and the Supercargo,
 the Carpenter and Gunner, and that the Gunner's
 Name was James Simpson, whom the Deponent
 knows, and points to at the Bar; and that there
 were four Guns and two Pattereroes aboard the
 said Sloop; and thereafter Captain Madder came a-
 board of the Sloop, and that they did engage the
 said other Ship for the first and second Days, and
 upon the third Day the said Ship was boarded
 by those in the Sloop, who when they came
 aboard, did take up those of the Crew of the said
 Ship from under Deck, killed them with Hatchets,
 and threw them over-board; and that Captain Green,
 Captain Madder, and James Simpson, the Gunner,
 were three of these who went aboard and killed the
 Men: And Depones, That the Ship the Worcester
 came up during the said Engagement, and did
 fire at the said Ship, but these in the Worcester
 did not board her: And the Deponent believes,
 that the Men who were killed and thrown over-
 board, as said is, were about ten in Number; and
 Depones, That there were but few Goods aboard
 the said taken Ship, which were carried aboard the
 Worcester, and amongst the rest he
 * minds of some China Root: And * Remem-
 Depones, That the said Ship which bers.
 was taken, was sailed by some of the
 Crew of the Worcester, and carried to Callicoiloan,
 and there sold, and that the said Ship was not
 tied with a Tow to the Ship Worcester: And the
 Deponent knows not what Men were killed aboard
 the Sloop or Worcester, or if any were killed, but
 the Deponent himself was wounded in the Arm,
 and which Wound he now shews to the View
 of all. Depones, That Captain Madder told the
 Deponent, that if ever he did tell any Person, ei-
 ther white or black, of the said Engagement, that
 he the said Captain would kill the Deponent, and
 heave him overboard. Depones, That
 the Upper-Coat which the Deponent † Now.
 presently wears, was found aboard of
 the said taken Ship, and which the Deponent has
 kept since that Time. Depones, That during the
 said Engagement, Haines, Bannantine, Bruckley,
 Wilcocks, Burn, Robertson, Glen and Taylor, eight
 of the Pannels, were aboard the Ship the Worces-
 ter; and that Keigle, Kitchen and Linstead were
 aboard the Sloop with Captain Green, Madder
 and Simpson; and believes that Reynolds was then
 ashore at Callicoiloan: And Depones, That the said Ship
 was sold to a King in Malabar, and that the Man who
 bought the said Ship bears a Malabar Name, whose
 Servant is called Coge Commodor: And Depones, That
 the said Engagement happened between Tillicherry
 and Calecut, upon the Coast of Malabar: And
 Depones, That he cannot positively tell how many
 Guns

∴ Master of a Ship. † Of, before a Place, in the Scots
 Dialect, denotes the Place to be the Estate of the Person nam'd.
 || i. e. Solemnly sworn, that he would tell the Truth, and nothing
 but the Truth; that he had no Prejudice or Ill-will against any
 of the Prisoners at the Bar, that he got no good Deed, or Pro-
 mise of good Deed, for giving Evidence against them, nor was
 suborned, advised, or directed how to swear, or what he shall
 say in this Tryal.

Guns the taken Ship did bear, but thinks they were about Twenty, small and great : And the Deponent believes, That the Engagement happen'd about a Month after the Deponent went aboard of Captain Green's Sloop; and cannot be positive when the Ship the *Worcester*, did engage the said taken Ship, whether first, second, or third Day : *Depones*, That the Engagement was by way of a running Fight : *Depones*, That he knows not who did sail in the said taken Ship to *Callicoiloan*. *Causa Scientia*, the way how he came to know this, the Deponent was aboard the said Sloop during the Time of the said Engagement, and saw and heard, as he has deposed ; and this is the Truth, as he shall answer to GOD : *Depones*, He can write after the *Malabar* Character ; and this Deposition is also signed by the said Captain *George Yeaman*, the sworn Interpreter.

Antonio Ferdinando.

Geo. Yeaman.

ROB. FORBES.

COmpeared *Charles May*, Chyrurgeon of the Ship the *Worcester*, Commanded by Captain *Green*, aged twenty six Years, or thereby, unmarried ; who being solemnly sworn, purged of partial Counsel, examined and interrogate upon the Libel : *Depones*, That he was aboard of Captain *Green*'s Ship the *Worcester*, and went from *England* with her ; that when the said Ship went to the Coast of *Malabar*, the Deponent was set ashore at the *Ibeck*, which is the Landing-Place, and from thence went up some Miles to *Callicoiloan* ; and some Time thereafter, about a Fortnight, the Deponent did hear the Firing of Guns as at Sea, and did meet with *Coge Commodo*, who was Merchant to the said Ship, and bought some Things from them, with *Francisco de Olivera* the Linguister of the said Ship, who had come that Day from the *Ibeck*, and that the Deponent asked him what mean'd the Shooting, and that the said *Coge Commodo*, and *Francisco de Olivera* answered the Deponent, That the *Worcester* had gone out, and was fighting at Sea with another Ship : And *Depones*, That the next Morning the Deponent came to the Shore, where he did see the Ship the *Worcester* riding in her Birth, that is, much about the same Place where she had lyen before, and that the said Place was about four Miles from the Shore : *Depones*, That there was then another Vessel riding with the *Worcester* at her Stern : *Depones*, That about some Time thereafter, in the same Morning, the Deponent did see the Long-Boat of the *Worcester* coming to the Shore in a great Haste, and that when the Boat landed, the Deponent asked the Men what was the Matter that brought them ashore, it not being ordinar for Boats to come over the Bar, by reason of a great Sea : And the Men answered, That Captain *Madder* had sent them ashore for a *Pinguetta* (which is the Name of a certain kind of Boat) with Water, because they had spilt and staved all their Water aboard, and that there had been Busking all Night, which the Deponent understood, meant ; that they had been at fore Labour and Fatigue, as if their Ship had been driven from her Anchor, and bearing up again : *Depones*, That he did not speak at that Time with the Men in relation to any Fight, but that the said Men told him, they had brought a Ship in with them ; and that the Deponent made no Stay at the Shore, but returned immediately to *Callicoiloan*, where his Patients were : *Depones*, That five or six Days

thereafter, the Deponent went aboard the *Worcester* for some Medicines which he wanted for the Use of his Patients ; and that when he came aboard, the Deponent saw the Deck of the *Worcester* lumber'd with Goods, and five or six Chests also, and some Bales of Goods ; and that the Deponent did then say to Mr. *Madder* Senior, What have you got there ? You are full of Business. And that Mr. *Madder* did then curse him, and bid him go mind his Plaister-Box. And *depones*, That the Deponent was afterwards informed, that the Ship which was riding at Stern of the *Worcester*, was sold to *Coge Commodo*, the Ship's Merchant at *Keilon* River ; and the said Ship was brought there by a Part of the *Worcester*'s Crew, who immediately left her so soon as they had brought her to an Anchor, or otherways fixed her. *Depones*, That the † Linguister like † Interpreter, wife told the Deponent, That *Coge Commodo* complained, he had bought the Ship too dear ; and that he said, he had bought one the Year before cheaper, tho' Four times the Value. *Depones*, That some Time thereafter, the Sloop came down the Coast ; and that *Antonio Ferdinando* was sent ashore to the Deponent at the *Ibeck* ; and that the said *Antonio Ferdinando*, the *Black*, was wounded in the Arm : And that the Deponent did take off the * Dressing of the * Plaister, said Wound, and found it to be a Fracture ; and that it look'd as if the Wound had been occasioned by a Gun-shot. And that the Deponent asked the said *Antonio Ferdinando*, the *Black*, who had dressed the Wound, or set his Arm ? And that the said *Black* did tell the Deponent, That he was set ashore at *Cochin*, and there dressed by a *Dutch* Chyrurgeon. And *depones*, That some Time thereafter he went aboard the *Worcester*, and called for the said *Black*, and any other Persons that were ill ; and there came to him to his Chest, *Duncan Mackay*, and another, (which the Deponent thinks was *Edward Cuming*, but cannot be positive) and that these Persons were also wounded ; and that the said *Black* was likewise there. And *depones*, That he did ask his said Patients how they came by their Wounds ? And that Mr. *Madder* hearing the Deponent ask Questions, he came to the Deponent, and bid him ask no Questions ; and likewise discharged the Patients to answer the Deponent any Questions upon their Peril. And the Deponent then said to Mr. *Madder*, that he had no Command over him ; and that Mr. *Madder* answered, That he would go to one who had Command over the Deponent : And that the said *Madder* went up accordingly ; and thereafter returned, and ordered the Deponent immediately ashore ; and the Deponent was accordingly carried ashore in the *Pinguetta*, that was lying by the Ship's side. *Depones*, That all this which the Deponent has before deposed upon, did fall out about the Months of *January* or *February*, 1703 Years. *Depones*, That while the Ship the *Worcester* was going up the Coast of *Malabar*, Mr. *Linsfeed*, one of the Crew, was left at *Keilon*, which was near Seven Leagues, or about Twenty one Miles from *Callicoiloan* ; and that the said *Linsfeed* was left there with one Mr. *Hammond*, to take care of some Part of the Cargo which was to be put aboard of the Ship. *Depones*, That he did not see the said Mr. *Linsfeed* at *Keilon* ; but only heard that he was left there, and remained there, as the Deponent heard, till the Ship came back. And *depones*, That the Shooting which the Deponent heard

heard, was before the Ship came back, as he has already deponed. And *depones*, That thereafter, during the Voyage, he never heard the Crew, or any of them, talk of their taking a Ship. *Depones*, That whilst the Deponent heard the said Shooting, Mr. *Loveday* and Mr. *Orlay* were ashore at *Callicoilan*: And *depones*, That when the *Worcester* sailed from *England*, the Crew was about 35 or 36 in Number. *Depones*, That while the Deponent was aboard, the Ship went no further up than *Callecut*: And *depones*, That the Reason how he knows Mr. *Hammond* and Mr. *Linsteed* were ashore at *Keilon*, was, that he heard the *Supercargo* desire the said Persons to go ashore, and take care of some Part of the Cargo: And *depones*, That he was but Two or Three Hours aboard after he heard the *Supercargo* give the said Order; and saw not the said Two Persons (*Hammond* and *Linsteed*) go ashore. And *depones*, That it was in the Ship the *Worcester's* going up the Coast of *Malabar*, that the Deponent heard the Shooting. *Depones*, That upon that Coast the Ship sprung a Leak, and did from thence sail to *Bengal*, in order to have the same helped: And *depones*, That he knows not how many Leagues there was betwixt the Place where the Leak sprung, and *Bengal*; but that it was about Five Weeks Sailing. *Depones*, That he knows not the Reason, why the Ship was not brought into some Place on the Coast of *Malabar*, for being refitted. *Depones*, That when the Deponent came aboard from *Callicoilan*, that the Ship weighed Anchor, and sailed to *Cochin*, and from that to *Callecut*, and thereafter came back the same way. *Depones*, That there were some Goods put aboard the Ship from *Callecut*, but none at *Cochin*, as the Deponent remembers. And further *depones*, That when the Deponent returned, he found Mr. *Hammond* and Mr. *Linsteed* ashore at *Keilon*. *Causa Scientie patet*: The Way how he comes to know this is evident. And this is the Truth, as he shall answer to GOD.

Charles May.

ROBERT FORBES.

Compeared *Antonio Francisco*, Servant to Captain *Thomas Green*, Commander of the Ship the *Worcester*, aged 22 Years, or thereby, unmarried; with Captain *George Yeaman*, Merchant in *Dundee*, his Interpreter: And the said *Antonio Francisco* being solemnly sworn, purged of partial Counsel, examined and interrogat upon the Libel pursued by the Procurator-Fiscal, against the said Captain *Green*, and the other Pannels; *Depones*, That the Deponent believes there is a GOD; and his Mistress at *Pegu* caused baptize him a Christian; and he owns the Christian Religion: And he came to the Service of Captain *Green*, at *Delagoa*. *Depones*, That upon the Coast of *Malabar*, while the Deponent was aboard of the *Worcester*, he heard some Shooting of Guns from aboard the *Worcester*, to the Number of Six, or thereby: And that the Deponent in the mean Time was chained and nailed to the Floor of the Fore-Castle in the said Ship; and he heard no Shooting from any other Ship. *Depones*, That Two Days after the Deponent heard the said Shooting, he saw some Goods brought aboard the said Ship the *Worcester*; and which *Antonio Ferdinando*, the other *Black*, told the Deponent, were brought from another

Ship which they had taken: And likewise the said *Black* told the Deponent, that at the same Time Captain *Madder* had given some Rack, *id est*, Brandy to the Men. And at the same Time, the other *Black* told the Deponent likewise, That there were Ten Men of the Crew of the taken Ship killed, when she was taken. And that the said *Black* did let the Deponent see a Plaister on his Arm, upon which he said he had got a Wound by a Shot, while in the Sloop taking the other Ship: And that he told the Deponent, that the said Ship was taken by the Sloop belonging to the *Worcester*: And that the Deponent neither heard of, nor did see any other wounded Men. *Depones*, That he does not know where they were sailing, after he heard the Shooting; but he was told by the other *Black*, that they were sailing to *Callicoilan*: And the said other *Black* did forbid the Deponent to tell any Person whatsoever of the said Engagement. And the Deponent does not remember how long it is since he heard the said Shooting of Guns. And *depones*, That *Antonio Ferdinando*, the other *Black*, told the Deponent all these Matters upon the Coast of *Malabar*: And that the said *Antonio* came aboard the Ship the *Worcester*, when they were going to *Bengal*. And *depones*, That while he was chained to the Fore-Castle, he knows not who were aboard, or who were ashore: And that he was so chained for the Space of Two Months; and that he was so chained to the Fore-Castle about Ten Days before he heard the said Shooting: *Causa Scientie patet*. *Depones*, He cannot write.

This Oath signed by the said Captain *George Yeaman*, the Deponent's Interpreter.

George Yeaman.

ROBERT FORBES.

Compeared *James Wilkie*, Taylor, Burgess of *Edinburgh*, aged Twenty-five Years, or thereby, Married; who being solemnly sworn, purged of partial Counsel, examined and interrogat upon the Libel pursued by the Procurator-Fiscal, against Captain *Green*, and the other Pannels; *Depones*, That in *October* last, after Captain *Green's* Ship was brought into *Bruntisland*, the Deponent went over to *Bruntisland* with his Mother, with a Design to learn some News, or to get some Notice of a Brother of his, *Andrew Wilkie*, who had gone along with Captain *Drummond* to the *East-Indies*: *Depones*, That after the Deponent and his Mother came to *Bruntisland*, they went to Mrs. *Seaton's* House; where the Deponent fell in Company with *George Haines*, whom the Deponent presently * points in the * now shews at Pannel; and after some Discourse, the Bar. the Deponent asked the said *George Haines*, Whether or not, in his Voyage, he had seen Captain *Drummond*? At which the said *Haines* fell in a Passion, and said, *D-n me, what have I to do with Captain Drummond?* *Depones*, That the Deponent seeing *Haines* in such a bad Humour, forbore for some Time to speak about his Brother or Captain *Drummond*: But after that they had taken some Cups about, and that the Deponent thought *Haines* in a better Mood, the Deponent asked the said *Haines*, If he had not heard of, or seen any Scots Ship coming to or from the *East-Indies*? *Depones*, That *Haines* then said, *That while their Ship was upon the Coast of Malabar,*

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(where

(where they had taken in a Black, whom Haines pointed to, and had by him at the Time) a Dutch Ship informed them, That one Captain Drummond, commanding a Scots Ship, was turned Pirate; and that thereupon they manned their Sloop, and made themselves ready, in case they should have been attack'd. But Haines added, That they did not see the said Captain Drummond. Depones, That the said Haines did likewise say, That he had in his Custody, at the Time the Ship the Worcester was seized in the Road of Leith, that which he would not have fallen in the Seizers Hands for twice the Value of the Ship. And depones, That the said Haines likewise added, That he threw it over-board after the Ship was seized; saying, Let them seek it now in the Bottom of the Sea. Depones, That while the Deponent was discoursing with the said Haines about the Worth of the Ship; the said Haines said to the Deponent, That it would not be found to be so rich as it was expected: But that there was still in the Ship that which would never be found by the Seizers, unless they pulled her Board from Board: And that the said Haines said, He knew very well where that Thing lay. Depones, That his Mother having gone to the other Room to Mrs. Seaton, the Mistress of the House; she desired the said Mrs. Seaton to enquire of Haines concerning her Son, the Deponent's Brother; and that Mrs. Seaton said, That Haines was a * Suiter of Anne Seaton, her Daughter, who would be more proper to enquire that of Haines: And that the next Morning Anne Seaton declared, in Presence of Kenneth Mackenzie, that Haines had said to her, He found they had a Design to pump him; but that they should not be the wiser of him: Tho' what he had said, he had said; but would say no more at that Time. *Causa Scientie patet.* And this is the Truth, as he shall answer to God.

James Wilkie.

ROBERT FORBES.

† Inhabitant. Compeared Kenneth Mackenzie, † Indweller in Cannongate, aged Twenty seven Years, or thereby; Married: Who being solemnly sworn, purged of partial Counsel, examined and interrogat *ut supra*: Depones, That in the Month of October last, when the Ship the Worcester was lying in Bruntisland Harbour, the Deponent was in Widow Seaton's House with George Haines, (whom he now points to in the Pannel) and James Wilkie, and heard the said James Wilkie ask the said Haines about Captain Thomas Drummond's Ship; at which the said Haines fell in a Passion; but the Deponent going out of the Room, heard no more what pass'd. And depones, That the same Night, the Deponent heard Mrs. Wilkie intreat the said Widow Seaton, to endeavour to get an Account, from any of Captain Green's Crew, of her Son, who had gone Doctor aboard of the said Captain Drummond's Ship: And having returned next Morning, the Deponent heard Anne Seaton, Daughter to the said Widow Seaton, tell, That Haines had said to her, that they had a Design to pump him; but what he had said, he had said. And that he the said Haines told the said Anne Seaton, when ask'd by her, why he fell in a Passion at the mentioning of Captain Drummond? That he answered, That he knew more of the said

Captain Drummond, than he would tell. *Causa Scientie patet.* And this is the Truth, as he shall answer to GOD.

Kenneth Mackenzie.

ROBERT FORBES.

Compeared William Wood, one of the Gunners of Her Majesty's Artillery, aged Fifty three Years, or thereby; Married: Who being solemnly sworn, purged of partial Counsel, examined and interrogat *ut supra*; Depones, That the Deponent was in Company with George Haines, at Bruntisland; and that one John Henderson, * Writer in Edinburgh, * Clerk for was likewise present. Depones, That the said George Haines, and the rest, in Company with the Deponent, having drunk pretty warmly, the said George Haines fell in a melancholy Fit; and John Henderson having ask'd the Reason, the said Haines express'd himself thus: It is a wonder that since we did not sink at Sea, that God does not make the Ground open and swallow us up when we are come ashore, for the Wickedness that has been committed during this last Voyage, on Board of that Old Bitch Bess; pointing to Captain Green's Ship. And depones, That thereafter he went a walking with the said George Haines in the * Links of * Sands. Bruntisland; and the Deponent happening to tell the said Haines, that Captain Madder's Uncle was burnt in Oyl, for attempting to burn the Dutch Ships at Amsterdam; the said George Haines did thereupon tell the Deponent, That if what Captain Madder had done, during this last Voyage, were as well known, he deserved as much as his Uncle had met with. *Causa Scientie patet.* And this is the Truth, as he shall answer to GOD.

William Wood.

ROBERT FORBES.

Compeared John Henderson, Writer in Edinburgh, aged Twenty Years, or thereby; Unmarried: Who being solemnly sworn, purged of partial Counsel, examined and interrogat *ut supra*, Depones, * conformis * as William Wood in Wood in even-omnibus; except as to what happened betwixt the said William Wood and George Haines in the Links of Bruntisland, in relation to Captain Madder and his Uncle. *Causa Scientie patet.* And this is the Truth, as he shall answer to GOD.

John Henderson.

ROBERT FORBES.

Compeared Anne Seaton, Indweller in Bruntisland, aged Nineteen Years, or thereby, Unmarried: Who being solemnly sworn, purged of partial Counsel, examined and interrogat *ut supra*, Depones, That she was present with George Haines, one of Captain Green's Crew (whom she points at the Bar) in Bruntisland, at the Time when Mrs. Wilkie and her Son were there: That Mrs. Wilkie

Wilkie desired the Deponent to endeavour to learn if *George Haines* knew any Thing of Captain *Drummond*, because the said Mrs. *Wilkie* had a Son that went along with him. Depones, That she the Deponent did accordingly enquire at *Haines*, but he denied that ever he saw the said Ship, or knew any Thing of her. Depones, That she was likewise present with *George Haines*, when *William Wood*, one of Her Majesty's Artillery, and *John Henderson*, were in Company with him, and that at that Time, *George Haines* in a melancholy Fit exprest himself thus: *It's a wonder, that since we did not sink at Sea, that we are not swallowed up with the Ground ashore, for the Sins committed on board of Captain Green's Ship.* And Depones, that he likewise added, during the last Voyage. And depones, that *Haines* said to the Deponent, *That he knew more of Captain Drummond than what he would express at that Time:* Depones, That the said *George Haines* told the Deponent, *That when the Ship was seized in Leith Road, he had aboard with him that which he would not have had to fall in the Seizers Hands for twice the Value of the Ship, but that he threw the same over-board:* Depones, That she never talked with *Haines* about an old Sweet-heart that she had aboard of Captain *Drummond's* Ship, nor did the said *Haines* say to the Deponent, *That she would never see him again:* And depones, That she never heard *Haines* say, *That there was yet aboard of the said Ship what would not be found unless she were pulled Board from Board:* And depones, That when the Deponent was enquiring of *Haines* about Mrs. *Wilkie's* Son, that he said, *That she designed to pump him as Mr. Mackenzie had done before.* *Causa scientie patet.* And this is the Truth as she shall answer to God.

Anne Seaton.

ROBERT FORBES.

Compeared Captain *John Brown* Skipper in *Leith*, aged 40 Years, or thereby, married, who being solemnly sworn, purged of partial Counsel, examined and interrogate *ut supra:* Depones, That he went aboard the Ship the *Worcester* when the Goods were unloaded, by Order of the Lords of the Committee of Privy-Council, and saw the Hatches which were fast and sealed, opened: Depones, That on the Larboard-side of the Ship, the Goods were much damaged, and that few or none of the pack'd Goods were numbered or marked, which is customary; and the Deponent himself never received any Goods but what were marked, that he might know to whom they belonged: Depones, That the Goods aboard the said Ship, were regularly enough stowed: And being

* On behalf of the Prisoners. ing interrogate * for the Prisoners, whether or not it be customary that Goods be marked or numbered where

there is a *Supercargo* aboard: Depones, That it is always customary, whether they belong to ten, or one Man: And being interrogate for the Pannels, whether or not the Reason why the Goods wanted Mark or Number, might be, because that the Goods were much damaged, and the Pepper spoiled and heated: Depones, That where the Goods or Pepper was spoiled, the Bales were all rotten to Pieces, but where the Pepper and other Goods were entire, there were Bales and Packs which wanted both Numbers and Marks: And being likewise interrogate by the Pannels, whether or

not there were some Packs and Bales that had a common Ship-mark, and some who had only the Veltige † thereof, being † Sign. near worn out: Depones, That there were a great many who had a common Mark, and that it was plain and obvious, and that there were others who had no Mark at all, and that the most Part wanted Marks altogether, and that there were two or three Bales which had the Veltige of a Mark. *Causa scientie:* The Deponent || witnessed the unloading of || Was wit- the said Ship, at the Desire of the nesses to. Lords of the Committee of Privy-Council, and saw, and knows as he has deponed. And this is the Truth as he shall answer to GOD.

John Brown.

ROBERT FORBES.

Compeared *Archibald Hodge* Skipper in *Leith*, aged 40 Years, or thereby, married; who being solemnly sworn, purged of partial Counsel, examined and interrogate *ut supra:* Depones, That he was aboard the Ship the *Worcester* in *Bruntland* Harbour, when the Committee of Privy-Council came to rummage her, and saw Goods unloaded from aboard: Depones, That the most Part of the Goods wanted both Number and Marks, which is no wise common or regular in any Ship that ever the Deponent has seen: But the Deponent did never see any *East-India* Ship unloaded before. *Causa scientie patet.* And this is the Truth, as he shall answer to GOD.

Archibald Hodge.

ROBERT FORBES.

Compeared *John Glen* Goldsmith, Indweller in *Leith*, aged 43 Years, or thereby, married, who being solemnly sworn, purged of partial Counsel, examined and interrogate *ut supra:* Depones, That the second Day after the Ship the *Worcester* came to *Leith* Road in Summer last, the Deponent went aboard the said Ship, and about Twelve a Clock of the Day, the Deponent was in the Cabin with Captain *Madder* and one *Hammond*, now in *England*, as the Deponent is informed; at which Time the said Captain *John Madder* took a Seal out of his Pocket, and asked the Deponent, what he thought of the *Scots African* and *Indian* Companies Arms, and at the same Time gave the Deponent the said Seal in his Hand, to which the Deponent did look, and found thereon the *St. Andrew's* Cross, a Dromedary, or Camel, with a Castle on the Back of it, and a Ship with a Rising-Sun above the Helmet, and two wild Men as Supporters, and that the said Seal, to the best of the Deponent's Memory, was near the Bigness of an *English* Half-Crown, and had an Handle of *Lignum-vitæ*. And being interrogate if aboard the said Ship he did see the Impression of the said Seal upon any Paper: Depones negative. And further Depones, That the Seal now exhibited in Court, was not the same which Captain *Madder* did show to the Deponent; and whereupon he has deponed as above. *Causa scientie patet.* And this is the Truth, as he shall answer to GOD.

John Glen.

ROBERT FORBES.

* *Fury ordered to withdraw.*
† *Sentence or Opinion.*

|| *Sufficient to bear a Tryal.*

The Probation being ended as above, and the * Affize ordained to enclose, some of the Affizers moved, that that Part of the Judges and Assessors † Interloquitor, whereby they find the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by clear and plain Evidence, || relevant, &c. to be explained as to these Words, *being proven by clear and plain Evidence*, if the same did require, that the said Crimes of Piracy, or Robbery, or Murder, should be proven by two or three Witnesses, directly proving the foreſaid Crimes: Or, if it were only required, that the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by a clear and plain Evidence, as to the cumulative and concurring Presumptions, whereby the same were alledged to be inferred, altho' two concurring Witnesses should not be found as to every ſeveral Presumption, were ſufficient: The ſaid Judge and Assessors declared their Meaning to be in the Terms of Law, *viz.* That tho' there were not a direct Probation of the Crimes libelled, *per idoneos Testes, vel instructa apertissimis documentis*, by proper Witnesses, or made good by plain Proofs; yet if the Crimes did appear by the Qualifications and Circumstances, as they were libelled, to be made out *per indicia ad probationem indubitata & Luce clariora*, by undoubted Presumptions as clear as Sun-shine, albeit every Circumstance and Qualification were not proven by two direct Witnesses, the same should be held for a clear and plain Evidence.

Thereafter, according to the Custom observed in Criminal Courts and Processes, That the Advocates for the Pursuer, and for the Pannels, are allowed || *hinc inde* to speech the Affize, and resume and lay before the Affizers, the Libel, with the Interloquitor past thereon, and apply the Probation led for proving thereof on the one Part, and on the other to resume the Defences for the Pannels, and to take off as much as possible, the Weight of the Probation for their Defence and Exculpation; Sir David Dalrymple her Majesty's Solicitor, one of the Assistants to the Procurator-Fiscal in this Criminal Pursuit, spoke to the * Affize in Manner following.

Gentlemen of the INQUEST,

YOU have before you Indictments against the Pannels upon very atrocious Crimes, and these Indictments have been sustained relevant, as libelled by the Honourable Judge-Admiral, to be proven by clear and plain Evidence. But for your further Satisfaction, at the Desire of some of your own Number, made openly in Court, the Judges have declared, That by these Words, *Plain and clear Evidence*, they do not confine the Affize to two concurring Witnesses, but have left to you what Evidence is necessary to make Faith according to the Nature of the Crime, to your Conviction.

Your Business then, *Gentlemen*, is to apply or compare the Probation with the Indictment, and to return your Verdict distinct, concerning what you think proven or not.

It is a Happiness, that this Trust is in the Hands of Persons so discerning and faithful, and therefore the less needs to be said, either for clearing the

Nature of the Crime, the manner of the Discovery, or for summing up the Evidences: But to comply with the Custom of such Tryals in this Kingdom, and for preventing the Mistakes into which the Lawyers on the other Part, seem to lead you: Forgive me if after a

* Sederunt of Twelve Hours spent in * *Hearing*, † leading of the Probation, I detain † *Giving in* you a little longer in Recapitulating *the Evidence*, what has past, with some few Observations, I hope not improper, before || *Withdraw*. ye || enclose.

As to the Crimes contained in the Indictment, it is obvious how heinous they are, and how hateful they render the Persons who are truly guilty in the Eye of the Law: A Pirate is in a perpetual War with every Individual, and every State, Christian or Infidel. Pirates properly have no Country, but by the Nature of their Guilt, separate themselves, and renounce on the Matter, the Benefit of all lawful Societies: They are worse than ravenous Beasts, in as far as their fatal Reason gives them a greater Faculty and Skill to do Evil: And whereas such Creatures follow the Bent of their Natures, and that promiscuously, Pirates extinguish Humanity in themselves, and prey upon Men only, especially upon Traders, who are the most innocent. The Crime of Piracy is complex, and is made up of Oppression, Robbery, and Murder, committed in Places far remote and solitary. And indeed if GOD had not, in a most wonderful way, brought the Crimes whereof the Pannels stand accused, to Light, they might have escap'd unpunished in this World, to their own eternal Destruction, and to the great Loss of such who may be amended, or prevented by the Example of their Punishment. But altho' the Abuses now complained of, happened in the vast Ocean, and at no less distance than the *East-Indies*, and that the Actors were tied by obvious Reason to Secrecy on their own Account, and were † *Arbitrary* bound by a † *regulous Command*, not *Command of* to reveal or answer Questions: And *their Captain* besides all these, it is most probable there was a most impious Oath interposed, as uses to be in such Cases, and which has more Force to restrain Men of such desperate Principles and Practices, than all the Ties of Religion or Nature: Yet GOD, in his Providence, has let in Light upon these dark and cruel Crimes, as it were by meer Accident: For I presume, you are not ignorant, that the first Notices of this Matter proceeded from Words which were dropt in Passion, or express'd by the Weight of Guilt, concerning the Wickednesses which have been done aboard the *Worcester* during the last Voyage. These, and some other Grounds of Suspicion which appeared upon better Enquiry, were the Occasion of the Information given to the Government, and how cautious the Lords of Her Majesty's most Honourable Privy-Council, have been in examining the Matter before any Prosecution was appointed, I persuade my self, that you and the whole Nation know, and are satisfied. And now that the Probation has been solemnly led in Presence of this Court, and of the great Number, of all Qualities who have been present; I doubt not, it will appear to you and all Men, who will suffer their Reason to act freely, that these Informations have been but too well founded.

The Indictment, as it concerns the Facts libelled, consists chiefly of two Parts. The first concerns a Murder and Piracy happening upon the Coast of

Malabar. The second concerns Circumstances which help to give Light to that Piracy, and which Circumstances have happened since the Arriving of the *Worcester* into this Country.

As to the first, *Gentlemen*, You have a Testimony of the first Witness *Antonio Ferdinando*, who depones, He came aboard of the *Worcester* upon the Coast of Malabar, and that about a Month after, he saw an Engagement betwixt the Sloop belonging to the *Worcester*, and another Ship sailed by White-Men, speaking English, and bearing such Colours as Captain Green's Ship did bear; and that the Captain and some others of the *Worcester's* Crew, went aboard the Stranger's Ship, and stayed about the Space of a Glass; that upon their return to the *Worcester*, the Sloop was mann'd out with twenty Men, of which Number were the Captain himself, with Madder, Simpson, Keigle, Kitchen, and others; that the Sloop was mounted with 4 Guns and 2 Patteraroes; that the Sloop engaged the Stranger's Ship, and that there was a running Fight for 3 Days, during which Time the *Worcester* came up and fired at the said Ship, and that upon the third Day, the said unfortunate Ship was taken, (and what is fearful even to repeat) The Crew being about Ten, were murdered and thrown over-board; that the Goods were brought aboard of the *Worcester*, and the taken Ship was sailed with a Part of the *Worcester's* Crew to Callicoiloan, and there sold to Coge Commodo; that the Deponent himself was wounded, the Scar of which Wound was shown to you, *Gentlemen*, and the Court; and that he was commanded to keep Secrecy under the highest Peril, and that the very Upper-Coat which he wears (and in my Judgment, appears to be Scots

* Coarse
Cloath.

* Rugg) was a Part of the Spoil.

† Solidity.

As to this Testimony, *Gentlemen*, There are several Things very observable, such as the † Stayedness, Simplicity and Constancy of this Witness, who, in many Examinations before the Council, and Committee of Council, has uniformly given the same Account which he has now deposed before this Honourable Court; not in the same Form of conceived Words, but materially the same, tho' the † Interrogators have been changed: And I think, it adds to the Weight of his Testimony, that ye are Witnesses how it was * emitted, while he was under heavy Sickness, and forced to lie down at the End of the Table.

2. It is observable, that this Witness *Antonio Ferdinando* had no accession to the discovering of this Matter, nor was at all an Informer: But the Matter being enquired into, he did plainly and honestly acknowledge from the Beginning, as he has now deposed: Neither was the Story first told at *Leith*, nor since the Pannels arriving in our Harbours: But it appears by the Testimony of *Antonio Francisco* the other *Black*, (who shews a great Inclination to favour Captain Green and the Pannels) that *Ferdinando* gave him the same Account in substance upon the Coast of *Malabar*: And this is further confirmed by *Stringman* the Cook, who told in several Examinations before the Council, that shortly after the said *Stringman* came aboard on the Coast of *Bengal*, *Ferdinando* who was his Mate, gave him the like Account of the Story: So that it is morally evident, that this Account of the Crime was not invented with any View of a Trial against the Captain and his Crew.

3. It is worthy your Notice, that Captain Green had been aboard of the unfortunate Ship taken,

as a Friend, and had Opportunity to spy, that the Crew being but about ten, were too weak to man or defend a Ship of 20 Guns, which, no doubt, emboldned him to undertake the Wickedness complained of.

It is observable, That the several Parts of *Ferdinando's* Testimony are fortified by concurring Proofs. As first, by the Books found aboard, it appears, that the Sloop was furnished with Arms in the Month of *February* libelled, and that the Arms were such as the Testimony mentions. 2. He shows you the Scar of his Wound upon his Arm; and as he depones, that he got it in the Engagement, so the Chyrurgeon depones, That he not only saw it, but that shortly after the hearing of the Shooting, he had taken the * * * Plaster. Dressing from off the Wound, and found it a Fracture, and that it look'd like a Gun-shot, and that the *Black* came to his Chest a few Days thereafter to have it drest aboard. 3. The Testimony of *Ferdinando* is also confirmed by the Depositions of *Francisco* and Mr. May, as to two very notable Articles, viz. The bringing of the Goods aboard about that Time: And by the Testimony of the said Mr. May, as to the Ship taken riding at the Stern of the *Worcester*. 4. Captain Madder's severe Commands for observing of Secrecy, is not only deposed upon by *Ferdinando* the first Witness, but also by May the Chyrurgeon, very circumstantially: When Mr. May asked an innocent Question, as one should think, upon seeing the Deck lumbered with Goods, Mr. Madder answers, cursing him, and bids him mind his Plaster-Box. When May goes to his Chest, there came three Men to be dressed of their Wounds, of which the *Black* was one. May asks them how they came to be wounded, but Madder had followed, and commands Silence on their Peril; but Mr. May persisting in his Enquiry, Madder goes to the Commander, and brings a positive Order to answer no Questions: Thus *Ferdinando* and May concur as to the Command of Silence. Now, I put it to your Consciences, *Gentlemen*, if ye think this Mystery was used to cover a common Accident; or, if rather you are not satisfied, that, joyning the Testimony of *Ferdinando* with the Wounds, and the Silence so rigorously imposed, the Goods brought aboard, the riding of the taken Ship at the Stern of the *Worcester*, they do not evince the Certainty of the Piracy and Murder libelled, as far as the Nature of the Thing can admit.

To these, *Gentlemen*, Ye would be pleased to join in your Observation, That it is owned and demonstrated, from the Books taken aboard of the *Worcester*, that there sprung a Leak in the said Ship on the Coast of *Malabar*; and that it had been most natural for the Pannels to have carried their Ship to *Goa*, or to *Surat*, which was within Ten Degrees Sailing, or thereabouts; yet the Pannels did chuse, rather than continue on that Coast, to run along in a leaky Vessel, a dangerous Course, round the *Peninsula*, and the Island *Keilon*, to the Bottom of the Bay of *Bengal*, a Course of about Seven or Eight Hundred Leagues. But that Fatigue and Risque was small, when compared with the Danger of repairing their Ship on a Coast, where their Crimes might be more easily discovered. 2. It is remarkable, that the Books found aboard, and now lying before you, contain the full Instructions given to Captain Green and his Company, from their alledged Owners, which have some-

something mysterious from the very Beginning. I have had little * Opportunity to peruse them, having seen them this Morning for the first Time. But one Thing I could not but † notice, That in the Instructions, one

Article contains a Cypher, in which the Captain or Supercargo was to correspond with their Owners. And altho' this Cypher seems to be nice, and well enough devised at first to cover the Correspondence from any ordinary Curiosity; yet so great Anxiety has been shown concerning this Cypher, that the Freighters send a Letter after the Ship; adding an Instruction, That besides the Character to be used, there should be this further Disguize added, That the last Letter of the preceding Word should be always repeated before the first Letter of the next Word; of which, for Illustration, the Letter contains an Example, giving Direction how Letters should be address'd to the Writer himself. But neither was this Caution sufficient: For next Day another Letter is written, relating still to the Cypher; and wherein the Writer expressly advises, that the Letters from the Ship should not be directed to himself, but to a Scrivener living in --- Street, London; and that they should not be subscribed. Why all this Mystery? The Correspondence must be in Cypher; and this Cypher exquisite and refin'd: And yet the Letters to be address'd to a Third Person, obscure, for what I know. They were not to contain any Address or Subscription, which should either discover the Writer, or the Person to whom he writes. Fair Trading requires no such Affectation.

But further, you will be pleas'd to take notice, That the outward Cargo for a Ship of 200 Tuns, and 20 Guns mounted, sail'd with 36 Men, was in Value but 999 £. 17 s. 2 d. Sterling;

* Voucher. which appears by the * Document produced by themselves, for instructing their Entry at the Custom-House; and that too, for the most part, Arms. I have not so much Experience in Matters of Trade; but to me it seems very strange, that a Voyage so exceedingly hazardous and expensive, should have

† Stock. † Means. And these Things, in the very undertaking of the Voyage, being joined with the shrewd Evidences of the Crimes, whereof these Pannels stand accused, seem to be of very great weight: And

* Cunning. where such * Fineness occurs in the Entry, and the Effects are so Tragical, in such an Enquiry; I hope, I shall be forgiven by every body, having laid them before you with as much Tendernefs to the Freighters (with whom I have nothing to do) as possible.

As to the Second Part of the Libel, I mean these Circumstances which concur to give Light to the Crimes chiefly libell'd; there is also sufficient Evidence. The first of these Circumstances, is what concerns Mr. Reynolds, one of the Pannels. The Indictment bears, That there was a Letter found, writ to him by his Wife's Sister, in Return to one of his writ to his Wife; wherein his said Sister advises him to confess; adding, That in his own Letter, which she had seen, he says, *That some of their Men had basely confess'd*; which implied, that they were guilty. And Reynolds being questioned upon this Letter, produced the Copy of his Letter to his Wife, which occasioned his Sister's

writing to him, agreeing with this Letter. These you have before you.

I am not ignorant, that *Ferdinando* (the first Witness) says, *He believes Reynolds was ashore*: But the Testimony as to that is not positive; neither is it, in my Judgment, sufficient to take off the Accession to the Crime, or † Art and Part libell'd; since the † Contriving said Reynolds was of the same Crew, and Acting. and did not separate himself from them; and it is most presumable, had his own Share of the Booty. Besides, it's plain from the Letters, he was conscious to the Truth, which (he says) *was basely confess'd*: And it is of little weight, what has been offer'd as a Gloss; viz. *Basely confess'd*, is as much as if he had said, *falsly told Stories*. For in the ordinary way of speaking, to confess, is to tell true; and the Adverb *basely*, implies no more than if he had said, that they had ungenerously confess'd; tho' it be indeed rather a Duty, whatever Mr. Reynolds thinks.

The next observable Circumstance is what concerns *George Haines*: As to whom, by laying together the Testimonies of *James Wilkie*, *Kenneth Mackenzie*, *William Wood*, *John Henderson*, and *Anne Seaton*, you will find it proven, That upon asking a Question about *Drummond's Ship*, Haines fell in a Passion; by the Depositions of *Wilkie* and *Kenneth Mackenzie*. 2. That Haines said, *That when the Ship the Worcester was seized in the Road of Leith, he had that in his Custody, which he would not have fallen in the Seizers Hands for twice the Value of the Ship; and that he threw it over-board*; is proven by the Testimonies of *James Wilkie* and *Anne Seaton*. 3. That *James Wilkie's* Mother employ'd *Anne Seaton* to enquire of Haines concerning her Son, who had gone Doctor to *Drummond's Ship*; is proven by the Testimonies of *Wilkie* and *Seaton*. And *Kenneth Mackenzie* depones, That he was present when the said *Anne Seaton* gave an Account of what had pass'd betwixt her and Haines; and that she told, that Haines said, *They had a Design to pump him*: And that being ask'd why he fell in a Passion at the mentioning of Captain *Drummond*? He answered, *That he knew more of Captain Drummond than he would tell*. And *Anne Seaton* concurs with *Mackenzie* as to these Particulars. 4. That Haines, in a melancholy Fit, * burst forth in * broke out. these, or like Words, *It's a wonder that since we did not sink at Sea, God does not open the Earth, to swallow us up at Shore, for the Wickedness committed during the last Voyage, in that old Bitch Bess*; (pointing to Captain Green's Ship) is proven by the concurring Testimonies of *William Wood*, *John Henderson*, and *Anne Seaton*. And 5. That Haines said, *If what Captain Madder did during the last Voyage, were as well known as what his Uncle undertook at Amsterdam; he deserv'd as much as his Uncle met with; which was, to be boil'd in Oyl*; is only attested by *William Wood*. Nor does every minute Circumstance need a concurring Probation.

Having thus laid before you the Indictment and Probation, conjoining these Proofs; which, I am confident, to all impartial Men, will appear clear and plain Evidence of the Crimes of which these Pannels are accused; I shall take Liberty, in the next place, to precaution you against certain Insinuations, which the Pannels Lawyers have discover'd when the * Probation * Evidence was a leading, and to be giving in.

I need

I need be at little Pains to convince you, that the first Witness, tho' a *Black*, is a legal Witness; seeing that, upon full Debate, has been already determined by the Honourable Judges. And indeed, besides that, he is not only a Man, but a Christian, and adduced for proving a Crime covered, committed at Sea, which is more solitary than any De-fact at Land. His Testimony had such a distinguishable Air of Truth and Sincerity, as made him not only a legal Witness, but a very material and probative one. But the Pannels Lawyers would fain have observed some Inconsistency in his Testimony, and betwixt it and that of Mr. May's: For, say they, *Ferdinando depones, that he came aboard Two Years and a half ago; and that the Action happen'd about a Month after he came aboard; so that it must have been in the Month of November, 1702. and not in the Months of February, March, &c. 1703.* But ye were Witnesses, that the *Black* did not depone positively as to the Time of his coming aboard, but said it was about Two Years and a half ago; and that the Engagement was about a Month after. Both these Designations of the Time admit a Latitude: And he was so cautious, that he stopt again before he signed his Oath; until it was told him, that it could not be otherways understood.

But then they urge, That he depones, that the Engagement happen'd betwixt *Tillicherrie* and *Callectut*, upon the Coast of *Malabar*; yet Mr. May depones, that he heard the Shooting at *Callicoiloan*; which, say they, being at such a vast Distance from *Tillicherrie*, was impossible.

But these Gentlemen do not observe, that the Engagement continued for Three Days; and that it is expressly deponed, there was a running Fight during that Time: So that tho' the Beginning of the Attack might have been betwixt *Tillicherrie* and *Callectut*, yet it might have continued along the Coast.

Neither is it of more Moment what these Gentlemen observe, that the Strangers Ship attacked might have in Three Days got off: Because it appears, she was attacked and pursued by the Sloop, which was a light Vessel; and the Ship it self attack'd was weakly mann'd, having but about Ten Men aboard, and a Ship of 20 Guns.

But it may possibly be further urged, That the *Black* deponed, that Mr. *Loveday* and Mr. *Linsfeed* were aboard the Sloop; whereas Mr. May depones, That Mr. *Linsfeed* was left at *Keilon*; and that he heard him order'd to go ashore before, and saw him taken into the Ship some Time afterwards.

But neither is there any Inconsistency in this Particular, betwixt these Two Oaths: For Mr. May depones, that when the Ship came upon the Coast of *Malabar*, he himself was put ashore: And altho' before he was put ashore he heard *Linsfeed* and *Hammond* ordered ashore, yet he did not see them go; so that *Linsfeed* might have continued in the Ship notwithstanding. Or, in the next place, let us suppose that *Linsfeed* had once gone ashore; does it from thence necessarily follow, that he did not come aboard again, till the Doctor saw him taken up? Certainly it does not; for Mr. May continued a very long Time ashore. But now granting what these Gentlemen so earnestly desire, that *Ferdinando* had been mistaken as to some such Circumstance; can that overturn his Testimony? The Thing happening upwards of Two Years ago: The Subject was an Engagement at Sea; perhaps the first Fighting ever he was Witness to: And the

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Confusion which, for the most part, is incident to the firmest Spirits in their first Adventures, might excuse this Witness, if in a * minute Circumstance * *small.* he had mistaken; seeing his Oath, as to what is material and essential, is most pregnantly † attracted, as † *supported.* has been already said.

It may be likewise observed, That it was very much urged for the Pannels, that *Ferdinando* came aboard the Ship at *Anjongo*, only Two Days before the Ship parted from the Coast of *Malabar*: But tho' that were true, it would be little to the Purpose: For it is evident by his own Deposition, that at first he enter'd to the Service of Mr. *Loveday*, the Purser; and that he came aboard of the Sloop at *Callicoiloan* with *Loveday*; and the Sloop was the chief Instrument made use of in the Piracy libelled.

It is not unlikely, that the Lawyers on the other side will amuse you with Observes upon Mr. May's Testimony; as that he is but a Witness * *de auditu*, not having been * *by hearsay.* present at the Action: But in this they are again mistaken; for, as I take it, a Witness *de auditu* is such an one, who repeats at second-hand: As if Mr. May had deponed, that another Person had told him he had heard Shooting. But since our Hearing is as much to be depended on as our Seeing, in what concerns the proper Object of the Ear; Mr. May's Testimony, which chiefly consists of what he heard and saw himself; is not in the Sense of Law *de auditu*. Mr. May depones he heard the Shooting; and the next Day that he came down, he saw the *Worcester* riding, with another Ship at her Stern; and that he saw some of the Crew come ashore in a Boat; and that they told him that they had brought in a Ship; and that *Coge Commodo*, or the *Linguister*, told him he had bought the Ship. He saw and handled the *Black's* Wounds: He was Eye and Ear-witness to *Madder's* threatening, and imposing a rigorous Silence. In all this there is nothing properly *de auditu*; for that the Seamen told him they had brought in a Ship, did not depend barely upon their telling, but upon these Circumstances, that they were the Persons brought it in; and that the Ship was riding under his Eye, at the Stern of the *Worcester*. And just so what he heard from *Coge Commodo*, and the *Linguister*, being upon the Place, and seeing the Ship under his Eye, is not to depone only *de auditu*, but has as much Evidence, as is necessary to create a full Certainty in the Mind of any reasonable and indifferent Person.

As for the other Circumstances, I beg Liberty to forewarn you, Gentlemen, That every Thing material is proven; and that even as to the least Circumstance, there is some Evidence. That the Goods were not regularly marked, as is ordinar in fair Trade, is proven by the Oaths of * *Skippers*: That the Seal * *Masters of* of the *African Company* was seen in *Ships.* the Hand of Captain *Madder*; is deponed by *Glen*, a Seal-Cutter, who could not well be mistaken in a Matter of that kind. And in like manner, that there was something aboard of the *Worcester*, which would not be found, tho' they should tear her Board from Board; is deponed by *James Wilkie*. None of these Circumstances are absolutely without Evidence: And the rest of the Libel, both what is essential, and even

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as to lesser Circumstances, is distinctly and plainly proven.

To conclude, *Gentlemen*, As, on the one Hand, you are to be very tender of admitting that for a Proof, in a Case of Life and Death, which ought not to be admitted; so you must be careful not to reject such Evidence, as must convince the whole World, that these unhappy Criminals are guilty of the cruel and atrocious Crimes libelled. Take the Matter in its whole Series: The affected Darkeness in the Entry to the Undertaking, a Correspondence in Cypher, wherein the Parties were neither to be mentioned on the Cover, nor in the Letters, nor were they to subscribe. That the Cargo was inconsiderable, and chiefly composed of Arms, not to the Value of a Thousand Pounds Sterling. And it seems almost ridiculous, that a Ship of 200 Tuns, with 20 Guns mounted, sailed by 36 Men, should be sent to the *East-Indies* upon an ordinary Adventure, with so invaluable a Cargo: And join with that the Evidence of the Murder and Robberies, mentioned in the Indictment. Consider how much Light the Providence of GOD has discover'd in so dark a Crime, committed in a Place so distant and solitary; and I am confident, you will conclude with me, That the Murder and Piracy is proven.

The Advocats for the Pannels did also on their Part * speak the Affize, by resuming the Defences for the Pannels, and for taking off the Weight of the Probation led against them, and by alledging what could be further said for their Exculpation and Defence. But these Speeches having been made * extempore, & *vi- by word of va voce*, albeit the Advocats for the Pannels were desired, at the Printing of this † Process, to give in to be printed a full Copy of what they had said in Defence to the Affize; yet they declined to do the same.

The Judge of the High Court of Admiralty and Assessors ordain the * Affize presently to inclose, and to return their Verdict upon Friday next, being the Sixteenth of March Instant, at Ten a Clock in the Forenoon; and the † hail Fifteen Assizers to be present, each under the Pain of Three Hundred Merks, and continue the Dyet till that Time: And ordain the Pannels to be carried back to the respective Prisons.

ROBERT FORBES, I. P. A.

CURIA JUSTICIARIA, *Suprema Curie Admiralitatis tēta in Pretorio, vel nova Domo Sessionis Burgi de Edinburgo, decimo sexto Die Mensis Martii, 1705. per Judicem dictæ Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnestoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston, Assessores.*

Curia Legitimè Affirmata.

The said Day, the Persons who pass'd upon the Affize of Captain Thomas Green, Commander of

the Ship the *Worcester*; Captain John Madder, Chief Mate of the said Ship; John Reynolds, Second Mate; Thomas Linsteed, Assistant, Supercargo; James Burn, Boatswain; James Simpson, Gunner; Andrew Robertson, Gunner's Mate; John Bruckley, Seaman; George Kitchen, Seaman; Henry Keigle, Carpenter; George Haines, Steward; Samuel Wilcocks, Chirurgeon's Mate; George Glen, and Alexander Taylor, Seamen; John Bannantine, Seaman; returned their Verdict in Presence of the said Judge and Assessors; whereof the Tenor follows.

Edinburgh, the 14th of March, 1705. The * Affize having inclosed, did chuse Sir James Fleming, of Ra- * *Fury having withdrawn.* thobyres, to be their † Chancellor; † Foreman. and William Neilson, Merchant in Edinburgh, to be their Clerk: And having consider'd the Two Indictments pursued at the Instance of Mr. Alexander Higgins, Procurator-Fiscal of the High-Court of Admiralty, against Captain Thomas Green, Commander of the Ship the *Worcester*; Captain John Madder, Chief Mate of the said Ship; John Reynolds, Second Mate; Thomas Linsteed, Assistant, Supercargo; James Burn, Boatswain there; James Simpson, Gunner; Andrew Robertson, Gunner's Mate; John Bruckley, Seaman; George Kitchen, Seaman; Henry Keigle, Carpenter; George Haines, Steward; Samuel Wilcocks, Chirurgeon's Mate; George Glen, and Alexander Taylor, Seamen; John Bannantine, Seaman; with the Debate upon the said Indictments; and the Judge of Admiralty and Assessors, their Interlocutor, and Explanation thereupon, with the Deposition of Witnesses adduced by the Pursuer * thereintil: They, by Plura- * *in the lity of Votes, find, that there is one Cause.* clear Winness as to the Piracy, Robbery, and Murder libelled; and that there are accumulative and concurring Presumptions proven, for the Piracy and Robbery so libelled: But find, that John Reynolds, Second Mate of the said Ship, was ashore at the Time of the Action libelled.

Sic subscribitur,

* Foreman.

Ja. Fleming, * Chancellor.
Will. Neilson, Clerk.

Thereafter Mr. David Forbes, Advocate, produced a † Procuratory † Power, from the Company of Scotland trading to Africa and the Indies, to him the said Mr. David Forbes. In the Terms whereof the said Mr. David Forbes Protested, and took Instruments. The Tenor of both Procuratory and Protest is as follows, viz. The COURT of DIRECTORS of the Company of Scotland, trading to Africa and the Indies, Considering, That the Ship the *Worcester* and her Cargo is by Sentence of the High Court of Admiralty, found liable by way of Reprizal to the said Company, for Reparation of the Damages sustained by them, thro' the wrongous Seizure of the Ship the *Annandale*, and the Delay and Denial of Justice in England concerning the same, Conform to the said Companies * Process of Declarator of * *Tryal.* Reprizal, bearing a Conclusion of † *† Selling to the highest Bidder.* Roup and Sale of the said Ship the *Worcester* and her Cargo, for Reparation of the Company's said Damages,

as the Judge Admiral's said Sentence, dated the third of *March* instant bears. And considering likewise, that the additional Conclusion of the Criminal Indictment, raised at the Instance of Mr. *Alexander Higgins* Procurator-Fiscal of the said High Court of Admiralty, against Captain *Thomas Green*, late Commander of the said Ship the *Worcester*, and his Crew, for Piracy, Robbery and Murder, bears over and above the Confiscation of their Escheat, Moveables in general, That the said Ship and Cargo in Special should be likewise confiscated to Her Majesty's Use: The said Court of Directors do therefore, by these Presents, give full Power, Warrant and Authority to Mr. *David Forbes* Advocate, to appear for them; and in their Name and Behalf, and in Behalf likewise of Mr. *Roderick Mackenzie*, their Factor in the said Process of Reprisal, to the * Behoof of the said Company, to protest against the said additional Conclusion of the said Criminal Indictment, with all that has followed, or may follow thereupon, that the same may not in the least prejudice the said Company of the Benefit of their Right and Interest in the said Ship the *Worcester*, and her Cargo, as should accord. In Testimony whereof, these Presents are by Warrant of the said Court of Directors, signed by their President for the Time, and Counter-signed by the said Company's Secretary at *Edinburgh*, the twelfth Day of *March*, One Thousand seven Hundred and five Years. *Sic subscribitur*,

FRANCIS SCOT. P. C. D.

By Order of the said Court ROD. MACKENZIE
Secretary to the said Company.

Follows the PROTEST.

EDINBURGH, 16 March, 1705.

I The above Mr. *David Forbes*, Do hereby Protest in the Terms of the above Mandate, and thereupon I take Judicial Instruments in the Hands of Mr. *Daniel Hamilton*, Clerk of Court, and require the Members of Court as Witnesses. *Sic subscribitur*,

DAVID FORBES.

* On the Her Majesties Advocate Protested *
contrary. in the contrair.

Which Protections, the Judge of the High Court of Admiralty, &c. admitted and allowed them to be recorded.

The Judge of the High Court of Admiralty and Assessors, continue the † Time of Trial. Dyet till Wednesday the Twenty-one of *March* Instant at Ten a-Clock in the Forenoon: And ordains the Pannels to be carried back to their respective Prisons.

CURIA JUSTICIARIA *supreme Curia Admiralitatis* tenta in *Pretorio*, vel *novâ Domo Sessionis Burgi de Edinburgo*, vigesimo primo die Mensis Martii, 1705. per *Judicem dictæ Curie*, & per *Honora-*

Assessores, Joannem Comitem de *Loudoun*, Joannem Dominum de *Belhaven*, Dominos Robertum *Dundas de Arnistoun*, Joannem *Home de Blackadder*, & Joannem *Cockburn de Ormiltoun*, *Assessores*.

Curia legitime affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worcester*.

Captain *John Madder*, Chief-Mate of the said Ship.

John Reynolds, Second-Mate of the said Ship.

Thomas Linseed, Assistant to the deceased *Supercargo* of the said Ship.

James Burn, Boatswain of the said Ship.

James Simpson, Gunner.

Andrew Robertson, Gunner's-Mate.

John Bruckley, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter of the said Ship.

George Haines, Steward of the said Ship.

Samuel Wilcocks, Chyrurgeon's Mate.

George Glen, Seaman.

Alexander Taylor, Seaman: And

John Bannantyne, Seaman in the said Ship.

The Judge of the High Court of Admiralty and Assessors, having considered the Verdict of * Assize returned against Captain * *Fury*.

Thomas Green Commander of the Ship called the *Worcester*, now in *Bruntisland Harbour*, Captain *John Madder*, chief Mate of the said Ship; *John Reynolds*, second Mate of the said Ship; *Thomas Linseed*, Assistant to the deceased *Supercargo* of the said Ship; *James Burn*, Boatswain of the said Ship; *James Simpson*, Gunner; *Andrew Robertson*, Gunner's-Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter of the said Ship; *George Haines*, Steward of the said Ship; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, Seaman; *Alexander Taylor*, Seaman; and *John Bannantyne*, Seaman in the said Ship; upon the sixteenth Day of *March* instant; whereby it is found proven, that there is one clear Witness as to the Piracy, Robbery and Murder libelled; and that there are accumulative and concurring Presumptions proven from the Piracy and Robbery so libelled: And that *John Reynolds* second Mate of the said Ship was ashore at the Time of the Action libelled; they in respect thereof, by the Mouth of *John Park* † *Dempster*, * *Decern* and Ad-judge the said Captain *Thomas Green*, † *One that pronounces Doom.*

John Madder, *James Simpson*, *Henry Keigle*, and *George Haines* to be taken to

the Sands of *Leith*, within the Flood-mark, upon the first Wednesday in *April* next, being the fourth Day of the said Month, betwixt the Hours of Eleven a-Clock in the Forenoon and Four a-Clock in the Afternoon, and there to be hanged upon a Gibbet till they be dead. * *In like*

And * *sicklike*, *Decern* and Adjudge *Manner.*

the said *George Glen*, *Alexander Taylor*, *Andrew Robertson*, and *George Kitchen*, to be taken to the Sands of *Leith*, within the Flood-mark upon the second Wednesday of *April* next, being the Eleventh Day of the said Month, betwixt the

Hours of Seven and Twelve a-Clock in the Forenoon, and there to be Hanged upon a Gibbet till they be dead. And also, *Decern* and *Adjudge* the said *James Burn*, *John Bruckly*, *Samuel Wilcocks*, *John Lannantine*, and *Thomas Linsteed*, to be taken to the Sands of *Leith*, within the Flood-mark, upon the third *Wednesday* of *April* next, being the Eighteenth Day of the said Month, betwixt the Hours of Eleven a-Clock in the Forenoon, and Four a-Clock in the Afternoon, and there to be hanged upon a Gibbet till they be dead: And

* *Estate*. ordain all their Moveables, Goods and*
 † *Forfeited*. *Worcester* and Cargo to be † *Escheat*, and
 † *Forfeited*. in-brought to Her Majesty's Use; reserving to all Persons pretending Right to the said Cargo, or any part thereof, their respective Claims and Pretensions to be insisted in and discuss'd before the High Court of Admiralty as accords, which is pronounced for ||
 || *Sentence*. *Doom*; and † *Affoizlie* the said *John Reynolds*.

JAMES GRAHAM I. P. A.

The Judge of the High Court of Admiralty and Assessors, recommend to the Lords of Her Majesty's Privy Council, to give a Reprieve to *Thomas Linsteed* Assistant Supercargo of the Ship *Worcester*; and desire that their Lordships would recommend him to Her Majesty for Her Gracious Pardon.

JAMES GRAHAM *In presentia Assessorum*. In presence of the Assessors.

Follows some Confessions and Declarations emitted by some of Captain Green's Crew, which are here set down according to their Dates, and as they were freely made in the Presence of the Persons therein mentioned, and are only here subjoyned not as any Part of the Trial. Process, but for the further Satisfaction of all that shall be pleased to read the Premises.

Edinburgh, 16th March, 1705.

DECLARATION by *Thomas Linsteed*, emitted in Presence of *Sir James Steuart* Her Majesty's Advocate, hereto subscribing with the said *Linsteed*.

T *Thomas Linsteed* declares, That being in the Ship the *Worcester* as Assistant to the Supercargo, when the Vessel came to *Callicoilan*, upon the Coast of *Malabar*, which was about the Beginning of the Year 1703. *Mr. Hammond* and he were sent ashore to look after the Goods they had sold, and the Returns they expected at *Callicoilan* and *Keilon*; That the Ship the *Worcester* left *Callicoilan* with her Sloop in *January* 1703. for to go to *Callectut*, and other Places up that Coast; but within five or six Days after the Ships parting, there came in Fisher-Boats to *Callicoilan*, who told them that their Ship the *Worcester* had had an Engagement at Sea, and that it was the Sloop that first attack'd the Vessel, and that they fought until they were out of sight of the Fishermen, who could give no

further Account of it. But thereupon the Declarant and *Mr. Hammond* wrote and sent a Messenger either to *Cocheene* or *Callectut*, to know what was become of the *Worcester*; and that they got a Return after some Days, that they should mind their Business, and not concern themselves with any Thing that *Callant* the Supercargo did aboard. That some Days thereafter, the Declarant met with *Coge Commodo* in the *Ibeck* of *Keilon*, who told him, that he had bought a Ship, and he took the Declarant aboard; that the Vessel was about 100 Tons, and did bear about twelve or thirteen Guns, and that she appeared to be of the Country Build. And *Coge Commodo* said, he had bought her from the Pirates of *Cota* or *Burgara*, which are two little Pirating Towns on either side of a River on the Coast of *Malabar*; but when the Declarant came to *Keilon*, the *Dutch* and *Portuguese* there told him, that that Vessel which *Coge Commodo* had bought was brought in in the Night Season by some of the Crew of the *Worcester*, and that her Top-mast was taken down, and her Sails taken off, and the Yards lower'd; and that the *Dutch* and *Portuguese* made no more reckoning of it, because 'tis what is ordinary on that Coast. That the Declarant and *Mr. Hammond* stayed, for two or three Months after their parting from the Ship, at *Callicoilan* and thereabouts, until the Ship the *Worcester* came back to the Road of *Callicoilan*, and that there he went aboard: That when he went aboard, he told them what he had heard, but they gave him no Account of the Action; nor could he learn more of it. That the Doctor was ashore at *Ibeck* while the Ship was at Anchor at *Callicoilan*, and that at that Time the Declarant was gone up to *Callicoilan*, and knows no more of the Doctor's being ashore. That the Sloop with *Mr. Loveday* and others aboard did first come back to *Callicoilan*, and advertised the Declarant and *Mr. Hammond* to be in readiness, for the Ship was coming back; and that when she came back they went aboard, and the Declarant went aboard at *Anjango*, from whence they sailed to *Bengal*. And this the Declarant declares to be a Truth. *Causa scientie patet*.

T. Linsteed.

J. A. STEWART.

Edinburgh, 27 March, 1705.

I N Presence of *Mr. James Graham* Judge of the High Court of Admiralty, *George Haines* one of the Crew of the *Worcester*, being desirous to make a Confession of what he knew in relation to the Crimes for which he and the rest of the Crew are pursued; Declares, That when the Ship the *Worcester* was in the Downs, the Declarant received a Letter from a Friend in *London*, telling him, that it was surmised in *London* that their Ship was going out upon some ill Design; and that he had likewise another Letter from his Father to the same Purpose, and heard the Gunner *James Sympson* say, he had also another of the same Nature. The Declarant declares, that thereafter he used all his Endeavours to get ashore, and accordingly he having got leave to see some Friends aboard the *Fleet-Frigat* that was then riding in the Downs, he got into her Long-Boat that was then going ashore, but some of the Frigate's Crew having got notice where the Declarant was, after he went ashore, they came to him, and having drunk with him to some Pitch, persuaded him to go aboard of his

his own Ship again ; and the Declarant was accordingly carried aboard, in one of the Boats belonging to the Town of *Deal*. And some Time thereafter, the Declarant designed likewise to have got into a Man of War, riding hard by their Ship ; but Mr. *Callant*, the Supercargo, came after him, and brought him back : And the Declarant believes the Name of the Man of War was the *Salisbury*. That the Ship *Worcester* sailed from the *Downs* the 8th of *March*, 1702. in the Morning. That in the Month of *June*, or *July* thereafter, the Ship arrived at *Delagoa*, where their Sloop was built of Timber, and other Materials which they had brought from *England* aboard the Ship. That having sailed from *Delagoa*, some few Days before they came upon the Coast of *Malabar*, he heard some of the Crew, and particularly *John Eruckley* the Cooper, talk of turning Pirates, and persuading others of the Crew to go in with them. That when they came upon the Coast of *Malabar*, and had been there about a Month, they endeavoured to take a large Country Boat ; and for that end, the Sloop endeavour'd to get betwixt the said Boat and the Shore, that so the Ship might come up with the said Boat ; but there being several Hands aboard, and the Boat having Fifty Oars, out-sailed both Ship and Sloop, and got off. Declares, That *Coge Commodo* was aboard the Ship the Time of the aforesaid Chase ; and that he drew his *Sabre*, and encouraged the Crew of the *Worcester*. Declares, That hereafter the Ship and Sloop sailed for *Cochin*, with a Design to have cleaned both at that Place ; (the Sloop being much spoil'd with Worms) but the Governor would not allow them to be cleaned there ; and therefore they went up to *Calicut*, where the Sloop was cleaned and refitted, and mann'd with about Eight Men, and Two Guns, Two Patteraroes, and other small Arms and Ammunition put aboard ; and then the Sloop alone sailed up towards *Tillicherry*, and stayed away from the Ship about Eight Days. Declares, That the Sloop took no Goods along with her when she went out ; but when she returned, she had aboard Eight Hogheads of *Rack* and knows not how she came by them. But *John Roberts*, one of the Crew who had been with the Sloop at that Time, was very melancholy after his Return ; and the Declarant having a *Coco-nut* full of *Rack* in his Hand, desired *Roberts* to take a Part ; but he would not, and went down to his Hammock mightily concern'd. And afterwards told the Declarant, that the Reason of his Concern and Melancholy, was, That he was accessary to the cutting off of some Mens Heads at *Satirifice Rack*, betwixt *Tillicherry* and *Calicut*. Declares, That the Sloop did sail by her self from *Calicut* thereafter ; and the Ship followed down to *Callicoilan*, and did there meet with the Sloop : And having discover'd a Ship coming as from the *Southward*, the Sloop was under Sail, and made to get in betwixt the said Ship and the Offing, that so she might not get to Sea : And the Ship coming nearer to the *Worcester*, in which the Declarant was at the Time ; the *Worcester* slip her Anchors, and made towards the foresaid Ship, and at length came up with her, and fired a sharp Shot, to cause her come to ; which she did accordingly, by bracing her Head-sails back to the Masts ; and that thereafter she was boarded. Declares, That the Ship was about Seventy Tuns Burden, and square-sterned, and painted in the Quarters with Red and Yellow ; and that she had a Main Deck, and a Quarter Deck, and a little Fore-

Castle, and was of the *Indian Build* : And that there was in the Ship, when boarded, about Twelve or Fourteen Men, all white, and sickly, as the Declarant clearly perceived before the Ship was boarded. But when the Declarant was endeavouring to know of what Country the Men were ; *Edward Carry*, one of the *Worcester's* Crew, knock'd him down with a Hand-spike into the Midship Hatch : But he afterwards heard amongst the Crew, that the Men of the taken Ship were *Britons*. Declares, That he knew not what became of the Men which were aboard of the taken Ship, not having been able to come above Deck, with the Stroke which he received from *Edward Carry*, and whereof he yet bears the Mark : But declares, that the Sloop went off before he came above Deck, and stayed away for Three or Four Days ; and that the Declarant thereafter heard the Men were put into the Sloop. And what was done with the said Men of the taken Ship he cannot tell ; but doubts not they were murdered and made away, because they could not be put ashore at any Place at hand on that Coast ; there being *English* and *Dutch* Factories all along the Coast, very near each other. Declares, That these of the Crew who went with the Sloop from the Ship at that time, were Mr. *Loveday*, *Thomas Calcutt*, *Andrew Roberf n*, Gunner of the Sloop, *John Roberts*, *Edward Carry*, *Duncan Mackay*, *Alexander Taylor*, and *Antonio Ferdinando* the *Black* ; but cannot be positive who besides were there. Declares, That the next Evening after the Action, the Ship which was taken the Day before, was carried in by some of the Crew to *Callicoilan*, and sold to *Coge Commodo* for 1500 *Rupies* : And that the Goods of the said taken Ship were some Bales and Matts of *China*, *Roots*, and Four Chests of Copper ; which Chests were sold afterwards at *Bengal*, to a *Bannion* Merchant named *Tagodas*. Declares, That some Days after the Action, the Declarant was sent ashore with a Letter to the Supercargo, and that he then heard that *Coge Commodo*, to whom the Ship was sold, was a great Assister of all Pirates, and was very serviceable to *Kidd* and *Avery* when upon that Coast, and bought of their Goods, as the Declarant was credibly informed of the People on that Coast. And declares, That the Time the Declarant was on Shore, the Supercargo, Mr. *Linstead*, *Reynolds*, *Hammond*, and the Doctor were ashore. And the Declarant did likewise see *Antonio Ferdinando*, the *Black*, at the *Ibeck* of *Callicoilan*, who complained of a Wound in his Arm. Declares, That after the Action, and before the Declarant went ashore, the Doctor, *Charles May*, came aboard from the *Ibeck* of *Callicoilan* ; and seeing the Chests which had come out of the taken Ship upon the Deck, he asked Captain *Madder*, What did all that Lumber upon the Deck ? And that *Madder* answer'd him with a Curse, and told him to mind his *Plaster-Box*, and ask no *Questions*. Declares, That while the Ship was upon the Coast of *Malabar*, she sprang a Leak in the Strake next the Keel, which made the Crew to pump constantly : However, they went not into any Place upon the Coast of *Malabar*, to reef her, but sailed to *Bengal*, which was about Five Weeks Sailing ; and there the Ship was refitted, not only of the Leak, but of an Hurt which the Ship got in the Action, in the Plank, betwixt the Midship's Crupper and the Cheltree, and a new Plank put in, in the Larboard side, where the Hurt was. Declares, That the Declarant did keep a Note, by way of Journal, during the Voyage, which contained the

Substance of what he now declares in relation to the above Particulars : And that when the Ship was seized in the Road of *Leith*, he heaved the same over-board, lest it should have fallen in the Seizers Hands. *Declares*, That he would have emitted this Declaration and Confession sooner, but that he was always made believe by Captain *Green's* Agents, that the Defences made for the Crew, would certainly bring them off : *And if they did all agree in one Mind, and keep close Mouths, there would be no Fear ; for nothing could be otherways proven that could do them Harm.* And *declares*, That *Wilcocks*, the Chirurgion's Mate, told the Declarant, that he saw a Letter from the Owners of the *Worcester*, in *London*, to Captain *Green* ; which bore, *That altho' the Crew were condemned in Scotland, they had Pardons ready to send down for them.* And this the Declarant was likewise informed of from the Carpenter's Wife.

George Haines.

J. A. GRAHAM

Edinburgh, 28 March, 1705.

IN Prefence of Sir Robert Forbes, Judge of the High Court of Admiralty, * appeared. * compeared George Haines, one of the Crew of the Ship the *Worcester*, and declared that he now adds to his former Declaration ; That after the Ship therein mentioned was seized, he saw the Men which were therein killed and murdered with Pole-Axes and Cutlases, and saw their dead Bodies put into the Sloop, and thereafter thrown over-board : And, to the best of the Declarant's Knowledge, the said Men so killed were *Scotsmen* ; the Declarant having heard them speak the *Scots* Language. And further *declares*, That the said Ship then seized, was understood by the Crew of the *Worcester* to have been Captain *Drummond* his Ship ; and particularly he heard Captain *Madder*, *John Bruckley*, and the deceased *Edward Carry* say so. And further adds, that he would have emitted what is above before this Time, but was afraid lest his mentioning the Ship so seized to belong to Captain *Drummond*, and the Men aboard of the same to have been murder'd, might have render'd the Government offended, and obliged them to deal hardly with the Declarant. And this he declares to be Truth, as he shall answer to GOD.

George Haines.

ROB. FORBES.

Edinburgh, 31 March, 1705.

IN Prefence of Mr. James Graham, Judge Admiral ; *John Bruckley*, Cooper of the Ship *Worcester*, being desirous to make a Confession of the Crimes, whereupon he and the rest of the Crew were pursu'd ; *declares*, That some Time after the Ship the *Worcester* came upon the Coast of *Malabar*, that she and the Sloop gave Chase to a Country Boat, which escaped by reason of her Oars. That afterwards the Ship and Sloop sailed in Company to *Cochin*, where they were denied Access to clean ; and therefore they thereafter sailed to *Calicut*, where the Sloop (which had been spoiled by the Worms) was hal'd upon the Shore,

and clean'd, and thereafter was mann'd with about 10 Men, and 2 Guns, 2 Patteraroes, with other small Arms put aboard. From *Calicut*, the Sloop was order'd to sail towards *Tillicherry*, but there was no Goods sent along ; and in about Six or Eight Days thereafter, the Sloop came back in Chase of another Ship. *Declares*, That when the Ship the *Worcester* saw the Sloop in Chase of the other Ship, she slipt her Anchors, and made out to Sea to meet them. *Declares*, That he saw the Sloop board the said Ship towards Night ; and that the Long-Boat was after order'd to be mann'd, and Captain *Madder* went along in the Long-Boat. *Declares*, He does not know what became of the Men who were on Board the taken Ship ; but that the Declarant did see they were white Men. And the Reason why he knows not what became of the Men, is, that the Declarant was never on Board the taken Ship ; and that the Sloop which had boarded the Ship, was ordered away next Morning ; and he doubts not but the Men were amongst which were taken out of the Prize Ship. *Declares*, That the Ship which was taken, was mann'd with some of the *Worcester's* Crew, and sailed alongst with the *Worcester* till they came to *Callicoilan*, where they found the Sloop. *Declares*, That whilst the *Worcester*, with the other Ship, came in sight of the Sloop, the Sloop weighed Anchor, and stood to the Offing ; so that the taken Ship came into *Callicoilan* betwixt the Sloop and the *Worcester* ; and all Three came to an Anchor together. *Declares*, That after they came to an Anchor, the taken Ship rode under the Stern of the *Worcester*, and was thereafter sent into *Callicoilan* River, and sold to *Coge Commodo*, as the Declarant supposes. *Declares*, That thereafter the Declarant was sent ashore for Water to the *Ibeck* of *Callicoilan*, where he met with Doctor *May* ; and that he sent on Board a *Pinguetta*, with Water, according to his Orders. *Declares*, That some time after they came to an Anchor before *Callicoilan* ; and before the Declarant was sent ashore for Water as above, they saw a Ship at Sea coming from the *Southward* ; that the Sloop was under Sail at that Time, being a cruising about : That she sailed towards the Sea, and bore down the Ship towards the *Worcester*. That the *Worcester*, when the Ship came near, slipt from her Anchors, and made towards the Ship ; which thereafter was boarded, first by the Sloop, and then by the *Worcester*, about Ten or Eleven a Clock in the Forenoon. *Declares*, That there was both *Whites* and *Blacks* on Board that Ship, and most part *Whites* ; but the Declarant did not know what became of them ; but that the Sloop went off in a few Hours after the Engagement, and did not return till after Two or Three Days. That the Declarant does not know what became of that Ship ; but *declares*, that he was in a *Moorish* King's House, with about Six of the Crew ; and that that King was *Coge Commodo's* Master, who had bargained for one of the taken Ships ; the Declarant cannot be positive which : And that at the same Time the Supercargo, who was along with them, presented the King with a small Fowling-Piece. *Declares*, That the Declarant stayed ashore, trimming the Casks, for about Six Weeks thereafter : And does not remember at present any more of the Affair. And *declares* he cannot sign but by this Mark.



JAMES GRAHAM.

Edin-

Edinburgh, 3 April, 1705.

IN Presence of Sir Robert Forbes, Judge of the High Court of Admiralty, appeared John Bruckley, one of the Crew of the Ship the Worcester; and declares, That he adheres to his former Declaration, emitted before Mr. James Graham, Judge Admiral, the Thirty first of March. And now adds, That the Men which were aboard the Ship, which was seized before Callicoiloan, were for the most part White Men; and the Declarant heard them speak the English Tongue, being in Number about Twelve or Fourteen. And declares, That Captain Madder was in the Sloop, and one of those that boarded the said Ship; and that the Men were put into the Sloop, and carried away to the Northward in the Sea; and the Declarant never heard any more of them. And that the Goods aboard the taken Ship were brought into the Ship the Worcester, and consisted of China Root, and

Four Chests of Copper; which Chests were sold at Bengal, to a Bunnian Merchant. And further adds, That the Men seized in the taken Ship were killed after they were put into the Sloop, and before they were carried to the Sea Northward. And further adds, That immediately after the Action was over, the Declarant did hear the Supercargo, Calant, Captain Madder, John Roberts, and Edward Carry say, That the seized Ship was Captain Drummond's Ship, belonging to the Scots African Company. And adds, That when the Worcester sailed from the Downs, the Declarant did not know where the Ship was bound; but heard it frequently said, they were going upon a Discovery. And declares this is the Truth, as he shall answer to GOD. And declares he cannot write, but by this Mark.

+

ROBERT FORBES.

A P P E N D I X.

† *exactly*. **T**HE foregoing Account of the Trial of Captain Green and his Crew, being taken † closely from the Records of Court; and the usual Form of the Court being to Hear and Discuss Objections against the Witnesses, before they be examined, *viva voce*, without any written Debate; it is therefore thought fit here to add the Objections that were made against the Witnesses, and the Answers given thereto, with the Interlocutors pass'd thereon; that there may be nothing wanting to the Reader's full Information.

And first, It was objected against Antonio Ferdinando, the Cook's Mate, That he could not be a Witness, because of his Poverty; * he not being worth (as the Stile of the Court is) the Queen's * Unlaw, that is, Ten Pounds Scots, in case he should transgress: And so, according to the Law of this Kingdom, was to be rejected. 2. That he was not a Christian, and therefore could not be received as a Witness against Christians, specially in a Pursuit that reached their Lives and Fortunes. Nor could he indeed be supposed to have the just Knowledge of the Religion of an Oath.

To which it was answer'd, 1. That tho' the Standard of Ten Pounds Scots, settled by the Law and Custom of this Kingdom, as to the Quality of Witnesses, might well be refused in a Tryal of Crimes of this Nature against the Law of Nations, and which were to be tried accordingly; yet the Matter of Fact was false; Antonio Ferdinando being worth more than Ten Pounds Scots, by the very Wages due to him; and which, by the Pannels own Books, were attested to be Fifteen Shillings *per Menssem*, whereof, to this Hour, he hath got no Payment. 2. Antonio Ferdinando was a Christian, as he himself owned from the Beginning; and that he was born of Christian Parents: Like as it's

known, that such Names are only given to Christians. Besides, tho' his not being a Christian might be a † Prejudice against him, yet it could be no just Exception against his Testimony as a Witness; since he both profess'd the Knowledge of GOD, and the Conscience of an Oath, as he had often declared.

The Judge and Assessors having consider'd the foresaid Objections and Answers, they repel the Objections in respect to the Answers, and allow the Witness to be admitted.

2. It was objected against Antonio Ferdinando, That he was not worth Ten Pounds Scots; and had indeed nothing; besides, that he was no Christian, but a Servant or Slave to Captain Green; and also had no Religion.

To which it was answer'd, 1. That tho' Ten Pounds Scots be the Rate of Witnesses in our Scots Law; yet, as hath been said, this Rule cannot * vie in the Case of the * bear. Crimes libell'd, committed against the Law of Nations in remote Parts, & in alto Mari, in the deep Sea; which made the Crimes to be Crimes excepted. And it's known to be the Rule and Privilege, as to Crimes atrocious and † occult; and therefore ex- † bidden.

cepted to exempt even the Witnesses from the ordinary Qualifications. Nor was Antonio Ferdinando to be reckon'd no Christian; since, 1. He bears a Christian Name; and next declares, that a Christian Mistress he had in Pegu, who gave him to Captain Green, did first procure him to be Baptized and Christned. And 3. He professes the Knowledge of the True GOD. Nor, being a Christian, can he be reckon'd any longer a Slave.

But upon the whole, As to these Two, and the whole other Witnesses; the Nature of the atrocious Crime against the Law of Nations, with the Manner of their having been committed, and the Endeavours used for their Concealment, ought principally

cially to be remembred; since thereby, in the Opinion of all Lawyers, they become Crimes excepted: And that it is the known Privilege of Crimes excepted, to relax from the ordinary Rules, and to proceed on such Evidence, as the Matter doth afford, the Substance of the Probation being only observ'd.

The Judge and Assessors having considered the foresaid Objections and Answers, they repel the Objections, in respect of the Answers, and allow the Witness to be admitted.

3. It was objected against Anne Seaton, that she could not be a Witness, because a Woman.

To which it was answered, that in Crimes where the Probation proceeds not upon *Tesses requisiti*, but such as Providence offers, even Women are admitted. But 2. It's the general Opinion and Practice over all, that in Crimes atrocious, occult and excepted, a Woman is never refused.

The Judge and Assessors having considered the foresaid Objection and Answer, they repel the Objection, in respect of the Answer, and allow the Witnesses to be admitted.

* Excerpts out of the Instructions and Letters found in Captain Green's Books, to which Sir David Dalrymple's Speech to the Jury relates.

* Extracts.

IN the Instructions or Orders given by the Freighters of the *Worcester*, Captain Thomas Green Commander, to Mr. Robert Callant Super-cargo there occurs one Article in these Words,

We would have you write us by all Opportunities, especially from Sinde, by any Ships bound from thence to Persia; And for the greater Secrecy, especially of the Letter to be sent to Mauritius for us, here under is an Alphabet for you to write us by; Your Subscription must be in common English, directing all such Letters to Captain Thomas Bowrey in Well-clofe-Square, London.

(Nota, At this Place the whole Alphabet is insert distinctly, and above each Letter a different Character is set down, to be used in Place of the Letters of the Alphabet.)

When your Cargo for England is provided, or near compleated, then we would have you sell the Sloop for what you can get, and invest the Produce in Goods for England.

And lower amongst the same Orders in another Article are these Words,

You must engage the Master of the Sloop not to let any Letter from himself or any other be sent to England, but only our Letter, in which you may insert the Names of any Dead; and for the Care and Secrecy of those who go in the Sloop, in case no Letter or News comes to England, but our Letter concerning our Business, then we will on the return of the Ship give the Master and Crew one Month's Pay Gratis, and they shall also have their Shares of the Benefit promised the Ship's Company for the Whale Fishing.

By a Letter dated London, 3 February 1701, from Captain T. B---y to Mr. Callant, the said Captain advises him in these Words;

For the greater Security of our Affairs, when you write by the Alphabet in your Instructions, I would have you carry the last Letter of each Word to be in the room of the first Letter to the next Word, as for Example.

Captain Thomas Bowrey, Sir wee are all well.

Captai nthoma showre yfi rwe ear eal llwell.

Make no Title (as is usual) to begin your Letter, nor no Date, nor Compliment, no Name at last; But let all be comprehended in the Lines of your Letter, so as to make no distinction, and make but one Paragraph of all your Letter, and if any Men dead, set their Names immediately after your own Name subscribed to the Letter, all in Characters before directed, and please to keep this as Directions therein.

By another Letter from the said Captain T. B---y to the said Mr. Callant dated London, 16 February 1701, he adds concerning the foresaid Cypher in these Words,

On further Consideration, I think, I have committed an Error in my Letter to you Yesterday, it being wrote in it as, viz.

Captai nthoma showre yfi rwe ear eal llwell.

That is, Captain Thomas Bowrey, Sir we are all well.

Now, I doubt the naming any Name in the beginning, or making any Compliment there, may be a Means to find the Key of the Alphabet, therefore pray strike out of the Letter I sent you yesterday, as above done, and begin directly with your Business, following the Directions given you. And whereas you are ordered to direct your said Letter to me, I would not have you mention my Name in the Subscription, but direct the said Letter to Mr. Nicholas Pope Scrivener, in Nicholas Lane, London, to pay 5l. to the Bearer as in your Instructions.

The Tryal of ROBERT FEILDING, Esq;

Die Mercurii quarto Decembris, Anno Regni Annæ Reginæ, quinto, Annoq; Dom. 1706.



At the Sessions-House in the Old Baily, This Day came on the Tryal of Robert Feilding, Esq; for Felony, in Marrying Her Grace the Dutchess of Cleaveland; Mary Wadsworth, his first Wife, be-

ing then alive. The Court being sat, proceeded in this manner.

Clerk of Arraignment. SET Robert Feilding to the Bar. (Which was done.)

Clerk

Clerk of Arr. Robert Feilding, hold up thy Hand. (Which he did.)

Clerk of Arraignment. **R**Obert Feilding, you stand indicted by the Name of Robert Feilding, late of the Parish of St. James's, within the Liberty of Westminster, in the County of Middlesex, Esq; For that you, on the Ninth Day of November, in the Fourth Year of Her now Majesty's Reign, at the Parish aforesaid, in the County aforesaid, took to Wife one Mary Wadsworth, Spinster, and the same Mary Wadsworth, then and there had for your Wife; and that you the said Robert Feilding, afterwards, viz. on the Twenty Fifth of the same Month of November, in the Year aforesaid, at the Parish of St. Martins in the Fields, in the said County, did feloniously take to Wife the most Noble Barbara Dutchess of Cleveland, (the said Mary Wadsworth, his former Wife, being then living); against the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

How say'st thou, Robert Feilding, art thou Guilty of this Indictment, or not Guilty?

Feilding. Not Guilty.

Clerk of Arr. Culprit. How wilt thou be tried?

Feilding. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. Call the Jury. Mr. Feilding, if you except to any of the Jury, you must do it before they are sworn.

Feilding. I do not challenge any of them.

The Jury sworn, viz.

Francis Chapman,
Thomas Moody,
Peter Levigne,
Hugh Merchant,
Joseph Devenish,
Edward How,

Edward Boswell,
John Mills,
Richard Hazzard,
Samuel Chace,
Thomas Yeomond,
John Johnson.

Proclamation made, That if any can inform the Queen's Justices, and the Queen's Council, of any the Matters the Prisoner stands charged with; let them come forth and they shall be heard.

Mr. Raymond, the Queen's Council. My Lord, and you Gentlemen of the Jury, I am, in this Case, Council for the Queen. The Prisoner at the Bar, Robert Feilding, stands indicted, That he on the Ninth Day of November, in the Fourth Year of Her now Majesty's Reign, &c. (the Indictment repeated) To which Indictment he has pleaded not Guilty, and put himself on God and his Country, which Country you are. I hope if we prove the Indictment, you will find him guilty.

Sir James Mountague. My Lord and Gentlemen of the Jury, I am of Council with the Queen against the Prisoner, Mr. Robert Feilding, who stands indicted for taking to Wife Earbara Dutchess of Cleveland, after he had before marry'd one Mary Wadsworth, who is still alive: This is a Crime that amounts to Felony; and tho' the Law doth not take away from him that shall be convicted thereof, the Benefit of his Clergy; yet, since it is such a Crime as doth take away from the Prisoner the Assistance of Council, I shall only state Matter of Fact, which is as followeth.

About a Year ago, or a little better, there was a young Lady left a Widow by Mr. Deleau, and reputed a great Fortune: Mr. Feilding thinking him-

self qualified for the greatest Fortune, had a Design upon this Lady; and in August, 1705. he applied himself to one Mrs. Streights to consult with her, and contrive some Method how he might have Access to court this Widow. This Mrs. Streights had no Acquaintance with the Widow her self, but knew Mrs. Charlott Villars was acquainted with her, and used to cut her Hair; so the best Thing they could think of at that Time, was to make Mrs. Villars their Friend, that by her Means he might have Admittance into the Lady's Company; for he did not question if the Lady had but once a Sight of his very handsome Person, she would have the same Affection for him, that he had met with from other Ladies, even on their first seeing of him. Mrs. Villars was promised 500 l. to bring this Affair about; and tho' she doubted with her self, whether she could ever accomplish it, yet by these Means she might perhaps make a Penny of it to her self; and thereupon she promises Mrs. Streights to use her endeavour to serve the Major-General, meaning Mr. Feilding, tho' Mrs. Villars could not be sure such an Overture would be well received by Mrs. Deleau: Yet being acquainted with one Mary Wadsworth, a young Woman not much unlike in Person to Mrs. Deleau, she imagined it would be no difficult Matter for her to set up the said Mrs. Wadsworth to represent Mrs. Deleau; and accordingly it was done, and Mr. Feilding proved so intent upon the Matter, that he went in few Days to Doctors-Commons, to see for Mr. Deleau's Will (and found thereby that Mrs. Deleau was left very considerable.) And that he might judge the better whether she were truly the Fortune she was represented to him, he took a Copy of the said Will, and soon after went to Mrs. Villars and told her, That what Mrs. Streights had said concerning Mrs. Deleau's Fortune was true: And being very well-satisfied with her Fortune, he was resolved to get a View of her. Soon after, Mr. Feilding went to Tunbridge, and after two or three Days stay there, returned and called at Waddon, the Place where Mrs. Deleau resided, with a Pretence to see the House and Gardens, but in reality it was to see the Widow; he thought nothing else was then to be done, but to give the Lady a sight of his handsome Person he designed to lay at her Feet; but it happened that the Lady would not be seen her self, but her Servants were permitted to show him the Gardens, and he fancied himself that he had had a Sight of Mrs. Deleau too; for a Kinswoman of Mrs. Deleau's looking out into the Garden while he was there, gave him the Sight of a Woman at the Window, and he presently concluded it could be no body but Mrs. Deleau admiring Beau Feilding. About three Days after Mr. Feilding's Return from Tunbridge, which was about a Fortnight after St. Bartholomew-tide last was Twelve-month, he told Mrs. Villars of his calling at Waddon, and that he had acquainted the Dutchess of Cleveland of the fine Gardens that were there, and he said that her Grace had a great Desire to see them, and therefore directed Mrs. Villars to go from her Grace to Mrs. Deleau, to ask the Favour of her to permit her Grace to see the House and Gardens. Accordingly Mrs. Villars went down to Waddon; and Mrs. Deleau treated her very civilly, and told her, whenever her Grace pleased, she should see her House and Gardens; but as she was a Widow she could not attend upon her Grace: But tho' the Dutchess was expected

after this, yet she did not go, for indeed she did not know any Thing of the Message. So the next Time Mr. *Feilding* attempted to see her, was at a Horse-Race at *Banstead-Downs*, whither he went for that Purpose, but did not see her. After this, or some Time before, he sent a Letter to Mrs. *Deleau's* House, but the Servants when they saw the Name to it, knowing the Character of Mr. *Feilding*, threw it into the Fire.---- When Mrs. *Villars* found that the Dutcheß of *Cleveland* knew nothing of her being sent to *Waddon*, and that it was only a Contrivance of Mr. *Feilding's* to get an Opportunity of seeing Mrs. *Deleau*, and that in Truth he had never seen her, she resolved to play Trick for Trick with him, and thereupon proposed the Matter to *Mary Wadsworth*, the Woman I beforementioned to be of her Acquaintance, but one that Mr. *Feilding* did not know, and one that would not worst her self much by such an Undertaking, whether it succeeded or not. Mrs. *Wadsworth*, upon the first opening of it, readily embraced the Offer, and thereupon Mrs. *Villars* went to Mr. *Feilding* and told him, she had proposed the Matter to the Lady (Mrs. *Deleau*) which she at first rejected, but at last did give a favourable Ear to it; and that she did not fear, but if Matters could be prudently managed, his Desires might be accomplished.---- A little before my Lord Mayor's Day last was Twelve-month, she told Mr. *Feilding* that she had at length obtained of the Lady the Favour of a Promise of an Interview, and that she was shortly to bring her to his Lodgings, but he must take care not to let her know they were his Lodgings, or to give her the least Cause to suspect he had any Thing to do there: Accordingly Mrs. *Villars*, the Evening of my Lord Mayor's Day, brought Mrs. *Wadsworth* in a Mourning Coach and Widow's Dress to Mr. *Feilding's* Lodgings: He was not within at the Time they came thither, but being sent for, came in soon after, and was extremely complaisant for some Time; but at length, tho' he had been cautioned not to let the Lady know they were his Lodgings, yet he could not forbear shewing her his fine Cloaths, and what Furniture he had; and in a little Time after sent for Mrs. *Margaretta* to sing to her; and pretended he was so extremely taken with her, that nothing would satisfy him but being married that Night; but she, with a seeming Modesty, check'd his forward Behaviour, and made a shew of going away in displeasure; but before they parted, he prevail'd upon her to promise not to put off their Marriage longer than *Wednesday* Seven-night. My Lord, Mr. *Feilding* rightly judged by this Conversation what an Interest he had fix'd in the Lady, and looking upon himself to be sure of her, he actually went to a Goldsmith and bespoke a Ring, and directed himself what Posie should be engrav'd. When the Day came which had first been agreed on, sham Pretences were made, not to seem over-hasty in so serious a Matter, and the Marriage was put off till the *Friday* following, being the 9th of *November* last was Twelve-month; at which Time Mrs. *Villars* and the Lady came again to Mr. *Feilding's* Lodging, where he received her with an extraordinary Transport of Joy, and the Marriage must immediately be proceeded on; but she for some Time framed several Put-offs, and at length made an Offer to have gone away; but Mr. *Feilding* by no Means would permit her to go, with-

out making her his own, which he was resolved should be done presently; and to make all Things sure, he ran out and lock'd the Chamber-door to keep her and Mrs. *Villars* in, whilst he went for a Priest; and taking Coach immediately drove to Count *Gallas's*, the Emperor's Envoy; when he came to his Gate, he enquired of the Porter for one *Francisco Drian*, that was stiled, *The Father in Red*, upon account of a red Habit he usually wore; but he not being within, Mr. *Feilding* asked for another Father; and one Father *Florence* was called to him, whom he acquainted with the Business he came about; but whilst he was treating with Father *Florence*, the Father in Red luckily came in, and Mr. *Feilding* immediately took him away with him in the Hackney-Coach to his Lodgings. My Lord and Gentlemen, we shall shew you that this Father in Red stay'd there about an Hour, and then went away.---- We shall shew your Lordship likewise, That Mr. *Feilding* and *Mary Wadsworth* supped together, and after Supper he was actually marry'd to Mrs. *Wadsworth*. And that this Marriage was consummate, we shall prove by several Particulars, viz. That clean Sheets were laid upon the Bed, and all Ceremonies performed that are usual upon such Occasions; and they actually went to Bed together, and lay together all that Night; and the next Day the Lady and Mrs. *Villars* went away, and as Mr. *Feilding* supposed, to *Waddon*, the Widow *Deleau's* House; to which Place your Lordship and the Jury will find he directed his Letters to her afterwards, and in the Superscriptions stiles her the Countess of *Feilding*. To corroborate this Evidence we shall likewise prove to your Lordship, that about a Week after, he lay with her again at the very same Lodgings; and we can make it appear that he hath lain with her three several Times since this first Night, twice before, and once after his Marriage with the Dutcheß of *Cleveland*. My Lord, we shall shew you that he made her Presents, furnish'd her with Money, and treated her as his Wife, until the Cheat was found out, which was not till *May* after; and then finding how he had been served, that instead of marrying a Fortune of 60000 *l.* he had been imposed upon, and marry'd one not worth so many Farthings, he discarded her in great Wroth.

My Lord, we will call our Witnesses who will prove to your Lordship, step by step, how this Matter was brought about; and first we will begin with Mrs. *Villars*.

Mrs. Villars sworn.

Mrs. Villars. My Lord, there came one Mrs. *Streights* to my Lodgings and wanted to speak with me (it was *Bartholomew-tide* was Twelve-month) but I was not at home; when I came home, they told me Mrs. *Streights* had been there, and left word that I was always out of the way when it was to do my self good; she said it would be Five hundred Pounds out of my way if I did not come to her. I met with her and Mr. *Feilding*, and being acquainted with Mr. *Feilding's* Design upon Mrs. *Deleau*, he asked me whether I knew the Lady? I said I had no particular Acquaintance with her, but I used to cut her Hair: He told me that he was in Love with her, and asked me whether I could assist him in his Courtship? and whether a Marriage might be brought

brought about ? I told him I could not tell, I did not know whether I had that Interest in the Lady as to be made serviceable in such a Design. Mr. Feilding enquired very strictly after her, and said, he would try Means to come into her Company that he might gain her Acquaintance : Upon which we parted at that Time. --- And about Three Days after, Mrs. Streights came to my House again, and said, Mr. Feilding would speak with me. I went to him ; and he told me, he found that the Lady was worth 60000 *l* as he had been told before. He asked me where it was she liv'd ? I told him, in *Copthall-Court*, near the *Change*. I told him likewise where her Country House was ; That it was at *Waddon* in *Surrey*. Mr. Feilding told me, He would go to *Tunbridge*, and call by the way to see the Gardens ; and by that means he might have an Opportunity of seeing Mrs. Deleau ; which he did accordingly. I was sent for again ; and he told me he had seen the Gardens, and they were very fine : And that he saw the Lady through a Calement ; and that she might have the more perfect View of him, he took divers Turns in the Garden, pull'd out his Watch, and set it by the Sun-Dial : And that he came round the Country, and almost murder'd his Horses, to get a Sight of her. But he desired to be in her Company, that he might have a full View of her. He desired me to go to Mrs. Deleau, and tell her, that the Dutchess of *Cleveland* had heard a great Character of her Gardens, and was very desirous to see them. --- I went and acquainted Mrs. Deleau with it : She said, she would not refuse a Woman of her Quality ; but would take it as a great Favour, to shew her any Thing that belong'd to her : But desir'd that it might not be that Week, but the Week following ; because she was to see a Race on *Banstead Downs*. I told Mr. Feilding this ; and he made Answer for the Dutchess of *Cleveland*, and said, The Dutchess was not well ; and could not go to see the Gardens. When I found that Mr. Feilding did not send me from the Dutchess, but from himself ; I was out of Countenance, that I should innocently impose upon the Lady. Mr. Feilding told me, he would go and see the Race upon the *Downs* ; and when he came back, he would send for me, and acquaint me whether he had seen the Lady. And when he came to Town again, he sent Mrs. Streights to me, to come to him ; and when I came to him, he told me he saw Mrs. Deleau, he believed, upon the *Downs*. Mr. Feilding made a Bow to them, and they to him. He said, From thence he went to *Epsom*, and sent a Letter to be deliver'd into Mrs. Deleau's own Hands, by a Servant of his, not in a Livery. I think it was accordingly deliver'd. Mr. Feilding told me Mrs. Deleau read it, and said it requir'd no Answer ; and said no more. Mr. Feilding ask'd me, whether I could not get a Letter to Mrs. Deleau ? He said, he was much in Love with her. I told him, I believ'd he was mistaken ; and that it was another whom he saw. --- I perceiv'd that he had no Knowledge of Mrs. Deleau. --- I acquainted a young Woman (whom I supposed he might have seen) with his Inclination, (Mrs. Wadsworth) : She said, she did not expect to be so happy ; but wish'd it might be so. I engag'd to Mr. Feilding to do what I could to bring it about. --- There were divers Letters pass'd between them till my Lord Mayor's Day. Divers Presents were sent from Mr. Feilding,

by me, to the Lady. The first Present was a Gold Apron, struck with Green : That was the first Present Mr. Feilding sent to Mrs. Wadsworth, whom he thought was Mrs. Deleau all the while ; but it was Mrs. Wadsworth. I did not think Mrs. Deleau, who was a great Fortune, would agree to marry a Man of Mr. Feilding's Character. Mr. Feilding kept sending of Presents and Letters from that Time, from the latter End of *Bartholomew-tide*, to my Lord Mayor's Day. He sent her a Suit of white Sattin Knots, and Gloves, and other Things. He desir'd I would bring her to his Lodgings on my Lord Mayor's Day, at Night ; which I did about Nine a Clock, in a Mourning Coach. Mr. Feilding was not at home, but came immediately. When he came in, he fell down upon his Knees, and kiss'd her, and express'd Abundance of fond Expressions. He asked her, *why she stay'd so long ?* And *whether she lov'd Singing ?* He said, He would send for *Margaretta* to come up. When she came, Mr. Feilding bid her sing the Two Songs which he lov'd ; --- which she did : The one was, *Charming Creature* ; and the other, *Ianthe the Lovely*. After which, Mr. Feilding sent for Two Pints of Wine, and some Plumb-Cakes. He urg'd very much to marry her ; but she declin'd it, and made him a Promise to come to him the *Wednesday* following. In the *interim* she sent him a Letter, to acquaint him she could not come according to her Appointment ; but she would come to him on the *Friday* following, which was the 9th of *November*. Then he sent her another Letter, to desire her not to fail, but come to his Arms ; and told her, That there wanted nothing but the Holy Father to join their Happiness ; for their Hearts were all one already. And when *Friday* came, Mrs. Wadsworth and I went to Mr. Feilding's Lodgings again : He was not within ; but came running into the Room in a little Time after with a great deal of Joy, and took Mrs. Wadsworth into his Arms, and said, *Nothing could ease his Mind, but a Promise to make him happy, in Marrying him presently.* --- He said, he would fetch the Priest ; but Mrs. Wadsworth refus'd his Proposal, and would have dissuaded him from going then ; and desired him to put it off till another Time, and would have gone away : But he would not hear of it ; and said, She had disappointed him before ; and that he repented he had let her go away before ; but now he was resolv'd to make her his own, before she went away. Mr. Feilding then went for the Priest, and lock'd the Chamber-Door after him, and took the Key with him, for fear Mrs. Wadsworth should go away ; and order'd *Boucher* to let no body into the Dining-Room till his Return. Mr. Feilding returned in a little Time, and brought a Priest with him, in a long Red Gown lin'd with Blue, and a long Beard, and a Fur-Cap. Mr. Feilding told her, that this was the Holy Father that was to make them one. Mr. Feilding then ordered the Man to lay the Cloth, and fetch'd a Dish of Pickles to Supper. --- At Supper Mrs. Wadsworth seem'd cautious ; and for fear the Priest should not be in Orders, said, *How shall I know that this is a Priest in Orders ?* Mr. Feilding question'd him. Then the Priest pull'd a Picture out of his Pocket, about the Bigness of a Crown-Piece ; and told them, *That none but Priests had such Pictures.* And that she might be still further satisfied, she desired another Token.

After this, *Boucher*, and the rest of the Servants were order'd down Stairs. Then the Priest call'd for Water, Salt and Rosemary, to make Holy-Water. *Boucher* brought up Water and Salt, but could get no Rosemary. Mr. Feilding and I received it at the Dining-Room Door. Then Mr. Feilding lock'd the Door, and took the Key in the Inside. Mr. Feilding ask'd Mrs. Wadsworth, Whether it should be done in the Bed-Chamber, or Dining-Room? Mrs. Wadsworth agreed it should be in the Bed-Chamber. There were none present, but Mr. Feilding, Mrs. Wadsworth, the Priest, and my self. The Priest made Holy-Water, and blessed it: Then he set Mrs. Wadsworth at the right of Mr. Feilding: The Priest stood before them, and read the Ceremony in Latin, as I understood; and Mrs. Wadsworth said, *She was not yet satisfied he was a Priest*. Then he laid down his Book, took from under his Gown a Piece of Silk like a Scarf, that was mark'd with a Cross in the Middle; and said, None but Priests us'd such a Thing. Then Mrs. Wadsworth was well satisfied he was a Priest. Says Mr. Feilding to her, *Do you think, my Dear, that I would have any body to do this Business, but the Holy Father?* Mrs. Wadsworth was well satisfied till he came to that Part, *Wilt thou have this Woman to thy wedded Wife?* She desir'd it might be spoke in English by him, as well as he could. He did so. He ask'd Mr. Feilding, *Whether he would have this Gentlewoman to be his wedded Wife?* He said, *Yes, with all my Heart*. He asked the Lady then, *Whether she would have this Gentleman for her Husband?* She said, *Yes*, faintly: But, says Mr. Feilding, *You don't speak it so earnestly as I do: You must say, With all my Heart and Soul*. Which she did. Then the Priest blessed the Ring, and gave it to Mr. Feilding, to put it on the Lady's Finger. He said something in Latin, but what it was I know not. Then we went into the Dining-Room. *Boucher* brought up Wine; and when all had drank, the Priest was discharged. Mrs. Wadsworth and I went into the Bed-Chamber, and I put her to Bed. Mr. Feilding called her his *Dear Wife, the Countess of Feilding*; and said, He would make haste and fly to her Arms. After I put her to Bed, he went to Bed to her; and order'd me to come into the Room to see them in Bed; which I did. I rose the next Morning, and came to Mr. Feilding's Room, where *Boucher* came soon after to light a Fire: Then I saw Mrs. Wadsworth in naked Bed with Mr. Feilding. Mrs. Wadsworth put on her Cloaths as soon as she could; and a Hackney-Coach was call'd for her, and she went away. At parting with Mr. Feilding, she told him, she did not know when she could return; but about a Fortnight after, she came again. There were Fires made in both Rooms, and Candles lighted up; clean Sheets upon the Bed, and every Thing prepared for her lying there. Mrs. Wadsworth went to Bed. Mr. Feilding did not come home till late that Night. I saw them that Night in Bed, and went into the Room the next Morning, and saw them in Bed again: She rose, and went away as before. Mr. Feilding desired her not to stay so long as she had done before; for if she did, he would come and fetch her. She promis'd him she would return sooner. Mr. Feilding kept sending of Letters to her between Times, which was about Fifteen or Sixteen Days, till she came to him again. He desired her to come to him, and he would be at home to receive her. She accordingly came to him, after having given him notice of her coming. He was not at home when she

came; but she went to Supper by her self. - - She had for her Supper some toasted Cheese, a Pint of Wine, and a Bottle of Oat Ale. When he came home to her, he asked her, *Why she did not send for something better for Supper?* They went to Bed again, as before; and I saw them in Bed together. Mrs. Wadsworth got up in the Morning; Mr. Feilding treated her; and away she went as before. Then Mr. Feilding kept writing to her, [*which Letters are inserted in their proper Places*] and desir'd her to come to him again, as being the last Night she should lie with him at his Lodgings; for he was going to leave his Lodgings for altogether, and be with her Grace the Dutcheß of Cleveland. Mrs. Wadsworth came; but neither Mr. Feilding nor *Boucher* were at the Lodgings: But she had not been there long, but *Boucher* came in, and said, That he had brought his Master's Night-Gown and Slippers from the Dutcheß of Cleveland's.

Council. Mrs. Villars, You say, most of the Service was in a Language you did not understand.

Mrs. Villars. It was, my Lord - - But one Part of it was in English. I heard Mr. Feilding say, *He would take this Lady to be his wedded Wife*.

Council. Who is that Lady?

Mrs. Villars. That Lady, Mrs. Wadsworth; pointing at her; (*She being in Court.*)

Council. What did you hear Mrs. Wadsworth say?

Mrs. Villars. I heard her say, *That she took Mr. Feilding to her wedded Husband*.

Council. What did you observe else that was remarkable?

Mrs. Villars. I saw the Ceremony of the Ring performed. I saw the Priest bless the Ring with Holy-Water, and sign himself with the Sign of the Cross. The Priest held Mrs. Wadsworth by the lower Joint of the Finger, and put the Ring on.

Council. What is Mrs. Wadsworth's Christian Name?

Mrs. Villars. *Mary*.

Council. What did he say further, when he said, *I take thee to be my wedded Wife?*

Mrs. Villars. He named no Name, but *I take this Lady, &c.* - - The Priest ask'd him, *Whether he took her with all his Heart and Soul?* He said, *I take her with all my Heart, and Soul, and Blood, and every thing else*.

Council. What Time was this?

Mrs. Villars. It was *Bartholomewide* was Twelve Months, as near as I can remember to the Time.

Council. Did Mr. Feilding tell you he had been at Waddon?

Mrs. Villars. Yes, he did; and said, That he had seen the Lady thro' the Window, whence he fell in Love with her.

Council. Why was this Marriage kept private?

Mrs. Villars. Because Mr. Feilding took the Lady to be Mrs. Deleau.

Justice Powel. How long was it before it was discover'd?

Mrs. Villars. It was not discover'd till the latter End of May last, or the Beginning of June.

Justice Powel. When was the Time Mr. Feilding was marry'd?

Mrs. Villars. It was the 9th of November was Twelve Months.

Council. What was the Reason why the Marriage was carry'd on so privately?

Mrs. Villars. The Reason was, because Mrs. Deleau had a Father alive, who had in his Hands a Part of her

her Fortune ; and for fear of disoblighing him, Mrs. *Wadsworth*, that went for Mrs. *Deleau*, was willing it should be kept private.

Council. Can you tell the Reason of its being discovered ?

Mrs. *Villars*. Mrs. *Wadsworth* sent to Mr. *Feilding* for Money. - - - Then Mr. *Feilding* found he had not a Woman of that Fortune which he took her to be. When Mr. *Feilding* did find it out, he took Mrs. *Streights* into a Closet, at the Dutcheſs of *Cleveland's*, and sent for me there : Then Mr. *Feilding* wanted to have the Presents returned. Mr. *Feilding* then beat me, and asked me whether that was a fit Wife for him ? And then took a Thing made of Steel at one end, and a Hammer at the other end ; and told me, If I would not unsay what I said of his Marriage with *Wadsworth*, he would slit my Nose off : And that he would get Two Blacks ; the one should hold me upon his Back, and the other should break my Bones.

Justice *Powel*. One would have thought you should have been afraid to have seen Mr. *Feilding*.

Mrs. *Villars*. My Lord, It was not till then found out.

Sir *James Mountague*. My Lord, I think she hath clearly proved the Marriage ; and that she saw them Three times in Bed together, in the Space of Six Weeks after the Marriage.

Mr. *Feilding*. By what Name did Mrs. *Wadsworth* go ?

Mrs. *Villars*. By no Name at all.

Mr. *Feilding*. Did I ever appear with her in Publick ?

Mrs. *Villars*. No, never.

Mr. *Feilding*. What was the first Place I saw her in ?

Mrs. *Villars*. The first Place you saw her, was at your Lodgings, last Lord Mayor's Day was Twelve Months.

Mr. *Feilding*. My Lord, I desire it may be asked her, how she came to think that I should send such mean Presents as she hath mentioned, to a Lady of Mrs. *Deleau's* Fortune ? They were not at all suitable to Mrs. *Deleau*.

Justice *Powel*. Ay, Mrs. *Villars*, What say you to that ? Mr. *Feilding* thinks it a very strange Thing, that he should send such Trifles to a Lady of Mrs. *Deleau's* Quality.

Mrs. *Villars*. He did think, at that Time, that he made his Addresses to Mrs. *Deleau* ; and I am sure such Presents were sent ; and he was really marry'd to her, and marry'd her for Mrs. *Deleau*.

Justice *Powel*. Mrs. *Villars*, Mr. *Feilding* desires this Question should be ask'd you ; When was the first Time you acquainted the Dutcheſs of *Cleveland* with this Matter ?

Mrs. *Villars*. I will tell your Lordship. Mrs. *Feilding* that is now, told me, Mr. *Feilding* beat her at the Lodge at *Whitehall*, (I did not see the beating) and said, she should have Occasion to bring me upon my Oath, to prove that Mr. *Feilding* was marry'd to her the Ninth of November. I went with Mrs. *Feilding* to the Duke of *Grafton*, and told him, I was sure he was marry'd the Ninth of November before.

Justice *Powel*. How long was it after the beating, before you and Mrs. *Feilding* went to the Duke of *Grafton* ?

Mrs. *Villars*. It was about Three Weeks.

Justice *Powel*. Are you sure it was before that Time that there was any Parting betwixt Mr. *Feilding* and the Dutcheſs of *Cleveland* ?

Mrs. *Villars*. Mrs. *Feilding* acquainted me with it her self, that the Beating was before the Difference between the Dutcheſs of *Cleveland* and Mr. *Feilding*.

Council. Altho' you did not see what pass'd at *Whitehall* ; Whether was this before the Difference between the Dutcheſs and Mr. *Feilding* ?

Mrs. *Villars*. I believe it was about a Fortnight, or Three Weeks.

Mr. *Feilding*. How came it to pass that it was not discover'd till now of late ?

Mrs. *Villars*. It was not discover'd till she sent to Mr. *Feilding* for Money, about May, after the Marriage.

Justice *Powel*. Why did not you apply your self to Mr. *Feilding* for the Reward ?

Mrs. *Villars*. I was to have no Reward.

Mr. *Feilding*. Mrs. *Villars*, What Reward did the Dutcheſs of *Cleveland* promise you ?

Mrs. *Villars*. I never saw the Dutcheſs of *Cleveland* ; and I was never promis'd any Reward.

Justice *Powel*. Was you not to have had a Reward for helping Mr. *Feilding* to Mrs. *Deleau* ?

Mrs. *Villars*. Mrs. *Streights* left such word at my Lodgings ; but I had no Promise of it from Mr. *Feilding*.

Sir *James Mountague*. My Lord, Mrs. *Villars* has given you so full an Account of every Thing I have open'd, that all that we have to do now, is to support Mrs. *Villars's* Evidence ; and to make it appear to your Lordship, that she is right in all these Particulars that she tells you of. And the better to make our selves understood, we will go on, and give your Lordship an Account how these Things were carry'd on from Time to Time. But first we shall prove to your Lordship, How that after Mr. *Feilding* was thus marry'd to Mrs. *Wadsworth*, he did actually marry the Dutcheſs of *Cleveland*.

Mr. *Feilding*. My Lord, I do not deny my Marriage to the Dutcheſs of *Cleveland*.

Sir *James Mountague*. Then, my Lord, we will not trouble you with any Proof of that Matter, but go on with making out the Circumstances of his Marriage with Mrs. *Wadsworth* ; and we shall verify, in every Particular, Mrs. *Villars's* Evidence. And first we shall prove, that he actually took a Copy of Mr. *Deleau's* Will. For that call Mr. *Searle*. (Who was sworn.)

Sir *James Mountague*. Mr. *Searle*, Give my Lord and the Jury an Account of what you know of Mr. *Feilding's* coming to *Doctors Commons*, to see the Will of Mr. *Deleau*.

Mr. *Searle*. My Lord, I am Servant to Mr. *Cortle*, Proctor to the *Prerogative Office*. Mr. *Feilding* came to *Doctors Commons* about the Beginning of *Michaelmas Term*, 1705. and desired me to search, and see whether Mr. *Deleau's* Will was come into the Office, or no. I look'd in the Kalendar, and found it was come in ; and spoke to the Clerk, in whose Possession it was, and he read it over to him ; and he desired a Copy of it, which I wrote out. Mr. *Feilding* came in Three Days after for it, but it was not done. I desir'd him to come another Time ; which he did, and had it.

Council. Who did he bespeak it of ?

Mr. *Searle*. He bespoke it of me, and had the Copy of me.

Council. When was this ?

Mr. *Searle*. It was about the Beginning of *Michaelmas Term*.

Sir *James Mountague*. The next Thing we shall prove, is, That Mr. *Feilding* was actually at *Waddon*, Mrs. *Deleau's* House : And we shall prove that even by Mrs. *Deleau*.

(Who was sworn.)

Council. Pray, Madam, have you any Acquaintance with Mr. *Feilding* ?

Mrs. *Deleau*. None at all.

Council. Do you remember he came to your House in the Country ?

Mrs. *Deleau*. He did about *Bartholomew-tide* was Twelve-month.

Council. When he was there, had he a fight of you, Madam ?

Mrs. *Deleau*. No, my Lord ; he was not in the House, but in the Garden.

Council. Do you know Mrs. *Villars* ?

Mrs. *Deleau*. I do, my Lord.

Council. Did she ever come to you upon such a Message, That my Lady Dutcheſs of *Cleveland* and Mr. *Feilding* had a Desire to see the Gardens ?

Mrs. *Deleau*. She did so ; and it was about the same Time Mr. *Feilding* had been there, or some little Time after, I believe.

Council. Did you go to the Race on *Banstead Downs* ?

Mrs. *Deleau*. No, my Lord.

Council. Did Mrs. *Villars* use to Cut your Hair ?

Mrs. *Deleau*. No, my Lord -- Her Mistress did.

Council. Was there any Letter brought to your House from Mr. *Feilding* ?

Mrs. *Deleau*. I heard there was.

Council. Who receiv'd the Letter from Mr. *Feilding* ?

Mrs. *Deleau*. Some of the Servants, but I receiv'd none ; but some of the Servants receiv'd it. I was then at my Father's, and left Orders that they should take in no Letters but such as came from my Relations, which would come by themselves.

Council. When had you Notice of Mr. *Feilding's* being at your House ?

Mrs. *Deleau*. My own Butler came up, and acquainted me Mr. *Feilding* was below. He came to my House with the Character of Major General *Villars*. I did not see him ; but here's the Lady that saw him out of the Window ; who, it seems, he took for my self.

That Lady Sworn.

Council. My Lord, we only bring this Lady to prove what the first Witnesses said, That Mr. *Feilding* saw Mrs. *Deleau* thro' a Window -- Madam, Do you remember Mr. *Feilding* was at *Waddon*, and when ?

Lady. He was there about *Bartholomew-tide* was Twelve-Month. I did see him thro' a Window, and inform'd my Cousin of it.

Council. Then call Mr. *Boucher*, (who was Sworn.)

Council. Mr. *Boucher*, Pray give my Lord and the Jury an Account of all you know of this Matter.

Mr. *Boucher*. My Lord, I went with Mr. *Feilding* to my Lord-Mayor's Show last Lord-Mayor's Day was Twelve-month. He went in his Chariot to Mr. *Feilding's* a Linnen-Drapers at the *Three Legs* in *Cheapside*. I looked into the Balcony and saw Mrs. *Villars* there -- My Master came down again, and went to Sir *Basil Firebrass's* ; from thence I was order'd to go home, and meet my Master in *Bond-Street* ; which I did. He ask'd me whether any body had been at his Lodgings to enquire for him ? I said, No, and went home again. Then I found the Lady and Mrs. *Villars* at Mr. *Feilding's* Lodgings.

They had been there but a little time, but Mr. *Feilding* came in. Mr. *Feilding* complimented the Lady, and ask'd her if she lov'd Singing ? Mrs. *Margaretta* was sent for, and accommodated this Lady and Mrs. *Villars* with two Songs. Mr. *Feilding* treated them with a Bottle of Wine and a Plumb-Cake -- *Margaretta* went away ; and soon after Mrs. *Villars* and this Lady went away. So, says Mrs. *Heath* afterwards to me, Do you know what Woman of Quality that is in the Coach ? This Mrs. *Heath* is the Landlady where Mr. *Feilding* lodged. Mrs. *Villars* and the Lady went away in a Coach. She was in a Mourning-Dress, and the Coach was a Mourning-Coach.

Council. What Time was this ?

Mr. *Boucher*. It was my Lord-Mayor's Day was Twelve-month, on the Twenty ninth of *October*.

Council. Well, go on, and tell what you know of the Marriage.

Mr. *Boucher*. Not long after this, my Master order'd me to be at home, to get clean Sheets for the Bed, Wax-Candles, and Sconces, and Fires in both the Rooms : He told me some Ladies would be there that Night ; and order'd if he was not at home when they came, to tell them, that he would be there presently. Accordingly they came, and he was not at home ; but in a little time he came and went up to them. Some time after that, he came down Stairs in great Hast, and said, *Boucher*, go and bespeak a Dish of Pickles. I did so ; and brought over a Cloth, and the rest of the Things, and left them in the Window. I stay'd by the Stairs till he came back in a Hackney-Coach, with a Priest along with him in a long Gown, and long Beard, and a Furr Cap ; I knew him to belong to the Emperor's Envoy ; and I heard Mr. *Feilding* call him, Reverend Father. Then I was order'd to set the Table and Glasses, and Wine, and Things of that kind, upon the Side-board. I waited at Table all the while. When Supper was over, Mr. *Feilding* order'd me to go down and fetch Water, Salt, and Rosemary. I went and got Water and Salt, but could get no Rosemary. Then I was order'd to go down, and they were lock'd in about three quarters of an Hour : He then call'd, *Boucher*, says he, will you fill some Wine ? -- I did so, and perceiv'd upon the Thumb of this Lady, upon her Left Hand, a plain Gold Ring, which before Supper she had not. When this was over, the Priest went away. Presently after, says Mr. *Feilding*, Take the Sheets from my Bed, and lay them on the other Bed, for Mrs. *Villars* ; and see that none lye there. I told my Master 'twas done. Mrs. *Villars*, in the mean time, put the Lady to Bed. When I came down to tell them of it, I saw the Ladies Cloths upon a Stool in the Chamber ; and Mrs. *Villars* folding them up, and laying them in another Room. I then light Mrs. *Villars* to Bed, and then went to Bed my self. In the Morning I was call'd to make a Fire ; I then perceiv'd Mr. *Feilding* and this Lady in Bed together. The Fire being made, I was order'd to get a Hackney-Coach. Mrs. *Villars* dressed the Lady hastily, and she was carried away in the Hackney-Coach. About a Fortnight after, Mr. *Feilding* order'd me to prepare the Lodgings again. This Lady came to my Master's Lodgings that Night, and had something for Supper ; my Master order'd me to get ready Mrs. *Villars's* Bed : I did so. In the Morning was call'd down to make a Fire, which I did ; the Curtains being open next the Fire, I perceiv'd them in Bed again. I was order'd to get a Hackney-Coach, which I did ; and they went away again.

again. This was about the Twenty fifth of November. Soon after this, I understood by some of the Dutchess of Cleveland's Servants, that Mr. Feilding was marry'd to my Lady Dutchess. At the same time Mr. Feilding order'd me to go to Mrs. Heath's, to bring his Night-Gown, Cap and Slippers to the Dutchess of Cleveland's House, and to attend the next Morning with clean Linnen, his Wig, &c. And about, or on the Fifth of December, says he, Boucher get my Lodgings in Order again, for I expect Mrs. Villars and the Lady to be there; which accordingly I did. I was sent from the Dutchess of Cleveland's with his Night-Gown, Cap and Slippers. Mrs. Villars and the Lady came accordingly that Night, and had a Boil'd Chicken for Supper. Mr. Feilding and the Lady lay together that Night; and in the Morning I saw them in Bed together; and when she got up, she went away again in a Hackney-Coach. That was the last time I saw the Lady in Mr. Feilding's Lodgings.

Council. Were you at Epsom with Mr. Feilding?

Mr. Boucher. I was there with him, and went to Waddon with him to Mrs. Deleau's. Mr. Feilding went into the Gardens and walk'd in them.

Mr. Feilding. I would ask you, Boucher, whether the Priest that came in a Red Gown lin'd with Blue, whether you did not sometimes see him dine at the Dutchess of Cleveland's House?

Mr. Boucher. I did see him there, I cannot say often; but once I am sure I did.

Justice Powel. Was not that Priest that was there that Night upon which Mr. Feilding was suppos'd to be Married, at the Dutchess of Cleveland's.

Mr. Boucher. I saw him there once.

Justice Powel. Was it before or after that suppos'd Marriage?

Mr. Boucher. I cannot be positive whether it was before or after.

Mr. Feilding. Whose Servant are you at this time?

Mr. Boucher. I am now Cook to Coll. Webb's Regiment.

Mr. Feilding. How came you here?

Mr. Boucher. My Master desir'd me to go to the Duke of Grafton's House, where his Grace told me I was to justify the Truth of what I knew of Mr. Feilding's Marriage; that's all. I was sent to England for by my Master.

Mr. Feilding. I desire to know whether he did not only make Mrs. Villars's Bed, but lye with her likewise?

Council. Call Mrs. Martin, (who was sworn.)

Sir Ja. Montague. Mrs. Martin, Will you give my Lord and the Jury an Account of what you know of Mrs. Villars?

Mrs. Martin. I know Mrs. Villars.

Council. What do you know of her, and of any Body else coming to your Sister's House after Mr. Feilding?

Mrs. Martin. The next Day after the Lodgings were taken, Mrs. Villars came and ask'd for the Major-General, and continu'd coming almost every Day as long as he was at our House.

Council. What time did Mr. Feilding come first to your House?

Mrs. Martin. It was the beginning of October was Twelve-month.

Council. Did you ever see any other Gentlewoman come with her?

Mrs. Martin. My Lord, on my Lord-Mayor's Day at Night I saw Mrs. Villars come in, and another Gentlewoman with her.

Council. Did you see the Coach they came in?

Mrs. Martin. There are others that saw the Mourning-Coach.

Council. What time was this?

Mrs. Martin. It was my Lord-Mayor's Day at Night.

Council. Where do you live?

Mrs. Martin. At Mrs. Heath's, my Sister's in Pall-Mall, at that time.

Council. Did Mrs. Villars and the Lady continue there all Night?

Mrs. Martin. No, they did not.

Council. Was there any Body came in afterwards?

Mrs. Martin. I did not see any Body.

Council. How long did they continue in your Sister's Lodgings that Night?

Mrs. Martin. I cannot tell.

Council. Did you see them there again?

Mrs. Martin. The second time was about November.

Council. Who came then?

Mrs. Martin. I did not see them come in; but Mrs. Villars came into the Parlour, and said, that there was the same Lady that had been there the Night before.

Council. Did they stay then that Night?

Mrs. Martin. I believe they stay'd there that Night.

Council. Did you see them go away in the Morning?

Mrs. Martin. I did not see them in the Morning.

Council. Did you ever see any Body come at them whilst they were there in an extraordinary Habit, a Red Gown, &c.?

Mrs. Martin. There was a tall Man knock'd at the Door in a long Gown, Blue Facing, and Furr-Cap, with a long Beard. He was conducted to the Major-General's, up Stairs.

Council. Do you remember the Supper that Night?

Mrs. Martin. I remember a Dish of Pickles.

Council. How long did the Gentleman in Red stay?

Mrs. Martin. I know not; I did not see him go away again.

Council. Do you remember that the Lady and Mrs. Villars, with a Gentleman in Red, and Mr. Feilding were together?

Mrs. Martin. I remember when they were together, Boucher was sent down.

Council. Do you remember any Bed got ready?

Mrs. Martin. I remember that Orders was given to his Servant to make ready a Bed, and to put on clean Sheets.

Justice Powel. Do you believe there was any Marriage that Night?

Mrs. Martin. I do not know any thing of the Marriage.

Council. Then call Mrs. Heath, (who was sworn.)

Sir Ja. Montague. Mrs. Heath, give an Account what time Major-General Feilding came to take Lodgings at your House.

Mrs. Heath. About the Beginning of October last was a Twelve-month.

Council. Do you remember that one Mrs. Villars came to see him there?

Mrs. Heath. Yes, frequently, my Lord, she has been in my Parlour, and told me there frequently, that she came from a Lady of Quality.

Council. Did you ever see this Lady.

Mrs. Heath. I never saw her, my Family being retired from Lodgers.

Council. What Discourse did you hear from Boucher?

Mrs. Heath. He said that a Woman of Quality was there, and that she came there two or three Times with Mrs. Villars.

Council. What Time did you hear of that Lady's being there first?

Mrs. Heath. On my Lord Mayor's Day; for I dined in the City, and when I came home, my Family acquainted me with it. Mrs. Villars came down to me one Night, which was the Night the Man in Red was there, but I did not see him.

Sir James Mountague. Do you know of their staying there all Night?

Mrs. Heath. Mrs. Villars came to me, and said that her Lady was a Person of Quality worth 80000*l*. she shewed me a little Picture, which she said was her Lady's Picture: That Night she came to me, and desired that the Lady and she might lie in a Room up two Pair of Stairs; for they had stay'd late, and did not care to go home. I disputed it, but she said we should have no trouble, for Boucher should make the Bed, and the General's Sheets should serve them.

Council. Do you remember at any Time after that, that Mr. Feilding came to you, and rail'd against Mrs. Villars?

Mrs. Heath. He did come to my House, after he had discharged my Lodgings, and he told me that Mrs. Villars was a very bad Woman; and that she imposed a Woman of the Town upon him for a Woman of Quality.

Council. What Time was it that Mr. Feilding told you so?

Mrs. Heath. It was two or three Months ago, but I don't well remember the Time; says he, *Damn her, I do not know how she contrived it, but I saw her at a Woman of Quality's House in the Country.* He said this at that Time.

Council. Let's hear it again.

Mrs. Heath. Mr. Feilding told me, *That Mrs. Villars was a Bitch, and had imposed a base Woman upon him, instead of a Woman of Quality.* He said likewise, *That he thought he saw the Lady look out of a Window of a Person of Quality's House in the Country.*

Justice Powel. Mrs. Heath, Did you ever hear or believe that they were married?

Mrs. Heath. I did not believe it a Marriage, but a Conversion; because his Man came down into the Parlour, and asked for Salt and Water and Rosemary; which occasioned these Words, *Lord, said I, I fancy they are making a Convert of this Woman;* because they said it was a Priest above. And his Man at that Time said, there was a Priest above.

Mr. Feilding. Did my Man, at that Time, tell you I was married to that Woman, or any Time else?

Mrs. Heath. Nothing, my Lord; no body told me Mr. Feilding was married at that Time.

Council. Then call Mrs. Margareta, (who was sworn.)

Mrs. Margareta. My Lord, I remember that Mr. Feilding sent for me to his Lodgings in Pall-Mall; I was sent for in the Evening, but I can't tell how long it was before he was married to my Lady Dutcheffs.

Council. What Company was there in the Room at that Time?

Mrs. Margareta. I cannot tell.

Council. What were the Songs you sung?

Mrs. Margareta. I sung several *Italian* Songs, and one *English*, and that was *Ianthe the lovely*.

Council. Who was then in the Room?

Mrs. Margareta. No body was there then, as I remember, but the Gentlewoman, Mr. Feilding and I.

Council. What sort of Woman was this you speak of?

Mrs. Margareta. She was in Mourning; she had a Velvet-Scarf. I never heard her speak, for he desired me to sing that Song, *Ianthe the lovely*; for he said he had the Original of it, and had translated it out of *Greek*.

Justice Powel. Were you then more than once at Mr. Feilding's Lodgings?

Mrs. Margareta. But once; and saw no more there than the Gentlewoman that sat by the Fire with her Back towards me. But I did not see her Face, nor hear her speak.

Justice Powel. What Time was it?

Mrs. Margareta. I cannot tell justly the Time; it was dirty Weather and dark: I believe it might be about Six a-Clock, but am not sure.

Mr. Feilding. My Lord, she says there was but one Woman there: Mrs. Villars was not there.

Justice Powel. Name the Persons that were there.

Mrs. Margareta. There was that Gentlewoman in Mourning, whose Name I do not know, Mr. Feilding, and my self; there was no body else that I saw; and no body could be there, but I must see them, for I was Mistress of all the Doors.

Justice Powel. Did Mr. Feilding pretend it was to entertain his Wife?

Mrs. Margareta. No; he desired me to come to him, and left a Direction at my Lodgings, and said, there were some People of Quality there; and when I came I saw none but the Lady that sat by the Fire.

Council. Then call Mrs. Price, (who was sworn.)

Council. Mrs. Price, do you live at Mrs. Heath's House?

Mrs. Price. I do.

Council. Give an Account to my Lord of the Mourning-Coach coming to Mr. Feilding's Lodgings on Lord Mayor's Day was Twelve-month.

Mrs. Price. I saw a Mourning-Coach come to Mr. Feilding's Lodgings at Mrs. Heath's House, but did not see the Ladies come out of it; two Ladies were lighted into Mr. Feilding's Lodgings, Mrs. Villars and another; and Mrs. Villars followed the other Lady up Stairs, and immediately Mrs. Villars came down, and ask'd for the General: Boucher in the mean Time came in, and told them he would be there presently. Accordingly he came. They continued some Time, and when they were gone, the Coach was gone.

Council. Was Mrs. Margareta there?

Mrs. Price. I did not see her.

Council. Do you know of any other Time of their coming there?

Mrs. Price. Some Time after my Lord Mayor's Day, this Gentlewoman and Mrs. Villars came again; at the same Time Mrs. Martin told me she let in a Gentleman in Red, in an *Armenian* Habit; but I cannot tell what he came there for; I think his Man Boucher said he was a Priest.

Council. Whilst the Priest was there, do you remember Boucher's coming down for any remarkable Thing?

Mrs. Price.

Mrs. Price. I remember *Boucher* came down, but do not remember what he came down for.

Council. How long did they stay the second Time?

Mrs. Price. They staid there all Night; there were clean Sheets put on the Bed, and Lodgings prepared for the Lady and Mrs. Villars.

Council. Do you know Mrs. Villars?

Mrs. Price. I did know Mrs. Villars by her coming to Mr. Feilding.

Justice Powel. Do you know what Reputation Mrs. Villars has?

Mrs. Price. I do not, my Lord.

Mrs. Heath called again.

Mrs. Heath. My Lord I never had any Acquaintance with Mrs. Villars, no more than by her coming to the Major General. One Mrs. Howard came with her, and she has told me that she was a Woman of no Reputation, and that she was a Singer too, my Lord.

Council. Then call *Thomas Sone*, (who was sworn.)

Council. What do you know of Mr. Feilding's buying a Ring of you? Give us an Account of it?

Mr. Sone. I know Mr. Feilding by sight, he bought a Gold Ring of me, but I cannot remember the Time.

Council. How long ago do you think it is?

Mr. Sone. I believe it may be a Year ago.

Council. Was there any Posie in it?

Mr. Sone. Yes, I gav'd the Posie whilst he took a turn in the Alley: The Posie was by his Direction, (*Tibi Soli*.)

Council. Who did you deliver this Ring to?

Mr. Sone. I sold it out of my Glass to Mr. Feilding.

Council. Swear Mr. Wilkins, (he was sworn.)

Council. What do you know of Mr. Feilding's buying a Ring of Mr. Sone? The Time when this Ring was bought?

Mr. Wilkins. It is about a Year and two Months ago; I was by when the Gentleman gave Direction for it; and I saw him write down (*Tibi Soli*.)

Council. Then swear the Register of Doctors-Commons.

The Register of Doctors-Commons Sworn.

Council. Shew the Register the Ring.

Register. My Lord this Ring, was brought by my Lady Dutcheff's Proctor with the Letters.

The Ring produced, and shewn to Mr. Sone the Goldsmith, who deposed, That that was the Ring which he made for Mr. Feilding; and the Posie the same which Mr. Feilding directed.

Council. How do you know it to be the same which you sold to Mr. Feilding?

Mr. Sone. I know it to be the same by my Mark and Work.

Mr. Cooke, Proctor, sworn.

Mr. Cooke. My Lord, there was a Ring brought, it is the same that was exhibited in Court, and the Ring was brought first of all by the Lady, Mrs. Feilding; it was afterwards in the Custody of my Brother; my Brother brought it to me, and I delivered it to the Register, and believe it to be the same Ring by the Posie (*Tibi Soli*.)

Council. Now, my Lord, we shall prove Mr. Feilding's coming to Count Gallas's for a Priest.

Call Constantine Pozzy, (who was sworn.)

Council. Where do you live?

Pozzy. I am Servant to the Emperor's Envoy.

Council. Do you know Mr. Feilding?

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Pozzy. I know General Feilding by sight; I remember one Night he came and asked for the Father in Red? I told him that he was not within; then he ask'd for Count Gallas's Almoner (meaning Father Vanderber, his Lordship's first Chaplain,) but he happened not to be within neither. I told him that Father Florence, one of the Chaplains was within. Then said Mr. Feilding, call him to me; I did so. Upon which Mr. Feilding gave me Half a Crown. Mr. Florence came immediately to Mr. Feilding.

Council. Was there a Priest at that Time in Red that had a long Beard.

Pozzy. My Lord had such a Priest then; after Mr. Florence and Mr. Feilding had been discoursing some Time in the Hall together, Mr. Florence went up Stairs to Count Gallas; whilst Mr. Florence was up Stairs, the Father in Red came in; I saw Mr. Feilding and the Father in Red go away together in the Hackney-Coach before Mr. Florence came down.

Council. What Time was this?

Pozzy. It was in November, the beginning of it.

Council. Did you hear what Mr. Feilding and Mr. Florence did discourse of?

Pozzy. No, nothing.

Council. Then swear Mr. Florence, (who was sworn.)

Council. Give my Lord, and the Jury an Account of what you know of Mr. Feilding's coming to you?

Mr. Florence. I have seen Mr. Feilding.

Council. Upon what Occasion had you any Discourse with him?

Mr. Florence. It was on Friday Night, Post-Night, about the beginning of November, Constantine Pozzy came under my Chamber-Window, called to me, and said, Here is Major General Feilding, he wants one of the Chaplains, he desires to speak with you. I went to him immediately, and introduced him into the Hall. The Major General spoke to me in French. Sir, says he, I come here to look for the Father in Red; but I understand he is not at home; you will do as well, be pleased to go along with me. He told me he had courted a young Lady for some Time, and now found her well dispos'd, and therefore desir'd me to go along with him to marry them. I understood there had been some Treatment between him and the Dutcheffs of Cleveland, and therefore I ask'd him whether it were to the Dutcheffs; He did not inform me. I told him I did not care to do any Thing out of the House; and desir'd him to let me ask my Lord; says he, give my Service to Count Gallas and tell him. I went up to him and spoke to him, and told him the Business Mr. Feilding came about. He bid me, says he, What you do, do it wisely. When I came down Mr. Feilding was gone, I was told that the Gentleman in Red came in, and that Mr. Feilding and he were gone away together.

Council. That which he would have you to do, was to have married him with a certain Lady, was it not?

Mr. Florence. It was so.

Council. What Time was that?

Mr. Florence. It was upon Friday, I am sure.

Council. Had you any Discourse with Mr. Feilding after this?

Mr. Florence. The next Sunday after this, says he, I give you many Thanks for the last Favour. I knew of no other Favour I did him but this.

D d d d d

Council

Council. Then call Matthew Paul, (who was sworn.)

Council. Do you give my Lord and the Jury an account of Mr. Feilding's beating a Gentlewoman; and if any Marriage was claimed at that Time by a Gentlewoman.

Paul. Mr. Feilding came to Whitehall-Gate in a Chariot, he litt out of it. There was a Hackney Coach brought two Women; one of these Women got out of the Coach and came up to Mr. Feilding: Mr. Feilding called her Bitch; the Lady called him Rogue, and said she was his *lawful Wife*; at that Mr. Feilding having a Stick, he punch'd it at her; it happen'd upon her Mouth, and made her Teeth bleed. He order'd the Centry to keep her 'till he was gone, and he would give 'em a Crown. She said, as I told you before, That she was his *lawful Wife*, and for that Reason they did not care to meddle with her.

Council. Sir, Do you know what Time this was?

Paul. I cannot justly tell: It was as near as I can judge, about the latter End of May.

Council. Pray call Mrs. Feilding, and let the Witness see if he knows the Woman again that he saw Mr. Feilding beat.

Mrs. Feilding called into Court.

Council. Is this the Woman you saw?

Paul. This is the Woman, my Lord, I really believe.

Council. Then swear Mr. Seymour, (who was sworn.)

Council. Do you know Mr. Feilding?

Mr. Seymour. Yes, Sir.

Council. Do you remember his beating any Woman at Whitehall-Gate?

Mr. Seymour. Yes, Sir.

Council. What Time was it?

Mr. Seymour. It was in the last Summer, but I cannot be positive to the Time.

Council. Do you know the Gentlewoman when you see her?

Mr. Seymour. Yes, I do; that's the Gentlewoman (pointing to Mrs. Feilding) I am sure of it.

Council. What did she say to Mr. Feilding?

Mr. Seymour. She said to him, you are a Rogue, I am your *lawful Wife*.

Council. Then swear Captain Eaton, (who was sworn.)

Council. Captain, do you know any Thing of Mr. Feilding's beating a Woman?

Captain Eaton. I was at the King's Arms Tavern, and whilst I was there, the Drawer came to me, and told me there was two Women would speak with me; this Woman (pointing at Mrs. Feilding) and another, whom she call'd Mother. She told me she was married to Mr. Feilding, before he was married to my Lady Dutchess; and desired me to acquaint my Lord Duke of Northumberland with it, that the Dutchess of Cleveland might know of it: I told her I did not design to concern my self about it. She told me she had been much abused by him.

Council. What Time was this?

Captain Eaton. It was some Time before the 18th of August; it was the latter End of June, or beginning of July.

Council. Was it before the Difference between Mr. Feilding and my Lady Dutchess?

Captain Eaton. It was before that Time.

Council. Now we shall produce Mr. Feilding's own Letters, where under his Hand your Lord-

ship will find he took Mrs. Wadsworth for Madam Deleau.

Drivers Letters produced in Court.

Council. Call Mr. Lilley. (He appears.)

Council. Do you know these Letters to be Mr. Feilding's Hand-Writing?

Mr. Lilley. I am a Stranger to his Hand.

Boucher called.

Council. Can you read and write?

Mr. Boucher. Yes, my Lord, I can.

Council. Do you know these Letters to be Mr. Feilding's Hand-Writing?

Mr. Boucher. This is his Hand, I believe. I have seen him write an hundred Times; I have had the Curiosity to observe his Hand, and this is his own Writing.

Council. Then swear Frances Beale, (who was sworn.)

Council. Do you know Mr. Feilding's Hand-Writing?

Beale. I do, my Lord.

Council. Do you know that Letter to be his Hand?

Beale. I have seen him write several Times, and believe it to be his Hand.

Council. Now, my Lord, we will beg the Favour to read these Letters, and first of all, one directed

To the Countess of Feilding. Sunday Night.

I Hope my Dearest Wife will easily believe that nothing can be Welcomer to me than the Assurance of her Health; but as I receiv'd hers but this Day, I could not have the Felicity of seeing her to Morrow, and she have notice of it; therefore if she thinks fit on Thursday next at Four a-Clock, I will see her at Puggy's, and there endeavour to repair this tedious Absence.

Eternally Your own Feilding.

Another Letter prov'd to be his Hand by Boucher and Beale.

To my Dearest Wife, the Countess of Feilding. Friday.

I Had return'd my Dear Wife's Favour long before now, but my Lady Dutchess's Sickness on one hand, and more than ordinary Business (of which I will give my Dear a particular Account) on the other hand, has not given me a Moment of Time to write to my Love. Puggy brings you the Set of Knots you desir'd, and the Pattern of the Damask; or if my dearest Life wants any Thing else, she may with Pleasure command it; for I am never so well pleas'd as when employ'd by my Dearest Wife, and must be ever her affectionate Husband, till Death,

Feilding.

Another Letter proved by Boucher and Beale.

Nov. 27. 1705.

THE last Letter I had from my dearest Wife has mortified me much, finding, that notwithstanding all my Kindnesses, she taxes me with Coldness in my Letters, which I call Heaven to witness I never in the least intended; and beg my Dearest to give me some Warning before she taxes me of Unkindness. Puggy tells me that my Dear designs to come to Town to Morrow, which I hope she will put off till another Day, because I am oblig'd to be at her Grace's to morrow all the Afternoon, and till late at Night; but any other Day my Dear shall find she is always welcome to the Arms of him who loves her more than Life it self;

self; and I shall never fail of giving her fresh Proofs that I am,

Her Loving and Affectionate Husband;
Feilding.

Justice Powel. It is plain it is his Hand; and that he wrote to one whom he terms his Wife.

Council. Do you know these Letters to be writ by Mr. *Feilding*, and sent to his Wife?

Mrs. Villars. I have seen them before, and I believe them to be Mr. *Feilding's* Hand. I saw Mr. *Feilding* write them, as well as I can see by my Eyes; and when he had writ them, he deliver'd them into my Hands, and order'd me to deliver them to his Dear Wife.

Council. What does he mean by *Puggy*, in his Letters? Who is *Puggy*?

Mrs. Villars. He us'd to call me *Puggy*.

Council. My Lord, We have done for the present, (having proved clearly his Marriage with this Woman) without Mr. *Feilding* denies his Marriage to the Dutcheß of *Cleveland*.

Mr. Feilding. My Lord, I own my Marriage with the Dutcheß of *Cleveland*.

Justice Powel. Mr. *Feilding*, You have heard from the Evidence that hath been given against you, That you were married to another Woman, before you were married to the Dutcheß of *Cleveland*: And now is the Time to make your Defence.

Mr. Feilding. All the Evidence against me, consists in what Mrs. *Villars* hath said: She is the only Evidence that swears positively to this Fact; the rest are very inconsistent with themselves. I beg of your Lordship, in a Case so nice as this is, where my Honour and Reputation, and every Thing that is dear lies at Stake, that the Evidence in this Cause may be clear and positive. Mrs. *Villars* (my Lord) hath forsworn her self; 1. In that she swears she cut Mrs. *Deleau's* Hair: Mrs. *Deleau* takes notice, that she never cut it. And as to her Reputation, it's so bad, that when our Witnesses are heard, I hope your Lordship will see little Reason to believe any thing she says to be true. My Lord, We will prove, that she hath been in Custody of a Master of *Bridewel*; that there she hath received the Correction of the House; therefore I think she is not fit to appear as Evidence in this Court. She swears, That the Singing-Woman was at the Marriage; but it appears she was not, for the Singing-Woman contradicts it. And as to this Mrs. *Wadsworth*, who they set up, she was married to another Man, one *Bradby*.

Justice Powel. I must deal plainly with you, Mr. *Feilding*, from the Proof: I cannot speak of Mrs. *Villars's* Credit, for she is an ill Woman (no doubt) from her own Evidence, in that she put a false Woman upon you: But her Evidence is well supported by Circumstances of Time and Place; and all of them put together, bid fair for a Proof, that you were married to this Woman. You may call what Witnesses you please to Mrs. *Villars's* Reputation, and they may be heard. No Woman of Reputation will bring a mean Woman to a Man, instead of a Person of Quality. I think you say, Mrs. *Wadsworth* was married to another Man at the same Time: Indeed that will be to the Purpose, if you can make it out.

Mr. Feilding. My Lord, I can. She was married to another Husband, one *Bradby*. Call *Elizabeth Easlet*.
(Who was sworn.)

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Justice Powel. Do you call this Woman to be Witness to the Marriage?

Mr. Feilding. My Lord, I do.

Justice Powel. Do you know Mrs. *Wadsworth*?

Mrs. Basset. My Lord, I do not know her from another Woman; but there was a certain Woman, Two or Three Months ago, came to take a Name out of the Register-Book.

Council. What Register do you speak of?

Mrs. Basset. The Register of Marriages in the Fleet.

Council. Who keeps that Book?

Mrs. Basset. I keep it at present: My Father-in-Law is the Keeper of them; but he is sick, and therefore he hath left them in my Charge.

Council. Where is your Father?

Mrs. Basset. He is not able to appear.

Council. Do you keep them in your Custody?

Mrs. Basset. Yes, I do.

Council. Does no body else come at them but your self?

Mrs. Basset. No, not this Twelve-month; since they have been in my keeping.

Council. Who then makes the Entries?

Mrs. Basset. These were my Father's Books when he was in Health.

Council. What can you say of this Woman?

Mrs. Basset. I do not know her. But some Time ago there was a Woman came to my House; She told me, she wanted to speak with Mr. *Basset*. I told her, she could not speak with him. She pressed to speak with him: But when I told her he was ill, and could not be spoken with; says she to me, Here is a Marriage in your Book, of one *Lilly Bradby* and *Mary Wadsworth*. Says she to me, If you'll put it out of your Book, I'll give you a Piece of Money.

Council. Is this the Woman that made you this Offer?

Mrs. Basset. I will not swear to the Woman; I never saw her but that one Time, my Lord. I am not positive in the Matter; but I believe it is.

The Certificate of the Marriage read.

Lilly Bradby Marry'd to *Mary Wadsworth*, the 28th of October, 1703. *The Man of St. James's, the Woman of St. Margaret's Westminster.*

Justice Powel. Who us'd to write down the Certificates in the Register-Book?

Mrs. Basset. Several People, my Lord, we hir'd to do it.

[*The Place of the Register shewn Mrs. Basset.*]

Council. Have not you your self look'd upon this Place now given as Evidence?

Mrs. Basset. Yes, I have.

Council. Whose Hand is that?

[*Pointing to the Certificate.*]

Mrs. Basset. It is my Father-in-Law's: He that was Clerk of the Fleet.

Council. Is the whole Leaf of his Hand-Writing?

Mrs. Basset. I cannot tell.

Justice Powel. Can you read Writing?

Mrs. Basset. Yes, my Lord.

[*The Certificate view'd by the Court, and prov'd to be a different Hand from the rest.*]

Council. There are Hands various in this Book.

D d d d d 2

Mrs.

Mrs. Basset. My Husband's Brother us'd to make Entries sometimes.

Sir James Mountague. Does your Husband's Brother use only to make Entries at the latter End of the Book?

Mrs. Basset. I don't know.

Council. Do you know when the Entry was made?

Mrs. Basset. I do not know when the Entry was made.

Council. Do you remember, that there were any Gentlemen with you to examine the Book?

Mrs. Basset. Yes, Sir, there were.

Council. Did you shew them this very Book?

Mrs. Basset. I did not; because Mrs. Wadsworth said there would be some Trouble about it.

Council. Have you several Registers at the same Time?

Mrs. Basset. Yes; there are several Ministers, and therefore are Entries made in several Books.

Council. Why were you so friendly to Mrs. Wadsworth; when the Gentlemen came to examine the Book for this Register, and you shew'd them other Books instead of this?

Mrs. Basset. I did not shew them that, because Mrs. Wadsworth desired me.

Council. What did Mrs. Wadsworth give you?

Mrs. Basset. She gave me nothing. I will not say it was Mrs. Wadsworth.

Council. Do you remember you shew'd any Books to these Gentlemen, where there were Marriages registred in 1703?

Mrs. Basset. The Book is at Home in my House.

Council. Do you keep Two Books for the Register of Marriages, for one and the same Year and Time?

Mrs. Basset. There are several Books; and we Enter sometimes in one, and sometimes in another; by reason that there are several Ministers, and each hath his particular Book.

Council. Did the Gentlemen ask you at that Time, whether there were more Books of Marriages?

Mrs. Basset. I do not remember.

Council. How many Books have you of that Year?

Mrs. Basset. But Two.

Council. Did you shew them any false Book? That is, Did you shew them a false Register of Marriages for a true one?

Mrs. Basset. I know nothing of that.

Mr. Feilding. Call Mrs. Drinkwater.

[Who was sworn.]

Justice Powel. Do you know Mrs. Villars?

Mrs. Drinkwater. I have known her above a Year.

Justice Powel. What is her Character and Reputation?

Mrs. Drinkwater. I know nothing of that - - - But I know so far of her, That she said she was married to Colonel Feilding on the Fifth of November: She accordingly gave it out that she was with Child by him. And that she told me, that the Dutchess of Cleveland proffer'd to give her 200 l. and 100 l. a Year, for Fifteen Years, if she would prove a Marriage with Mr. Feilding: But that she would do more for Mr. Feilding for 40 l. than she would for the Dutchess of Cleveland for a much greater Sum. And said, it was purely Want, that made her comply with my Lady Dutchess's Desire. I have read all the Letters between Mrs.

Villars and the Colonel; and I never heard of any Marriage between Mrs. Eradby and Mr. Feilding, but between Mr. Feilding and Mrs. Villars.

Council. When was this Discourse between you and Mrs. Villars?

Mrs. Drinkwater. I cannot tell exactly the Day; but the Time they were marry'd was the Fifth of November was Twelve-month, as she said.

Sir James Mountague. You pretend to say, she said, That if Mr. Feilding gave her 40 l. she would do more for him, than she would do for a greater Sum from my Lady Dutchess. How long was this ago when she said this?

Mrs. Drinkwater. It was about Three Months, or better.

Council. Where was this Discourse, pray?

Mrs. Drinkwater. It was at her Lodgings, when she lodged at the Back-side of Red Lion Square, at a Widow-Gentlewoman's House.

Council. How came you to be there when this Discourse was?

Mrs. Drinkwater. She, some Time before, gave me an Invitation to her Lodgings; and I went to give her a Visit, and then this Discourse happen'd.

Council. Who was by then?

Mrs. Drinkwater. None but I and She. She said it was Want and Necessity, that made her act after this manner.

Mr. Feilding. Did she not send for you, to tell you she was going to forswear her self?

Mrs. Drinkwater. She talk'd of it first.

Council. When did you tell the Colonel of it?

Mrs. Drinkwater. I do not know justly the Time.

Council. How long have you been acquainted with Colonel Feilding?

Mrs. Drinkwater. Not but since this Thing happen'd. I never had any further Conversation with him, than to speak in her Behalf to him. But I have this further to say; That an Outlandish Man came to me about a Fortnight's Distance, and said, If I could do any thing on the Behalf of the Dutchess of Cleveland, it would be a considerable Sum of Money in my way.

Council. Where do you live your self?

Mrs. Drinkwater. I live in the same House where Mrs. Villars lodged: I am a Servant to one Captain Howard; My Master is now in the Service.

Council. Who lives in the Family?

Mrs. Drinkwater. We have none but a Footman, and my Master.

Mr. Feilding. Call Mrs. English.

[Who was sworn.]

Justice Powel. What have you to say?

Mrs. English. My Lord, I went down to Mrs. Villars's Lodging the Morrow after last Valentine's Day, for some Money; for I washed for her: Says she, I have none at present. She told me, she would send to her Spouse for some. A Gentleman came in and said, I have none for you: Says he, My Master says, If a Crown will do, he will send it you out of Charity; but he cannot supply your Extravagancies. On the Fifth of November (she said) she was marry'd to Mr. Feilding; and she said, she would have Money from Mr. Feilding, or she would send her Soul to the Devil.

Mr. Feilding. Call Mrs. Fletcher; (who was sworn.) Give my Lord an Account of what you know of Mrs. Villars.

Mrs. Fletcher. All I know of her and Mrs. Eradby, is, Mrs. Villars lived with me a Twelve-month. She told me she had had Two Bastards;

one by my Lord Torrington, the other by my Lord Stamford.

Justice Powel. How long was this ago, that she was at your House for a Twelve month?

Mrs. Fletcher. It was about Four Years ago. She confess'd she had had Two Bastard-Children; and that she had been in *Bridewel*. I have nothing more than from her own Tongue, that she was a very infamous Woman.

Sir James Mountague. Mistress, How long have you been acquainted with Mrs. Villars?

Mrs. Fletcher. She was recommended to me by one in the Court, and by her good Behaviour.

Sir James Mountague. Would you have a Correspondence with a Woman that had Two Bastards? Pray what is your way of Living in the World?

Mrs. Fletcher. My Husband is a broken Merchant; he allows me 20*l.* a Year.

Council. What Vocation are you of?

Mrs. Fletcher. I drive little Trade, but work Plain-Work.

Sir James Mountague. You are acquainted with Mr. Feilding; are you not?

Mrs. Fletcher. I know him.

Council. How long have you known him?

Mrs. Fletcher. About Three or Four Years.

Council. You would not scruple to assist Mr. Feilding, if he wanted a fair Lady. Look upon that Letter; and see whether it be your Hand-Writing, or no?

[Then a Letter was shewn her.]

Mr. Longford. If you deny it, we will prove it.

Mrs. Fletcher. It is my Hand-Writing.

Justice Powel. Mistress, You can say no more of it.

Mrs. Fletcher. No, my Lord.

Mr. Feilding. Call Mrs. Gardiner.

[Who was sworn.]

Justice Powel. What have you to say?

Mrs. Gardiner. My Lord, Mrs. Villars lodged in my House; and she came one Morning.

Council. When was it?

Mrs. Gardiner. It was the 6th of November last was Twelve-month: She came in then, and had been abroad all Night. She told me, she was married to Colonel Feilding. She gave a Pair of Gloves to me, and to this Gentlewoman; and likewise gave Favours and Garters in the House. But she desir'd me to keep it secret. Mrs. Bradby, about a Fortnight or Three Weeks before *Christmas*, came into Mrs. Villars's Lodging, and happen'd to fall down as if she had been in a Swoon; and within a few Days she fell in Labour.

Justice Powel. Was it a Boy, or a Girl, she was deliver'd with?

Mrs. Gardiner. I was not there. It was not at my House, but at new Lodgings.

Justice Powel. Where was it she was brought to Bed?

Mr. Feilding. We can bring Evidence of that, my Lord.

Justice Powel. Woman, How can you swear, that she was brought to Bed before *Christmas*?

Mrs. Gardiner. I may say it, my Lord, because here is one, I believe, that will swear it. Mrs. Villars herself told me so; and the Midwife said she deliver'd her, for which Mrs. Bradby gave her a Guinea. The next Day after her Fall she was very ill, and continued so till she was brought to Bed.

Justice Powel. Was she big?

Mrs. Gardiner. She was past breeding; she was very big.

Mrs. Drinkwater call'd again.

Justice Powel. What can you say about Mrs. Bradby's Labour?

Mrs. Drinkwater. My Lord, Mrs. Villars and I were at Mrs. Bradby's Labour.

Council. When was this?

Mrs. Drinkwater. To the best of my Remembrance, it was about a Fortnight before *Christmas*; but she did not look before *February*. I do not know, but the Fall she had in Mrs. Villars's House, might be the Occasion of her coming before her Time.

Justice Powel. Was she deliver'd of a live or dead Child?

Mrs. Drinkwater. I do not remember that, my Lord.

Council. Was it a Boy, or a Girl?

Mrs. Drinkwater. I know not that neither.

Justice Powel. I thought verily that if you were at her Labour, that you could tell whether she had a Child, or no Child?

Mrs. Drinkwater. There were others that were at her Labour, can justify that the Midwife said she had a Child.

Council. Don't you know what became of the Child afterwards?

Mrs. Drinkwater. To the best of my Knowledge, I think it dy'd as soon as it was born.

Council. Just now you said, you did not know whether it was alive or no?

Mrs. Drinkwater. Here is Madam Luet will justify it.

Mrs. Villars called again.

Justice Powel. Mrs. Villars, Do you know she was with Child?

Mrs. Villars. I know that she miscarried.

Council. What time was it?

Mrs. Villars. After *Christmas*.

Mr. Feilding. Call the Keeper of the House of Correction, (who was Sworn.)

Justice Powel. What can you say?

Keeper. All that I know of Mrs. Villars, is, that she was a Prisoner in the House where I live.

Justice Powel. Where is that?

Keeper. In *Westminster*. I remember this Person was in my Custody above Five Years ago.

Justice Powel. Had she the Correction of the House?

Keeper. She had not the Correction of the House, because she was then with Child.

Mr. Feilding. Call Mr. Minors, (who was Sworn.)

Justice Powel. Mr. Minors, What have you to say?

Mr. Minors. My Lord, in *October* was Twelve-month, when Mr. Feilding lodged at Mrs. Heath's, I was then with Mr. Feilding almost every Day; I saw this Woman there every Day, except *Saturday* and *Sunday*. I din'd there, and there was Mrs. Margaretta, and sung these Songs which she spoke of now. Two or three Days after this, Mr. Feilding communicated to me his Treaty of Marriage with the Dutchess of *Cleveland*, and spoke to me to settle some Writings between them. (He produced the Writings.) Mr. Feilding desired me that I would be ready with them by the beginning of *November*, or the latter end of *October*. This is all I can say of this Matter. As to the Women, I saw these, and Abundance of common Women of the Town: I saw him take no more notice of Mrs. Bradby, than he did of any of the others.

Justice Powel. When did you see Margaretta there?

Mr. Mi-

Mr. Minors. I cannot speak to a Day ; but she was at Dinner when I dined there about October was Twelve-month.

Mr. Feilding. Call Mr. Chomley.

[Who was sworn.]

Justice Powel. What can you say ?

Mr. Chomley. My Lord, Not long ago there was a certain Person taken up, by the Name of Villars, about a Twelve-month ago.

Justice Powel. Do you know her, when you see her ?

Mr. Chomley. My Lord, I believe that is the Person ; (*pointing at her*) but whether she was committed or not, I cannot say. I have seen her divers times at a lewd time of Night, when she ought to have been at home.

A Letter produc'd of Father Dryan's, and shown to Mr. Florence. (*Mr. Florence Sworn.*)

Council. Mr. Florence, Do you know this Letter ?

Mr. Florence. I have seen it, and given an Answer to it accordingly.

Council. Is it Dryan's Hand ?

Mr. Florence. I cannot say positively it is his Hand. There are some more of his Letters in the House ; I cannot believe, or disbelieve it.

Council. Could Francis Dryan speak English ?

Mr. Florence. Very little.

Council. How long was he in England ?

Mr. Florence. About Eleven Months. He hath been gone a considerable Time.

Justice Powel. This Father that is now gone, Did he speak English at all ?

Mr. Florence. He was learning of it. Some English he could speak ; for I taught him from time to time.

Justice Powel. Do you think that he could enquire for Mr. Feilding in English ?

Mr. Florence. I believe he might say, Is Mr. Feilding at home ? But could speak little Sense in English.

Justice Powel. Do you think that if he were desired to speak these Words, *I take this Man for my Husband*, that he understood so much ?

Mr. Florence. I believe he might say what another said before.

Then the Queen's Council Reply'd.

Sir James Montague. My Lord, Mr. Feilding's Defence consists of Two Parts. First, he does endeavour to falsify his Marriage with Mrs. Wadsworth, by contradicting the Evidence of Mrs. Villars ; and for that he calls divers to prove Mrs. Villars to be a dishonest Woman. My Lord, we think there is no Occasion for us to make a Reply to that Particular, since we our selves do not pretend to say she is a Woman of very good Reputation. That which we insist upon is, that Mr. Feilding hath been impos'd upon, and marry'd this Woman ; and this we hope we have prov'd not only by Mrs. Villars's Evidence, but by other concurring Circumstances, which are so strong, that they cannot possibly be deny'd. And as to these Facts, he hath not at all contradicted our Evidence. For he does not so much as give your Lordship an Account how he came by the Ring, or for what End and Purpose he bespoke it. He does not deny that he directed the Post of it to be *Tibi Soli*. So that, my Lord, he gives no manner of Answer to all these Matters.

In the next place, he seems to admit that he had been foolish enough to be thus impos'd upon by these Intriguing Women. But, says he, they have not gain'd their Point ; for this imposing upon me signifies nothing, because this Woman was Wife to another Man, when we said she was marry'd to

Mr. Feilding. Now this sort of Defence does, in great measure, admit the Thing we contend for, *His Marriage with Mrs. Wadsworth* ; and whether he hath made it appear that this Marriage is null and void, shall be taken into Consideration next, by making some few Observations on the Nature of the Evidence that he hath produced to prove this Woman's Marriage with another Man. He says she is the Wife of one Lilly Bradby. That Man, by the Book, is describ'd to live in St. James's, and the Woman to be of St. Margaret's Westminster. But he hath not so much as given you any Account *that there is such a Man in the World, that he would have to be the suppos'd Husband of this Woman*. In the next place they have not undertaken to produce one Witness that was by at this Marriage, *not one Witness*. And what do they rely upon to prove this Wedding ? Truly, nothing but the Register-Book ; and the Man that keeps the Register-Book is not here. It's true, indeed, they say that it's a true Register, but we desire the Jury may inspect it ; for it appears by divers Circumstances to be a Counterfeit-Entry ; for it is written in another Character than what the rest are ; and it is written in the lower part of the Leaf, where we may suppose a Vacancy left to insert such a thing as this is, upon occasion. The Person that wrote it is not here. The whole Year that is set down here, is all *entirely one Hand Writing* ; and it is not at all like the *Writing of this Entry*. I think they pretend to say, there is something of the like Hand-Writing in the same Book ; and that they make use of to be a corroborating Circumstance. But that appears likewise to be at the latter end of another Book. The Book is *Rul'd*, and this Entry is writ below Lines without a Rule.

My Lord, this is what I think fit to take Notice upon the View of the Thing. We had an Intimation given us of this Book. It was rumour'd about the Town that this was the Defence which we were like to meet with. Therefore we did send to all Places where suspicious Registers were kept, and among the rest to this Fleet-Register. My Lord, we shall shew you that our Witnesses went to enquire for this Book ; but there they found no Book where this Entry was written. It's a very unaccountable thing that this Book should be concealed. Here is a Woman indeed gives you a Reason why she did it.---She says she did it, because she was desired to keep it secret by a Woman whom she *never saw before* ; and of whom she says she never *had a Penny*. This, methinks, is very extraordinary. But this very Book was shown them, if my Instructions be true, and the Place where this Entry is made was then a *Blank*, and *filled up since*. There was no such Entry at that time when they look'd upon it. This is all we shall say in respect of the Register, which is *all the Evidence* they bring to prove this Marriage.

But there is another thing they insist upon ; They make it an Objection, That this Father in Red was seen at Dinner with the Dutchess of Cleveland, after Mr. Feilding was marry'd to my Lady Dutchess. As to that Matter, we say it does not appear when that time was ; nor do they make it out that the Father in Red did know that he was married to the Dutchess of Cleveland at that time ; tho' in Fact they might be marry'd. Twenty People might be at Dinner there, and yet might be ignorant of this Marriage. It's possible that a Man may eat and drink with another, and yet not know whether he be married or unmarried. They do not make it appear that there was any Occasion given at Table that

would

would give Rise to such a Discourse. The Man not having an Opportunity to speak of it, To what end and purpose should he do it? The next thing they insist upon, and have endeavour'd to prove, is, That Mrs. Feilding was with Child; and brought to Bed the *Christmasts* after she was marry'd to Mr. Feilding. But they do not pretend to tell whether the Child she was brought to Bed of, was dead or alive; or whether it was a Boy or a Girl; but at last it proved a Miscarriage. We have given your Lordship an Account how it is likely she should be with Child; for we have proved to you undoubtedly that she was married to Mr. Feilding; that *they lay together several times*; and we have no Reason to suspect Mr. Feilding's Ability. Mr. Feilding knew she was with Child by him. He was the proudest Man in the World of *this thing*, and call'd it young Lord Tunbridge. To prove this, my Lord, here is a Letter written by himself. The Stile is something peculiar too, it is directed, *To the best of Wives, Anne Countess of Feilding*. Now, my Lord, Mrs. Deleau, whom Mr. Feilding thought he had married, her Name is *Anne*, but Mrs. Feilding's Name is *Mary*.

The Letter produced and proved by Boucher and Beal, and it was directed,

To the best of Wives, Anne Countess of Feilding, at Waddon.

Novemb. 14. 1705.

THere is nothing can please me more upon this Occasion, than to hear my Dearest Wife say I had made her sick, by turning her Liver; for without that we could not hope for a young Lord Tunbridge; which would be, the next to my Dear her self, the most welcome Present to my Arms. Make haste then, my Dearest Life, to Cultivate the young Spark; and be sure you don't starve my Boy. As for your coming to me, it wholly depends upon your self, who can best judge when it is most proper to come to me; which you can do, by giving out you are to stay all Night in London; and then you and Puggy have nothing to do but to come to me at Bed-time, and so we may go to Bed and lye till Morning, when Puggy may come again and call you. Adieu my Soul's Love, whom I must ever value more than Life. Feilding.

Council. Call Mr. Longford (who was Sworn.)

Sir Ja. Montague. Were you directed to go to the Fleet, and look into the Register-Book.

Mr. Longford. Mr. Attorney General telling me that he heard there would be some Pretence of a Marriage that would be set up, advis'd me to enquire after it. I was informed, that some Certificate was, or would be given in the Fleet. I went with Mr. Rescorloe to see the Books. We look'd all over those Months for the Year 1703. This Book is the very Book I take it to be, but am not positive. That which we saw, I observed had an Entry dated the Year 1705. before the Marriages in the Year 1704. in yellowish Ink at the Top of a Leaf.

Council. Call Mr. Rescorloe (who was Sworn.)

Sir Ja. Montague. Do you remember that you saw that Book?

Mr. Rescorloe. I do remember that I saw that Book with Mr. Longford. Mr. Longford and I went by the Attorney General's Order, to search the Books at the Fleet, to see whether we could find any Entry of Lilly Bradby's Marriage with Mrs. Wadsworth. This Woman that gave her Evidence here brought in this Book, and we look'd back for three Years. We found no such Entry as she shows here in this Book. We ask'd her again, whether there

were any other Books of Entries of Marriages? She said, No. I ask'd her, whether there had been any one there to see after such a Certificate? She said, there was a Woman and a Man about a Week or Fortnight ago. I ask'd her, Whether she shew'd them this Book? She said, she had shew'd them this Book, and they gave her a Shilling for searching it. She said positively there was no *such Certificate* entred in the Book, and that there was *no other Book for the Entry of Marriages*. We search'd the Month of *October* more strictly; we look'd for the very Certificate with the greatest Care and Industry that could be. We went to Bassett's House, who, this Woman said, was not at home. She laugh'd in her Sleeve, and said, he was a doating Man; and if he spoke two Words, he could not speak a third. I do really believe this to be the Book. I took good Notice of the *Blank* where this Certificate is entred, and did remark that there was a *vacant Space* under this Certificate, where was no Writing. Mr. Longford and I turned back again to the Year 1705, which was put before the Year 1704, and observed it then, as it appears now, to be the Book, *Except this Entry*. I do believe it to be the same Book we then saw.

Sir Ja. Montague. There is but one thing more that I would mention, which is, that the Woman in the Top-knot confess'd that this Letter was her own Hand-Writing. I desire it might be read.

The Letter was read. It is directed,

To Major-General Feilding.

Tuesday Morning.

ALL that know the Name of Major-General Feilding, must own the Generous and Charitable Actions that your Honour daily bestows upon 'em. I, among the rest, shall ever acknowledge your Goodness. It's Necessary that forces me to dispose of this Picture. Your Honour is a nice Judge of Painting, as well as an Admirer of such Pieces, which makes me humbly present it to you first; and in accepting the same, your Honour will highly oblige, as well as serve,

Your humble Servant,
M. FLETCHER.

POSTSCRIPT.

I long to see you. For your Encouragement, to grant me that Favour; I am now acquainted with a young Lady that's Pretty, and lives in good Fashion. Your Honour will oblige me in letting me receive your Commands.

Justice Powel. Gentlemen of the Jury, The Prisoner, Mr. Robert Feilding, stands Indicted for a capital Offence, for Felony, in marrying a Second Wife, his First being then Alive. This is the Offence charged against him. The Council for the Queen have called several Witnesses to prove this Matter upon him. And the first is one Mrs. Villars. She hath given her Evidence from one end to the other, if you believe what she swears. She swears, that one Mrs. Streights came first to her Lodging, and she was not at home; but left word that she must needs speak with her; that she was always out of the way when any thing offer'd that would do her a kindness; and that it would be 500*l.* out of her way if she did not see her. It seems, that when Mrs. Streights met her, she acquainted her with Mr. Feilding's Inclinations; and being inform'd that she was acquainted with the Lady, that she us'd

to cut her Hair, thought that she might have such an Interest in her, as to be made serviceable to bring the Matter about; which if she was, it might be worth 500 *l.* to her. Mrs. Villars undertakes the Business to bring Mr. Feilding and Mrs. Deleau together; she did readily accept of it; thereupon Mr. Feilding and she discours'd together concerning this Matter: She told him she was acquainted with Mrs. Deleau, and that she would do the best she could to bring it about. Mr. Feilding upon this went to Mrs. Deleau's Country-House at Waddon in Surry, that thereby the Lady might have an Opportunity of seeing him. She says, Mr. Feilding told her that he had Access to the Gardens; that when he was there he saw the Lady thro' the Glass-Window; he was willing to give the Lady a full View of him, therefore he stood still and set his Watch by the Sun-Dial, and took several Turns in the Garden; and he did afterwards send a Letter to her. Mrs. Villars was afterwards sent of a Message, as tho' it was from the Dutchess of Cleveland, to acquaint the Lady that the Dutchess had a great Mind to see the Gardens. Mrs. Deleau told Mrs. Villars that she should be proud that a Person of her Quality should come to her. She said that Mr. Feilding sent her, and she found afterward that the Dutchess of Cleveland did not intend to go; nay, that she knew nothing of the Matter. But see how she managed the Matter, and play'd this Trick upon Mr. Feilding; it is no better, if true. They agreed together that Mrs. Deleau should come to a Place where Mr. Feilding should appoint; that something of Musick, or some Entertainment should be provided; they contrived when it should be, the Time was on my Lord Mayor's Day at Night, and according to Appointment Mrs. Villars came with Mrs. Deleau, as Mr. Feilding thought, but in reality it was one Mary Wadsworth, which represented Mrs. Deleau; she came in a Mourning Coach, and dress'd in a Widow's Habit; after this manner they came to Colonel Feilding's Lodgings in Pall-Mall. The Lady truly was not to know that they were Mr. Feilding's Lodgings; however Mr. Feilding was not at home, but it was not long before he came: He came up to the Lady: You have heard what Addressee he made to the Lady, and how much Love he express'd towards her: Ask'd her, whether she lov'd singing? One Margaretta was sent for, and sung two Songs. Mr. Feilding was so taken with her, he would have marry'd her presently; but she being coy, modestly declin'd it, and so they parted for that Time. Mrs. Villars was to bring her afterwards, which was on the 9th of November, on the Night the supposed Wedding was; Mrs. Villars brought her. When she came there, Mr. Feilding propos'd to be married to her forthwith; she seem'd to be shy at present, but Mr. Feilding said he would fetch the Priest immediately; he lock'd them in, took the Key with him, and returned in three Quarters of an Hour; the Priest she describes to be in a long red Gown lin'd with blue, a long Beard and a Fur-Cap upon his Head, so he brought him along with him; when he came, he said, *This is the Man that should joyn their Hearts together.* She tells you further that Mrs. Wadsworth question'd the Priest; required of him a Proof to shew he was a Priest in Orders. The Priest pull'd a Picture of the Pope out of his Pocket, which he said was a Credential for Priests. After Supper the Marriage was propos'd, whether it should be in the Dining-Room, or Bed-Chamber? That

was the Question. The Lady thought the Bed-Chamber best; he thought so too. Well then, in the Bed-Chamber it must be. The Priest did want Water, Salt and Rosemary, Things that he us'd in performance of the Ceremony; Boucher was sent down for them; he brought up Water and Salt, but could get no Rosemary; after these Things were brought up, Boucher the Servant was turned out, and the Doors were shut. Then there was no body present but Mr. Feilding, the Lady, the Priest and Mrs. Villars. Then she tells you of the Ceremony of the Wedding, the Ceremony of the Water, and the Ceremony of the Ring. After that was done, they proceeded to the Marriage; the Office was in *Latin*; when they came to the Marriage Words, *I take thee to be my Husband*, &c. Mrs. Wadsworth desir'd it might be spoke in *English*; thereupon Mr. Feilding did say it in *English*, *I take this Woman to be my wedded Wife, with all my Heart and with all my Soul.* The Gentlewoman she said her part likewise in *English*; *I take this Man to be my Wedded Husband*; but Mr. Feilding observing her to speak it too low, desir'd her to speak it as earnestly as he did: Whereupon she did say, *I take this Man to be my Husband, with all my Heart, and with all my Soul.* The Ceremony of putting on the Ring the Priest directed; that was, to take hold of the End of one of her Fingers and put it on; she saw that done, and when the Ceremony was over, the Priest went away; that when he was gone away, she undressed the Bride, and put her to Bed, and then gave notice to Mr. Feilding that the Lady was in Bed. Then Mr. Feilding went to Bed, and she saw them in Bed together. Then she went to Bed her self in a Lodging that was provided for her up another Pair of Stairs: That the next Morning she arose, came down, went into the Room where there was a Fire made by Boucher; that then she saw them in naked Bed together. If you believe her, she swears the Marriage by this Priest, and the Consummation of it. Mrs. Villars goes further, and swears, that she brought her two other Times, and that those Times she saw them in Bed together as Man and Wife. I ask'd Mrs. Villars at last how Mr. Feilding came to be undeceived? She says, it was kept secret from November to May. Then Money was wanted; that was a great Disappointment to Mr. Feilding, for he thought he had marry'd a Lady that would have furnish'd him with Money. Then he discover'd the Fraud, and found he had been impos'd upon; then he was angry with her, beat her, and call'd her Names. Indeed, Gentlemen, I must deal plainly with you, if her Evidence stood alone, her Reputation is shaken to that degree, that in Truth, where a Man stands upon his Life, one would not have a great Regard for what such a Woman swears, if it were not supported otherwise. Now, tho' by her self she be not a good Evidence, yet the Matters of Fact which she swears to, are likewise proved by the concurrent Testimony of others.

First, They call Boucher, and truly he fortifies her Evidence in a great many Particulars, gives an Account of Mrs. Villars bringing Mrs. Wadsworth to Mr. Feilding's under the Character of a Person of Quality; gives an Account, just as she does, of their coming to Mr. Feilding's Lodgings in a Widow's Habit and Mourning Coach; their having a Treat of Plumb-Cake and two Bottles of Wine. He further gives an Account of their coming a second Time, and an Account of the Priest;

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knew the Priest; knew him to be the Emperor's Envoy's Priest. He remembers the Priest coming to the Place; he remembers also the Circumstances of being sent for Water, Salt and Rosemary. He says he was order'd down, and the Chamber-door was shut, and the Priest was then in the Chamber with Mr. Feilding, the Lady, and Mrs. Villars; and that when the Priest was gone, Mr. Feilding and the Lady went to Bed; that *he saw them in Bed together*; that the People that were below, when Boucher was sent down for Salt and Rosemary, they could conclude no otherwise but that they were making this Lady a Convert. Now, Gentlemen, this is a material Thing, that there was a Priest at that Time, and they were private together; this is a concurrent Evidence to strengthen Mrs. Villars's Testimony. There is Mrs. Martin, Mrs. Heath, and Mrs. Price, they remember several of these Matters perfectly well. Mrs. Martin saw this Person and her Mourning Coach; she saw the Lady and Mrs. Villars go up Stairs, and the Time when the Priest came in, she let him in; describes him by his particular Habit as the rest do. Mrs. Heath remembers Mrs. Villars coming with a Woman that she thought was a Woman of Quality, but saw not the Priest. Mrs. Villars told her she was worth 80000 *l.* she ask'd her whether she might lie there that Night, for it was too late to go home? She agreed they should lie together, Mrs. Villars and Mrs. Wadsworth. But now here is another Circumstance that hath mighty Weight in it, that is, the Ring; they have brought the Person of whom Mr. Feilding bought the Ring to the Value of 20 *s.* that the Ring was ready made, and Mr. Feilding directed the Posy (*Tibi Soli*) to be engrav'd in it. There was another Man by, when Mr. Feilding bought the Ring and order'd the Posy for it; and this *very Ring* with *this Posy* has been produc'd first by the Proctor and Register; the Proctor does say it was first brought to him by Mrs. Wadsworth, who came to retain him in an Action of Nullity of Marriage; he took notice of the Ring, and said that it had this Posy in it. Afterwards when Mrs. Wadsworth came again he was not at home; it was in the Hand of his Brother, and he is sure it is the same Ring. The Goldsmith swears it to be that Ring Mr. Feilding bought of him; he knew it by the Mark and Workmanship of it; for Goldsmiths know one another's Work. This, Gentlemen, hath a great deal of Weight in it; it is a very great Circumstance, unless they could tell you, which they have not, upon what Occasion this Ring was bought at this Time.

Gentlemen, They give a further Account of this Matter, by the Testimony of Letters, which they prove to be Mr. Feilding's Hand. Mrs. Villars was the Carrier of these Letters; Mr. Feilding stiling her in them by the Name of Puggy, a Name by which it seems he used to call her. These Letters are proved by Boucher and a Lady in the Gallery, to be Mr. Feilding's Writing. These Letters have been read to you, they are written as from a Husband to a Wife; in them he owns her to be his Wife, calls her Countess of Feilding, stiles himself her Husband. These Letters have been read to you. This Gentlemen, as I remember, is the Substance of the Evidence that hath been given for the Queen.

Sir James Mountague. My Lord, be pleas'd to take notice of Mr. Feilding's going to the Emperor's Envoy for the Father in Red.

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Justice Powel. It is true, I had forgot the Evidence of Mr. Florence a Chaplain, that is a Priest, now belonging to Count Galas the Emperor's Envoy, and the Porter. They tell you about this Time Mr. Feilding did come to enquire for this Priest; and gave the Porter half a Crown (by a good Token;) but the Priest he asked for not being at home, he enquired for Mr. Florence; he told Mr. Florence that he had been in Love with a young Lady a good while, but now had prevailed with her to marry him. And seeing the Father in Red was not there, he desired he would go along with him and do the Office. Mr. Florence told him it was improper for him to go without the Envoy's Leave; he went up to the Envoy and acquainted him with it, the Envoy gave him Caution to do it with Discretion; but when he came down again, it seems that the Red Father had been with Mr. Feilding in the mean Time, and were both gone together.

Now, Gentlemen, you hear what Defence Mr. Feilding makes against this great Charge against him.

First, He calls a great many Witnesses to prove that this Mrs. Villars was married as she pretended to Colonel Feilding, and that she was a very common Woman, so far as that she has been in a publick House of Correction; and one of their Witnesses does bear hard upon her Testimony; that is, that she should declare to her that she was married to Colonel Feilding, and that my Lady Dutchess should say to her, If you can make that out that you are married to Mr. Feilding, she would give her two hundred Pounds, and settle 100 *l.* a Year upon her for Fifteen Years together. Then as for Mrs. Wadsworth, they call you divers to prove that she was brought to Bed about Christmas, after this suppos'd Marriage. But when they came to be examined they did not prove very much of that; for indeed it proved to be a Miscarriage; the Woman could not say she saw the Child, could not tell whether it was a Boy or a Girl; whether it was dead or alive; it did not appear by their Evidence that she went out her Time with a Child. Another part of Mr. Feilding's Evidence is this, to prove Mrs. Wadsworth married to another Person; and then admitting she was married to Mr. Feilding, 'tis a null Marriage. To prove that Mrs. Wadsworth was before married to another, they have brought the Book of Marriages of the Fleet, and in that Book there is an Account of one Lilly Eradby, married such a Time to Mrs. Mary Wadsworth; the Man of St. James's, the Woman of St. Margaret's Westminster. The Woman of the Fleet, in whose Custody this Book was, pretends that Mrs. Wadsworth came to her, and desired if any came to see the Book, that she would not let them see the Entry of her Marriage; and why? Because there would be Trouble about her Marriage. This Woman swears that there were two Men came to search the Book, but she shewed them another Book; but this Book she did not shew them. She was ask'd whether she had two Books of Marriages for the same Year? She said she had several Books for the same Year: One Parson made his Entry in one Book, and another Parson in another Book. She pretends she did not shew them this Book; but the Book she shewed them was at home. I cannot conclude much from what this Woman hath said; but Gentlemen you have look'd upon this Book, and if you are satisfied from this Evidence, that Mary Wadsworth was married to

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Bradby

Bradby at this Time, I confess *Mr. Feilding* will not be within the Statute. You have look'd into the Book; they give you no Account that there was ever any such Man as *Bradby*, nor of no Co-habitation; but a meer Book is produced, and not of the *best Credit* neither; it is entred in the Bottom of the Leaf, but not in the Middle; it is written with *another coloured Ink*, and in *another Hand*. I ask'd the Woman whether she knew the Man that wrote it? She said, yes; and it was her Husband's Brother's Hand. He is alive, why is not he produced?

Gentlemen, they have called no Witnesses to prove the Marriage with *Lilly Bradby*. There were two Gentlemen on the other side, they went to the *Fleet* to search the Books of the Entry of this Marriage. They say that a Person inform'd them that there had been there a Man and a Woman before them; these Gentlemen went and desired to see the Book, particularly for the Year 1703. They say the Woman did produce the Book of Marriages, but they could not see such an Entry; she denied to them that she had any other Book for that Year; they cannot swear positively that this is the Book that was shewn them; but one of them says he believes it to be the same, for in that which he saw, he observed Entries of the Year 1705. before the Year 1704. He took good notice of it, and so it is *found in Court*. The other Gentleman says, he took particular notice of the Space that was in the Book, where this Entry is now written. Now the Woman does not bring the other Book she pretended to have shewn them. Now, as to the Labour, they have produced a Letter under *Mr. Feilding's* Hand, whereby *Mr. Feilding* takes notice of her being with Child, directs the Letter to *Anne Countess of Feilding* at *Waddon*; he took it that he had married *Mrs. Deleau*, for her Name is *Anne*, he directed his Letter to her Country-Seat. There is another Thing, of *Mr. Feilding's* coming to *Mrs. Heath*, and complaining what an ill Woman *Mrs. Villars* was, for she had served him a base Trick, instead of

a Woman of Fortune, she had put a common Woman upon him. Gentlemen, you have heard the Account too concerning his beating of her; for this Woman, it seems, was troublesome to him at *White-Hall*; she demanding him as her Husband, said she was lawful Wife; he struck her, and caused her to be held till he got away from her.

Gentlemen, It is a very great Charge, upon *Mr. Feilding*, it is true, if there be Evidence to maintain it; it does not really depend upon *Mrs. Villars's* Evidence; for if her Evidence were to stand alone, no Credit should be given to it; but as it is supported by concurring Evidence, I leave it with you whether it be not sufficient to find *Mr. Feilding* Guilty. But if you think that *Mrs. Wadsworth's* Marriage to *Lilly Bradby* is proved sufficiently, then, altho' you think *Mr. Feilding's* Marriage with *Mrs. Wadsworth* sufficiently proved, yet you are to find for the Defendant.

The Jury having withdrawn for some Time, brought in their Verdict, That *Mr. Feilding* was Guilty of the Felony he stood indicted of.

Mr. Feilding, (in Case he was found Guilty,) had obtained the Queen's Warrant to suspend Execution of this Sentence; and then by his Council took Exceptions to the Indictment, and moved in Arrest of Judgment; but they were answered by the Council for the Queen; but *Mr. Feilding* having obtained a Suspension of the Execution, the Judges by a *Cur' advisare vult* (as the Form is) suspended giving Judgment till the next Sessions, and accepted Bail for *Mr. Feilding's* Appearance the next Sessions.

The next Sessions, being the Fifteenth of January following, *Mr. Feilding* appear'd, and his Council waving their Exception (as being Frivolous) he was ask'd what he had to say why the Court should not proceed to Judgment and Execution? And then he craved the *Benefit of his Clergy*; which was allow'd. And then Judgment was given (as usual) That he should be burnt in his Hand. But he having the Queen's Warrant to suspend Execution, he was admitted to Bail.

The Proceedings against Robert Feilding, Esq; in Doctors Commons.

NOTWITHSTANDING *Mr. Feilding* was found Guilty of Felony at the *Old Baily*, her Grace the Dutcheß of *Cleveland* having instituted a Cause of Nullity of Marriage against the said *Mr. Feilding*, by Reason of a former Marriage with the said *Mary Wadsworth*, in the Arches Court of *Canterbury*; and having by Examination on Oath, of divers credible Witnesses, made good and sufficient Proof of the several Articles of the Libel by her Grace exhibited in the said Court against the said *Mr. Feilding*, did proceed to obtain the Sentence of the said Court; and accordingly on the 23d day of May, in the Year of our Lord God 1707. the Right Worshipful Sir *John Cooke*, Kt. Dr. of Laws, Official Principal of the said Court, then judicially sitting in the Common Hall of *Doctors Commons*, London, being then present the Duke of *Grafton*, the Duke of *Northumberland*, the Earls of *Litchfield*, *Sussex*, *Fersey*, and the Lord *Quarrendon*; as also the respective Proctors of her Grace the Dutcheß of *Cleveland* and *Mr. Feilding*, did, at the Petition of her Grace's

Proctor, read and promulge his definitive Sentence in *Latin*, of the Tenor following, viz.

" IN the Name of God, Amen. We *John Cooke*,
 " Kt. Dr. of Laws, Official Principal of the
 " Arches Court of *Canterbury*, lawfully appointed,
 " rightly and duly proceeding, Having heard, seen,
 " understood, and fully and maturely discuss'd
 " the Merits and Circumstances of a certain Cause
 " of Nullity of Marriage, by reason of a former,
 " now depending before us, between the most No-
 " ble Lady, *Barbara* Dutcheß of *Cleveland*, the
 " Party Agent and Complainant, on the one Part;
 " and *Robert Feilding*, Esq; of the Parish of St.
 " *James's Westminster*, in the County of *Middle-*
 " *sex*, the Party against whom it is complain'd,
 " on the other Part. The Parties aforesaid lawfully
 " appearing before us in Judgment, by their
 " Proctors respectively; and the Proctor for the
 " said most Noble Lady, *Barbara* Dutcheß of
 " *Cleveland*, praying Sentence to be given, and Ju-
 " stice to be done to his Party; and also the Proctor
 " of

" of the said Robert Feilding, Esq; praying Justice
 " to be done to his Party : And having carefully
 " and diligently search'd into, and consider'd of the
 " whole Proceedings had and done before us in this
 " Court ; and having observ'd all and singular the
 " Matters and Things, that by Law in this Behalf
 " ought to be observ'd ; We have thought fit, and
 " do thus think fit to proceed to the giving our
 " Definitive Sentence, or Final Decree, in manner
 " following ; viz.

" Forasmuch as we have by the Acts enacted,
 " deduced, alledged, exhibited, propounded, pro-
 " ved and confess'd, That the Proctor for the said
 " most Noble Lady, Barbara Dutchess of Cleve-
 " land, hath fully and sufficiently prov'd and
 " founded his Intention in a certain Libel, and
 " other Matters now remaining in the Registry of
 " this Court, propounded and exhibited in this
 " Cause on the Part and Behalf of his said Client ;
 " And that nothing hath been, on the Part and Be-
 " half of the said Robert Feilding, effectually ex-
 " cepted, deduc'd, alledg'd, exhibited, propound-
 " ed, prov'd and confess'd, which might, or could
 " in any wise (touching our Sentence hereafter to
 " be pronounc'd) hurt or weaken the Intention of
 " the said most Noble Lady, Barbara Dutchess of
 " Cleveland :

" Therefore, We John Cooke, Knight, Doctor of
 " Laws, the Judge aforesaid, having first called up-
 " on God, and setting him alone before our Eyes,
 " and having heard Council thereupon ; do pro-
 " nounce, decree, and declare the before-named
 " Robert Feilding, Esq; and one Mary Wadsworth,
 " mentioned in the Proceedings of this Cause, be-
 " ing free from all Contract and Promise of Mar-
 " riage with any other, (so far as appears to us)
 " on the Ninth Day of November, in the Year of
 " our Lord God, 1705. at a Place mention'd in
 " the Libel in this Cause, did contract Marriage,
 " and did solemnize, or procure the same to be so-
 " lemniz'd between them ; and did afterwards con-
 " summate the same : And that the said Robert
 " Feilding and the said Mary Wadsworth were, and
 " are Man and Wife. And that the said Robert
 " Feilding, Esq; after the Solemnization and Con-
 " summation of the aforesaid Marriage, not ha-
 " ving the Fear of God before his Eyes, on the
 " 25th Day of the said Month of November, in
 " the said Year of our Lord God, 1705. and in
 " the Place also in the aforesaid Libel mention'd,
 " did contract a pretended Marriage with the said
 " most Noble Lady, Barbara Dutchess of Cleve-
 " land. And also we pronounce, decree, and de-
 " clare, That the said pretended Marriage, or ra-
 " ther a Shew of Marriage, between the said Ro-
 " bert Feilding and the said most Noble Lady Bar-
 " bara Dutchess of Cleveland, at the Time and
 " Place libellated, was solemniz'd, or rather pro-
 " phan'd ; the said Mary Wadsworth, alias Feil-
 " ding, being then and since living. And also we
 " pronounce, decree, and declare the same pre-
 " tended Marriage, or rather Shew of Marriage,
 " between the said Robert Feilding and the said
 " most Noble Lady Barbara Dutchess of Cleveland,
 " so as aforesaid contracted and solemniz'd, or ra-
 " ther prophan'd, by reason of the former Mar-
 " riage between the said Robert Feilding and the
 " said Mary Wadsworth solemniz'd and consum-
 " mated, was, and is from the Beginning, void,
 " and of no Force in Law, and doth and ought to
 " want the Force and the Effect of the Law.

" Therefore, by this our Definitive Sentence, or
 " our Final Decree, which we now promulge in
 " these our Writings, We do pronounce, decree,
 " and declare the said most Noble Lady, Barbara
 " Dutchess of Cleveland, was and is free from any
 " Bond of Marriage with the said Robert Feilding,
 " and had and hath the Liberty and Freedom of
 " Marrying with any other Person.

The Original Sentence was Sign'd thus,

JOHN COOKE.

The aforesaid Sentence having been publicly
 read by the Judge, at the Time, Place, and in the
 Manner aforesaid ; the said Judge did decree one
 or more Publick Instrument or Instruments there-
 of to be made, (at the Petition of her Grace's
 Proctor) by Mr. Henry Farrant, the principal Re-
 gister of the said Court ; which accordingly he
 hath since issued under the Publick Seal of the Of-
 fice of the said Judge, on the Day following, viz.
 the 24th of May, 1707.

On Wednesday, the 25th Day of June, in the
 Year of our Lord, 1707. before the Right Wor-
 shipful Sir John Cooke, Knight, and Doctor of
 Laws, Official Principal of the Arches Court afore-
 said ; in his Dwelling-House at Doctors-Commons ;
 in the Presence of the said Mr. Henry Farrant, No-
 tary-Publick, and Principal Register of the said
 Court ; Mr. Feilding, by his Proctor, did renounce
 all Benefit of Appeal from the said Sentence, in the
 manner following ; viz.

" Appearing personally Mr. Edward Cooke, Proctor
 " for her Grace, the most Noble Lady, Barbara
 " Dutchess of Cleveland ; and Mr. Thomas Willy-
 " mott, Proctor for the said Robert Feilding, Esq;
 " At which Time, the said Willymott did exhibit a
 " certain Letter, or Epistle, of the Tenor follow-
 " ing ; viz.

Mr. Willymott,

When Sentence is given in Behalf of her Grace
 the Dutchess of Cleveland, pray enter no
 Instrument of Appeal, for I shall proceed no further
 therein.

Your Friend and Humble Servant,

FEILDING.

" And the said Willymott alledg'd, That the said
 " Letter was all of the proper Hand-Writing of the
 " said Robert Feilding ; and that he the said Willy-
 " mott receiv'd the said Letter from the said Robert
 " Feilding. And the said Willymott further alledg'd,
 " That no Appeal from the Definitive Sentence, given
 " by the said Judge on the Part and Behalf of the
 " said most Noble Lady, Barbara Dutchess of Cleve-
 " land, had been, or was interposed by, or on the
 " Behalf of the said Robert Feilding. And the said
 " Willymott, as Proctor of the said Robert Feilding,
 " did renounce all Benefit of Appeal from the said
 " Sentence, in the Presence of the said Cooke, as
 " Proctor of the said most Noble Lady, Barbara
 " Dutchess of Cleveland ; who, on the Part and
 " Behalf of the said most Noble Lady, Barbara
 " Dutchess of Cleveland, accepted the aforesaid Al-
 " legation and Renunciation of the said Willymott ;
 " and then also pray'd the Golden Ring, and Se-
 " ven Letters, by him exhibited on the Part of her
 " Grace, and annexed to the Libel in this Cause, to

‘ be deliver’d out of the Registry of this Court, for
 ‘ the Use of her said Grace. Whereupon the Judge,
 ‘ at the Petition of the said Cooke, (the said Let-
 ‘ ters being first registred in the said Court) de-
 ‘ creed the said Golden Ring, and the Seven Let-
 ‘ ters, to be deliver’d to the most Noble Lady,

‘ Barbara Dutchess of Cleveland, or to the said
 ‘ Cooke, for the Use of her Grace; as by Act of
 ‘ the Court had been expedited at the Time and
 ‘ Place aforesaid, and now remaining in the princi-
 ‘ pal Registry of the said Court, Relation being
 ‘ thereunto had, doth and may more fully ap-
 ‘ pear.



The Tryal of JAMES STIRLING, of Keir, and Others, Nov. 15. 1708.



URIA JUSTICIARIA,
 S. D. N. Regine, tenta in no-
 vo Domo Sessionis Burgi de E-
 dinburgh, Decimo quinto Die
 Mensis Novembris, Millesimo,
 Septingentesimo, Octavo; per
 Nobilem & Potentem Comitem, Georgium
 Comitem de Cromertie, &c. Jusficiarium
 Generalem, & Honorabiles Viros Adamum
 Cockburn de Ormiston, Jusficiarium Cle-
 ricum; Dominos Joannem Lauder de Foun-
 tainhall, Gulielmum Anstruther de eodem,
 & Gilbertum Eliot de Minto; Magistrum
 Robertum Steuart de Tillicoutrie, & Magi-
 strum Jacobum Frskine de Grange; Com-
 missionarios Jusficiarii Dist. S. D. N. Re-
 gine.

Curia Legitimè Affirmata.

Intran.

James Stirling, Laird of Keir.

Archibald Seaton, Laird of Touch.

Archibald Stirling, Laird of Carden.

Charles Stirling, Laird of Kippendavie; and

Patrick Edmonston, of Newtown.

INDicted and Accused at the Instance of Sir James
 Steuart, Her Majesties Advocate, for Her High-
 ness Interest, and as having Special Warrant from
 Her Majesty for that Effect. That where, by the
 Law of GOD, and the Laws of this, and all other
 well-govern'd Realms, the Crime of Treason and
 Lese-Majesty, and the Treasonable and Unlawful
 Rising and Continuing in Arms, are most Atrocious
 and Heinous Crimes, punishable by Forfeiture of
 Lands, Life and Estate, or other Pains of Law.
 Likeas by the Act of Parliament, Jac. I. Par. 1.
 Cap. 3. it is statute, That no Man openly rebel
 against the King's Person, under the Pain of Forfeit-
 ure of Life and Goods. And by the Act of Par-
 liament, Jac. II. Par. 6. Cap. 24. it is statute, That
 who commit Treason against the King's Person, or
 Majesty, or who rise in Feire of Weir against him,
 shall be punished as Traitors. And by the Act of
 Parliament, Car. II. Par. 1. Sess. 1. Cap. 3. it is
 declared to be High-Treason, for the Subjects more
 or less, upon any Pretext, to rise and continue in
 Arms; and to make Treaties or Leagues with Fo-
 reign Princes or States, or among themselves,
 without His Majesty's Special Authority first inter-
 poned. And by the Act of Parliament, Car. II.
 Par. 1. Sess. 2. Cap. 2. it is statute, That if any
 Person shall Plot, Contrive or Intend, Death and

Destruction to the King, or Bodily Harm tend-
 ing thereto; or Deprive, Depose, or Suspend Him
 from the Stile, Honour, and Kingly Name of this,
 or any other His Majesty's Dominions; or levy
 War, or take up Arms against Him, or any com-
 missionate by Him; or entice Strangers, or others,
 to invade any of His Dominions, and expresse
 and declare such Treasonable Intention; he shall be ad-
 judged a Traitor, and punished as in the Case of
 High Treason. Likeas by the Act of Parliament,
 1702. intituled, Act Recognizing Her Majesties
 Royal Authority, it is declared, That it shall be
 High Treason in any of the Subjects of this King-
 dom, by Writing, Speaking, or any other manner
 of way, to disown, quarrel, or impugn Her Maje-
 sties Royal Power and Authority, or Right and Ti-
 tle to the Crown. And by the Act of Parliament,
 1703. intituled, Act Asserting and Recognizing Her
 Majesties Authority, it is again statute and de-
 clared, That it shall be High Treason, in any of
 the Subjects of this Kingdom, to disown, quarrel
 or impugn, Her Majesties Right and Title to the
 Crown of this Kingdom, or Her Exercise of the
 Government thereof. NEVERTHELESS it
 is of Verity, That the said James Stirling of Keir,
 Archibald Seaton of Touch, Archibald Stirling of
 Carden, Charles Stirling of Kippendavie, and Pa-
 trick Edmonston of Newtown, all and each of them
 were guilty of the said Crimes, in sua far as they
 all, and each of them, shaking off all Fear of GOD,
 and Regard to Her Majesties Person, Authority and
 Laws, upon one or other of the Days of the Months
 of February, March, or April last, when an Invasion
 of that Part of Great-Britain called SCOTLAND
 was threaten'd, by an Enemy-Fleet of Ships with
 Forces, and an Army aboard, sent by the French
 King, or by the Pretender, who went some Time by
 the Name of the Prince of Wales, and now assumes
 to himself the Name, Stile and Title of King James,
 as King of Her Majesties Dominions; with a mani-
 fest and open Design to invade Her Majesties Do-
 minions, and to destroy Her Majesty and Her good Sub-
 jects; at least to deprive and depose Her Majesty
 from the Stile, Honour, and Princely Name of these
 Her Dominions; Did convocate and convene in
 Arms, with others their Accomplices; such as Ma-
 jor William Graham, Alexander Steuart, Uncle to
 Ardvorlich, George Seaton, Brother to the said Ar-
 chibald Seaton, and Mr. Charles Fleeming, alias
 Hay, Brother to the Earl of Wigtoun, all since ab-
 scoded, and upon the same Account declared Fug-
 tives: And thus did rise and continue in Arms
 without Her Majesties Special Authority first inter-
 poned;

poned; and did levy War, and take up Arms against Her Majesty. And farther, they having never before qualified themselves by any Mark of good Affection to Her Majesty or Her Government, did (at the Time foresaid) gather themselves together, with their Accomplices, in Arms, with Swords and Pistols, and other offensive Weapons, in an open Correspondence with the said Enemies and Invaders, at the very Time of their said Invasion; and being so convocate and convened in Arms, did march in one Body, or Company, with their said Accomplices, several Days and Nights, to and from several Places, in the Shires of Stirling, Perth, and other Shires adjacent, on purpose to encourage and strengthen the said Invaders, or at least to raise Her Majesties other Subjects in Rebellion against Her. Likeas for that End, they did openly drink to the good Health of their Master, as they called him; who could be none else but the said Pretender. And did by their said Rising in Arms, and open Correspondence with Her Majesties said declared Enemies, and otherways, entice them and others to invade Her Majesties Dominions, to the destroying of Her, and Her good Subjects; at least to deprive and depose Her from the Stile, Honour, and Princely Name of Queen and Sovereign of this and Her other Dominions; or at least thereby endeavour the Alteration of the Right of Succession to the Crown, so happily by Law settled upon Her Majesty and Her Successors. By all which, they, and each of them were guilty, Art and Part, of the foresaid Crimes of Treason, Rebellion, and Lese-Majesty, at least of Treasonable Rising and Convening in Arms, without Her Majesties Special Authority first had thereto; at least of a most unlawful Convocation in Arms, in a most dangerous and threatening Season, and in open Correspondence with the said Enemies and Invaders, to the Destruction of Her Majesties Government, and of the Quiet and Peace of Her Dominions. Which Crimes, all or any of them, being found proven against all or any of the forenamed Persons, by the Verdict of an Assize, before the Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary; They, and each of them, ought to be condemn'd by Sentence and Doom of the said Lords Commissioners, to forfeit their Lands, Lives and Goods, as Traitors; and be otherways punished in their Persons and Goods, by the Pains of Law, to the Example and Terror of others to commit the like in Time coming.

Sic subscribitur,

J. A. STEUART.

PURSUERS.

Sir James Steuart, of Goodtrees, Her Majesties Advocate.

Mr. William Carmichael, one of Her Majesties Solicitors.

Sir Walter Pringle; and

Sir Francis Grant.

Advocates.

Procurators in DEFENCE.

Sir Patrick Home.

Sir David Forbes.

Sir James Steuart.

Mr. Alexander Macleod.

Mr. James Graham.

Mr. Walter Steuart.

Mr. John Elphinston.

Mr. Colin Mackenzie.

Mr. Charles Cockburn; and

Mr. David Lauder.

Advocates.

My Lord Advocate judicially produced Her Majesties Letter, authorizing and requiring his Lordship to raise and insist in the aforesaid Process; whereof the Tenor follows, superscribed thus:

A N N E R.

' Right Trusty, and Well-beloved, We greet you well. Whereas James Stirling, Laird of Keir, Archibald Seaton, Laird of Touch, Archibald Stirling, Laird of Carden, Charles Stirling, Laird of Kippendavie, and Patrick Edmonston, of Newtown, were about the Time of the late intended Invasion apprehended by Warrants, for Suspicion of Treason, and Treasonable Practices, against Us and Our Government; and have since been committed by Warrants for High Treason, Depositions upon Oath having been made against them: Our Will and Pleasure is, and We do hereby authorize and require you, to raise a Process in the ordinary Form, before the Commissioners of Justiciary, against them, and each of them, for the Treasonable Practices wherewith they, or any of them, are, or shall be charg'd. And herein you are to take the Assistance of Sir David Dalrymple, Mr. William Carmichael, Sir Walter Pringle, and Sir Francis Grant, Advocates; or any Two of them, if necessary; and who are hereby required to concur with you accordingly. For all which, this shall be your Warrant. Given at Our Castle at Windsor, the Nineteenth Day of July, 1708. in the Seventh Year of our Reign.

By Her Majesties Command,

Subscribed thus, SUNDERLAND.

Directed on the Back thus:

To Our Trusty and Well-beloved,
Sir James Steuart, Our Advocate for Scotland.

Which being read in Presence of the said Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, they ordained the same to be recorded.

Sic subscribitur,

CROMERTIE, I. P. D.

Thereafter, there was a Petition presented to the said Lords, by James Stirling of Keir, Archibald Seaton of Touch, Archibald Stirling of Carden, Charles Stirling of Kippendavie, and Patrick Edmonston of Newtown, humbly shewing, ' That the Petitioners being indicted at the Instance of Her Majesties Advocate, for the Crimes of Treason and Lese-Majesty; and this being the Day of their Appearance and Tryal, they had, according to the Privileges allowed to all the Lieges, and confirm'd by Acts of Parliament, made choice of the following Lawyers, to appear before their Lordships in their Defence; viz. Sir Patrick Home, Sir David Forbes, Sir James Steuart, Mr. Alexander Macleod, Mr. Walter Steuart, Mr. James Graham, ' Mr.

‘ Mr. Colin Mackenzie, Mr. Charles Cockburn, and
 ‘ Mr. John Elphinston. And it being also usual in
 ‘ Cases of Treason, That Lawyers are publickly au-
 ‘ thorized and warranted to Manage the Tryals in
 ‘ their Pannels Defence ; therefore humbly craving
 ‘ their Lordships would be pleased to allow of the
 ‘ Petitioners Choice of the Lawyers above-men-
 ‘ tioned, and to authorize these Gentlemen accor-
 ‘ dingly, as the said Petition bears.

Which being consider’d by the said Lords, They,
 by their Deliverance thereon, allowed such Advoca-
 tes as the Pannels should think fit to employ to
 appear and debate for them in the above-mentioned
 Indictment, they being already sufficiently autho-
 rized by Law for that Effect.

Sic subscribitur,

CROMERTIE, I. P. D.

The said Indictment being read, and fully debate
viva voce, in Presence of the said Lords, Pannels
 and Affizers ; the said Lords, Justice-General, Ju-
 stice-Clerk, and Commissioners of Justiciary, or-
 dained the Pannels to give in their Information
 thereon, betwixt and Wednesday’s Night next ; and
 Her Majesties Advocate to give in his, betwixt and
 Friday’s Night thereafter, in order to be re-
 corded ; and continued the Dyet till Monday next,
 at Nine a Clock in the Forenoon ; and ordained
 the whole Affizers and Witnesses to attend then,
 each of them under the Pain of One Hundred
 Merks ; and the Pannels to be carried back to
 Prison.

INFORMATION for the Laird of Keir, and Others, against Her Majesties Advocate.

IT is alledged for the Pannels, denying always
 the Indictment, and haill Articles and Quali-
 fications thereof ; 1. That the Indictment is not re-
 levantly libelled, in respect it does not condescend
 upon any Overt-Act or Deed done by them, that
 could possibly be stretched to infer the Pains li-
 belled ; and the Acts of Parliament libelled on, ex-
 pressly require such Facts and Deeds, to infer the
 Pains of Treason therein mentioned. As Act 3.
 Parl. 1. James I. That none rebel openly or no-
 tourly. And Act 14. Parl. 6. James II. bears, And
 if it happens, any within the Realm, openly or no-
 tourly against the King to rebel, or makes War a-
 gainst the King’s Lieges, against his Forbidding, &c.
 And Act 2. Sess. 2. Parl. 1. Charles II. has these
 Words : And shall, by Writing, Printing, Preach-
 ing, or other malicious and advised Speaking, ex-
 press or declare such their Treasonable Intentions,
 &c. And the Act 1702. bears, That it shall be High
 Treason, by Writing, Speaking, or any other manner
 of way, to disown or impugn Her Majesties Royal
 Authority, &c. Which Laws, and generally all Laws,
 as well as the Nature of Crimes, require, That
 the same should be by express Words, Writs, or
 Deeds ; and not strained by remote Inferences and
 Conjectures : And in the present Case, there is nei-
 ther Words, Writ, or Deeds condescended on, that
 could possibly be drawn to infer the Crimes li-
 belled.

2. Whereas the Indictment bears, That the Pan-
 nels did convocate and convene in Arms, with
 others their Accomplices, and so did rise and con-
 tinue in Arms, without Her Majesties Special Au-
 thority first interponed ; and did levy War, and
 take up Arms against Her Majesty, &c. It is an-
 swered, That albeit Levying War against Her Ma-
 jesty, or rising and continuing in Arms without
 Her Majesties Authority, be undoubtedly Treason
 when duly qualified ; yet there is no Circumstance
 of Fact, Word or Writ, condescended on in the
 Indictment, that can be imagined to infer a Rising in
 Arms, or Levying War against Her Majesty. And
 albeit the Law statutes anent Rising in Arms, or Le-
 vying War generally ; yet in all Libels duly found-
 ed thereupon, the Subsumption must condescend
 upon particular Facts and Deeds, capable to be
 found and construed a Rising in Arms. The Com-
 mon Law expresses it thus : *Qui injussu Principis*
bellum gesserit, delectumve habuerit, exercitum com-
paraverit. And our Law, Act 75. Parl. 9. Q. Ma-
 ry, explains what it is to rise in Arms ; viz. That
 no manner of Persons attempt to do, or raise any
 Band of Men of War, or Horse or Foot, with Cut-
 verins, Pistolets, Pikes, &c. or other Munition bel-
 lical whatsoever, for Daily, Weekly, or Monthly
 Wages, in any Times to come, without special License
 in Writ had of our Sovereign Lady, and Her Succes-
 sors thereto. And Sir George Mackenzie, in his Ob-
 servation on Act 2. James I. defines Rising in Arms
 thus ; The Rising of Men in warlike manner, by
 Mustering them, or Forming them in Companies, or
 Swearing them to Colours. Nor are these Quali-
 fications by themselves sufficient, unless there be a
 formidable Number : And therefore he cites the
 Case of Macleod of Assint, Feb. 2. 1674. where
 the Lords of Justiciary refused to sustain the Arti-
 cles wherein it was libelled, the raising of Men,
 and disposing of them under Colours, to be rele-
 vant ; except it were alledged, that they were an
 Hundred Men or upwards, and were under Co-
 lours, or mustered under weekly or daily Pay.
 Whence it is evident, that the Rising in Arms must
 be by publick and notour Appearance of Compa-
 nies in Arms, so as their Design and Opposition to
 Authority could not be doubted ; whereof the least
 Shadow cannot be alledged in this Case.

3. Whereas the Libel bears further, That the
 Pannels did gather themselves together, with their
 Accomplices, in Arms, with Swords and Pistols,
 and other offensive Weapons, in an open Corre-
 spondence with the said Enemies and Invaders, at
 the very Time of the Invasion. It is answered,
 That the said Article anent Correspondence is not
 relevantly libelled ; there being no particular Con-
 descendance of any Acts of Correspondence pass’d
 betwixt the Pannels and the Enemy, as is necessary
 to be condescended on for inferring the Crime li-
 belled. Correspondence with the Enemy, in the
 Common Law, is thus express’d : *Quive hostibus*
nuncium literasve miserit, signumve dederit, fece-
ritve dolo malo quo hostes consilio juventur. And
 no such Fact or Qualifications can ever be pre-
 tended, or alledged in this Case. And their meet-
 ing together so few in Number of near Relations
 and Neighbours, as it were lawful for them to do
 at all times, so the accidental Circumstance of an
 imminent Invasion could never render the same un-
 lawful. Nor could their Travelling together for
 some Space in the Country, be strained to any De-
 sign of encouraging Enemies, or to raise the Sub-
 jects in Rebellion ; whilst they were no other ways
 appoint-

appointed or attended, than as they (and others of their Character) do usually travel, in a most peaceable manner, without giving the least Occasion, by Word or Deed, to any Rebellion or Sedition. And as there was not then any Body of Men in Arms in the Kingdom, against Authority, to whom they could be imagined to resort; so it is an Evidence that they had no mind of Convocating themselves against Authority, that they did not use the Means in their Power, by convocating their Tenants and Followers in Arms, either for assisting themselves, or giving Countenance and Encouragement to others on any such Designs.

4. Whereas the Libel mentions, That the Pannels did openly drink to the good Health of their Master, as they called him; who could be none else but the *Pretender*; it is no ways relevant. 1. Because the drinking of any Person's Health is not a Crime, there being no Law against it. 2. There is no Person named, whose Health is said to be drunk; and therefore cannot infer any Crime. And the Gloss put thereupon, That it could be no other but the *Pretender*, is only a Conjecture and uncertain Inference of the Pursuers; which can be no wise sufficient to fix a Crime upon others, who can only be answerable for what is clearly express'd and declar'd by them, by plain Words, Writs, or Deeds.

It was reply'd for the Pursuer, 1. That the Libel was most relevant, in so far as it did expressly bear, That the Pannels did rise and continue in Arms, without Her Majesties Special Authority first interposed: And the said Act 5. *Parl. 1. Car. II.* declares it *Treason to the Subjects, or any Number of them, more or less, upon any Ground or Pretext whatsoever, to rise and continue in Arms, without His Majesty's Special Authority.* And the particular Qualifications and Circumstances of their said Rising in Arms, will appear from the Probation.

2. The Pannels rising in Arms, leaving their own Houses, and marching in a Body thro' the Shires of *Stirling* and *Perth*, in Company with the other Persons mention'd in the Libel, whereof some have been since denounced for not Compearance, to underly the Law therefore; at the same time that the Nation was threatned by an Invasion of a *French* Fleet, with Land-Forces Aboard, cannot be understood to be upon any other Design, than on purpose to encourage and strengthen the Invaders, and in open Correspondence with them, especially whilst the Pannels can adduce no reasonable Cause for their so Convocating and Travelling together; and this was sustain'd *Treason* in *Caldwel's* Case.

3. The Laws libelled on, do not only make actual Rising in Arms, and Levying War against the Sovereign, to incur the Crimes and Pains of *Treason*, but likewise any Attempt so to do: For any Attempt or *Conatus* in the Case of *Treason*, is to be punished with the same Pains as the consummate Crime, as the Law says, *Eadem enim severitate voluntatem sceleris qua effectum puniri Jura voluerunt.* And Attempts are reckon'd as *Treason* in the Acts above-mention'd.

4. The Libel bearing Art and Part, is sufficiently relevant, notwithstanding the Generality thereof, such Libels being expressly ordained to be relevant by the Act of Parliament 151. *Parl. 12. Ja. 16th.* So that no Objection can be sustained against the Libel as Irrelevant, upon the Account of the Generality thereof, since Art and Part is libelled; which takes off any Objection, for not particularly condescend-

ing upon the Pannels Accession to the Crimes libelled.

It is Duplyed for the Pannels to the *First*, That albeit the Rising in Arms without Authority be mention'd in General, to infer the Crime of *Treason*, since the Law could not descend to every particular Qualification, that might happen to infer Rising in Arms to be *Treason*, but left the same to be determined by the Judges competent: Yet the Pursuer of a criminal Libel must adduce special Qualifications, and circumstantiate Matter of Fact, that may be sufficient to infer, That the Pannels did *Treasonably* rise in Arms, or otherways the Libel cannot be sustain'd. For as it could not be allowed to libel in General, that a Person is guilty of Murder, so no more can it be allowed to libel in General, that a Person is guilty of rising in Arms without Authority; the Propositions in these Libels being equally founded in Law; but the Subsumption must be cleared and qualified by circumstantiate Matters of Fact, inferring the respective Crimes; and if it were otherways, these evident Inconveniencies would follow.

As, 1. That the Pannels would be deprived of the Benefit of Exculpations, which could not easily be brought to meet with general Libels; whereas special circumstantiate Matters of Fact might have been more readily taken off by proper particular Grounds of Exculpation, whereby the Deeds condescended on, might be applied to other reasonable Causes, that might wholly exclude the *animus delinquendi*, or *dolus*, requisite in all Crimes.

2. This Inconveniency would likewise be inevitable, That the Assize would become Judge of the Relevancy, as well as of the Probation. For if the Libel bearing in General, the Pannels to be guilty of rising in Arms against Authority, should be sustain'd, and the Qualifications left to be determin'd by the Probation, then the Assize would be Judges both of the Relevancy and Probation; for they behoved to determine, whether the Qualifications arising from the Probation, did amount to a Rising in Arms, or other Crimes, generally mention'd in the Statute; whence it might come to pass, that Pannels might be put to the Knowledge of an Inquest upon irrelevant Crimes; and therefore Crimes should be particularly subsumed, as *Sir George Mackenzie* observes in his *Criminals Tit. Libels.* Page 465.

To the 2d. it's Duplyed, That whether the Pannels Travelling for some Space from their own Houses, either for Diversion or Business, in the most peaceable Manner imaginable, had happen'd in the Time in the threatned Invasion or not, could never alter the Nature of that Deed, since it cannot so much as be pretended, that they were *versantes in illicito*; the Travelling in such a peaceful Manner singly with Domestick Servants, being unquestionably allowed by Law. And this Defence of the Pannels Travelling in their usual Manner, and with their ordinary Equipage, was so evident of it self, that the Pursuers acknowledged there could nothing culpable be inferred from it at other Seasons; but that the Crime now insisted on, was founded, in that their Meeting and Travelling was the Time of the threatned Invasion, when a Fleet of Enemies Ships was upon the Coast. And yet the Libels does not bear, that the Pannels knew of any such Design, or that the *French* were actually upon the Coast; and without this Knowledge, the Circumstance which the Pursuers insist chiefly to make the Crime, was, as to the Pannels, no Circumstance at all. So that the Libel shortly resolves in the Pannels Travelling with

with their ordinary Equipage, after their usual way, in a peaceable Manner; which neither in common Sense, nor in the Construction and Interpretation of our Law, and Opinion of our Lawyers above mention'd, can be pled a Rising in Arms against Her Majesty or Government, or give the Occasion of the least Suspicion of any Intention that way. Neither can Suspensions, albeit there had been more evident Grounds for them, be sufficient to infer a Crime, the Law saying expressly, *That ex suspitionibus nemo est damnandus, Leg. 3. ff. de Pen.* And whereas it is pretended, that the Pannels have given no reasonable Account of their Progress and March at that Time; and therefore leaves place for the Pursuers Conjectures; the same is noways of any weight to fortify the Pursuers Libel; it being sufficient for the Pannels to alledge, That the Meeting of a few Gentlemen, and Travelling with Swords and Pistols, as they were hitherto used, does not infer a Rising in Arms. And to pretend that the Pannels should give special Accounts of their Progresses, is plainly to found a Criminal Charge or Libel *super inquerendis*, and so expressly discharged by Law; And doubtless it is sufficient for the Pannels to say, that their Meeting or Travelling together with such small Retinue, and in such peaceable and unprovided Manner, could not give the least Jealousy to any Person whatsoever; and if this Defence were not sustained, the natural Liberty of the Lieges would be very much circumscribed; and no Man could be sure, but the Action of his Life which he intended should be most innocent, should be the most fatal, as concluding him under Treason, and the worst of Crimes. And the Practique in *Caldwell's* Case is greatly differenced from this, in that there was a considerable Body of Men with all sorts of Arms actually in Rebellion against the Government at the Time; and that *Caldwell*, with his Associates, likewise of a considerable Number, had intercepted common Posts, and particularly some Letters to the Earl of *Haghton*, a Privy Counsellor, which was an Overt Act, and sufficiently declared their bad Design; besides these Sentences were reduced, and the Persons restored *per modum Justitie*.

To the 3^d. it is Duplyed, That albeit it be generally received by Lawyers, that Attempt or *Conatus* in Treason is punishable as Treason; yet that is never to be understood of a naked Design or *attus animi*; the Law saying expressly, that *Cogitationis poenam nemo patitur Leg. 18. ff. de Pen.* and *neminem qui male facere voluit plecti equum est nisi quod factum voluit etiam fecerit*. But that *Voluntas* or *Conatus* mention'd in Law, must break out into an external Act; if not consummating the intended Crime, at least inchoating the same, so as to become a Deed obvious to the external Senses, before it can be subjected to the Censure of humane Laws. And albeit *Delus* or *Prepositum* be requisite in all Crimes; yet not as it is latent in the Mind, but as it is express'd and declar'd by an external Act. And so *Matthews de Crim. in Proleg.* says, *Dolo contrahi crimen diximus, per delum autem factum delum intelligimus*. As it is clear by the express Statutes libell'd upon, particularly the said Act 2^d. sess. 2^d. Part. 1st. Ch. II. That Treasonable Intentions should be express'd and declared by Writing, Printing, or advised Speaking, before the same can be said to have infer'd the Pains mention'd in the Act; yea, even where there was Writing alledged upon; yet in Mr. *Robert Caldwell's* Case, that was not found sufficient to infer the Crimes in the Statute, unless it should have been qualified, that the Writing was published, and out

of the Writer's Hands, whereby the Attempt would become manifest; and in the Case of an Overt Act, which was the Point upon which *Balmerino's* Tryal proceeded; and without which, no Crime could have been found against him. And in the present Case, as the Pannels had truly no manner of ill Design, so no external Act whatsoever is, or can be condescended on, either of Word or Deed, that infers any Design of the Pannels to oppose Authority, or to act any thing contrair to Law, or their Duty to the Sovereign; for as they used their natural and innocent Liberty of Travelling in a peaceable Manner with their near Relations and Neighbours, for their Diversion or Business, so when they were called by Authority, they did not absent or withdraw themselves, but readily appeared and gave Obedience, upon the first Citation.

To the 4th. it is Duplyed, That the Libelling of Art and Part, is not sufficient to exclude the Objection upon the Generality of the Libel, because Art and Part relates to the particular criminal Facts, and Qualifications thereof libell'd, and includes an Alternative, that the Person complained upon, was either Actor, or Art and Part of the criminal Facts and Deeds particularly libell'd. Which general and indefinite Qualification of Accession, Law and Custom has not allowed, without a more special Condescendence of the Parties Accession to the Deeds libell'd, which could only be certainly and distinctly known by the Probation: But still that does not take off the Necessity of special Condescendences of the Qualifications that make up the principal Crime libell'd, without which Pannels could not have the Benefit of Exculpations; nor could the Relevancy be determined by the Judges, but remitted with the Probation to the Assize, which always has been cautiously shunn'd, as of dangerous Consequence. And in the present Case, the sustaining of the Libel in the Generality thereof above mention'd, would be a most dangerous Preparative; it being evident, that if a few Gentlemen, Meeting and Travelling together with their ordinar Retinue and Equipage, which is generally with Swords and Pistols, could be thought to fall under the Act of Parliament, of Rising in Arms without the Sovereign's Consent, no Gentleman in the Kingdom could be free from Grounds of a Criminal Process, if the bearing such Weapons should be construed a Rising in Arms; and few or many, making no Difference, as the Pursuer contends, it would necessarily follow, that two or three Persons meeting or travelling with Swords or Pistols, might be lyable to a Process of Treason, as rising in Arms without Authority; which were most absurd, and of dangerous Consequence to the Lieges. And as no Company can ever be found to have met and travelled in a more peaceable and inoffensive manner than the Pannels have done, doing no Injury by Word or Deed, to any Person whatsoever, and travelling in such a simple Manner, as did exclude all imaginable Jealousy of their having any Warlike Designs, or creating the least Disturbance to themselves or others, and giving a ready Obedience when called by Authority on a simple Citation: So they ought to be Absolved from the said Groundless and irrelevant Libel.

The Pannels shall not take up the Lords Time in informing more particularly upon the other Circumstances of the Libel, such as drinking of Healths, Correspondence, and enticing of the Country; by reason that my Lord Advocate did not insist upon these in the Debate, but only pretended

to have libelled them as Aggravations, which is of no Moment in a Process of Treason, and can be of no manner of Effect in this Case, where the Crime libelled is so manifestly elided. *Sic subscribitur.*

Alexr. Melrods

*Information for Her Majesty's Advocate,
against the Lords of Keir, Touch,
and others, now Prisoners in the Tol-
booth of Edinburgh.*

HER Majesty's Advocate, holding the Indictment as repeated, and here premised, before he offer to answer and remove the Exceptions and Objections made against it for the Defenders; takes leave to remember what cannot well be forgot, That the Occasion of the present Tryal was an actual Invasion of an Enemy-Fleet, with *French, Irish, and Popish* Forces aboard, in March last, threatening an imminent Invasion upon our Coast, to destroy Her Majesty, and all Her good Subjects, and ruin our Religion, Laws and Liberties.

Which Invasion was the more formidable, that it was intended and carried on by *Papists and French*, and by *Irish Papists*, the Dregs of both, which are certainly the worst Characters that can be apprehended in an Enemy.

While we stood thus threatened by such Enemies that had risen up against us, and were ready to swallow us up quick, so that the Waters had overwhelmed us, and the Stream had gone over our Soul, if GOD had not appeared for us; and her Majesty, by His Blessing upon her careful and most vigilant Conduct, interposed for our Delivery, and when the Enemy was upon our Coast, and ready to enter our *Firth*, and when all good Men were in the greatest Suspense of the saddest Apprehensions of what might ensue, by turning our Country at least to a Field of Blood, and Scene of all Confusions and Mischicks: Yet there were found amongst us, even among *Scott Protestants*, a Knot of Men who may justly seem to have wished and longed for that which all Men besides feared.

It is now indeed made an Argument to exculpate, that they were so few; and yet it may far more reasonably be wondered, that there was so much as one Man to be found of such a desperate Resolution and Practice.

The Five Gentlemen now in the Pannel, being of the Knot mentioned, so soon as this Invasion was noised abroad, and when it was brought just upon our Coast, then they think fit to leave their Houses, and going with their Horses and Servants, and all well armed with Swords and Pistols, and other invasive Weapons, they rise and continue in Arms, without any lawful Authority interposed: And thus appearing in Arms, and Marching from Place to Place in several Sumes, and for several Days and Nights, as it were in Correspondence with the fore-said Invaders, did wait in them lay, (if not to rise to their Assistance, at least) to disturb Her Majesty's good Subjects, from the Opposition and Defence that was at that Time so necessary.

It's true, when their Hopes were disappointed, then they shrink home, and such of them as had more to lose than they knew how to live otherwise, composed and rendered when called; when

others of them that had no more Gulls, but less to lose, thought fit to retire and abscond: Whereupon Her Majesty most justly ordered, that the Persons now in the Pannel should be brought to this present Tryal.

The Indictment exhibit against them, founded upon most plain and positive Laws and Acts of Parliament, *That none rebel openly against the King's Person or Government; That none levy War and take up Arms against the King and His Government; And that for any of the Subjects, more or fewer, to rise and continue in Arms upon any pretext, or to attempt the same without His Majesty's special Authority first interposed, it shall be High Treason; and that if any levy War, or take up Arms against the King, or entice Strangers or others to invade, and express and declare such treasonable Intentions, he shall be adjudged a Traytor, and punished as in the Case of High Treason.* And then the Indictment subsumes in the very Terms of the Law, *That at such a Time, and in such a Manner, and with the other Circumstances mentioned, the Defenders did actually rise and convene, and continue in Arms without her Majesty's special Authority first interposed; which in Law is justly construed to be the Levying of War, and taking up Arms against Her Majesty, and did plainly appear to be in a real Correspondence with, and for the Encouragement of the French Invaders; whom thereby, and otherways they did entice, to the invading of Her Majesty's Dominions, and the destroying of Her and all Her good Subjects: Of which Crime the Defenders bring Adore, Art or Part, ought to be punished with the Pain of Law.*

To this Indictment, the Defenders made Answer, denying the Crime libelled with all its Qualifications; that the Indictment is not relevant, in respect it doth not condescend upon any Overt Act or Deed that can be stretched to infer the Crime, or any treasonable Intention; and that all the Acts of Parliament libelled upon, require such open Words and Deeds; and the Act of Parliament, *Car. II. Part. 1. Sec. 2.* requires expressly, *That by Writing, Printing, Preaching, or other malicious and advised speaking, such treasonable Intentions should be expressed or declared; nothing of which can be found in this Case.*

To which it is replied, 1. That it is granted, That neither inward Thoughts nor Intentions, unless some way expressed or declared, can be made criminal, and far less treasonable; but on the other Hand, when the Law and Acts of Parliament does set down a specifick palpable Deed, such as rising and continuing in Arms, which is visibly an open Overt Act, and requires no more for the declaring of the Rebels Intention, save his so rising and continuing in Arms, without having Her Majesty's Authority interposed; what more can be required, either as to the Overt Act, since the Fact it self is truly and openly such; or as to the Certainty of the Parties Intention when the Law hath ascertained it, *viz.* By the want of Authority; which is plainly the present Case? But 2. It is to be advised, That our old Laws libelled upon, do indeed bear open and naked Rebellion: As likewise, *The Levying of War against the King and His Person and Government*: But these Laws having been found very liable to the very Exceptions that the Defenders now make against the Indictment, when in the Year 1661 this came to be considered, and the Parliament judged fit to ascertain and define the Crime of Treason, so as every Man might most plainly understand it, and

that there could be no Place for any of the former Evasions: The Act of Parliament condescends upon rising and continuing in Arms, as the very open and Overt-Act requisite to the Crime; and withal fixes the treasonable Intention, upon this one Qualification, That the rising and continuing in Arms, is without His Majesty's Authority interponed; a Negative that proves it self, and requires no other Evidence. 3. As to what the Act of Parliament, Car. II. Par. 1. Sess. 2. Cap. 2. requires, *That such treasonable Intentions should be expressed and declared*; these Words are plainly subjoined to a long Enumeration of several Points and kinds of Treason, and are certainly only to be applied to the Cases wherein the Intention may be doubtful, but can never in any good Sense or Reason be applied to such Deeds as the Law it self declares to be open and to import the Intention, such as rising and continuing in Arms, levying of War, or taking up Arms; where both the Deed and the Intention are manifest, and by Law declared and condemned. And in effect to alledge, where there is an open rising in Arms, or a levying of War, or the Maintaining a Fort or Garrison, That yet the Intention should be delibereate, where the Law requires no more to prove, but that it is done without Authority, is visibly absurd.

Secondly, Where it is objected, that albeit rising and continuing in Arms without Her Majesty's Authority be undoubtedly Treason, yet it must still be qualified by some Circumstances of Fact, Word or Writ, to infer the Intention; and to libel rising in Arms is but general, and it ought to be cleared by some particular Fact and Deed libelled, to make the rising Criminal. Thus the common Law says, *Qui injussu principis bellum gesserit, delictumve habuerit exercitum Comparaverit*, &c. And our Act of Parliament, Q. Mary, explains the Matter, viz. *That no Man raise Bands of Men of Weir on Horse or Foot, with Pistols and other bellical Arms, for daily or monthly Wages, without special License*, &c.

To all which it is answered, That it is granted by the Defenders, that rising and continuing in Arms, if duly qualified to be against Her Majesty, is undoubtedly Treason: But then is it not as evident, that all the Qualification that the Act of Parliament requires, is, that the same be done without Her Majesty's Authority? So that where the Qualification is so plainly defined, to require any farther, is to impose on the Law. It's true, that the Act Queen Mary, speaks of raising of Bands of Men of Weir, and keeping them under Pay; and the Common Law may also have something of that Nature. But if the Act of Parliament 1661, thought fit so far to secure the Prerogative, as to cut short and forbid all rising in Arms without Her Majesty's Authority, under the Pain of Treason, is not this plain Law, which the Defenders could neither misken, nor ought to have transgressed?

The Case of *Affint* is much insisted in, That it was not found to be a treasonable Rising, unless there had been more than an Hundred Men convened, and mustered under Colours and Pay. But 1. A Practick cannot change the Law. 2. The Reason of that Practick is manifest, viz. That *Affints* Convocation was covered with another Colour and Pretext, and was certainly not against the Government; and therefore the said Qualifications were required, which doth no ways hold in this Case.

For to deal plainly, and to cut off all the Defenders groundless Pretexts, that they were only innocently convened, that they had no Arms, but such as are

ordinary and allowed to Gentlemen in their Travelling; that they were only a small Number of Friends and Neighbours for their Diversion and Recreation: That they had no Correspondence with the Invaders, tho' their meeting and travelling together happened about that Time: And lastly, that if they should be overtaken on the Fact and Deed libelled against them, none could be in Safety to travel with Arms, even in the smallest Company.

To all this it is answered, 1. For all that the Defenders have alledged or can alledge for Excuse, yet their meeting and marching in Arms, at the Time and Manner that they did, is generally under this Prejugee by all that ever heard it, that it was at least the Height of Folly, and had the worst of Appearances.

But 2. If the Defenders would have the Deed to be considered with all its Circumstances, it is not declined. Now as to the Deed it self, it is open and palpable, viz. rising and continuing in Arms. 2. It has all the Qualification that Law requires to make it criminal, viz. That it was without Her Majesty's Authority being interponed. But 3. Admit of all the Circumstances that the Defenders can alledge for alleviating, are they not only bare Supposition and Question? What if they meet by Rencounter? What if they met for Diversion? Are not such Meetings ordinary? And what was acted by them against the Government? All which do not import so much as one positive colourable Excuse. Whereas to consider the Deed certainly condemned in Law on the other side with its undeniable Circumstances, viz. That the Defenders left their own Houses, having no just Occasion to invite them abroad: That they met in such a Company as perhaps all of them never met before; that they met well mounted, and with Swords and Pistols of all sorts, better appointed than most Men that go to War; that they were thus well mounted and armed, beyond what the Law and Act of Parliament 1693, allows to Men of their Fashion, there being none of them qualified to the Government; that all this happened when the Invasion was generally known and just upon our Coast: That they marched backward and forward for several Days and Nights, as it were hovering in expectation of what they look'd after: That they did not at all dissolve and go home, until their Hope of the Invasion was lost; and that since several of them have absconded. Can any Man lay and reflect upon these Things together, but he must say, That besides their being clearly guilty in the Terms of Law, as having risen and continued in Arms without Her Majesty's Authority, which in the Construction of Law, is to levy War against Her Majesty, their Intention was as treasonable as the Law presumes; so that upon the whole, this Judgment may be both righteously and safely pass'd in this Matter, viz. That their rising and continuing in Arms at the Time and in the Manner, and with the other Circumstances libelled, without Her Majesty's Authority first interponed, was Treason, unless they could exculpate, by at least some colourable or probable Pretext, which they never can prove, or have so much as alledged.

Nor could a Judgment of this Nature so clearly founded, be of the least ill Consequence or Inconvenience, since every ordinary Meeting bears its own Excuse; nor can indeed a lawful Meeting of this Sort be found without Excuse. And further, it would secure the Government according to the true Intention of the Law, against all suspicious and evil Designs and Attempts in Time coming. The

The Defenders object, That the Indictment doth not libel relevantly, as to the Point of Correspondence with the Invaders ; which should be qualified by a Condescendence on the particular Acts of Correspondence ; and, as the Common Law expresses it, That *Hostibus nuncium literasve miserunt, signumve dederunt, feceruntque dolo malo quo hostes consilio juventur.*

To which it is answer'd ; If Correspondence with Invaders had been the principal Crime libelled, the Defenders might have contended for such a Condescendence *quo modo* they corresponded : But when the Correspondence is only libelled, *viz.* an open and real Correspondence, by their rising at the same Time in Arms without Authority, that a Foreign Enemy was actually invading : This real Correspondence, or this Correspondence *in re ipsa*, is more than sufficient to make out the Presumption of Law ; *viz.* That their Rising and Continuing in Arms without Authority, was plainly against Authority. If at the Time of the Invasion, some Hundreds of disaffected Persons had got together in Arms ; would it have been doubted, but that their getting together at that Time in Arms, without Her Majesties Authority, was really to correspond with the Invaders, and to countenance and encourage them in their Invasion. If then all the Difference be, that the Defenders did convene in a smaller Number ; it only remains to be consider'd, That the Act of Parliament doth expressly declare against any Number, their Rising and Continuing in Arms without Authority ; and that the same is Treasonable ; which fully reaches the Number libelled.

As to what is added, of their being so small a Number, and only arm'd in the ordinary manner accustomed by Gentlemen Travellers ; it is already answer'd, and withal it is certain, that the greatest Mischiefs may have their Rise from small Beginnings. And as for the Defenders, they were very early in their Appearance, and visibly did what in them lay, both to encourage the Invaders, and to raise an Insurrection in the Country : And it was only the Goodness of GOD, and Her Majesties vigilant Conduct, that cut off both their further Hopes, and the increasing of their Numbers ; which might have been infallibly expected, if the Invasion had succeeded.

The Defenders take notice of that Part of the Indictment, which alledges, That they did openly drink the good Health of their Master, who could be none else but the Pretender ; which they alledge is no ways relevant to infer the Conclusion of the Libel.

To which it is answer'd, That the foresaid Drinking having been only mention'd in the Libel, for a further Illustration of the Defenders Intentions, it is granted, that *per se* it is not relevant to infer a Crime. But, 2. Being join'd with the other Circumstances above-mention'd, even in its doubtful Sense, it cannot be deny'd to import a further Discovery of these Gentlemens Intentions, in appearing and continuing in Arms without Authority ; which (in effect) is the principal Crime, sufficiently declar'd by the Act of Parliament it self, tho' it were not adminiculate by this and the other Circumstances above-mention'd.

The Defenders go on to resume and answer the Charge brought against them ; but the whole of the Matter being above abundantly cleared, it may suffice to notice, that they still insist, That the Rising in Arms libelled without Authority, is but ge-

neral, and so could not infer the Crime of Treason, unless more particularly qualified : Whereas it is certain, that the Rising in Arms is a specifick Act, and of the which, if libelled circumstantiately as to Time and Place, as it here is, makes a most particular Libel : And for qualifying the Intention of the Act, and of the Risers, all that the Law requires, is, That the Rising and Continuing in Arms, be without Her Majesties Authority first interposed ; which, in the Construction of Law, is to levy War against Her Majesty.

The Defenders alledge, That to libel Rising in Arms in general, is no better than to libel Murder in general : But if Murder be libelled circumstantiately, as to the Person murder'd, and the Time and Place ; the Libel is no doubt particular and relevant, without any further Qualification. What then should hinder, why Rising and continuing in Arms, circumstantiately libelled as to Time and Place, and plainly qualified as the Law requires, (*viz.* without Her Majesties Authority) should not also be a particular and relevant Libel of Treason ?

But the Defenders say, That by such a Libel they are deprived of the Benefit of Exculpation. But this is wholly groundless ; it having been often said, That if the Defenders can but qualify any probable Pretext for their Rising and Continuing in Arms without Authority, to take off the Presumption of the Law, it should be admitted. But when they can qualify no Pretext, nor can assign the least probable Cause for their Rising and Continuing in Arms as they did, except it was to countenance Invaders, or to raise Insurrection within the Country ; how is it possible, that this their Rising in Arms without Authority, as is libelled, should not be Treason ? Nor is there any Thing here left to the Judgment of the Assize, save most plain and palpable Matter of Fact ; *viz.* That the Defenders rose, and continued in Arms ; which being qualified as the Law requires, *viz.* That it was without Her Majesties Authority, it inevitably presumes the Treasonable Intention ; which being further joined with the Circumstances mentioned in the Indictment, cannot but evince to all Men, That the Rising, and Continuing in Arms without Authority, and in the Circumstances above-mention'd, was an Overt-Act of Rebellion ; specially when nothing is, or can be adduced, to give it a more probable Interpretation.

The Defenders insist much, That they were not *versantes in Illicito* ; That they only went out for Diversion, or Business, with their ordinary Arms and Servants : But what can be more *Illicitum*, than to rise and continue in Arms without Authority ; the very Deed forbid by the Law as Treasonable ? And what need of any further Qualifications of their Intention, since the Law makes *without Authority* to be sufficient ? And the Indictment doth also superadd most pregnant Circumstances, to verify their ill Intention ; which are not so much as offered to be cavilled, except by, What if this ? or, What if that ? which plainly signify nothing.

The Defenders seem to insinuate, That they did not so much as know there was an invading Fleet upon our Coast : But it is so notour, that at that Time the Invasion was universally known, and likewise signified by a Proclamation ; That this Alledgeance is manifestly disingenuous.

But the Defenders further alledge, (*Esso*) That Rising and Continuing in Arms, as they did, was suspicious ; yet Suspicions cannot found a Libel of

Treason. But the Defenders advert not, That it is not Matter of Suspicion that is objected, far less their Travelling with their ordinary Horses, Arms and Equipage, as formerly they were wont; but plainly, That at such a Time, when the Country was openly invaded by a Foreign and most formidable Enemy, they, being never qualified to the Government, should have run together in Arms, without Her Majesties Authority; which is all that the Law requires to make them guilty; and which in effect, with the other Circumstances libelled, declares their Treasonable Intentions to a Demonstration.

The Defenders say, That their Case differs from *Caldwal's*: But albeit they may vary in some Circumstances, yet it's certain, that as to the main, *Caldwal* and his Complices were found guilty of Treason, only for their raising of about Thirty or Forty, and continuing in Arms without Authority, when there was another Party in the Country engaged in an open Insurrection. So that the Defenders having in like manner risen and continued in Arms without Authority, when there was a far more dreadful Enemy imminent upon our Coast, cannot but fall under the same Construction. And that *Caldwal's* Process and Doom was afterwards reduced, signifies nothing; since it was reduced for Reasons wholly different and alien from the Case in Hand, and which are so well known, as they need not be repeated.

The Defenders do also endeavour to take off what was alledged from the Act of Parliament, That even the Attempt and *Conatus* in this Case is condemned, by telling us, That this *Conatus* doth also require an Overt-Act. But *Esto*, it be so; what more Overt-Act can be required, than open Rising in Arms? And what doubt can there be of the Intention and Design, when both the Act of Parliament, and the other Circumstances of the Deed, do so fully clear it? And therefore it is in vain to notice either *Caldwel's* Case, wherein there was indeed no Sentence; or yet *Balmerino's* Case, where the Overt-Act was thought to be doubtful; when the Rising and Continuing in Arms, is, in this Case, an Act both Overt in it self, and expressly defined to be such by the Act of Parliament.

The Defenders are at some Pains to make it believed, That the Libelling of Art and Part cannot sustain this Indictment. But, 1. The Advocate adheres to his Indictment, as libelled and qualified with Art and Part. 2. Tho' Art and Part be libelled, and the Act of Parliament makes it a Supplement for Relevancy in all Cases; yet Her Majesties Advocate finds no Necessity to enter further into that Debate, than to adhere as above; seeing that his Indictment is founded on clear Law, and that he as clearly subsumes in the Terms of Law; viz. The Rising and Continuing in Arms without Her Majesties Authority interposed; the Levying of War, and taking up Arms against Her Majesty, and open Corresponding with Her Majesties Enemies and our Invaders; and that not only by the above-mention'd real Correspondence, but even by enticing them other ways to invade; as shall be proven, if needful. All which are too manifestly Acts and Deeds of Rebellion, to need the constructive Support of Art and Part, further than that Actor, Art and Part, are perpetually connected together.

And therefore, upon the whole, since, as hath been said, the Country was (at the Time libelled) in the most imminent Hazard of a most destructive Invasion; and that at that very Time, the Defen-

ders, to the great Surprize and Astonishment of all Her Majesties good Subjects, did flee out in Arms, and convene and march; and troop together in Arms, without Her Majesties Authority, which in Law is sufficient; and that with the other aggravating and most concludent Circumstances above libelled, which were not offer'd to be taken off with any rational or probable Pretext: It appears to be without Question, That the Defenders fall under all the Conclusions of the Libel, and ought to be made liable in the Pains thereof.

In Respect whereof, &c.

Sic subscribitur,

J. A. STEUART.

CURIA JUSTICIARIA, S. D. N.
Reginae, tenta in nova Sessionis Domo Burgi de Edinburgh, Vigesimo secundo Die Mensis Novembris, Millesimo, Septingentesimo Octavo; per Nobilem & Potentem Comitem, Georgium Comitem de Cromertie, &c. Justiciarium Generalem, & Honorabiles Viros Adamum Cockburn de Ormiston, Justiciarium Clericum; Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de eodem, & Gilbertum Eliot de Minto; Magistrum Robertum Steuart de Tillicoultry, & Magistrum Jacobum Erskine de Grange; Commisionarios Justiciarum Dist. S. D. N. Reginae.

Curia Legitimè Affirmata.

Intran.

James Stirling of Keir.

Archibald Seaton of Touch.

Archibald Stirling of Carden.

Charles Stirling of Kippendavie; and

Patrick Edmonston of Newtown.

Indicted and accused at the Instance of Sir *James Steuart*, Her Majesties Advocate, and as having Special Warrant from Her Majesty for that Effect; for the Crime of Treason and Lese-Majesty, in manner mentioned in the Indictment raised against them thereanent.

P U R S U E R S.

Sir *James Steuart*, Her Majesties Advocate.

Sir *Walter Pringle*; and

Sir *Francis Grant*.

Advocates.

Procurators in D E F E N C E.

Sir *Patrick Home*.

Sir *David Forbes*.

Sir *James Steuart*.

Mr. *Alexander Macleod*.

Mr. *James Graham*.

Mr. *Walter Steuart*.

Mr. *John Elphinston*.

Mr. *Colin Mackenzie*.

Mr. *Charles Cockburn*; and

Mr. *David Lauder*.

Advocates.

The

The Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, having consider'd the Indictment at Her Majesties Advocate's Instance, against *James Stirling of Keir, Archibald Seaton of Touch, Archibald Stirling of Carden, Charles Stirling of Kippendavie, and Patrick Edmonstoun of Newtown*, Pannels, with the foregoing Debate thereon; **THEY FIND**, The said Pannels, their Rising and Continuing in Arms without Her Majesties Authority, and actual Corresponding with an open Enemy upon the Coast, ready to invade this Part of Great-Britain called **SCOTLAND**, Relevant to infer the Pains of Treason libell'd against the Pannels; and repel the whole Defences propon'd for the Pannels, and remit the whole to the Knowledge of an Assize.

Sic subscribitur,

CROMERTIE, I. P. D.

The said Lords, for several Causes and Considerations, continued the Dyer of the said Cause till Three a Clock in the Afternoon; and ordained Assizers and Witnesses to attend then, ilk Person under the Pain of One Hundred Marks; and the Pannels to be carried back to Prison.

Post Meridiem.

CURIA JUSTICIARIA, S. D. N.
Regina, tenta in nova Sessionis Domo Burgi de Edinburg, Vigesimo secundo Die Mensis Novembris, Millesimo, Septingentesimo Octavo; per Nobilem & Potentem Comitum, Georgium Comitem de Cromertie, &c. Justiciarium Generalem, & Honorabiles Viros Adamum Cockburn de Ormiston, Justiciarium Clericum; Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de eodem, & Gilbertum Elliot de Minto, & Magistrum Jacobum Erskine de Grange, Commissionarios Justiciarum Dist. S. D. N. Regina.

Curia Legitimè Affirmata.

Intran.

*James Stirling of Keir.
Archibald Seaton of Touch.
Archibald Stirling of Carden.
Charles Stirling of Kippendavie; and
Patrick Edmonstoun of Newtown.*

Indicted and accused at the Instance of Her Majesties Advocate, and as having Special Warrant for that Effect, for the Crime of Treason and Lese-Majesty, in manner mention'd in the Indictment rais'd against them thereanent.

PURSUERS.

*Sir James Stewart, Her Majesties Advocate.
Sir Walter Pringle, and
Sir Francis Grant.
Advocates.*

Procurators in DEFENCE.

Ut ante.

A S S I Z E.

*Sir Thomas Young, of Rosebank.
John Hamilton, Portioner of Newbottle.*

William Turnbull, of Currie.

James Kinloch, of Stonyflat.

James Deans, of Woodhouselee.

Henry Nisbet, younger, of Dean.

Sir James Fleeming, of Rathobyres.

Sir John Clark, of Pennycook.

John Hunter, Merchant in Edinburgh.

David Cleland, Merchant there.

James Gordon, Merchant in Edinburgh.

Gilbert Campbell, Merchant there.

William Duncan, Merchant there.

Alexander Brown, Merchant there.

Robert Walwood, Merchant there.

The Assize lawfully sworn, and no Objection of the Law made by the Pannels in the contrary.

The Pursuer for Probation adduced the Witnesses after Deponing; *viz.*

Mr. David Fenton, in Dunkeld, aged Forty Years, or thereby, Married; solemnly sworn, purged of partial Counsel, examined upon the Libel, depones, That about the Time libell'd, being about the Twentieth or Twenty first of March; tho' he knows not the Pannels Names, yet, by their Faces, he remembers they were at his House at Dunkeld, some of them two Days, and some but one Day; that Two of them, that came there on Sunday, went away on Monday Morning; *viz.* Carden and Kippendavie; and that the rest went away from his House on Tuesday. Depones, That all of them were in Arms; all of them having Swords, and some Pistols: But he cannot remember how many Pair of Pistols he saw. That Nine of them own'd themselves to be Masters; and that there were Seven Servants; and that he saw no other Weapons but Swords and Pistols, as said is. Depones, That all the Masters lodged in his House; but that the Servants and Horses lodged in common Stables. Depones, That he did not hear any of them speak of the Government, or the Invasion that was then intended: And that he knows nothing of their Purpose or Design of coming to his House; or why they were together. Depones, That when they went away, some of them went to the East Boat on the Water of Tay, in the way towards Perth; and others of them cross'd at the West Boat, in the way towards Strathbrand. And this is all he knows; and is the Truth, as he shall answer to GOD.

Sic subscribitur,

Da. Fenton.

CROMERTIE.

John Maccleran, Change-Keeper at the Bridge of Turk, aged Forty six Years and upwards, Married; solemnly sworn, purged of partial Counsel, examined upon the Indictment, and interrogate, depones, That about the Fifteenth of March last, he saw the Five Pannels at his House; but that he was not at Home when they came, and came Home the next Day: And that he saw with them, William Graham, Alexander Stewart, Brother to Ardvorlich, and a Brother of Touch's; and remembers of none others, but some Servants, whose Names he knows not. That they went away from his House the next Morning; and that all of them had Swords, and some of them had Pistols; and saw them have some few Guns, but he knows not how many. Depones, That he was not sent on any Message, nor knows

knows of none other there being sent on any Message from his House by the Pannels; and that they went from his House strait Eastward towards *Lenzie*: And that he did not hear them speak of any Person that they expected to meet at his House. *Causa Scientiæ patet*. And this is all he knows; and is the Truth, as he shall answer to GOD.

And being further interrogate, if he heard the Pannels speak of the Government, or of King *James*, or the Prince of *Wales*, or of the *French* Invasion, or of their Landing in any Place in the North; depones *negative*. And this is also the Truth, as he shall answer to GOD.

Sic subscribitur,

John Maccleran.

CROMERTIE.

Daniel Morrison, Servant to the Laird of *Keir*, Aged twenty three Years or thereby, unmarried, solemnly Sworn, purged of partial Counsel, examined and interrogate, Depones, That about the Time libelled, he saw the Pannels, with some others, to the Number of 10 or 12 Horse at *Dunkeld*, and at *Appinadove*, and at the Head of *Lochearn*; and that they had Swords and Pistols, but no other Weapons that he saw; Depones, That the first Place he saw the Pannels was at a Place near the Bridge of *Turk*, and went then to *Appinadove*, and from that to *Dunkeld*; Depones that he heard, That there was one *Campbell* who commanded a Party at the Bridge of *Allan*; and that *Keir* being informed thereof, and that they designed to apprehend him and his Horses, occasioned his going away with his Horses; and that *Touch* was with him that Morning, and went along with him to *Dunkeld*, and that they met *Carden* and *Kippendavie* at the Bridge of *Turk*; and that *Newtown* came there that Night, and from thence went all to *Lochearn*; Depones, he heard them speak nothing of the pretended Prince of *Wales*, or of the Invasion then intended; and that *Keir*, *Carden* and *Touch*, came home together from *Dunkeld*; and that to the best of the Deponent's Memory, it was on the 23^d of *March* that they were at *Dunkeld*, and that he knows not what was the Occasion of their parting; and Depones, That it was on the Seventeenth of that Month that they went from *Keir*; and Depones, That *Carden* and *Newtown* had neither Sword nor Pistol that he saw, and that none of the Servants had either Pistol or Sword, except *Keir*'s Man, who had a Sword. And Depones, that *Touch*'s Brother, who was in Company, had neither Sword nor Pistol that the Deponent saw; *Causa scientiæ patet*. And this is the Truth as he shall answer to GOD. And Depones he cannot Write. *Sic subscribitur*.

Cromertie.

Peter Wilson, Servant to the Laird of *Keir*, Aged Thirty Years, or thereby, *solutus*, solemnly Sworn, purged of partial Counsel, Examined upon the Libel, and Interrogate, Depones, That about the Seventeenth Day of *March* last, *Keir*, accompanied with *Touch* and his Brother, and others, to the Number of five Horse, came from *Keir*, and were that Night at the Bridge of *Turk*, where *Carden* and *Kippendavie* met them, and went all of them next Day to *Appinadove*, where one Mr. *Hay* met them: Depones, That the Occasion of *Keir*'s going from his House, was the Apprehensions he had of being seiz'd with his Horses, by the Forces then

lying at *Stirling*, as he heard. Being Interrogate, if he heard the Pannel speak any thing concerning the Government, the Prince of *Wales*, and the intended Invasion, depones *Negative*; but that they heard, that Admiral *Bing* had chased the *French* Fleet off the Coast, before they went from *Keir*; depones, That severals of them had Swords and Pistols, but cannot be positive whether *Carden* and *Touch*'s Brother had any or not; or if any of the other Servants had any, except the Deponent himself, and that they had no other Weapons that he saw; and depones, that it was at *Lochearn*, and not at *Appinadove*, that Mr. *Hay* met them. *Causa scientiæ patet*: And this is the Truth as he shall answer to GOD. *Sic subscribitur*.

Patrick Wilson.
Cromertie.

The Lords; Justice-General, Justice-Clerk, and Commissioners of Justiciary, ordain the Assize presently to inclose, and to return their Verdict to Morrow at twelve a Clock, in the high Council-house, and the hail fifteen Assizers to be present each of them, under the Pain of two hundred Merks.

CURIA JUSTICIARIA, S. D. N. Regina Tenta in Pratorio Burgi de Edinburgh, Vigesimo tertio die mensis Novembris millesimo Septingentesimo Octavo per Nobilem & potentem Comitem de Georgium Comitem de Cromertie, &c. Justiciarium Generalem, & Honorabiles Viros Adamum Cockburne de Ormiston Justiciarium Clericum, Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de Eodem, & Gilbertum Eliot de Minto, & Magistrum Jacobum Erskine de Grange, Commissionarios Justiciarum Dict. S. D. N. Regina.

Curia legitime affirmata.

The said Day, the Persons who pass'd upon the Assize of *James Stirling* of *Keir*, and others, returned their Verdict in Presence of the said Lords, whereof the Tenor follows.

Edinburgh 22^d. November, 1708.

The above Assize having inclosed, did choise Sir *James Fleeming* of *Rathobyres* their Chancellor, and *Gilbert Campbell* Merchant in *Edinburgh*, to be their Clerk. And having considered the Indictment pursued at her Majesties Advocate's Instance, as having special Warrant from Her Majesty for that Effect, against *James Stirling* of *Keir*, *Archibald Seton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonston* of *Newton*; for the Crime of Treason and Lese-Majesty, with the Debate thereupon, the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary their Interlocutor pronounced thereupon, and Depositions of the Witnesses adduced, They all in one Voice Find the Libel not proven. In Witness whereof (written by the said *Gilbert Campbell*) These Presents are subscribed by our said Chancellor and Clerk, Day and Date aforesaid. *Sic subscribitur*, *James Fleeming.*
Gilb. Campbell, Clerk.

After Opening and Reading of which Verdict of Assize, the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, Assailized the Pannels, and dismissed them from the Bar: Whereupon they took Instruments. *Sic subscribitur*.

Cromertie I. P. D.

The

The Tryal of Dr. HENRY SACHEVERELL. Begun in Westminster-Hall on Monday, February 27, 17th 1710.

The First Day.



ABOUT Eleven of the Clock the Lords came from their own House into the Court erected in *Westminster-Hall*, for the Tryal of *Henry Sacheverell*, Doctor in Divinity, in the manner following.

The Lord Chancellor's Gentlemen Attendants, two and two.

The Clerks of the House of Lords, with the Two Clerks of the Crown in the Courts of *Chancery* and *King's-Bench*.

The Masters in *Chancery*, two and two.

Then the Judges.

The Peers Eldest Sons, and Peers Minors, two and two.

The Yeoman-Usher of the House.

The Gentleman-Usher of the Black Rod.

Then the Peers, two and two, beginning with the youngest Barons.

The Serjeant at Arms with his Mace.

Then one of the Heralds.

Then the Lord Chancellor alone.

The Lords being Seated in the Place for that Purpose prepared in *Westminster*; and the Commons in a Committee of the whole House being in the Seats prepared for them, and the Managers for the House being at their Lordships Bar, the Serjeant at Arms made Proclamations as follow.

Serjeant at Arms. Oyez! Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Serjeant at Arms. Oyez! *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, or thou forfeitest thy Recognizance.

Then Doctor *Henry Sacheverell* came to the Bar and kneeled; his Council, viz. Sir *Simon Harcourt*, Mr. *Dodd*, Mr. *Phipps*, Mr. *Dee*, and Dr. *Henchman*, standing near him at the Bar; and rising again by Direction of the Lord Chancellor, the Serjeant at Arms again made Proclamation as follows.

Serjeant at Arms. Oyez! Whereas a Charge of High Crimes and Misdemeanors has been Exhibited by the House of Commons, in the Name of themselves and all the Commons of Great Britain, against *Henry Sacheverell*, Doctor in Divinity; all Persons concerned are to take Notice that he now stands upon his Tryal, and they may come forth, in order to make good the said Charge.

Lord Chancellor. Doctor *Sacheverell*, *Lord Cooper*, it is needless to give you any Directions concerning your Behaviour during the Time of your Tryal, or the ordering your Defence, because the Lords have not only allowed, but assigned you the Council you desired, some both of the Civil and Common Law, who will be well able to direct and advise you, not only in the Substance, but Form of your Defence. The Lords have also made an Order for summoning all such Witnesses as you

have propounded to appear for you. And that you might be the better able to provide for your Defence, you have had your Liberty on the first Application for it, and giving Security for your Appearance; you have also had all the Time you thought fit to desire, in order to prepare for your Defence: So that you ought ever to remember, that their Lordships have used towards you all the Indulgence you could reasonably expect.

Then the Clerk, by Direction of the Lord Chancellor, read the Articles of Impeachment, Doctor *Sacheverell's* Answer, and the Replication of the House of Commons, as follows.

ARTICLES Exhibited by the Knights, Citizens, and Burghesses in Parliament assembled, in the Name of Themselves and of all the Commons of Great Britain, against *Henry Sacheverell*, Doctor in Divinity, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

WHEREAS his late Majesty King *William* the Third, then Prince of *Orange*, did with an armed Force undertake a glorious Enterprize, for delivering this Kingdom from Popery and Arbitrary Power; and divers Subjects of this Realm, well affected to their Country, join'd with and assisted his late Majesty in the said Enterprize: And it having pleas'd Almighty God to Crown the same with Success, the late happy Revolution did take Effect and was Establish'd. And whereas the said Glorious Enterprize is approv'd by several Acts of Parliament, and amongst others, by an Act made in the first Year of the Reign of King *William* and Queen *Mary*, Entituled, *An Act, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; and also by one other Act made in the same Year, Entituled, *An Act for preventing Vexatious Suits, against such as acted in order to the bringing in their Majesties, or for their Service*; and also by one other Act made in the same Year, Entituled, *An Act for appropriating certain Duties for paying the States General of the United Provinces, their Charges for his Majesty's Expedition into this Kingdom, and for other Uses*: And the Actings of the said well-affected Subjects in Aid and Pursuance of the said Enterprize, are also declared to have been Necessary, and that the same ought to be Justified. And whereas the happy and blessed Consequences of the said Revolution are, the Enjoyment of the Light of God's true Religion Establish'd among us, and of the Laws and Liberties of the Kingdom; the Uniting Her Majesty's Protestant Subjects in Interest and Affection, by a legal Indulgence or Toleration granted to Dissenters; the Preservation of Her Majesty's Sacred Person; the many and continual Benefits arising from Her Majesty's Wife and Glorious Administration, and the Prospect

of Happiness for future Ages, by the Settlement of the Succession of the Crown in the Protestant Line, and the Union of the Two Kingdoms. And whereas the Lords Spiritual and Temporal, and Commons in Parliament Assembled, did, by their Address of the Seventeenth of December, in the Year of our Lord One thousand seven hundred and five, lay before Her Majesty the following Vote or Resolution, viz. *That the Church of England, as by Law Establish'd, which was rescued from the extremest Danger by King William the Third, of Glorious Memory, is now, by God's Blessing, under the Happy Reign of Her Majesty, in a most safe and flourishing Condition; and that whoever goes about to Suggest or Insinuate that the Church is in Danger under Her Majesty's Administration, is an Enemy to the Queen, the Church, and the Kingdom: And by their said Address, did humbly beseech Her Majesty to take Effectual Measures for making the said Vote or Resolution Publick, and also for Punishing the Authors and Spreaders of such Seditious and Scandalous Reports; and on the twentieth Day of the same December, Her Majesty was pleas'd to Issue Her Royal Proclamation accordingly. Yet nevertheless the said Henry Sacheverell Preach'd a Sermon at the Assizes held at Derby, August the fifteenth, in the Year of our Lord One thousand seven hundred and nine, and afterwards publish'd the same in Print, with a Dedication thereof; and the said Henry Sacheverell also Preach'd a Sermon at the Cathedral Church of St. Paul, before the Lord-Mayor, Aldermen, and Citizens of London, on the Fifth Day of November last, being the Anniversary Thanksgiving to Almighty God, for the Deliverance from the Gunpowder-Treason, and for beginning the late Happy Revolution, by giving his late Majesty a safe Arrival here, and for completing the same, by making all Opposition fall before him, till he became our King and Governor; which said Sermon, he the said Henry Sacheverell afterwards likewise publish'd in Print, with a Dedication thereof to Sir Samuel Garrard, Baronet, Lord Mayor of the City of London; and with a Wicked, Malicious, and Seditious Intention to Undermine and Subvert Her Majesty's Government and the Protestant Succession as by Law Establish'd; to Defame Her Majesty's Administration; to Asperse the Memory of his late Majesty; to Traduce and Condemn the late Happy Revolution; to Contradict and Arraign the Resolutions of both Houses of Parliament; to Create Jealousies and Divisions amongst Her Majesty's Subjects; and to Incite them to Sedition and Rebellion.*

ARTICLE I.

He, the said Henry Sacheverell, in his said Sermon Preach'd at St. Paul's, doth suggest and maintain, *That the necessary Means us'd to bring about the said Happy Revolution, were Odious and Unjustifiable: That His late Majesty, in His Declaration, disclaim'd the least Imputation of Resistance; and that to impute Resistance to the said Revolution, is to cast Black and Odious Colours upon his late Majesty, and the said Revolution.*

ARTICLE II.

He, the said Henry Sacheverell, in his said Sermon Preach'd at St. Paul's, doth suggest and maintain, *That the aforesaid Toleration, granted by Law, is unreasonable, and the Allowance of it Unwarrantable. And asserts, That he is a False Brother with*

relation to God, Religion, or the Church, who defends Toleration and Liberty of Conscience: That Queen Elizabeth was deluded by Archbishop Grindall, whom he scurrilously calls a False Son of the Church, and a Perfidious Prelate, to the Toleration of the Genevian Discipline: And that it is the Duty of Superior Pastors to thunder out their Ecclesiastical Anathemas against Persons intitled to the Benefit of the said Toleration; and insolently dares, or defies, any Power on Earth to Reverse such Sentences.

ARTICLE III.

He, the said Henry Sacheverell, in his said Sermon Preach'd at St. Paul's, doth Falsely and Seditiously Suggest and Assert, *That the Church of England is in a Condition of great Peril and Adversity under Her Majesty's Administration; and in order to Arraign and Blacken the said Vote or Resolution of both Houses of Parliament, approv'd by Her Majesty as aforesaid, he, in opposition thereto, doth suggest the Church to be in Danger; and, as a Parallel, mentions a Vote, That the Person of King Charles the First was voted to be out of Danger at the same time that his Murderers were conspiring his Death; thereby wickedly and maliciously insinuating, That the Members of both Houses, who pass'd the said Vote, were then conspiring the Ruin of the Church.*

ARTICLE IV.

He, the said Henry Sacheverell, in his said Sermons and Books, doth falsely and maliciously suggest, *That Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution: And that there are Men of Characters and Stations in Church and State who are False Brethren, and do themselves weaken, undermine and betray, and do encourage, and put it in the Power of others, who are professed Enemies, to overturn and destroy the Constitution and Establishment; and chargeth Her Majesty, and those in Authority under Her, both in Church and State, with a general Male-Administration: And as a publick Incendiary, he persuades Her Majesty's Subjects to keep up a Distinction of Factions and Parties; instills groundless Jealousies, foment destructive Divisions among them, and excites and stirs them up to Arms and Violence: And that his said Malicious and Seditious Suggestions may make the stronger Impression upon the Minds of Her Majesty's Subjects, he the said Henry Sacheverell doth wickedly wrest and pervert divers Texts and Passages of Holy Scripture.*

All which Crimes and Misdemeanors the Commons are ready to prove, not only by the general Scope of the same Sermons or Books, but likewise by several Clauses, Sentences and Expressions in the said Sermons or Books contain'd; and that he the said Henry Sacheverell, by Preaching the Sermons, and Publishing the Books aforesaid, did abuse his Holy Function, and hath most grievously offended against the Peace of Her Majesty, Her Crown and Dignity, the Rights and Liberties of the Subject, the Laws and Statutes of this Kingdom, and the Prosperity and good Government of the same. And the said Commons, by Protestation, saving to themselves the Liberty of Exhibiting at any time hereafter, any other Article or Impeachment against the said Henry Sacheverell; and also of replying to his Answers, or any of them, and of offering Proofs of all the Premises, or of any of them, and of any other

other Article or Impeachment that shall be Exhibited by them, as the Case according to Course of Parliament shall require, do pray that he the said Henry Sacheverell be put to Answer to all and every the Premises; and that such Proceeding, Examination, Tryal, Judgment and Exemplary Punishment may be thereupon had and executed, as is agreeable to Law and Justice.

The ANSWER of Henry Sacheverell, Doctor in Divinity, to the ARTICLES Exhibited by the Knights, Citizens and Burgesses in Parliament Assembled, in the Name of themselves and of all the Commons of Great Britain, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

THE said Henry Sacheverell, saving to himself all Advantages of Exception to the said Articles for the Generality, Uncertainty and Insufficiency thereof, and of not being prejudiced by any Words or want of Form in this his Answer, admits, That at the Request of George Sacheverell, Esquire, High Sheriff of the County of Derby, he Preached a Sermon at the Assizes held for that County, on the Fifteenth Day of August, One thousand seven hundred and nine; and that at the Desire of the Right Honourable Sir Samuel Garrard, Baronet, Lord Mayor of the City of London, he also Preached a Sermon at the Cathedral Church of St. Paul, before the said Lord Mayor, and the Aldermen and Citizens of London, on the Fifth Day of November last; and that he caused the said Sermons to be Printed: But denies that he Preached, or caused the same to be Printed or Published, with any such wicked, malicious or seditious Intent, as in the Preamble of the said Articles is affirmed; the said Henry Sacheverell having been induced to Print the Sermon he Preach'd at Derby, at the Request of the Gentlemen of the Grand Jury for that County, to whom he humbly presumed to Dedicate the same, as the most publick Acknowledgment he was capable of making, for the peculiar Honour he had receiv'd by their publick Approbation of that Sermon. And the said Lord Mayor having been pleased to express his good Liking of the said Sermon Preach'd at St. Paul's, the said Henry Sacheverell, at his Request, caus'd the same to be Printed, with a Dedication thereof to him. And for Answer to the said Articles, humbly saith,

Answer to the First Article.

To the First Part of the First Article, the said Henry Sacheverell denies, That, in his said Sermon Preach'd at St. Paul's, he doth suggest and maintain, that the necessary Means used to bring about the happy Revolution were Odious and Unjustifiable. Nor doth he in any Part of that Sermon affirm any thing concerning the necessary Means used to bring about the Happy Revolution. The said Henry Sacheverell is so far from Reflecting on His late Majesty, or the Happy Revolution, that he endeavours, in that Sermon, to clear the Revolution and his late Majesty from the black and odious Colours which their greatest Enemies had endeavoured to cast upon both.

And as to that Part of the said Article, whereby the said Henry Sacheverell is charged with suggesting

and maintaining, that his late Majesty, in his Declaration, disclaimed the least Imputation of Resistance; the said Henry Sacheverell doth acknowledge himself to have made such Suggestion; and declares, that he made it not in Dishonour, but in Vindication, of his said Majesty. The Resistance the said Henry Sacheverell represents the late King to have disclaimed, being such a Resistance as tended to the Conquest of this Realm, as plainly appears from that Part of his late Majesty's Declaration, which is refer'd to, and verbatim set forth at the Bottom of the same Page in which he mentions his late Majesty's disclaiming any such Imputation.

Whether the said Henry Sacheverell was mistaken or not, in expressing himself as if the late King had disclaimed any Imputation of Resistance, when he the said Henry Sacheverell meant thereby, that the late King disclaimed the Imputation of a Design of Conquest, he humbly conceives, such a Suggestion by him, plainly design'd for the Honour of the late King, cannot in any reasonable Construction be thought a Reflection on his said Majesty, or deemed any Crime or Misdemeanor.

For the further Justification of what the said Henry Sacheverell said in reference to his late Majesty's having disclaimed any the least Imputation of Resistance, the said Henry Sacheverell humbly observes, That in his late Majesty's Declaration, the following Passages are contain'd: *We have thought fit to go over to England, and to carry over with us a Force, sufficient, by the Blessing of God, to defend our selves from the Violence of Evil Counsellors ----- We think fit to declare, that this our Expedition is intended for no other Design but to have a Free and Lawful Parliament Assembled.*

As to the last Charge in the said Article, the said Henry Sacheverell denies, that he doth in his said Sermon suggest and maintain, that to impute Resistance to the said Revolution, is to cast Black and Odious Colours upon his late Majesty and the said Revolution; the Persons whom the said Henry Sacheverell in his Sermon describes, as casting Black and Odious Colours upon his late Majesty and the Revolution, are not those who impute Resistance to the late Revolution, of whom the said Henry Sacheverell affirms nothing, but those new Preachers and new Politicians, who teach, in Contradiction to both Gospel and the Laws, that the People have the Power vested in them, the Fountain and Original of it, to cancel their Allegiance at their Pleasure, and to call their Sovereign to Account for High-Treason against his Subjects; nay, and to Dethrone and Murder him for a Criminal, as they did the Royal Martyr by a Judiciary Sentence; who are Maintainers of Antimonarchical Schemes, and of such damnable Positions as are, by the Laws of Church and State, condemned for Rebellion and High-Treason; and who urge the Revolution in Defence of such Principles. Unless therefore those who impute Resistance to the Revolution, be the same with those new Preachers and new Politicians above specified, the said Henry Sacheverell affirms nothing concerning them.

The said Henry Sacheverell, upon the strictest Search into his said Sermon Preached at St. Paul's, doth not find that he hath given any the least colourable Pretence for the Accusation exhibited against him in this first Article, but barely by his Asserting the utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever; for which Assertion, he humbly conceives he hath the Authority of the Church of England, which in di-

vers Passages of her Homilies, too large and too numerous to be here specified, but by the said *Henry Sacheverell* ready to be produced, hath taught and inculcated this Doctrine, as founded on the Word of God; particularly in the Second Part of the Sermon of Obedience, contained in the former Book of Homilies, set forth in the Time of King *Edward the Sixth*, where are these Words: *Here good People, let us all mark diligently: It is not lawful for Inferiours and Subjects in any Case to resist and stand against the Superior Powers; for St. Paul's Words be plain, that whosoever withstandeth, shall get to themselves Damnation; for whosoever withstandeth, withstandeth the Ordinance of God.*

Which said Book of Homilies is affirmed in one of the Thirty Nine Articles of Religion, which concern the Confession of the true Christian Faith, to contain a godly and wholesome Doctrine, and is order'd to be read in Churches, by the Ministers diligently and distinctly, that they may be understood of the People. And the said *Henry Sacheverell*, in further Maintenance of the said Doctrine and Position, contained in the Books of Homilies, and of the Authority of those Books, saith, That by an Act of Parliament made in the Thirteenth Year of the Reign of Queen *Elizabeth*, Entituled, *An Act for the Ministers of the Church to be of sound Religion*, 'Tis Enacted, That no Person should thereafter be admitted to any Benefice with Cure, except he should first have subscribed the said Articles in the Presence of the Ordinary, and publicly read the same in the Parish Church of that Benefice, with Declaration of his unfeigned Assent to the same. And that by an Act made in the Fifth Year of her present Majesty's Reign, Entituled, *An Act for securing the Church of England as by Law Establish'd*, It was Enacted, That the said Act made in the said Thirteenth Year of the Reign of Queen *Elizabeth*, should remain and be in full Force for ever; and be inserted in expresse Terms in any Act which should be made for ratifying the Union of the Two Kingdoms of England and Scotland; and therein declared to be an essential and fundamental Part thereof. And the said Act was accordingly inserted in expresse Terms, in an Act for the Union of the Two Kingdoms; and thereby ratify'd, and declar'd to be an essential and fundamental Part thereof.

And the said *Henry Sacheverell* doth further humbly insist, and is advis'd, that the aforesaid Assertion is agreeable to, and warranted by, the Common Law of England, and divers Acts of Parliament now remaining in full force.

The said *Henry Sacheverell* doth with all Humility aver the Illegality of Resistance on any Pretence whatsoever to be the Doctrine of the Church of England, and to have been the general Opinion of our most Orthodox and Able Divines, from the Time of the Reformation to this Day: This Doctrine hath in the most solemn Manner been Taught in that University, whereof he hath been for more than Twenty Years a Member; this hath been often, with Publick Approbation of each House of Parliament, Preached and Printed; and in Terms of greater Force than any used by the said *Henry Sacheverell*, hath by the Right Reverend Fathers of our Church, Dead and Living, been avow'd and maintain'd.

And the said *Henry Sacheverell* was the rather induc'd to Preach against the Doctrine of Resistance of the Supreme Power upon the Fifth Day of November, because on that Day the Church commemorates our Deliverance from the Traiterous Attempts of Re-

bellious Papists, and because the Lawfulness of Resisting the Supreme Power was originally a Popish Doctrine; for which Reasons, as he humbly conceives, the Rubrick of the Office appointed for that Day by her late Majesty Queen *Mary* (of Blessed Memory) directs, That after the Creed, if there be no Sermon, shall be read one of the Six Homilies against Rebellion.

Whilst therefore the Church of England as by Law Establish'd is in a safe and flourishing Condition under Her Majesty's happy Administration; whilst Popish Tenets are by all good Protestants condemn'd and abhorr'd; whilst the Laws of this Realm continue in their full Force and Vigor, the said *Henry Sacheverell* humbly hopes, that a Dutiful Son of that Church, a sincere Protestant, and a faithful Subject of Her Majesty, shall not suffer for Asserting the Doctrine of Non-Resistance of the Supreme Powers. But if this Doctrine be declared Erroneous, and it should please God that he should suffer for Asserting it, he trusts that God will enable him to shew his steady Belief of this Doctrine, by a meek and patient Resignation to whatever shall befall him on that Account.

Answer to the Second Article.

To that Part of the Second Article, which charges, That he the said *Henry Sacheverell* doth suggest and maintain, That the Toleration granted by Law is Unreasonable, and the Allowance of it Unwarrantable; the said *Henry Sacheverell* saith, That, upon the most diligent Enquiry, he hath not been able to inform himself, that a Toleration hath been granted by Law; but admits, that an Act did pass in the first Year of King *William* and Queen *Mary*, Entituled, *An Act for Exempting their Majesties Protestant Subjects Dissenting from the Church of England from the Penalties of certain Laws*. Which Exemption the said *Henry Sacheverell* doth not any where maintain or suggest to be unreasonable, or that the Allowance of it is unwarrantable; but hop'd, that he had prevented any such Misapprehension, by declaring his sincere Meaning in these Words, contain'd in his Sermon Preach'd at *St. Paul's*;--- *I would not be here misunderstood, as if I intended to cast the least Invidious Reflection upon that Indulgence which the Government hath condescended to give them, which I am sure all those who wish well to our Church, are ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law has prescribed them.*

If there be any other Expressions concerning Toleration, which may seem to carry a dubious Sense in any other Parts of his Sermon, he hopes that they will not be applied to the Exemption granted by Law, but will be interpreted agreeably to his avowed Approbation of that Law.

And to such Part of the said Second Article, as charges that he the said *Henry Sacheverell* asserts, That he is a false Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conscience; he the said *Henry Sacheverell* saith, That he having so plainly declared himself in favour of the Exemption granted by Law, when he blames those, who, upon all Occasions, defend Toleration and Liberty of Conscience, cannot be thought to reflect on the Defenders of that legal Exemption or Indulgence which he himself approves and defends: He doth indeed suggest it to be one Part of the Character of a false Brother, upon all occasions to defend Toleration and Liberty

Liberty of Conscience; and to excuse the Separation, lay the Fault upon the true Sons of the Church, for carrying Matters too high. Which universal Defence of Toleration, and Excuse of Separation, attended with the laying the Fault of such Separation upon the true Sons of the Church, are by him jointly mentioned in one and the same Clause of the Sentence, and in one and the same Branch of the Character. So that his Reflection doth not extend to all who defend Toleration and Liberty of Conscience, much less to those who defend the Exemption granted by Law to Protestant Dissenters; but to such only, who at the same Time they defend universal Toleration and Liberty of Conscience, do also excuse the Separation, and lay the Fault thereof upon the true Sons of the Church, for carrying Matters too high. And these he did then, and still doth, with all Humility, conceive to be justly blameable, and, if Members of this Church, to be false Brethren.

And as to that Part of the second Article, whereby the said *Henry Sacheverell* is charged with asserting, *That Queen Elizabeth was deluded by Archbishop Grindall, to the Toleration of the Genevian Discipline*; he the said *Henry Sacheverell* saith, he humbly conceives he hath good Authority from the Histories and Monuments of those Times for such Assertion; but whether he hath, or hath not, he humbly apprehends such Assertion to be no Proof of his maintaining or suggesting, That the Exemption of Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws, granted by an Act made in the first Year of the Reign of King *William*, and Queen *Mary*, (which Exemption he supposes to be intended by the legal Indulgence or Toleration granted to Dissenters, mentioned in the Preamble of the Articles, and by the Toleration granted by Law, mentioned in this second Article) is unreasonable, or the Allowance of it unwarrantable. For he is humbly of Opinion, that there is a wide and manifest Difference between a Toleration of the *Genevian* Discipline, and an Exemption of Protestant Dissenters from the Penalties of certain Laws; between a Toleration allowed merely by the Regal Power, and an Exemption granted by Act of Parliament; which Exemption he is so far from thinking unreasonable or unwarrantable, that from the bottom of his Heart he wisheth it, under the same Restrictions and Limitations, extended to all Her Majesty's Protestant Subjects throughout the whole Kingdom of *Great Britain*.

And as to such Part of the Second Article, whereby the said *Henry Sacheverell* is charged with *scurrilously calling the said Archbishop Grindall a false Son of the Church, and a perfidious Prelate*; the said *Henry Sacheverell* humbly hopes, that any harsh Expressions he hath used concerning that Prelate may be rather excused, because the said Archbishop having permitted Innovations to be obtruded on the Church, did thereby incur the high Displeasure of so good and pious a Princess as Queen *Elizabeth*, by whose Order he was suspended, and continued under such Suspension to the Day of his Death. However, the said *Henry Sacheverell* presumes, that no Words spoken of an Archbishop above one hundred and twenty Years since deceased, will, in Construction of Law, amount to an high Crime and Misdemeanor.

And as to such Part of the Second Article, whereby the said *Henry Sacheverell* is charged with maintaining, *That it is the Duty of Superior Pastors*

to thunder out their Ecclesiastical Anathema's against Persons entituled to the Benefit of the said Toleration; he the said *Henry Sacheverell* saith, That he doth not maintain or suggest that it is the Duty of Superior Pastors to thunder out Ecclesiastical Anathema's against Persons entituled to the Benefit of the Toleration; which Persons, where he speaks of such Anathema's, are neither by him mentioned nor intended; but if the Expressions by him unapplied to any, must be determin'd to any one sort of Persons, he humbly conceives, that the Connection of his Discourse will determine them to those Schismatical and Factious Persons, who take Permission for Power, and advance Toleration immediately into an Establishment; and such Schismatical and Factious Persons, he humbly apprehends, are not the Persons entituled to the Benefit of the Act of Exemption, which was designed only to give some Ease to scrupulous Consciences in the Exercise of their Religion.

And as to the last Part of the second Article, whereby the said *Henry Sacheverell* is charged with *insolently daring or defying any Power on Earth to reverse such Sentences*; the said *Henry Sacheverell* saith, That the Sentence which he the said *Henry Sacheverell* dares any Power on Earth to reverse, is such, and such only, as is ratified in Heaven; and such Sentence he still affirms to be by any earthly Power irreversible; and hopes it will not be thought Insolence in him to affirm, what he conceives would be Blasphemy in any one to deny: And doth further acknowledge himself firmly to believe, that some Sentences pronounced by the Pastors of the Church are ratify'd in Heaven; and that some Persons exempted from Punishment by the particular Laws of the Land, may yet by the Laws of Christ be justly liable to such Sentence; and that Schism, or a causeless Separation from a Church imposing no sinful Terms of Communion, is a Sin, which exposes the Persons guilty thereof to the Censures of the Church.

Answer to the Third Article.

As to so much of the Third Article, as charges the said *Henry Sacheverell*, *That he doth falsely and seditiously suggest and assert, that the Church of England is in a Condition of great Peril and Adversity under Her Majesty's Administration*; and that, in order to arraign and blacken the said Vote and Resolution of both Houses of Parliament, approved by Her Majesty, he, in opposition thereto, doth suggest the Church to be in Danger: The said *Henry Sacheverell* denies that he hath either asserted or suggested the Church of England to be in a Condition of great Peril and Adversity under Her Majesty's Administration; but he doth freely acknowledge, that he hath in his Sermon suggested, That when National Sins are ripened up to a full Maturity, to call down Vengeance from Providence on a Church and Kingdom, debauched in Principles, and corrupted in Manners, and instead of the true Faith, Discipline and Worship, given over to all Licentiousness both in Opinion and Practice, to all Sensuality, Hypocrisy, Lewdness and Atheism, then we (that is evidently) all the Members of such a Church or Kingdom, are in Danger in such deplorable Circumstances. And this Suggestion of Danger arising to a Church and Kingdom from Vice and Infidelity, he humbly presumes is not opposite to the Vote of the Two Houses, or Seditious, but

entirely agreeable to what is solemnly declared in an Act of Parliament made the ninth and tenth of his late Majesty King William the Third, for the more effectual suppressing of Blasphemy and Prophaneness; wherein it is affirmed, *That many Persons had of late Years openly avowed and published many Blasphemous and Impious Opinions, contrary to the Doctrines and Principles of the Christian Religion; greatly tending to the Dishonour of Almighty God, which might prove destructive to the Peace and Welfare of this Kingdom.* And he conceives, that since the passing that Act, the detestable Crimes for the effectual suppressing of which that Act was intended, have greatly increased. And the said Henry Sacheverell saith, the Suggestions by him made of Dangers arising to us from Vice and Infidelity, he apprehends to be in no wise more seditious or repugnant to the Vote of the Two Houses approved by Her Majesty, than the like Suggestions occurring in the solemn Prayers of the Church Authorized by Her Majesty, and frequently used before each House of Parliament; wherein we beseech God, *that no Sedition may disturb this State, nor Schism distract this Church; and that he would give us Grace seriously to lay to Heart the great Dangers we are in by our unhappy Divisions.*

And as to so much of the said Third Article, whereby 'tis charged, *That the said Henry Sacheverell, as a Parallel, mentions a Vote, That the Person of King Charles the First was voted to be out of Danger, at the same Time that his Murderers were conspiring his Death; thereby wickedly and maliciously insinuating, that the Members of both Houses who passed the said Vote, were then conspiring the Ruin of the Church;* he the said Henry Sacheverell doth say, That he doth not draw any Parallel between the Vote concerning the King's Person, and the late Vote of the Two Houses, which he neither there, nor elsewhere in his Sermon, mentions: But had he suggested one Vote to be Parallel to the other, which he hath not, yet would not he thereby have wickedly and maliciously insinuated, that the Members of both Houses, who passed the late Vote, were then conspiring the Ruin of the Church; but would only have intimated, that as some Persons were conspiring the Murder of the King, whilst others, no way privy to their wicked Intentions, voted his Person to be out of Danger; so when the Two Houses voted the Church of England to be in no Danger under Her Majesty's Administration, there might be some others who were conspiring the Ruin of the Church; and many others, who, by their Vice and Infidelity, were drawing down God's Vengeance both on Church and Kingdom.

As the Vote of both Houses, made four Years ago, did concern those only who did then insinuate the Church of England to be in Danger under Her Majesty's Administration; so it cannot, he presumes, affect those who do now suggest the Christian Faith, which is the Foundation upon which every Christian Church stands, to be endangered by those Atheistical and Irreligious Principles which are daily from the Press propagated amongst us, notwithstanding the Provision made by the said Act for suppressing Blasphemy and Prophaneness: So that the said Henry Sacheverell thinks, that he might with Truth affirm (as he did in his Sermon preach'd at Derby) *That there were never such outrageous Blasphemies against God and all Religion, Natural as well as Revealed, vented publickly with Impunity, in any Christian Church or Kingdom in the whole World, as at present in our own; of which Affir-*

tion the said Henry Sacheverell is ready to produce undeniable and ample Proofs, if called thereto.

Answer to the Fourth Article.

As to the Fourth Article, it contains several Charges of a very high and Criminal Nature, of which the said Henry Sacheverell knows his Heart to be entirely innocent; and he observes with Comfort, That whereas in the former three Articles he is said to have maintained or asserted, as well as to have suggested, the Doctrines and Things therein laid to his Charge, in this fourth Article he is not accused of maintaining and asserting, but barely of suggesting what is therein contained: And he humbly hopes, that bare Suggestions or Insinuations, could they with any Colour or Probability be made out, as he is fully satisfied they cannot, will not, under the most mild and gracious Government, (at a Time when several new Laws have been made for securing the Liberties of the Subject) by your Lordships, the great Guardians of our Laws and Liberties, be adjudged sufficient to involve an English Subject in the Guilt and Punishment of high Crimes and Misdemeanors.

To the several Parts of the said fourth Article, the said Henry Sacheverell doth in all Humility answer; As to such Part thereof whereby it is charged, *That the said Henry Sacheverell, in his said Sermons and Books, doth falsely and maliciously suggest that Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution;* he the said Henry Sacheverell saith, That he hath not made any mention, in either of his Books or Sermons, of Her Majesty's Administration in Ecclesiastical or Civil Affairs, or of Her Ministers: So far is he from suggesting that Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution, that amongst the inestimable Blessings which are owing to our Deliverance annually commemorated on the fifth of November, he reckons this to be one, *That Her Majesty, the Good and Pious Relict of the Royal Family, sits now happily upon the Throne of Her Ancestors; and prays that God may long preserve Her, for the Comfort and Support of the Church; and professeth, that what he spoke proceeded from a tender Concern for Her Majesty's Person and Government:* And in the Dedication also of his said Sermon Preached at St. Paul's, solemnly declares, as he did before in his Discourse, *That his only Aim and Intention was earnestly to contend for the Safety, Rights and Establishment of Her Majesty, together with those of the Church.*

And as to such Part of the said fourth Article, whereby it is charged, *That the said Henry Sacheverell doth suggest that there are Men of Characters and Stations in the Church who are false Brethren;* the said Henry Sacheverell saith, That the false Brethren, as described by him in his Sermon, are either those who propagate False Doctrines, or who give up the Discipline and Worship of the Church, or who are for a Neutrality in Religion, or who wish well to the Church of England, and are ready to Sacrifice their Persons and Estates in her Vindication, but do not shew their Zeal in the Communion of the Church, as well as for it, in Obeying her Precepts, as well as defending her Rights. These being the several sorts of False Brethren enumerated by the said Henry Sacheverell, if he should have suggested that there are Men of Characters and Stations in Church and

and State, (Words by no Means restrained to the highest Characters and Stations) to whom the Denomination of False Brethren, in some or more Senses of that Word, as by him interpreted, doth belong, he humbly hopes that such Suggestion would not be deemed False, Malicious, or highly Criminal.

And as to such other Part of the said fourth Article, whereby it is charged, That the said Henry Sacheverell doth suggest, That there are Men of Characters and Stations in the Church and State, who do themselves weaken, undermine and betray, and do encourage and put it into the Power of others who are professed Enemies, to overturn and destroy the Constitution and Establishment; the said Henry Sacheverell denieth that he suggesteth any such Things concerning Men of Characters and Stations in Church or State. Where he speaks of those who weaken, undermine and betray, and encourage and put it in the Power of our professed Enemies to overturn and destroy the Constitution and Establishment, there Men of Characters and Stations are not mention'd by him; and where he mentions Men of Characters and Stations, twelve Pages afterwards, the only Place wherein he mentions them, there he speaks nothing of weakening, undermining and betraying, or of encouraging and putting it in the Power of our professed Enemies to overturn and destroy the Constitution and Establishment: And hopes therefore that he shall be no ways answerable for a suppos'd Reflection, which depends upon the Conjunction of Passages so widely distant from, and so little relating to each other. The Weakners, Underminers and Betrayers of our Constitution, and the Encouragers to whom the said Henry Sacheverell doth in any Part of his Sermon refer, will, he presumes, upon a candid Examination of those Passages, appear to be one of these three Sorts of Persons; either, *First*, such as by their Writings endeavour to subvert the Foundations of our Church and State; or, *Secondly*, such, whether Writers or others, who are for a Latitudinarian Heterogeneous Mixture of all Persons of what different Faith soever, uniting only in Protestancy, which would let into her Bowels those who neither believe her Faith, own her own Mission, submit to her Discipline, or comply with her Liturgy; which he afterwards stiles the Model of an universal Coalition; Or, *Thirdly*, those occasional Conformists, who have so far eluded the Corporation and Test Acts by their abominable Hypocrisy, as to have undermined the Foundations, and endanger'd the Government, by filling it (as far as they could) with its professed Enemies, that is, with themselves. Of all these, and their Encouragers, the said Henry Sacheverell confesses himself to have suggested that they do, in his Opinion, weaken, undermine, and betray the Constitution: But that either these, or their Encouragers, are Men of Characters or Stations in the Church or State, he hath not any where suggested.

And as to such other Part of the said Fourth Article, which chargeth the said Henry Sacheverell with charging Her Majesty, and those in Authority under Her both in Church and State, with a general Male-Administration; the said Henry Sacheverell saith, That he abhors the Thoughts of bringing any Charge against Her Sacred Majesty, whom he never mentions but in Terms of the profoundest Duty and Respect. Nor doth he tax those in Authority with a General, or with any Male-Administration; which is a Word he hath never us'd,

nor (as far as he can find) any other Word or Words by which the Thing is imply'd. So far is the said Henry Sacheverell from making any undutiful Reflections upon Her Majesty or Her Administration, that in the several Writings that he has publish'd, since Her Happy Accession to the Throne, particularly in one which is an avow'd Defence of Her Title to the Crown, and a Justification of Her entering into a War with France and Spain, he hath expressed himself with the most Hearty and Loyal Zeal for Her Majesty's Person, Government and Administration.

And as to such other Part of the said Fourth Article, whereby it is charged, That the said Henry Sacheverell, as a publick Incendiary, persuades her Majesty's Subjects to keep up a Distinction of Factions and Parties; the said Henry Sacheverell saith, That he is so far from being guilty of this Charge, that in his said Sermon he invites the Separatists to renounce their Schism, and come sincerely into the Church; and complains of those who have villainously divided us with the Knaveish Distinctions of High and Low Church-Men, and wishes we may be one Fold under one Shepherd; and that all those invidious Distinctions, that now distract and confound us, were lost, so that we might be terrible like an Army with Banners to our Enemies, who could never break in upon such an uniform and well-compacted Body.

And to such other Part of the said Fourth Article, as chargeth, That the said Henry Sacheverell instills groundless Jealousies, and foments destructive Divisions among her Majesty's Subjects; the said Henry Sacheverell saith, That in his said Sermon, he on the contrary Rebukes and Condemns those, who, by false Insinuations, and raising groundless Jealousies and Fears, embroil the Publick, and bring it into Confusion.

And as to such other Part of the said Fourth Article, whereby it is charged, That the said Henry Sacheverell excites and stirs up Her Majesty's Subjects to Arms and Violence; the said Henry Sacheverell saith, God forbid that he should be guilty of so heinous a Crime, who asserts the utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever; which Assertion he conceives to be the chief, if not only Ground of the Charge exhibited against him in the first Article.

In Confutation of this Charge, he begs leave to recite one Passage out of his Sermon preached at Derby in the following Words; We may be Partakers of other Mens Sins, if we do not, to the utmost of our Power, endeavour to prevent or obstruct their Commission, when they manifestly endanger the Good of the Publick: As we are Members of any Government, or Society, we are all obliged in Point of Honour, Interest and Conscience, to maintain its Security, promote its Welfare, and guard it against Factions Designs, or seditious Conspiracies that may threaten its Constitution, discompose its Peace, or violate and subvert its Laws. God and Nature have invested every Subject from his Cradle, with a Commission to engage, discover and disappoint the Enemies of his Church and Country; and he that is either privy to, industriously conceals, or any way abets their Schismatical, Illegal or Rebellious Enterprizes, both in the Eyes of Human as well as Divine Laws, is an Accomplice and Partaker in the Guilt, a Traitor to God and his Prince, a Patron and Protector of Injustice, and a common Adversary to himself as well

as all Mankind. And the said Henry Sacheverell hopes, what he hath said in the Dedication of the same Sermon, *That there are not wanting some to preach the Truth, and others to support it, at the Expence of their Lives and Fortunes*; will not be construed as exciting Her Majesty's Subjects to Sedition and Rebellion; since that Truth which he commends some for Preaching, and others for Supporting, is by him opposed to the Attempts of those who betray and run down the Principles and Interests of our Church and Constitution; and since he there deservedly commends the High Sheriff of that County, on the Account of his steady Loyalty and Zeal to serve Her Majesty and the Government, for which he hath been so remarkably distinguished.

In the Sermon Preach'd at St. Paul's, he doth indeed excite Christians to put on the whole Armour of God, as wrestling, not only against Flesh and Blood, but against Principalities, against Powers, against the Rulers of the Darkness of this World; against Spiritual Wickedness in high Places. But he hath learned from the same St. Paul, That the Arms of Resistance taken up by Subjects against the higher Powers, are no Part of that Spiritual Armour; and the Principalities and Powers by him mention'd, being plainly distinguished from Flesh and Blood, cannot, he thinks, be so far misinterpreted, as to be understood of Earthly Potentates and Rulers.

And as to so much of the said Fourth Article, whereby it is charged that he the said Henry Sacheverell doth wickedly wrest and pervert divers Texts and Passages of Holy Scripture, that his said malicious and seditious Suggestions may make the stronger Impression upon the Minds of her Majesty's Subjects; the said Henry Sacheverell says, That having no malicious or seditious Suggestions to imprint, he could not intend to wrest any Passages of the Holy Scripture to that wicked Purpose. Hard is the Lot of the Ministers of the Gospel, if when they Cite the Word of God in their General Exhortations to Piety and Virtue, or in their Reproofs of Mens Transgressions, or where they are Lamenting the Difficulties and Conflicts with which the Church of Christ, whilst Militant here on Earth, must always struggle, the several Texts and Passages by them Cited, shall be said to have been by them meant of particular Persons and Things, and shall be construed in the most Criminal Sense, and be made by such Construction one Ground of an Impeachment for High Crimes and Misdemeanors.

And as to all other Matters and Things in the said Articles contain'd, and not herein before particularly answered unto, the said Henry Sacheverell saith, he is not Guilty of them, or any of them, in Manner and Form as the same are charged upon him in and by the said Articles; and humbly submits himself to your Lordships Judgment.

HENRY SACHEVERELL.

The Commons Replication to the Answer of Doctor Henry Sacheverell.

THE Commons have considered the Answer of Henry Sacheverell, Doctor in Divinity, to the Articles of Impeachment exhibited against him by the Knights, Citizens and Burgesses in Parliament Assembled; and observe, that there are many things in it not warranted by the Course of Proceedings up-

on Impeachments, foreign to the Charge of the Commons, unbecoming a Person Impeached, and plainly designed to reflect upon the Honour of the House of Commons in this Proceeding, for which they might demand your Lordships immediate Justice.

But the Commons being sensible that the Nature of the Crimes whereof he stands Impeached, and the Necessity of bringing him to a speedy and exemplary Punishment, require that all Occasions of Delay should be avoided, and not doubting that your Lordships will in due time vindicate the Honour of the Commons, and the Justice of their Proceedings; the Commons do Aver their Charge against the said Henry Sacheverell for High Crimes and Misdemeanors to be true, and that the said Henry Sacheverell is Guilty in such manner as he stands Impeached, and that the Commons will be ready to prove their Charge against him at such convenient Time as shall be appointed for that Purpose.

Lord Chancellor. Gentlemen of the House of Commons, you may proceed with your Evidence.

Mr. Attorney Gen. MY Lords, by Command of the Knights, Citizens and Burgesses in Parliament Assembled, we appear in behalf of all the Commons of Great Britain, to make good the Impeachment against the Prisoner at the Bar, Doctor Henry Sacheverell.

The Misdemeanors he stands accused of are specified in the Articles which have been just now read to your Lordships, and the Facts there Charged, are Laid to have been done with a Wicked, Malicious, Seditious Intention, to Undermine and Subvert Her Majesty's Government, and the Protestant Succession as by Law Established; to Defame Her Majesty's Administration; to Asperse the Memory of His late Majesty King William; To Traduce and Condemn the late Happy Revolution; to Contradict and Arraign the Resolution of both Houses of Parliament; to Create Jealousies and Divisions amongst Her Majesty's Subjects; and to Incite them to Sedition and Rebellion.

My Lords, If this Charge is made good (as I am apt to think it will) I may presume to say, no Words can either aggravate or alleviate the Offence.

My Lords, our Proofs in this Case will arise from Evidence which cannot be liable to the Imputation of being over-aw'd by the Weight of the Prosecutors, or corrupted or perverted; for out of his own Mouth we shall Charge him, and by his own Words and Sermons we shall convict him.

My Lords, I can with Truth say, That it is no small Trouble to the Commons of Great Britain, to have this Occasion of coming in this manner before your Lordships: Could they have satisfy'd themselves that Her Majesty's Honour, the Safety of Her People, and the Protestant Succession as by Law Established, were not highly concerned to bring this Man to speedy Justice, they could very willingly have spared Your Lordships this Trouble.

But when they consider'd of what Import it was to the Nation, how much it concerned the very Being of our Constitution, to Discountenance and put an End to such sort of Seditious Proceedings as the Doctor and some others of his Brethren have been lately practising in divers Parts of the Kingdom, they could not think otherwise than that it was a Matter fit for the Grand Inquest of the Nation to take Notice of: And finding it to be a Cause of so great

great Moment to the Publick, they judg'd it fit to be taken under their own Management, and not trust it to the Decision of any Inferior Tribunal. And, my Lords, it must be agreed that your Lordships are the only proper Judges, when the whole Commons of Great Britain find it necessary to be the Prosecutors; nor can Doctor Sacheverell have any just Cause to complain of this manner of Proceeding, when it gives him so publick an Opportunity of Defending himself (if his Innocence can clear him;) and what can he desire more, when he lies under so heavy an Accusation, than to have your Lordships for his Judges, who have already shewn your great Indulgence to him, by allowing him (as the Noble Lord from the Woolpack just now observ'd) all the Advantages a Man under his Circumstances can ask, or desire to have?

My Lords, This Prosecution took its Rise from a Complaint that was made in the House of Commons the Thirteenth of December last, of two Books which had been lately Printed and Published under the Name of Doctor Henry Sacheverell. The Books being deliver'd in, several Paragraphs were read; and by divers Passages, too many for me now to enumerate to your Lordships, it did plainly appear that both Books did contain very Scandalous and Seditious Matter, highly reflecting upon the Queen and Her Administration.

Hereupon the Doctor was order'd to attend; which he did accordingly the next Day, and at the Bar of the Commons House own'd and avow'd both Books to be his; That they were Sermons he himself had preach'd; and that he had caused them to be printed and published.

After such a Confession, Your Lordships may imagine Her Majesty's Dutiful Commons did express their just Resentments of the great Wrong and Injuries that were done to Her Majesty, and all that were in Authority under Her; and immediately ordered this Impeachment.

Your Lordships will perceive, by Perusal of the Sermons and Epistles Dedicatory, that the Design and Drift of the same is to possess the People with strange Notions, and terrible Apprehensions of the Danger they are in, by a General Male-Administration of the Publick Affairs both in Church and State.

That both these Sermons were preach'd upon Publick Occasions; and had, since the Printing thereof, been handed about with more than ordinary Application.

One of these Books is entitled [*The Communication of Sin,*] being a Sermon preach'd at the Affizes held at Derby in August last: And because the Doctor thought he had not said enough against the Queen and Her Government in the Sermon, he affixes a Dedication to it, wherein he affirms, That the Principles of our Church and Constitution are shamefully betray'd and run down: That both are persecuted, on the one Side by rude and presumptuous Insults, and base undermining Treachery on the other; and that this Persecution is carry'd on by associated Malignants.

The other Sermon was preach'd at St. Paul's, London, on the Fifth of November, which is a Day set apart for a General Day of Thanksgiving, for Two very great Deliverances vouchsafed to this Nation, by the Discovery of the Gunpowder Plot, and the Arrival of His Late Majesty King William, to redeem us from Popish Tyranny and Arbitrary Power.

My Lords, When ye come to hear this Sermon read, I am confident that it must appear very strange to find, that when there were Two such Memorable Occasions for the Doctor to have set forth his Eloquence in a Thanksgiving-Sermon, he should in great measure pass by both the Bu-sinesses of the Day, and entertain his Audience with a long Harangue of the deplorable Condition the Church was in; not so much from Papists, (the avow'd Enemies of the Church) as from her pretended Friends, as he calls them, the False Sons of the Church, who were crept into her Bowels, and shewn themselves to be perfidious Brethren, by defending Toleration and Liberty of Conscience, and favouring the Dissenters.

And to shew his little Liking of the Great Work which was begun to be wrought on that Day by the Arrival of His Late Majesty, the chief Turn of his Discourse is to cry up Non-Resistance and Passive Obedience.

And to make it most evident, that what he said of Non-Resistance was to cast black and odious Colours upon the Revolution; he lays down a General Position, *That it is not lawful, upon any Pretence whatsoever, to make Resistance to the Supreme Power*; which Supreme Power, by other Passages, he explains to be the Regal Power.

And being apprehensive that every one that heard him talking in that manner against Resistance, would see plainly he was Censuring and Condemning the Means that brought about the Revolution, and being desirous to cast as heavy Reflections as he could upon the Memory of King William, he asserts, *That the Prince of Orange, in his Declaration, utterly disclaim'd all manner of Resistance.*

My Lords, Every body knows, that knows any thing of the Revolution, That the Prince of Orange came over hither with an Armed Force; and that in several Paragraphs of his Declaration, (the Doctor speaks of) *His Late Majesty invites and requires all Peers of the Realm, both Spiritual and Temporal Lords, all Gentlemen, Citizens, and other Commoners, to come in and assist him, in order to the executing that Design he had then undertook, against all that should endeavour to oppose him.*

Therefore it must be accounted very ridiculous for the Doctor to advance such a Position, if he had no further Meaning in it, than to give an Account of the Prince of Orange's Design in coming over here into England.

And this will make it necessary for your Lordships to consider what is the true Meaning of this Assertion: Is it not plainly to make the Prince of Orange say one Thing, and at the same time do directly another? And can this be done with any other Design, than to asperse the Memory of the late King William?

Then as to his Discourse concerning Passive Obedience and Non-Resistance, in such Latitude as is there mention'd; what could it tend to, but to cast Reflections upon that Resistance, which was the Means which brought about the Revolution?

For was there any Occasion at that Time to be so earnest to cry down Resistance, and preach up Passive Obedience?

Can any one pretend to say, there were any Symptoms of Discontent throughout the Nation, in any Parts thereof?

No: To our Comfort be it spoken, no Reign, no Age, no History can give a better Account of the good Dispositions of the People to their Sovereign.

reign. Therefore since the Preaching these Doctrines was needless, it does favour of some wicked Design, to be talking so unseasonably of this Subject.

If what the Doctor very frequently asserts in this Sermon be true, *That all are False Sons of the Church, who assisted in bringing about the Revolution, or that join'd in the Opposition that was made to the Encroachments which were begun by evil Ministers in the Reign of King James the 1st. against our Religion and Liberties*; let the Doctor a little consider, how far his Character of a False Brother may be carry'd!

Every body knows, that liv'd in those Days, that the Body of the Clergy of the Church of England made a Noble Stand against the Encroachments which were then making, and appear'd as active as any of the Laity.

And was it not by their Writings, Preaching, and Example, that the Nobility and Gentry were animated to maintain and defend their Rights, Religion and Liberties? And as an undoubted Monument that this was the Sense of the whole Kingdom at the Time of the Revolution, it is enter'd in the Journal of the House of Commons, on the First of February, 1688;

That the Unanimous Thanks of the House was given, Nemine Contradicente, to the Clergy of the Church of England, for the great Services they had done their Religion and Country, by the Opposition they had made to the Execution of the Ecclesiastical Commission, and their refusing to read the King's Declaration for a Toleration, which was then founded upon the Dispensing Power.

And how did the Archbishops receive the Message that was sent them upon this Occasion, that they might communicate that Resolution to the Clergy in their respective Dioceses?

Our Journals tell us, That Mr. *Levison Gower* the next Day acquainted the House of Commons, that he had attended the Two Archbishops, according to Order, with the Thanks of the House; and that Archbishop *Sancroft*, and the then Archbishop of *York*, return'd their Thanks to the Commons for themselves, and in Behalf of all their Clergy, for their favourable Vote.

Your Lordships see, the Commons were then happy enough to be thought favourable to the Clergy of the Church of England; and yet those very Commons were the Men who passed the *Toleration-Act*, for exempting Protestant Dissenters from the Penalties of certain Laws, as one of the most necessary Acts for the Good of the Kingdom.

And were they not encouraged to go about that Charitable Work, by the Petition of the Seven Bishops, presented to King *James*; wherein they acquainted him, *That it was not for want of a due Tendernefs to Dissenters, which made them refuse reading his Declaration for Toleration to Dissenters, in relation to whom, they were willing to come to such a Temper as should be thought fit, when the same came to be consider'd in Parliament.*

But now the same hath been consider'd in Parliament, and the Toleration hath been settled and establish'd by the Legislative Authority of the Kingdom, and hath been ratify'd and approv'd of in this Reign, by Her Majesty and both Houses of Parliament; Doctor *Sacheverell* belike disapproves of it, and is pleas'd to tell us in a most extraordinary manner, *That a Man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gained by any other Grants and Indul-*

gences, than giving up our whole Constitution: And he that recedes the least Tittle from it, to satisfy and ingratiate with these Clamorous, Insatiable, Church-devouring Malignants, knows not what Spirit they are of.

After such an ample Declaration of his Opinion, what fatal Consequences will attend the granting Indulgences to Dissenters, Can the Doctor imagine, that his saying, in his Answer to the Articles, *That he intends not to cast the least invidious Reflection upon that Indulgence the Government has condescended to give them*, will take off the hard Censures he hath pass'd upon Dissenters?

And, my Lords, if an Archbishop, who hath been dead almost a Hundred and twenty Years, cannot be permitted to rest quiet in his Grave, but must have foul Aspersions cast upon his Memory, as being a false Son, and a perfidious Prelate of the Church, for interceding (as Doctor *Sacheverell* says) with Queen *Elizabeth* for the Dissenters in those Days: What must the present Archbishops and Bishops of our Church expect from Doctor *Henry Sacheverell*, if they do not Thunder out their Ecclesiastical Anathema's against Dissenters as often as the Doctor shall think there is occasion for them?

My Lords, I perceive the Doctor hopes to save all he hath said against Toleration to Dissenters, by a nice Distinction he hath hit upon between an Indulgence and a Toleration.

Therefore he tells your Lordships, *That upon the most diligent Enquiry, he hath not been able to inform himself that a Toleration hath been granted by Law.*

Can the Doctor pretend to say, that this Word Toleration has never been made use of to express the Religious Liberty and Indulgence that is granted and allowed to Dissenters? If we wanted Authorities to justify the Use of the Word, after the Doctor has made use of it in the same Sense over and over, in many Passages in his Sermon, as will be taken Notice of by the Gentlemen that are to make good the Second Article, the Doctor might be put in Mind, that Her Majesty in Her Speech from the Throne, on the 17th of December, 1705, hath been pleas'd to Declare, *That she will inviolably Maintain the Toleration.*

My Lords, As the Time was most Unseasonable for the Preaching such Doctrines as these, so the Place was very improper for a Lecture of Politicks: For your Lordships do perceive this latter Sermon, which was Preach'd on the Fifth of November last, was Preach'd in the Great Metropolis of this Kingdom, before the Lord Mayor, Aldermen, and Citizens of London; from whose steady Loyalty to Her Majesty, and firm Affections to the Revolution, such vast Sums have been contributed for carrying on this long War against France, which hath proved so fatal to the French King, and other Enemies of this Kingdom.

And what more likely to give a fatal Wound to the Publick Credit at this Time, than such Doctrine, which tends to the Overthrow of all the Acts of Parliament which have been made in Support of this Constitution.

And how strange an Attempt was it for the Doctor to Preach against the Revolution and this Government, before those Citizens who owe the Restoration of their Charters, and all their Franchises and Immunities to it.

But, to do Justice to the Doctor, he in his Answer denies he hath said any thing of the Means which brought about the Revolution.

And,

And, if your Lordships can believe him, he says, *he has endeavour'd to Vindicate the Revolution from the black and odious Colours the Enemies of the Revolution would throw both upon that and his late Majesty.*

To what End and Purpose then are these Doctrines Preach'd with so much Vehemence at this Time, unless it be to reflect backwards upon what was done at the Time of the Revolution?

There is certainly no Occasion to Preach Non-Resistance to Her Majesty's Loyal and Dutiful Subjects, who have never shewn the least Inclination to give Disturbances to this present Government.

Was there ever known a Time, in which there was so universal an Agreement in all Ranks and Degrees amongst us? Does not every one almost strive to shew their Zeal and Affection for Her Majesty and Her Government? If there be any that are less quiet than their Neighbours, we shall find them amongst the Friends of Doctor Sacheverell, who are professedly no Friends to the Revolution. Nothing is more certain, than that all that are not satisfied with what was done at the Time of the Revolution, must be Enemies to the present Establishment: And 'tis from this Source, all these Declamations against Men of Character and Station, both in Church and State, do proceed.

But I would have the Doctor consider, that we have Laws to punish Spreaders of false News, and horrible Stories, of the Great Men and Great Officers of the Kingdom; and 'tis to put a stop to these malicious Practices now on Foot, that this Delinquent is now brought to this Bar.

When we shall have read our several Proofs, which will justify every Particular charged on the Doctor in the Articles of Impeachment, the Commons will not doubt of your Lordships Judgment against this Defendant.

Mr. Lechmere. **M**Y Lords, I am commanded to assist in stating to your Lordships the Grounds of the Charge of the Commons, and the Nature and Tendency of the Crimes now before you, in Judgment.

Your Lordships have had open'd to you an Impeachment of the Commons of Great-Britain: The Subjects of both Nations had an equal Concern in that which is the Ground of it: They are happily united in this Prosecution; and the common Interest of your Lordships, and us all, is inseparable in its Event.

I need say no more to your Lordships of the Greatness of this Cause; nor for the Person of the Offender, but for the High Importance of those Matters which he has presumed to draw in Question.

The Commons, on their Part, have been exceeding careful, in every Step of this Proceeding, that it should receive a Deliberation suitable to the *Weight of the Cause*, and the *Dignity of the Commons*; and they observe it to your Lordships, with great Satisfaction, That by your ready Concurrence, no Difficulties have arisen to delay or discourage their Impeachment. They ascribe this to a Desire in your Lordships, equally with themselves, to cultivate a good Correspondence on so important an Occasion, and to that due Regard your Lordships shew to the Course of Impeachments, *the Ancient Right*, and *Great Security* of the Commons.

In framing their Charge, the Commons have thought fit, by a Preamble to their Articles, to lay

before you the Grounds of their Accusation; in Terms the most cogent and expressive; to the end, your Lordships might have early and perfect Notice of the Points on which the Commons intend'd to proceed; that your Lordships, and the whole Kingdom, might know the unanimous and hearty Zeal of the Commons, to assert the Justice of the late Happy Revolution, and the Foundations of Her Majesty's Government and Administration; And that the *Judgment* of the Commons, on this weighty Occasion, might stand *fully on the Records of Parliament*, and be *transmitted to all Posterity*.

Your Lordships will observe, in reading their Evidence, many Things excepted to by the Commons, precedent to the Ground of their first Article; but you will soon perceive, that all Parts of the Design of the Prisoner center in that. They could not therefore have acquitted themselves, if they had not made that their Foundation: Being firmly convinc'd, they never can have the Honour and Justice of that Glorious Work too much at Heart; nor be too jealous of those, who under any Pretences, *tho' never so specious*, shall attempt to lessen it. And when they consider the certain Dependence that the Justice of the late Revolution itself must have upon the Steps that led to it, they can have no doubt but your Lordships will think him equally Criminal, who condemns the Means by which it was effected.

My Lords, *The Necessary Means*, (which is the Phrase us'd by the Commons in their first Article) are Words made choice of by them *with the greatest Caution*. Those Means are described (in the Preamble to their Charge) to be, That Glorious Enterprize, which his late Majesty undertook with an armed Force, to deliver this Kingdom from Popery and Arbitrary Power; the Concurrence of many Subjects of the Realm, who came over with him in that Enterprize, and of many others of all Ranks and Orders, who appear'd in Arms in many Parts of the Kingdom, in Aid of that Enterprize.

These were the *Means* that brought about the Revolution, and which the Act that pass'd soon after, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown, intends, when His Late Majesty is therein called *the Glorious Instrument of delivering the Kingdom*; and which the Commons, in the last Part of their first Article, express by the Word *Resistance*.

But the Commons, who will never be unmindful of the *Allegiance* of the Subjects to the *Crown* of this Realm, judg'd it highly incumbent upon them, out of regard to the Safety of Her Majesty's Person and Government, and the Ancient and Legal Constitution of this Kingdom, to call that Resistance the *Necessary Means*; thereby plainly founding that Power, and Right of Resistance, which was exercised by the People at the Time of the Happy Revolution, and which the Duties of Self-Preservation and Religion call'd them to, upon the Necessity of the Case; and at the same time, effectually securing Her Majesty's Government, and the due Allegiance of all Her Subjects.

Your Lordships will find, That the Prisoner, in his Sermon preach'd at St. Paul's, has asserted a Doctrine in direct Defiance and Contradiction of that Resistance us'd to bring about the Revolution; when he affirms the utter Illegality of Resistance, on any Pretence whatsoever, to be a Fundamental of our Constitution: And, as your Lordships will hear it fully made out from the Proofs, by those

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Gentlemen to whom that Part is assigned, he has also plainly declared himself, that even that Resistance used at the Time of the late Happy Revolution, is not to be excepted out of his Fundamental Rule.

My Lords, When a Preacher of the Gospel, and a Minister of the Church of England; even under this Happy Establishment, shall thus publicly condemn the Foundations on which it stands, in Defiance of Her Majesty and the Great Council of the Nation then sitting in Parliament; it becomes an indispensible Duty upon us, who appear in the Name and on the Behalf of all the Commons of Great-Britain, not only to demand your Lordships Justice on such a Criminal, but clearly and openly to assert our Foundations.

I crave Leave to remind your Lordships of the Condition of Things in both Kingdoms, immediately preceding the late Revolution: The Case is stated and recorded, between the late King James and the Subjects of both Kingdoms, in the several Declarations of the Rights of both Nations made by them at that Time.

I shall forbear to aggravate the Miscarriages of that unhappy Prince, further than by saying, That it is declared in the Preamble to the Bill passed in England, *That by the Assistance of Evil Counsellors, Judges and Ministers, employ'd by him, he did endeavour to subvert and extirpate the Protestant Religion, the Laws and Liberties of the Kingdom, in the several Instances there enumerated.* And in that passed in the Kingdom of Scotland, it stands declared, *That, by the Advice of Evil Counsellors, he did invade the Fundamental Constitution of that Kingdom, and alter'd it from a Legal Limited Monarchy, to an Arbitrary Despotick Power.*

Your Lordships, on this Occasion, will again consider the Ancient Legal Constitution of the Government of this Kingdom; from which it will evidently appear to your Lordships, That the Subjects of this Realm had not only a Power and Right in themselves to make that Resistance, but lay under an indispensible Obligation to do it.

The Nature of our Constitution is that of a Limited Monarchy, wherein the Supreme Power is communicated and divided between Queen, Lords and Commons, tho' the Executive Power and Administration be wholly in the Crown. The Terms of such a Constitution do not only suppose, but express an Original Contract, between the Crown and the People; by which that Supreme Power was [by mutual Consent, and not by Accident] limited and lodg'd in more Hands than one: And the uniform Preservation of such a Constitution for so many Ages, without any fundamental Change, demonstrates to your Lordships the Continuance of the same Contract.

The Consequences of such a Frame of Government are obvious: That the Laws are the Rule to both, the common Measure of the Power of the Crown, and of the Obedience of the Subject; and if the Executive Part endeavours the Subversion, and total Destruction of the Government, the Original Contract is thereby broke, and the Right of Allegiance ceases: That Part of the Government, thus fundamentally injur'd, hath a Right to Save or Recover that Constitution, in which it had an Original Interest.

Nay, the Nature of such an Original Contract of Government proves, That there is not only a Power in the People, who have inherited its Freedom, to assert their own Title to it, but they are bound

in Duty to transmit the same Constitution to their Posterity also.

'Tis mis-spending your Lordships Time to illustrate this: 'Tis an Eternal Truth, essential to the Government it self, and not to be defaced, or destroy'd, by any Force or Device.

That the Rights of the Crown of England are Legal Rights, and its Power stated and bounded by the Laws of the Kingdom; That the Executive Power and Administration it self is under the strictest Guard, for the Security of the People; And that the Subjects have an Inheritance in their Ancient Fundamental Constitutions, and the Laws of the Land; appears from every Branch of this Government: 'Tis the Tenor of all Antiquity; Our Histories and Records afford innumerable Proofs of it: And when your Lordships look back on the History of *Magna Charta* alone, you can't doubt of the Sense of our Ancestors, that they were Masters of Franchises that were truly their own, and which no Earthly Power had Right to extort from them. Many others, of incontestible Authority, are those Valuable Relicks, which our Popish Ancestors have left us, as Proofs of the Freedom of our Constitution, of the constant Claims they made, both in and out of Parliament, to their Inheritance in their Laws, against the Encroachment of Arbitrary Power; and when the *Last Extremity* call'd them to it, they never fail'd to vindicate them by the Arms of Resistance.

"Such was the Genius of a People, whose Government was built on that Noble Foundation, *Not to be bound by Laws, to which they did not consent*; that, muffled up in Darkness and Superstition, as our Ancestors were, yet that Notion seem'd engraven on their Minds, and the Impressions so strong, that nothing could impair them.

Upon the Reformation of Religion, when all Foreign Power was abolish'd, and the Supremacy of the Crown was restor'd to its Height by many Acts of Parliament, your Lordships will always find Declarations at the same Time made of the Rights of the People; particularly that of the 25th of H. VIII. where 'tis said, *That the Realm of England is free from any Man's Laws, but such as have been devised, made and ordained within the same, for the Wealth of it; or such other, as the People of the Realm have taken at their free Will and Consent, and by long Use have bound themselves to, as the Ancient Establish'd Laws of the Realm, and none otherwise.*

Your Lordships will, I doubt not, consider those Laws made at that Time, to be fresh and remarkable Declarations, and Ratifications of the Original Contract.

This Excellent Constitution of our Government has been, thro' many Struggles, preserv'd from that Time to this; and the true Spirit of the *English* Nation still kept alive, down to the Times of the late Happy Revolution; at which Time the Danger being imminent, not only to the Laws and Liberties of the Kingdom, but to the Protestant Religion, THE ANCIENT VIRTUE OF THE ENGLISH NATION EXERTED IT SELF, AND SHONE OUT IN ITS FULL LUSTRE, IN THAT GLORIOUS WORK.

The many Laws pass'd since, more particularly those for the Settlement of the Crown and Succession, are so many repeated Declarations of their Late Majesties, and Her Majesty now on the Throne, together with the Representative Body of the

the Nation, in Confirmation of their Ancient Constitution. Nay, my Lords, we have higher Testimonies to appeal to; the many Glorious Successes with which God Almighty has blessed the Arms of Her most Sacred Majesty, employ'd in Defence of the Arms of Resistance, are so many Testimonies from Heaven in our Vindication.

Your Lordships take notice on what Grounds the Doctor continues to assert the same Position in his Answer. But is it not most evident, that the General Exhortations to be met with in the Homilies of the Church of *England*, and such like Declarations in the Statutes of the Kingdom, are meant only as Rules for the Civil Obedience of the Subject, to the Legal Administration of the Supreme Power in ordinary Cases? And it's equally absurd, to construe any Words in a Positive Law to authorize the Destruction of the whole; as to expect that King, Lords and Commons should, in express Terms of Law, declare such an ultimate Resort as the Right of Resistance, at a Time when the Case supposes that the Force of all Law is ceased.

But the Commons think he hath, by his Answer, highly aggravated his Crime, by charging so pernicious a Tenet, as that of absolute unlimited Non-Resistance, to be a fundamental Part of our Government, and by asserting this as the Doctrine of the Church of *England*.

It is a great Reproach to the Excellency of our Constitution, to impute such Principles to it as inevitably infer its Destruction; and an equal Dishonour to the Crown of this Realm, the great Glory of which is to be set over and govern a Nation of Free-born Subjects, the meanest of which has an Inheritance in the Government and the Laws equal with the greatest.

They likewise esteem it an high Reflection on Religion it self, and the Church of *England*, to charge its purest Doctrines with such Constructions, by which all Irreligion and Oppression would be Authoriz'd.

The Commons must for ever consider themselves under the strongest Obligations of Gratitude to our great Deliverer, to assert the Honour and Justice of that Resistance by which he rescued an oppressed People from inevitable Destruction; and think they should not deserve the Name of Subjects of *Great Britain*, or the least Blessing of so good a Government, if at this Time before your Lordships, and for ever hereafter, they did not assert, in the most strenuous Manner, the Honour and Justice of that Resistance which brought about the late Happy Revolution. And upon this Foundation it is, that they doubt not but your Lordships will, in a Parliamentary way, fasten a Brand of indelible Infamy on that enslaving Tenet by which it's condemn'd.

I shall take up less of your Lordships Time on the following Articles.

The Commons esteem the Toleration of Protestant Dissenters to be one of the earliest and happiest Effects of the late Revolution, wisely calculated for the Support and strengthening the Protestant Interest, the great End of the Revolution it self.

They remember, with the highest Gratitude to Her Majesty, Her Royal Resolution declared from the Throne, to preserve it inviolably; and they observe to your Lordships, that it appears to them, from a Report on their own Journals of a Conference between both Houses, on the Bill against *Occasional Conformity*, (not meant to enlarge the Liberties of Protestant Dissenters) That the Persecution of Pro-

testants is, in the Preamble to that Bill, declared to be contrary to the Christian Religion, and the Doctrine of the Church of England, and that the Act of Toleration ought to be kept inviolably; and the Commons find no Exception then taken by your Lordships to that Declaration; but on the contrary, many Expressions from both Houses, highly extolling the Policy and good Effects of that Law.

Your Lordships will perceive, from the Evidence of the Commons, many plain Declarations of the Prisoner in Maintenance of this Article; but we offer it to your Lordships, as a further Evidence; that he most shamefully arraigns the Memory of a Prelate, Eminent for his Zeal to the Protestant Religion; for his compassionate Intercessions with Queen *Elizabeth*, in favour of Dissenting Protestants; a Reflection plainly meant by him to cast an Odium on the Act of Toleration, and on the present Fathers of the Church, so Eminent for their Charity and Moderation; and from the Applauses he gives to the Severities shown by that Queen, he illustrates the Calumny thrown by him on Her present Majesty, and Her Approbation of the Toleration: Your Lordships will duly consider the Malignity of Expressions meant to condemn so good a Law, now standing in its full Force, and to encourage the Unchristian Principles of Persecution.

The latter Part of the Second Article is founded on the Legal Supremacy of the Government in Matters Ecclesiastical, by which all Ecclesiastical Jurisdiction, by the Ancient undoubted Laws of the Kingdom, is made subject to the Civil Power.

The Prisoner, in Terms very unbecoming, has struck at this Essential Part of our Constitution, in those Words; wherein, after having persuaded the superior Pastors of the Church to Thunder out their Anathema's against Protestant Dissenters, *He desires any Earthly Power to reverse such Sentences.*

My Lords, The restoring the Legal Supremacy of the Crown, was the Effect of the Reformation of Religion in this Kingdom; and the Abuse of that Power, to the apparent Danger and Destruction of the Church of *England*, in the Instance of the late illegal Ecclesiastical Commission, remains condemn'd by the Bill of Rights.

But the Commons crave Leave to observe, that the Independent Power, or Jurisdiction of the Church, or of Ecclesiastical Judges, which is the Doctrine advanced by the Prisoner, is not less dangerous. It stands in utter Defiance and Contradiction of *Magna Charta*, and the Laws of the Land; 'tis destructive of the Legal Supremacy of the Crown and Legislature; a Violation of the Oath of Supremacy; contrary to the Principles of the Reformation, and the Doctrine and Interest of the Church of *England*, of which he is a Member.

The Commons are strengthened in their Concern for the Legal Supremacy, when they call to Mind Her Majesty's Letter to his Grace of *Canterbury*, of the 25th of *February* 1705, for Propogating the Convocation; wherein Her Majesty is pleased to declare Her constant Care and Endeavours to preserve the Constitution of the Church of *England* as by Law Establish'd, and Her Resolution to preserve the Supremacy, as being a Fundamental Part of it: And upon these Considerations, they have an Absolute Assurance of an equal Regard on your Lordships Part, to a Matter of so great Importance.

Your Lordships will observe the Third Article to be included within the general Charge of the Fourth: But, the Commons being sensible, with how distinguish'd a Malice the Substance of this Charge is

levelld, by the Prisoner, against the Honour of Her Majesty and the Two Houses of Parliament, they thought it their Duty to Her Majesty to lay this before your Lordships in a distinct Article for your particular Consideration and Judgment.

When your Lordships reflect on the late heavy Censure, which the Queen and both Houses so justly laid on the Authors of the like groundless Slander, you will think that the Prisoner has reviv'd and avow'd the same, from an inveterate Pride to signalize his Enmity to Her Majesty and both Houses, and in the most publick Manner to insult the Honour of the Queen and Legislature at the same time that he was endeavouring to subvert their Foundations.

The Commons will ever shew the utmost Jealousy for the Safety and Honour of Her Majesty's Person, and must always esteem it their peculiar Concern to vindicate every Attempt that shall be made against it; and assure your Lordships, they can't be forgetful of that signal Regard Her Sacred Majesty shewed to the Church of *England*, at the time of the late Revolution; of that constant Uniform Zeal She has express'd for it from that Day to this; that perpetual Monument of Her Royal Bounty to the Clergy of the Church of *England*, to the Diminution of Her own Revenue; nor of Her Royal Care for the perpetual Establishment of its Discipline and Worship, in making it a fundamental and essential Part of the Union of the Two Kingdoms: These Things they esteem an Absolute Security, that Her Royal Protection and Affection for the Church of *England* can never fail.

The Commons doubt not of your Lordships particular Notice of the Parallel mention'd in this Article, by which your Lordships will collect the Inveteracy of the Design, from the Odiousness of the Comparison.

In their Fourth Article the Commons have laid before your Lordships many Charges; which, tho' of different Considerations, yet all conduce to the main Charge of the Commons; as tending to undermine Her Majesty's Government, and to raise Sedition and Rebellion.

Your Lordships will find, from many and pregnant Proofs supporting this Article, That Her Majesty's Administration, whereby she has justly gain'd the Affections of all Her true Subjects, is represented by the Prisoner as deserving the utmost Odium and Contempt of Her People.

That the Civil and Religious Rights of Her Subjects, which Her Majesty has protected with the Tenderness of a most indulgent Mother, are betray'd by those to whom She has committed the Care of them, and that they are now in a Condition more Calamitous, than at that time, when Superstition and Tyranny were ready to have swallow'd them up.

Your Lordships will find him labouring to persuade the People, that the Condition of Peace and Prosperity, which the good Government of Her Majesty has secured to Her Kingdom, is a State of utter Distraction and Confusion, wherein all Irreligion and Disorder is not only unpunish'd, but encourag'd.

Nor will your Lordships wonder to find a Person, who has thus set himself to weaken the Title of Her Majesty to the Throne, representing Her Administration like that of one who has no Title at all.

And from this ruinous and almost irretrievable Posture of Affairs, your Lordships will

find him considering himself as a peculiar Messenger, appointed and called out to open the Eyes of the deluded People, and to undeceive a Nation thus abused. And this, my Lords, he has done, not in the Words of Meekness and Peace; not by exhorting them to the Exercise of the submissive Doctrines of Passive-Obedience and Non-Resistance; but he assures them, that he does not come to Preach Peace, but to sound a Trumpet; he endeavours to excite such true Sons of the Church as are of his Persuasion, to recover, defend, and maintain, with their Lives and Fortunes, their invaded Rights, and such Doctrines as he has thought fit to deliver to them.

My Lords, I take Liberty to acquaint your Lordships, that the Commons conceive, that the Laws and Statutes of the Realm, and the Order and Peace of Government, necessarily enjoin it as a Duty upon all private Subjects, to represent their Sense of the Nation's Grievances in a Course of Law and Justice, and not otherwise; and whenever the Oppressions become National and Publick, They claim it as the peculiar Right of their own Body, to pursue the evil Instruments of them, till Publick Vengeance be done; and at the same time, the Commons assure your Lordships, that they will account it their Indispensible Duty to Her Majesty and their Country, to assert the Justice and Wisdom of Her Administration, against the Enemies of both.

I have thus stated to your Lordships the Nature of this Cause; wherein, I persuade my self, you perceive many Points of the highest Moment to the Peace and Welfare of the Kingdom.

The Tendency of the Crimes of which the Prisoner stands Accused, lies Open and Apparent: But I yet beg your Patience, to draw the Scene a little closer.

Your Lordships will consider the Necessary Consequence of a Position, meant and expounded so as to persuade the World, that the Glorious Work of the Revolution was the Fruit of Rebellion, and the Work of Traitors. Does it not declare the late Reign to be one continued Usurpation? And under what better Circumstances does it bring the present?

Is the Act of Toleration condemn'd with any other Tendency than to weaken so great a Support of the Revolution it self? And I intreat your Lordships, to consider the certain Fatal Effects of an Universal Dissatisfaction of the People, in Things that concern them nearest, the Safety of the Church of *England*, and the Protestant Interest, and the Security of themselves and their Posterity.

It's true, my Lords, That, considered at a Distance, there seems a Repugnancy in this Gentleman's System. How comes it to pass, that absolute Non-Resistance and the Spirit of Rebellion stand so well together, and are made so suitable, in the same Discourse?

But, if your Lordships should discern, in any Part of his Sermon, any dark Hints, or disguised Opinions, of a *Sole Hereditary Right of Succession* to the Crown, that will shew your Lordships the true Consistency of the whole; your Lordships will find, that in his Opinion, the Duty of the Absolute Non-Resistance is owing to him only that has the Divine Commission to Govern; and from thence, your Lordships can't fail of knowing against what Queen, what Government, what Establishment, he Encourages the taking up the Arms of Resistance.

I have

I have thus endeavour'd to discharge the Trust reposed in me by the Commons, and am not un-
fensible how far short I have fallen; but, my Lords,
I assure my self that the Cause can't suffer by
it, its own Strength and Vigor will support it
at this time, and so long, I hope, as the Nation
endures.

Your Lordships see plainly, that the Duty of the
Commons, which they will always discharge, called
upon them very loudly, to make Inquisition on so
remarkable an Offender as the Prisoner at the Bar.

Your Lordships see, they had not acquitted them-
selves aright, if they had intrusted the Prosecution
of this great Cause in any other Hands but their
own, or suffered these Points to have been handled
in any Place, but in full Parliament; or before any
other Judicature, but that of your Lordships: And
it is with the greatest Cheerfulness and Security, that
they submit the Cause of the Queen, of the whole
Nation, of the Protestant Religion, and Protestant
Succession, to the Weight and Wisdom of your
Lordships Judgment.

Mr. Attorney General. I did acquaint your Lord-
ships that there were Two Sermons deliver'd into the
House of Commons, which I desire may be now
delivered in, and read to your Lordships. We
must desire *Mr. Jodrell* to give an Account where he
had those Books in his Hands.

Then Mr. Jodrell was Sworn.

Mr. Jodrell. These two Books were deliver'd in
at the Table of the House of Commons, by one of
the Members.

Mr. At. Gen. Were they shown to Dr. Sacheve-
rell, when he attended the House?

Mr. Jodrell. They were shown to him at the
Bar of the House.

Mr. At. Gen. Did he own them to be his Books,
or what did he own about them?

Mr. Jodrell. That which is the Sermon Preach'd
the Fifth of November, he owned to be his, and
that he directed to be Printed.

Then that Book was deliver'd in.

Mr. At. Gen. There is another Sermon which
was Preach'd at the Assizes at Derby, that was also
shown him at the Bar, and he own'd it.

Lord Chancellor. What say you as to the Preface
of the other Sermon?

Mr. Jodrell. He owned the Dedication of it to
be agreeable with the Dedication of that Impression
which he ordered to be Printed.

Mr. At. Gen. We pray that Dedication may be
shown to him; if he denies it, we are ready to
prove it by the Printer.

Sir Simon Harcourt. My Lords, The Doctor
did own the Sermon, and the Dedication of both
the Sermons, before the House of Commons; and
he will not give your Lordships the Trouble of
hearing any Proof of them. He doth own them.

Mr. At. Gen. Then we desire they may be
read.

*Clerk reads the Dedication of the Derby Ser-
mon; and the Dedication and Sermon at St.
Paul's.*

The DEDICATION of a SERMON
Preach'd at the Assizes held at Derby, Au-
gust 15, 1709. By Henry Sacheverell, D. D.
Fellow of Magdalen-College, Oxon, and
Chaplain of St. Saviour's, Southwark.

To the Right Worshipful

GEORGE SACHEVERELL, Esq;

High Sheriff of the County of Derby;

AND TO

The Honourable Gentlemen of the
GRAND-JURY,

Gilbert Thacker, Esq;

Robert Wilmot, Esq;

John Fitz-Herbert, Esq;

John Beresford, Esq;

Henry Vernon, Esq;

William Cook, Esq;

William Cavendish, Esq;

Francis Pole, Esq;

William Horton, Esq;

George Savill, Esq;

William Brown, Esq;

Paul Balledon, Esq;

James Chetham, Esq;

William Wolley, Esq;

George Turner, Gent.

Gentlemen,

THE Peculiar Honour You were pleas'd to con-
fer upon me after the Delivery of this plain
Discourse, was so Signal, that nothing less than this
Publick Acknowledgment can acquit Me of Ingrati-
tude.

Now, when the Principles, and Interests, of our
Church, and Constitution, are so shamefully Betray'd,
and Run down, it can be no little Comfort to all
those who wish their Welfare and Security, to see,
that notwithstanding the Secret Malice, and Open
Violence they are Persecuted with, there are still to
be found such Worthy Patrons of both, who dare
Own and Defend them as well against the Rude and
Presumptuous Insults of the One Side, as the Base,
Undermining Treachery of the Other; and who
Scorn to Sit silently by, and partake in the Sins of
these Associated Malignants.

Tho' the Truth seems to be so much Forsaken at
present, yet, God be thank'd, they shall yet find, to
our Honour, that We have still amongst Us those who
have Courage to Speak it, as well as those who have
Lives and Fortunes to Maintain it: And tho' the Age
is sunk into the Lowest Dregs of Corruption that it
cannot endure Sound Doctrine, there are not wanting
Some to Preach it, and Others to Support it, at the
Expence of Both. May the Influence of your Good
Examples, which as much Animates our Friends, as
it Terrifies our Enemies, be as diffusively Prevailing,
as 'tis nobly Conspicuous, and the Blessing of that
Church attend you, which you so Eminently adorn
and sustain!

And, as I am oblig'd by the Relation I have the
Honour to bear to your Family, may a double Por-
tion of the Divine Favour rest on You (Mr. High-
Sheriff) whose Commands I was very ready to execute
in this Office, since you thought neither the Advance-
ment of your Years, so generously expended for the

Good

Good of your Country, nor the great Trouble attending this Post, sufficient to exempt you from shewing that steady Loyalty and Zeal to serve Her Majesty and the Government, for which you have been so remarkably Distinguish'd.

I am, with all Regard,

GENTLEMEN,

Your very Humble Servant,

Henry Sacheverell.

The PERILS of FALSE BRETHREN,
both in Church and State :

Set forth in a

SERMON Preach'd before the Right Honourable the LORD-MAYOR, Aldermen, and Citizens of London, at the Cathedral-Church of St. Paul, on the Fifth of November, 1709. By Henry Sacheverell, D. D. Fellow of Magdalen-College, Oxon, and Chaplain of St. Saviour's Southwark.

To the Right Honourable

Sir SAMUEL GARRARD, Bart
Lord-Mayor of the City of London.

My LORD,

BY Your Lordship's Command this Discourse ventures to appear in Publick, in Contempt of all those Scandalous Misrepresentations the Malicious Adversaries of our Church have traduc'd it with, and that Impartial Sentence it had the Honour to receive from some of those Acute, and Wise Judges, who Condemn'd it without Sight, or Hearing. But 'tis no New Thing with some Men to Censure at random what lies out of their Sphere; Examining a Cause may prove Dangerous, for fear of their own Conviction of its Merits. When Men are resolv'd to leap into a Gulph, the best way is to shut their Eyes, for fear they should see their Danger, and Repent of their Folly. When they are thus abandon'd, and given up to Ruin, the Charitable Hand, that would hold out an unwelcome Light to prevent it, must expect to be treated with that ungrateful Insolence, and Reproach, which usually attends the Generous Freedom of those who Dare speak Seasonable, and Necessary Truths. That Patient's Case doubtless is very Desperate, that sets himself against his Cure; and when Men are so stupidly harden'd in their Errors, as to resist the most glaring Evidence, there's no room for Argument, or Gospel. Moses, and the Prophets, may with Christ, and his Apostles, be Banish'd our Synagogues, when Truth must be Oppress'd by Number, and Noise, and Rebellious Appeals to the People, as the only Judges of Right, and Wrong, and the dernier Resort of Justice, and Dominion. Are not these the Fashionable Methods now made use of to Over-

bear, and Silence our Church, to Affront and Revile our Legislature, in order to Break in upon the Prerogative of the Crown? By Threatning them with Imaginary Legions, and a popular Tribunal, where their Authority, and Establishment are to be Try'd and Determin'd? To put a stop to which Dangerous and Encroaching Mischief, that now with Impunity walks up and down thro' this Distracted Kingdom, I thought it my Duty (being Summon'd to this Office by your Lordship) to Discharge it in the BEST METHOD I could, to Preserve Us from these Malicious Designs, by endeavouring, if possible, to Open the Eyes of the Deluded People in this Our Great Metropolis; being Conscious of what Prodigious Importance it is to the Welfare of the whole Nation, to have its Rich, and Powerful Inhabitants set right in their Notions of Government, both in Church, and State; that they may not be Flatter'd into their Ruin, but seeing the Fatal Consequences of these Damnable False Doctrines, which some Seditious Impostors have labour'd to Poyson 'em with, may Forsake, and Detest them. I am confident, My Lord, that this Glorious, and Renown'd City can Boast of so many Excellent Examples of Unshaken Steadiness, Disinterested Probity and True Zeal, and Loyalty for Our Church, and Sovereign, that if they would act with the same Open, and Undaunted Resolution Your Lordship does, these Affrighting Fantoms must Vanish. But if Honest Gentlemen will sit still, and give up their Cause through want of Courage, or a Just Sense of the Dangerous Attempts of Our Enemies, without the Spirit of Prophecy, We may foretel what will become of Our Constitution, when 'tis so Vigorously Attack'd from Without, and so Lazily Defended from Within.

We are told by these Men, who would shut both our Eyes, and our Mouths, in order the more effectually to Undermine, and Destroy Us, that the Pulpit is not a Place for Politicks; and that 'tis the Business of a Clergyman to Preach Peace, and not found a Trumpet in Sion; so expressly contrary to the Command of God, to Cry aloud, and Spare not. My Lord, I was humbly of Opinion, that the Fifth Commandment was Genuine; the Fanaticks would do well to strike that Dangerous Precept out of the Decalogue, as the Papists have the Second, that neither might Rise in Judgment against these United Friends, and Brethren. Now as This stands the First in the Second Table, is it not of the utmost Importance, to be rightly Understood, as containing the Principal Duty that we owe to God's Vice-Gerents, which has been so Scandalously, and Villanously Misinterpreted of late, to the Great Dishonour of Both? Certainly Our Church thought so Formerly, when it took such Care to Guard Our Obedience, with more Homilies concerning the Peril of Rebellion, than of any other Sin. And when was more Reason for Enforcing their Doctrines than now, when We see these admirable Dissuatives against Faction, and Sedition, maliciously Wrested to Countenance, and Support it? If our Excellent Constitution apprehends no Hazard from these Licentious Proceedings, I am sure Those who would defend it from them, have reason to do so, with regard to their Own Persons: Our Pastors can't do their Duty, without being Menac'd for it, and Slander'd by the Vile Amanuenses of the Mob, to expose us to their Fury; as Papists, and Men Disaffected to Her Majesty's Government, whose Safety, Rights and Establishment together with Those of the Church, We so earnestly contend for; which I solemnly here De-

clare

clare (as I did before in this Discourse) to be my only Aim and Intention; and in an humble way to follow the Footsteps of Your Lordship, who is so Bright an Ornament, and Support of them. That This Great City may Flourish under Your Auspicious Conduct, and never want a Magistrate of Your steady Principles to Guide and Govern it, is the hearty Prayer of,

My LORD,

Your LORDSHIP's

most Humble Servant,

HENRY SACHEVERELL.

2 COR. xi. 26.

In Perils among False Brethren.

AMONG All the most Dreadful Plots that ever Threaten'd this Church, and Kingdom, the Dismal Tragedy contriv'd as this Day to be Executed on Both, may justly claim the Horrible Precedence, and consequently the Highest Expressions of Our Gratitude for so Astonishing and Miraculous a Deliverance from it. For whether we consider the Black Depth of its subtle Contrivance; the Destructive Extent, and Sanguinary Consequences of it, or its Surprising, and Unaccountable Discovery, We must confess, that nothing but the All-Powerful, and Gracious Hand of God, interposing against the utter Subversion of Our Nation, and Religion, could have prevented such a Fatal Conspiracy. A Conspiracy! so full of the most Unheard-of Malice, most Insatiable Cruelty, most Diabolical Revenge, as only could be hatch'd in the Cabinet-Council of Hell, and brought forth in a Conclave of Romish Jesuits! Now tho' the History of this Unparalleled Mystery of Iniquity was Design'd against Us at such a Distance of Time, and the Fact so evidently Acknowledg'd, that the Papists themselves are so far from Denying, that they Extol it with the Highest Panegyrics; so that there needs neither Proof of the one, nor Repetition of the other: Yet doubtless 'tis as much our Duty, as Interest, to keep up the Annual Celebration of this Never-to-be-forgotten Festival. For that the very Face, and Shadow of our Church, and Constitution, is yet Surviving; That this Good, and Pious Relict of the Royal Family Sits now Happily upon the Throne of Her Great Ancestors; That our Hierarchy, and Nobility was not finally Extirpated and cut off; That our Country was not made an Aceldama, a Field of Blood, and a Receptacle of Urfurping Robbers; That We yet, without Slavery, Superstition, or Idolatry, enjoy the Benefit of our Excellent Laws, and most Holy Profession Undeild: In a word, That God has yet vouchsaf'd us this Opportunity of coming into his Presence, to Acknowledge these Inestimable Blessings, is owing to his Mercy so signally shewn to Us, in Disappointing the Barbarous Massacre intended This Day. A Day! which ought to stand for

Ever in the English Kalender, as an Eternal Era, at the One End, as the Thirtieth Day of January at the Other, for Indelible Monuments of the Irreconcilable Rage, and Blood-Thirstiness of both the Popish, and Fanatick Enemies of Our Church, and Government! For these are equally such Treacherous FALSE BRETHREN, from whom we must always expect the utmost Perils, and against whom we can never sufficiently Arm Our selves with the greatest Caution, and Security. These TWO DAYS indeed, are but One United Proof, and Visible Testimonial of the same Dangerous, and Rebellious Principles, these Confederates in Iniquity maintain: And as the One is but a Thanksgiving for our Deliverance from what the First Projected; so is the Other an Humiliation, for what God permitted the Latter, by Their Help and Direction, to put in Execution. I think therefore the Best way of Acknowledging these Great Mercies, and Judgments of God, and Acquitting Both Solemnities in a Proper way, is by so justly Considering Our Circumstances with respect to Each Side, as to Guard against Their Malicious, and Factions Designs for the future; that we may never Trust Either, to need a Second Deliverance from those Villainous Enterprizes, they will never cease to put in Practice, whenever they see an Opportunity of Doing it with Security.

Now as Persecution, and Affliction, were the distinguishing Badges of the Messiah, who was a Man of Sorrows, and Acquainted with Griefs; so to convince his Disciples, that his Kingdom was not of this World, He Bequeath'd the same sad Legacy to Them, to share the Character, as well as imitate the Example, of their dying Lord, and Master. With unshaken Courage, and Resolution, to take up His Bloody Cross, and follow the Great Leader of Their Salvation: To March with a Cheerful Magnanimity through all the Powers of Darkness, looking unto Jesus the Author and Finisher of their Faith, who for the Joy that was set before Him, Endur'd the Cross, despising the Shame, and is set down at the Right-hand of the Throne of God. Thus was His Church to expect no Better Treatment than Her Great Founder, and Original, to pass through the same Fiery Tryal, to be made Perfect through Sufferings, to be Militant here, in order to be Triumphant hereafter; and like Him, to be Crown'd with Thorns in this World, to Obtain a Crown of Glory in the Next. Not only to Encounter the Open Fury and Violence of Her Profess'd, and Inveterate Enemies; but (which was the Bitterest Part of Her Sufferings) like Her Saviour, to be Betray'd, and perfidiously Given up by Her Own False-hearted, and Insidious Apostles.

As the Histories of the Church in All Ages, are as 'twere but One Continu'd Ratification of this Melancholly Truth, made up of so many Mournful Narratives, of the Unhappy Lives, and Disastrous Deaths of Saints, Martyrs, and Confessors, who Bravely seal'd the Faith with their Blood; so it is Exemplified in no One Instance more than in that Primitive, and Heroick Champion of Christianity, the Author of this Epistle. Wherein, for the Wonder, and Emulation of Posterity, He has Recorded a Long and Frightful Catalogue of those Astonishing Calamities He had underwent in the Propagation of the Gospel. Such Ample Satisfaction, did the Pious Labours of the Convert, make for the wicked Persecution of the Jew; when by a Miraculous Turn of Providence,

the

' Greatest Sinner was changed into the Devoutest
 ' Saint, and the most Zealous Bigot against, into
 ' the most Resolute Sufferer for, Religion. Yet
 ' however this Great Apostle might have Attain'd
 ' so extraordinary a Degree of Merit, as to Out-
 ' shine all that Noble Army of Martyrs, which Adorn
 ' the Bloody Kalendar of the Church; nay, as He
 ' expresses it, *to come never a whit short of the*
 ' *Greatest Apostles*, and as 'twere to Vye Characters
 ' with the very Chosen of the Son of God; Does it
 ' not seem a little to carry the Air of Ostentation,
 ' and Vain-glory, thus to claim the Pre-eminence,
 ' and Supremacy, and to Boast himself in that Pom-
 ' pous Shew of Services that He hath done for God,
 ' and the Church? But We shall easily Reconcile
 ' the Apostle, and the Orator, and find no Imputa-
 ' tion upon his Modesty, if we consider the Occa-
 ' sion of it. He had (as He informs Us) with
 ' much Pains, and Expence, Planted Christianity
 ' in Corinth, where he had no sooner by a Mira-
 ' culous Ministry Establish'd it, but several False
 ' Apostles, and Seducers, were in his Absence Crept
 ' into the Church, to Vitiate, and Corrupt his
 ' New Profelytes, under the Pretence of More Pu-
 ' rity and Holiness, (like Our Modern Sectarists) to
 ' raise a Schism amongst 'em, and to Draw them off
 ' from the Opinion they had of St. Paul; by Ri-
 ' diculing Him for his Person, and Address, as a
 ' Little Unedifying, Ungifted Preacher, of a weak
 ' Bodily Presence, and Contemptible Speech; thus
 ' Wounding the Ministry, thro' the Sides of the
 ' Minister. Such Sights and Provocations, certain-
 ' ly were a sufficient Ground for the Apostle to in-
 ' sist upon his Character, lest the Gospel should
 ' Suffer by it: And with Authority to Rebuke the
 ' Ingratitude of the Corinthians, and Vindicate his
 ' Dignity, and Transcendent Excellencies, against the
 ' base Lies, and Calumnies cast upon Him by such
 ' false Apostles, deceitful Workers, transforming
 ' themselves into the Apostles of Christ, like their
 ' True Father the Devil, transforming himself into
 ' an Angel of Light. With what Justice then
 ' might He here stand upon the Comparison, when
 ' thus vilely Run down, by such Wretched, Empt-
 ' ty, Hypocritical Sophisters? To Appeal to his
 ' Spiritual Gifts, and Revelations, and Sufferings,
 ' in Competition with such Impudent, Boasting,
 ' Self-conceited Pretenders, was the Lowest Act of
 ' Humility, and Good-Nature; to Condescend to
 ' Dispute with such as ought to be Answer'd, not
 ' with Arguments, but Anathema's! Yet behold the
 ' Singular Modesty of this Great Apostle! He can-
 ' not enter upon his own Justification, without
 ' much Reluctance, and a long Apology to intro-
 ' duce it. *I am become a Fool in Glorifying* (says
 ' He) *but you have Compell'd Me to it. I speak*
 ' *as concerning Reproach, as tho' we had been Weak;*
 ' *Howbeit, wherein any is Bold, I speak foolishly, I*
 ' *am bold also. Are they Hebrews? so am I! Are*
 ' *they Israelites? so am I! Are they the Seed of*
 ' *Abraham? so am I! Are they Ministers of Christ?*
 ' *I speak as a Fool, I am more. In Labours more*
 ' *Abundant, in Stripes above Measure, in Prisons*
 ' *more Frequent, in Deaths often; of the Jews five*
 ' *Times receiv'd I forty Stripes, save One. Thrice*
 ' *was I beaten with Rods, Once was I ston'd, Thrice*
 ' *I suffer'd Shipwreck, a Night and a Day have I*
 ' *been in the Deep. In Journeyings often, in Perils*
 ' *of Waters, in Perils of Robbers, in Perils by my*
 ' *own Countrymen, in Perils by the Heathen, in Pe-*
 ' *riils in the City, in Perils in the Wilderness, in Pe-*
 ' *riils in the Sea, in Perils amongst FALSE*

' BRETHREN. In this Rhetorical Abridgment
 ' of the Sufferings, and Dangers of his Life, there's
 ' a very Observable Gradation; the Apostle still Ri-
 ' ses in his Calamities, and puts this Last as the
 ' Highest Perfection of his Misery, as that which
 ' made the deepest Impression upon his Passions, and
 ' what He bore with the greatest Resentment and
 ' Difficulty. The many severe Pains, and Tortures
 ' inflicted on his Body, were nothing to This; nay,
 ' the Good-Nature, and Mercy of Highway-men, and
 ' Pagans, and even the Devouring Bosom of the
 ' Deep, were to be Preferr'd before, and sooner
 ' (it seems) to be Trusted to, than the more cer-
 ' tainly Destructive, and Fallacious Bosom of a Trea-
 ' cherous, FALSE BROTHER.

' I shall take the Expression in its full Latitude,
 ' without confining it to the express Design of the
 ' Place; tho' it were very Obvious to draw a Parallel
 ' here, betwixt the sad Circumstances of the Church of
 ' Corinth formerly, and of the Church of England at
 ' present; wherein Her Holy Communion has been
 ' Rent, and Divided by Faction, and Schismatical
 ' Impostors; Her pure Doctrine has been Corrupted,
 ' and Desil'd; Her Primitive Worship, and Discipline
 ' Profan'd, and Abus'd; Her Sacred Orders Deny'd
 ' and Villify'd; Her Priests, and Professors (like
 ' St. Paul) Calumniated, Misrepresented, and Ridi-
 ' cul'd; Her Altars, and Sacraments Prostituted to
 ' Hypocrites, Deists, Socinians, and Atheists; and
 ' this done, I wish I could not say, without Discou-
 ' ragement, I am sure with Impunity, not only by our
 ' profess'd Enemies, but which is worse, by our pre-
 ' tended Friends, and FALSE BRETHREN. But
 ' to proceed to the Matter before us: In my Discourse
 ' upon these Words I shall endeavour,

' I. First, To shew in what Sense, and upon what
 ' Accounts Men may be Denominated FALSE
 ' BRETHREN.

' II. Secondly, I will lay before you the Great PERIL,
 ' and Mischief of such, both in Church and
 ' State.

' III. Thirdly, I will set forth the Heinous Malignity,
 ' Enormous Guilt, and Folly of this Prodigious
 ' Sin.

' IV. Lastly, As a Consequence from the Whole, I
 ' will undertake to Evince what mighty Reason
 ' we have at all Times, and more especially at
 ' present, to stick firmly to the Principles both
 ' of our Church and Constitution; and how much
 ' it concerns Us to Eeware of all those FALSE
 ' BRETHREN, that Desert, or Betray them.

' I. And First, I will shew you in what Sense, and
 ' upon what Accounts Men may be Denominated
 ' FALSE Brethren. In order to which it will be
 ' Necessary to State the full Extent of the Nature
 ' of FALSE BROTHERHOOD.

' This Term *ψευδελος* being of a Relative Sig-
 ' nification, must respect Men as considered under
 ' all Social Cases, or as they are plac'd under such
 ' Regards, and Circumstances, as in Duty oblige
 ' them both to Think, Speak, and Act, with Truth,
 ' and Integrity, correspondent to their inward Prin-
 ' ciples, and outward Professions. And wherein they
 ' are found deviating wilfully from either, by an un-
 ' reasonable Alteration of Judgment, by any tacit
 ' Mental Reserve, or Equivocation, upon any indi-
 ' rect Ends, or Designs, or guiding their Expressions
 ' and Actions contrary to these stated Rules, they
 ' are guilty of Falshood, both in Conscience and
 ' Practice, of a Breach of that Veracity, Justice,

and Trust that they owe to God, themselves, and the World, and are properly what are stil'd in the Text FALSE BRETHREN. For whereas every Man that either believes, speaks, or acts Rationally, must be suppos'd to have some Standing-Ground, and Measure of Judgment, settled upon some Grand, Primitive Maxims of Truth, both Speculative and Practical, whether founded upon Revelation, Reason, or Honour, which are what we call any Man's Principles either in Religion, Society, or Friendship: If these Fundamental Axioms have with true Deliberation been sifted, and weigh'd, not only as to their intrinsic Nature, and Goodness, but as to their outward Tendency, and Consequences, they must appear, tho' not perhaps as infallible in themselves, yet with Respect to the Person so considering them, as demonstrative Truths, as the Light, and Oracles of God, and Reason, set up in his Breast; by which He is always oblig'd to Direct, and Govern his Thoughts, Resolutions, and Actions; and which if He swerves from, disowns, or betrays upon any sinister Motive whatsoever (tho' after this nice Search they should prove Erroneous) involve the Man in a very heinous Sin, treacherously acting against his Judgment, and giving the Lye both to his Faith, his Reason and his Knowledge. This Matter being thus briefly Premis'd, it is Evident, that with regard to the several Objects it is Conversant about, Men may in three Respects be term'd Guilty, of FALSE BROTHERHOOD.

1. First, With Relation to God, the Church, or Religion, in which they hold Faith, or Communion.

2. Secondly, With Relation to the State, Government, or Society, of which they are Members.

3. Thirdly, With Relation to those Private Persons, with whom they have either Friendship, Correspondence, or Dealing.

1. And First, He is a FALSE BROTHER with Relation to God, Religion, or the Church in which he holds Communion, that Believes, Maintains, or Propagates any False, or Heterodox Tenet, or Doctrine, repugnant to the Express Declarations of Scripture, and the Decrees, or Sense of the Church, and Antiquity thereupon. For as in the first alone are contain'd the Essential Points, and Articles of our most Holy Faith; so the Primitive Expositions, Decisions, and Practice of the ancient Writers of the Pure, and uncorrupted Ages of Christianity, must certainly be acknowledg'd the best, and most Authentic Comments upon their Meaning. In Opposition to which, if any upstart Novelist, or self-conceited Enthusiast, out of Pride, as setting Himself above these Genuine Oracles of Truth; or out of Ignorance, as being unacquainted with the Learning, and Records of Antiquity; or out of Perverseness, scorning to submit his Understanding to the Dictates, or better Reason of others; or out of Ambition, and Vain-glory, as affecting to be the Head, and Leader of some New Sect, or Party; (all, or either of which have, and will be found for ever the Parents of Heresy) and should break in upon this Sacred Depositum of the Church; and should attempt Blasphemously to Corrupt that inviolable Fountain of Truth, with Erroneous Conjectures, and Vain Philosophical Systems; to Prophane and Degrade the Holy Mysteries of Religion, by absurd Interpretations, and impudent Reasonings; should we stick

to call such a Rebel to God, and Traytor to his Church, a FALSE BROTHER? If a Man should Dare not only to Revive, but to Justify any Execrable, Exploded Heresies, as those of Arius, and Nestorius, denying the Hypostatical Union, or the Eternity of the Son of God; or should affirm that He was God in Man, or that the Godhead was only Locally in his Manhood, as God was in the Cloud; or that should Presume to Evacuate the great Sanction of the Gospel, the Eternity of Hell-Torments; or Expound any of the Articles of Our Faith, in such a Loose and Vagrant way, as may suit 'em as well to a Mahometan's as a Christian's Creed; and to lay open all those Sacred Boundaries of the Church, to let in all Sectarists, and Schismatics, of whatsoever Wild, Romantic, or Enthusiastick Notions, so as to make the House of God, not only a Den of Thieves, but a Receptacle of Legions of Devils: Should we cover such a False Apostle under the Sacred Umbrage of a True Church-man? In short, whosoever presumes to Recede the least Tittle from the express Word of God, or to explain the great Credenda of our Faith in New-fang'd Terms of Modern Philosophy, must publish a New-Gospel, Un-god his Saviour, and Destroy his Revelation; and by unsettling the Universal, Receiv'd Doctrine of the Church, give up Christianity into Scepticism, and Atheism; and to speak the best of his Character, is FALSE both to his God, and his Religion, and shall be called hereafter, The Least in the Kingdom of Heaven, how Great soever he may be in the Kingdoms here below. And as a Man may thus Betray the Doctrine of his Church, so is he no less FALSE to its Interest, that gives up any Point, of her Discipline, and Worship. These are the Exterior Fences to Guard the Internals of Religion, without which they are left Naked, without Beauty, Order, or Defence. Should any Man, out of Ignorance, or Prejudice, to the Ancient Rights, and Essential Constitution, of the Catholick Church, Affirm, That the Divine Apostolical Institution of Episcopacy, is a Novel Doctrine, not sufficiently Warranted by Scripture, and that 'tis indifferent whether the Church is Govern'd by Bishops, or Presbyters; Is not such an one an Apostate from his own Orders? Let the Christian World be Judge, who best deserve the Name of Church-Men, those that strictly Defend, and Maintain the Catholick Doctrines, upon which the Church, as a Society, is Founded, or those who would Barter them for a Mungrel-Union of all Sects? Those who Zealously support her Mission, which only can support her, or those who would destroy it; to take in Schismatical Presbyters without Episcopal Ordination, which would Un-Church the very Church, and Annihilate her Constitution? Is this the Spirit, and Doctrine of our Holy Mother? To assert Separation from Her Communion, to be no Schism; or if it was, that Schism is no Damnable Sin; that Occasional Conformity is no Hypocrisy, but rather for the Benefit of the Church; that any one may be an Occasional Conformist with Schismatics, and yet not Guilty of Schism; that a Christian may serve God in any Way or Congregation of Worship, as well by Extemporary Prayers, as by a Prescrib'd Form, and Liturgy; that Conformity to the Church, and Ecclesiastical Authority, are no Parts of Morality, and a Good Life, which are only necessary to Salvation: That the Orders and Ceremonies of the Church, are only Carnal, Arbitrary Ordinances,

to be Dispens'd with as Men please, both by Clergy and Laity; that the Censures and Excommunications of the Church, are meer Bruta Fulmina; Canonical Obedience, and Absolution, Spiritual Tyranny, and Usurpation; and in a Word, that the whole Body of the Worship, and Discipline of the Church of England, is nothing else but Priestcraft, and Popery in Masquerade. If upon all Occasions to comply with the Dissenters both in Publick, and Private Affairs, as Persons of Tender Conscience, and Piety; to promote their Interests in Elections, to sneak to 'em for Places, and Preferment, to Defend Toleration, and Liberty of Conscience, and under the Pretence of Moderation, to excuse Their Separation, and lay the Fault upon the True Sons of the Church, for carrying Matters too high; if to Court the Fanaticks in Private, and to hear 'em with Patience, if not Approbation, Rail at and Blaspheme the Church, and upon occasion to Justify the King's Murder; If to Flatter both the Dead and the Living in their Vices, and to tell the World, that if they have Wit, and Money enough, they need no Repentance, and that only Fools and Beggars can be Damnd; If these, I say, are the Modish, and Fashionable Criterions of a True Church-Man, God deliver Us all from such FALSE BRETHREN.

There is another sort of them who are for a Neutrality in Religion, who really are of none, but are a secret sort of Reserv'd Atheists, who always pretend to be of the Church, join in the Herd, and will sometimes frequent our Publick Communion, as long as the Government appears on our side; but if any thing is to be got by it, can with as safe a Conscience slide privately into a Conventicle, and look as demure as the shyest Saint amongst 'em. They are equally of all, and of no Communion, they are the Gallio's that care for none of these Things; They tell us they are for the Religion Established by Law, but no longer than 'tis so; they can see neither Sin nor Danger in that Ecclesiastical Bugbear, as they call Schism, yet talk very loud about Union, Comprehension, and Moderation; by all which canting Expressions, they mean nothing but getting Money, and Preferment, by holding in with Persons of all Parties, and Characters, halting betwixt the Diversity of Opinions, and Reconciling God, and Belial for Gain. To these we may add those who either out of Fear, or Complaisance, can tamely and without Vindication, hear their God and Religion Blasphem'd and Abus'd. But there is another sort of FALSE BRETHREN, who set up for a greater Perfection of Piety than their Neighbours, who like their Originals, the Pharisees in the Gospel, are always pleading their Merits before God, and the World, with an Ostentation of Sanctity, in comparison with their Profane Brethren, with a Stand off, for I am Holier than Thou! These are the Saints, that under the pretence of Conscience, shall commit the most abominable Impieties, and justify Murder, Sacrilege, and Rebellion, by Texts of Scripture. There are yet another sort of FALSE BRETHREN, of a quite opposite Character to these, who wish well to the Church of England, and really believe her Constitution in Doctrine, Discipline, and Worship, the best and purest in the Christian World; and when either their Tongues, Hands, or Purses are wanting in her Defence, are ready to Sacrifice their Persons, and Estates in her Vindication. These indeed are noble Qualifications, and 'tis pity so good a Character should want any thing to Compleat it. And to turn the

Words of our Blessed Saviour to the rich Man, yet one thing thou lackest, thy Zeal is to be shewn in, as well as for, the Communion of the Church, in obeying Her Precepts, as well as defending Her Rights. In all these Cases there is a Serious and Deliberate Act of Treachery against Conscience and Conviction, a base Forfeiture of that Spiritual Allegiance we owe to God, and our Church, as a sacred Body, and Fraternity, that ought to preserve inviolable Unity, professing one Faith, one Baptism, one God, and Saviour of us all.

2. But Secondly, Men may be Denominated FALSE BRETHREN, with Relation to the State, Government, or Society of which they are Members. The Constitutions of most Governments differing according to their several Frames, and Laws, upon which they are Built, and Founded, it is impossible to lay down any one Universal Rule, as the Scheme and Measure of Obedience, that may square to every one of them. Only this Maxim in general, I presume, may be Establish'd for the Safety, Tranquility, and Support of all Governments, that no Innovation whatsoever should be allow'd in the Fundamental Constitution of any State, without a very pressing, nay, unavoidable Necessity for it; and whosoever singly or in a private Capacity should attempt it, is Guilty of the Highest Misdemeanour, and is an Enemy to that Politick Body of which he is a Member. To apply this Maxim to our Government, in which the Truth of it will very evidently appear. Our Constitution both in Church and State, has been so admirably contriv'd, with that Wisdom, Weight, and Sagacity, and the Temper, and Genius of each so exactly Suited, and Modell'd to the mutual Support, and Assistance of one another, that 'tis hard to say, whether the Doctrines of the Church of England contribute more to Authorize, and Enforce our Civil Laws, or our Laws to Maintain and Defend the Doctrines of our Church. The Natures of both are so nicely Correspondent, and so happily Intermixt, that 'tis almost impossible to offer a Violation to the one, without Breaking in upon the Body of the other. So that in all those Cases before mention'd, whosoever presumes to Innovate, Alter, or Misrepresent any Point in the Articles of the Faith of our Church, ought to be Arraign'd as a Traytor to our State; Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion, and High Treason, in the other; and consequently a Crime that concerns the Civil Magistrate, as much to Punish, and Restrain, as the Ecclesiastical. However this Assertion at first View may look like an High-flown Paradox, the Proof of it will fully appear in a few Instances. The Grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subject's Obligation to an Absolute, and Unconditional Obedience to the Supreme Power, in all Things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever. But this Fundamental Doctrine, notwithstanding its Divine Sanction in the Express Command of God in Scripture, and without which, it is impossible any Government of any Kind, or Denomination in the World should subsist with Safety, and which has been so long the Honourable and Distinguishing Characteristick of Our Church, is now, it seems, quite Exploded, and Ridicul'd out of Countenance, as an Unfashionable, Superannuated, nay (which is more wonderful) as a Dangerous Tenet,

not, utterly Inconsistent with the Right, Liberty and Property, of the PEOPLE; who, as our New Preachers, and New Politicians teach us, (I suppose by a New and Unheard-of Gospel, as well as Laws) have in Contradiction to Both, the Power Invested in Them, the Fountain and Original of it, to Cancel their Allegiance at pleasure, and call their Sovereign to account for High Treason against his Supreme Subjects forsooth; nay to De throne and Murder Him for a Criminal, as they did the Royal Martyr by a Judiciary Sentence. And, what is almost incredible, presume to make their Court to their Prince, by maintaining such Antimonarchical Schemes. But, God be Thanked! neither the Constitution of our Church or State, is so far Alter'd, but that by the Laws of Both, (still in Force, and which I hope for ever will be) these Damnable Positions, let 'em come either from Rome, or Geneva, from the Pulpit, or the Press, are condemn'd for Rebellion, and High Treason. Our Adversaries think they effectually stop our Mouths, and have Us Sure and Unanswerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly They are the Greatest Enemies of That, and His Late Majesty, and the most Ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon Both. How often must they be told, that the * King Himself solemnly Disclaim'd the least Imputation of Resistance in His Declaration; and that the Parliament declar'd, That they set the Crown on His Head, upon no other Title, but that of the Vacancy of the Throne? And did they not Unanimously condemn to the Flames (as it justly Deserv'd) that Infamous Libel, that would have Pleaded the Title of Conquest, by which Resistance was suppos'd? So Tender were they of the Regal Rights, and so averse to infringe the least Tittle of our Constitution! We see how ready these Incendiaries are to take the least Umbrage, to charge their own Cursed Tenets on the Church of England, to Derive their Guilt upon it, and Quit Scores with it for Their Iniquity! Thus do they endeavour to draw Comparisons, and to Justify the Horrid Actions and Principles of Forty One, which have been of late Years, to the Scandal of Our Church, and Nation, so Publickly Defended, not only by the Agents and Writers of the Republican Faction, but by some that have the Confidence to Style themselves Sons, and Presbyters of the Church of England; who, in open Defiance of the most peremptory Declarations of God in Scripture, (never to be evaded by any Shifts or Misinterpretations) and the Universal Doctrine, and Expositions of the Catholick Church upon it in all Ages, with the Express Testimony, and Concurrence of Our Church, from its Reformation down to the Present Times, Corroborated with the Sense of Our Legislature, so unexceptionably Confirm'd in Our Laws, Dare, in Despite and Contempt of all this Evidence, manifestly Defend the Resistance of the Supreme Pow-

er, under a New-fangled Notion of Self Defence; the only Instance they shew of Shame, that they dare not YET maintain Rebellion by its Proper Name. Yet, if those silly Pretences, and weak Excuses for it alledg'd, carry any Strength, or Reason in them at all, they will equally serve to Justify All the Rebellions that ever were or can be committed in the World. Now as the Republicans Copy after the Papists in most of their Doctrines and Practices, I would fain know in this where the Difference lies, betwixt the Power Granted to, (as 'tis suppos'd Originally Invested, but from what Commission God knows, in) the People, to Judge and De throne their Sovereigns, for any Cause they think fit; or a no less Usurped Power of the Pope, to solve the People from their Allegiance, and dispose of Sceptres, and Diadems to his Favourites, whenever he thinks it his Interest to pluck them from his Enemies Heads. Comparisons are generally Odious; but a Learned Bishop of our Kingdom, whose Aversion to Popery, I hope, is not doubted, I mean the * Right Reverend the Lord Bishop of Sarum, has been bold Judiciously to Determine, even on the Papists Side in this Case, That if such a Deposing Power is to be intrusted in Mortals Hands, let's Inconveniencies will ensue in placing it in One, than in Many; tho' God forbid it ever should be Lodg'd in any other than that of God himself, the Original of all Power, from whom it proceeds, and to whom it must Return; the King of Kings, Lord of Lords, and ONLY Ruler of Princes. So that these Romantick wild Notions will carry Us into something worse (if 'tis possible) than Popery itself; more Fatal to the Rights and Interests of the Crown, and the Welfare and Tranquility of Our Constitution, which can never be Safe under such Precarious Dependancies, and Despotick Imaginations. A Prince indeed in another Sense, will be the Breath of his Subjects Nostrils, to be blown in, or out, at their Caprice, and Pleasure, and a worse Vassal than even the meanest of his Guards. Such Villanous and Seditious Principles as these, Demand a Confutation from that Government they so insolently Threaten and Arraign; and which are only Proper to be Answer'd by that Sword they would make our Princes bear in Vain, by the Solong call'd-for Censure of an Ecclesiastical Synod, and the Correction of a Provok'd and Affronted Legislature; to whose Strict Justice, and undeserv'd Mercy, I commit both them and Their Authors. Only give me leave to dismiss 'em with a Remark of the Pious and Learned Bishop Andrews, upon some of their FALSE BRETHREN in his Time. † "What (says that Good Prelate) is now become of those Words of God, Touch not mine Anointed? Are we not fallen into Strange Times, that Men dare thus Print and Publish, yea, even Preach and Pro-

* Let's Disorder may be apprehended from the Pretensions of the Roman Bishops, than from these Maxims, that put the Power of Judging and Controlling the Magistrate in the PEOPLE's Hands, which opens a Door to Endless Confusions, and indeed, sets every Private Person upon the Throne, and introduceth an Anarchy, which will never admit of Order and Remedy; whereas, Those who have but One PRETENDER over Them, could more easily deal with Him, and more Vigorously RESIST Him. [Vindication of the Church of Scotland. Printed at Glasgow, 1673. p. 68, 69.]

† Sermon 3. on the Conspiracy of the GOWRIES, Preach'd before the King at Holdenbergh, Aug. 5. 1610. p. 808.

* His Highness Declares, in Opposition to those who give out, That we do intend to CONQUER and ENSLAVE these NATIONS, that we have thought fit to add a few Words to our Declaration; "It is not to be imagin'd, that either these who have invited Us, or those who are already come to Assist Us, can join in a WICKED ATTEMPT OF CONQUEST, to make void their own Lawful Titles to their Honours, Estates, and Interests." See the Prince of Orange's Declaration. Dr. Kenner's History of the Four Last Reigns, p. 493.

“ *claim their Sins ; even those sinful and shameless Positions, to the Eyes, and Ears of the whole World ? Whereby God's Anointed are Endanger'd, Mens Souls are Poison'd, Christian Religion is Blasphem'd as a Murderer of her Own Kings ; God in his Charge is openly Contradicted, and Men made Believe, they shall go to Heaven in breaking God's Commandments. What could have been spoken with a more Prophetical Spirit, of these filthy Dreamers, these Presumptuous and Self-will'd Men, Despisers of Dominion and Government, who are not afraid to speak Evil of Dignities, who wrest the Word of God to their Own, and their deluded People's Perdition, and think to Consecrate even the worst of Sins, with what is almost Analogous to the Blasphemy against the Holy Ghost ! These FALSE BRETHREN in Our Government, do not Singly, and in Private spread their Poyson, but (what is lamentable to be spoken) are suffer'd to combine into Bodies, and Seminaries, wherein Atheism, Deism, Trutheism, Socinianism, with all the Hellish Principles of Fanaticism, Regicide, and Anarchy, are openly Profess'd and Taught, to Corrupt and Debauch the Youth of the Nation, in all Parts of it, down to Posterity, to the Present Reproach, and Future Extirpation of Our Laws, and Religion. Certainly the Toleration was never intended to Indulge, and Cherish such Monsters, and Vipers in our Bosom, that scatter Their Pestilence at Noon-day, and will Rend, Distract, and Confound, the firmest and Best settl'd Constitution in the World. In short, as the English Government can never be Secure on any other Principles, but strictly Those of the Church of England, so I will be bold to say, where any Part of it is Trusted in Persons of any Other Notions, They must be False to Themselves, if They are True to Their Trusts ; or if They are True to Their Opinions, and Interests, must Betray That Government They are Enemies to upon Principle. Indeed, We must do em that Justice, to confess, That since the Sectarists have found out a Way (which their Forefathers, God knows, as Wicked as they were, would have Abhor'd) to swallow not only Oaths, but Sacraments, to Qualify themselves to get into Places, and Preferments ; these Sanctify'd Hypocrites can put on a Shew of Loyalty, and seem tolerably Easy in the Government, if they can Engross the Honours and Profits of it : But let Her Majesty reach out Her little Finger to touch their Loins, and these Sworn Adversaries to Passive Obedience, and the Royal Family, shall fret themselves, and Curse their Queen, and their God, and shall look upwards. And so much for Our Political FALSE BRETHREN, till I come to speak with 'em again by and by. I proceed,*

“ 3. In the Third Place, to a more Inferior Species of Them, that Act in a lower Sphere, namely, Those who in their Private Capacities, are FALSE either in their Friendship, Correspondence, or Dealing : But these Sins of Unfaithfulness, as the Psalmist calls them, being of so Copious, and Extensive a Nature, and respecting the Private Concerns of Human Life, I shall only trouble You with enumerating some of the General Instances of them : Such as are, Betraying Our Friend in his Secrets, Deserting him in his Misfortunes, in not Defending his Reputation, when falsely Accus'd, in an Obsequious Compliance with Him in any Indirect, or Dishonourable Measures, in a Nauseous Flattery of his Follies, or

“ *Vices, in Permitting him in any Error, without Admonition, and in giving him wrong Advice, and not leading him out of it. Such are also with regard to Our Neighbour, the Concealing, or Misrepresenting any Truth that he is Concern'd to know, Playing upon his Faith with doubtful and ambiguous Insinuations, with Double Equivocations, and Dissimulatory Expressions, an Actual Breach of Word, Promise, or Profession, clandestine Undermining, by Circumvention, Fraud, or Craft, Back-biting, and secretly Slandering, Propagating Scandal, and Eearing False Witnesses, and Partaking several ways in his Sins ; which are all the Characteristicks of an Insidious, Treacherous, and False-hearted Knave. But these Vices being of a Private Consideration, I hasten to the next General Head propos'd, Namely,*

“ II. Secondly, *To lay before You the Great Peril, and Mischiefs of these FALSE BRETHREN in Church and State ; which I shall endeavour to do, by Proving that They Weaken, Undermine, and Betray in themselves, and Encourage, and put it in the Power of Our Profess'd Enemies, to Overturn, and Destroy the Constitution and Establishment of Both.*

“ 1. And First, as to the Church. But here it is very Necessary to Premise, That by the Church of England, We are to understand the True Genuine Notion of it, as it stands Contra-distinguish'd in its Establish'd Doctrine, Discipline, and Worship, from all Other Churches, and Schismatics, who would Obtrude upon Us a Wild, Negative Idea of a NATIONAL CHURCH, so as to Incorporate Themselves into the Body, as True Members of it ; Whereas 'tis evident that this Latitudinarian, Heterogeneous Mixture of all Persons of what Different Faith soever, Uniting in Protestancy, (which is but One Single Note of the Church of England) would render it the most Absurd, Contradictory, and Self-Inconsistent Body in the World. This Spurious, and Villanous Notion, which will take in Jews, Quakers, Mahometans, and any thing as well as Christians, as ridicu'ously incongruous as 'tis, may be first Observ'd, as One of those Prime, Popular Engines, Our FALSE BRETHREN have made Use of to Undermine the very Essential Constitution of Our Church ; which as it stands Guarded with its Own Sacred Fences, with Her only True Sons in Her Bosom, may Defy all the Malice of the Devil, and Her Enemies, to Prevail against Her. But such is Her hard Fortune, Her Worst Adversaries must be let into Her Bowels, under the holy Umbrage of Sons, who neither Believe Her Faith, Own Her Mission, submit to Her Discipline, or Comply with Her Liturgy. And to admit this Religious Trojan Horse, big with Arms and Ruin, into Our Holy City, the Strait Gate must be laid quite Open, Her Walls, and Inclosures pull'd down, and an High Road made in upon Her Communion, and this Pure Spouse of Christ prostituted to more Adulterers than the Scarlet Whore in the Revelations. Her Articles must be Taught the Confusion of all Senses, Nations, and Languages, to render Her a Babel, and Desolation. This was indeed the Ready way to Fill the House of God, but with what ? With Pagan Beasts, instead of Christian Sacrifices, with such Unhallow'd, Loathsome, and Detestable Guests, as would have Driven out the Holy Spirit of God with Indignation.

‘ nation. This Pious Design of making Our
‘ House of Prayer a Den of Thieves, of re-
‘ forming Our Church into a Chaos, is well known,
‘ to have been Attempted several Times in This
‘ Kingdom, and lately within our Memory, When
‘ all Things seem’d to Favour it, but that Good
‘ Providence, which so happily interpos’d, against
‘ the Ruin Our Church, and Blasted the Long-pro-
‘ jected Scheme of these Ecclesiastical Achitophels.
‘ A Scheme so Monstrous, so Romantic, and Absurd,
‘ that ’tis hard to say, whether it had more of
‘ Villany, or Folly in it, and which even the Secta-
‘ rists of all Sorts (who will not be satisfied with
‘ any thing less than Sovereignty) Exploded, and
‘ Laugh’d at, as Ridiculous, and Impracticable. It
‘ was doubtless a Wise way to Exemplify Our Bro-
‘ therly Love and Charity for the Souls of Men,
‘ to put both Them, and Our selves into a Gulph
‘ of Perdition, by throwing up the Essentials of Our
‘ Faith, and the Uniformity of Our Worship. But
‘ since this Model of an Universal Liberty, and Co-
‘ alition fail’d, and these FALSE BRETHREN
‘ could not carry the Conventicle into the Church,
‘ they are now Resolv’d to bring the Church into
‘ the Conventicle, which will more Plausibly, and
‘ Slily Effect Her Ruin. What could not be gain’d
‘ by Comprehension, and Toleration, must be brought
‘ about by Moderation, and Occasional Conformity;
‘ that is, what they could not do by Open Violence,
‘ they will not fail by Secret Treachery, to Accom-
‘ plish. If the Church can’t be Pull’d down, it may
‘ be blown up; and no Matter with these Men How
‘ ’tis Destroy’d, so that it is Destroy’d. Now let
‘ Us, I beseech You in the Name of God, fairly
‘ consider what must be the Consequence of this
‘ Scandalous Fluctuation, and Trimming betwixt the
‘ Church and Dissenters; both in Conscience, and
‘ Prudence. Does not this Innovating in, Giving
‘ up, or Receding from, any One Point, or Article
‘ in our Faith, Violate, and Affect the Whole Frame,
‘ and Body of it? Can we either Add to, or Di-
‘ minish from, the Least Jot of our Religion? Are
‘ we to take it’s Constitution as our Saviour, and
‘ his Apostles Deliver’d it down to Us; or have we
‘ Authority to Curtail, Mangle, or Alter it, to Suit
‘ it to the Pride, Humours, Caprice, and Quail-
‘ sick Stomachs; of Obstinate, Moody, Wayward,
‘ and Self-conceited Hypocrites, and Enthusiasts?
‘ Will not such a Base, and Time-serving Compli-
‘ ance give the Enemies of Our Church an Occasion
‘ of Blaspheming Her as Weak, and Inconstant? Will
‘ it not Argue the Illegality of Her Ordinances, and
‘ Laws, or that they were too Rigid, and wanted
‘ an Abatement? Will not this Harden, Encourage,
‘ nay Justify the Dissenters in their Opinion of
‘ their Separation, when they see such large Allow-
‘ ances, and Concessions made in it’s Favour? What
‘ Dishonourable, and Unworthy Opinions must they
‘ entertain of the Priests of that Church, who can
‘ Sacrifice their most Solemn Declarations, and
‘ Oaths to Complaisance, and Preferment? What
‘ would be the End of All this, but to Establish
‘ Heresy, and Erastianism upon the Ruins of our
‘ Faith, and Discipline? Would not this Spiritual
‘ Legerdemain, this Fallacious Tricking, and Double-
‘ dealing, eradicate all the Principles of Truth,
‘ and Honesty, or Piety out of Men’s Minds, make
‘ ’em Unconcerned, whether there is Any, or No
‘ Religion, Run ’em into an Universal Scepticism,
‘ and Infidelity, and make ’em All Atheists, or Pa-
‘ pists? For when they had Turn’d about, and
‘ about, and were grown Giddy with Change, they

‘ would either Give up Themselves to the Disbe-
‘ lief of all Things, or Rest their Weary’d Judge-
‘ ments in the Authority of that Church alone, that
‘ can Delude ’em with the Specious Pretences of
‘ an Infallible Guide. Thus our FALSE BRETHREN
‘ as the Jews did our Blessed Saviour, crucify his
‘ Church Betwixt Thieves; and as they commit-
‘ ted that Execrable Villany under a Pretended Fear
‘ lest the ROMANS should come and take away
‘ their Place, and Nation, which by that very Fall
‘ They brought upon Themselves: So these Men,
‘ out of a Fictitious Fear lest the Modern ROMANS
‘ should come, and Destroy Our Church, are Work-
‘ ing that Ruin they pretend to Avoid, and under
‘ a False Zeal of Keeping out Popery, are Them-
‘ selves infallibly Bringing in That very POPERY
‘ into Our Kingdom, with which they so Falsely
‘ and ungratefully endeavour to Attaint the Church
‘ of England, the Greatest Bulwark, and only Safe-
‘ Guard against Popery in the whole World! Tho’
‘ it were highly to be wish’d that those Excellent
‘ Laws made for Her Defence and Security, were
‘ at present put strictly into Execution; for the
‘ Roman-Catholic Agents, and Missionaries that
‘ swarm about this Great City, as it were in De-
‘ fiance and Contempt of them, were never more
‘ Busy in making Profelytes to their Superstition,
‘ and Idolatry, and Perverting and Debauching
‘ Her Majesty’s Subjects in every Corner of our
‘ Streets.

‘ 2. Thus we see how Dangerous these FALSE
‘ BRETHREN are to Our Church, which is so
‘ Great, and Considerable a Branch of our Civil Con-
‘ stitution, that the Support of Our Government
‘ depends upon it’s Welfare, and what Affects
‘ That, must strike at the Foundation of Our State;
‘ Innovations in Either tending to the Subversion
‘ of their Laws, and the Unsettling the Establish-
‘ ment, and consequently to Anarchy, and Confu-
‘ sion. But to draw this Argument more home to
‘ the Point; I will endeavour to prove, that our
‘ FALSE BRETHREN are as Destructive of our
‘ Civil, as Ecclesiastical Rights. For first, it can-
‘ not be deny’d, that though They do submit to
‘ the Government, their Obedience is Forc’d, and
‘ Constrain’d, and therefore so Treacherous, and Un-
‘ certain, as never to be Trusted, because proceed-
‘ ing upon no Principle, but meer Interest and Am-
‘ bition; and whenever That changes, their Alle-
‘ giance must follow it; and therefore (to use
‘ their Own Expression) are as much Occasional
‘ Loyalists to the State, as They are Occasional Con-
‘ formists to the Church; that is, They will Betray
‘ either, whenever it is in their Power, and They
‘ think it for their Advantage. FALSHOOD
‘ always implies Treachery; and whether That is
‘ a Qualification for any One to be Trusted, espe-
‘ cially with the Guardianship of our Church, or
‘ Crown, let our Governors consider. And certain-
‘ ly nothing but the most Sottish Insatiation, can so
‘ far Blind both our Eyes, and our Judgments, as
‘ to make us Believe, that the same Causes should
‘ not produce the same Effects, and that the same La-
‘ titudinarian, and Republican Notions should not
‘ bring forth the same Rebellious and Pernicious
‘ Consequences. They are pleas’d now to soften
‘ their Lewd Principles, and cover their Dangerous
‘ Tenets with the Name of Speculative Opinions;
‘ but what Fatal Practices they have created, and
‘ whether these Seditious Thoughts will not again
‘ Exemplify themselves in the same Bloody Actions,
‘ We shall be Convinc’d, to our Sorrow, if We don’t
‘ Appre-

Apprehend. That the Old Leaven of their Fore-fathers is still Working in their Present Generation, and that this Traditional Poyson still remains in this Brood of Vipers, to Sting Us to Death, is sufficiently Visible, from the Dangerous Encroachments They now make upon our Government, and the Treasonable Reflections They have Publish'd on Her Majesty, God bless Her! Whose Hereditary Right to the Throne, They have had the Impudence to Deny, and Cancel, to make Her a Creature of their own Power; and that by the same Principles They plac'd a Crown upon Her, They tell Us, They, (that is, the Mob) may re-assume it at their Pleasure. Nay, now They have Advanc'd themselves from the Religious Liberty Our Gracious Sovereign has Indulg'd them, to Claim a Civil Right, as they Term it, and to Justle the Church out of Her Establishment, by Hoisting their Toleration into it's Place; and to convince Us what alone will satisfy 'em, insolently Demand the Repeal of the Corporation and Test Acts, as an Ecclesiastical Usurpation, which indeed under Her Majesty (whom God long preserve for it's Comfort and Support!) is the only Security the Church has to Depend upon. And which they have so far Eluded by their Abominable Hypocrisy, as to have Undermin'd Her Foundation, and Indanger the Government, by filling it with it's Profess'd Enemies. These Charges are so Flagrant, and Undeniable, that a Man must be very Weak, or something worse, that thinks, or pretends, that Dissenters are to be Gain'd, or won over by any other Grants, and Indulgences, than giving up our Whole Constitution: And He that recedes the least Tittle from it, to satisfy, or Ingratiate with these Clamorous, Insatiable and Church Devouring Malignants, knows not what Spirit They are of; or He ought to shew who is a True Member of Our Church. Have They not ever since their first Unhappy Plantation in this Kingdom, by the Intercession of That False Son of the Church, Bishop Grindall, always Improv'd, and Rise upon their Demands in the Permission of the Government? Infomuch the Queen Elizabeth, that was Deluded by that Perfidious Prelate to the Toleration of the Genevian Discipline, found it such an Headstrong, and Encroaching Monster, that in Eight Years, She foresaw it would Endanger the Monarchy, as well as the Hierarchy: And like a Queen of True Resolution, and Pious Zeal for Both, pronounc'd, That "such were the Restless Spirits of that FACTIOUS People, that no Quiet was to be Expected from them, till they were utterly Suppress'd: Which like a Prudent Princess, She did by Wholsome Severities, that the Crown for many Years sat Easy, and Flourishing on Her Head. And had Her Successor, King James, but follow'd Her Wise Politicks, his Son had never fall'n a Martyr to their Fury, nor any of his Unhappy Offspring suffer'd those Disastrous Calamities, which made the Royal Family one continu'd Sacrifice to their Malice. And what better could have been expected from Miscreants, Begot in Rebellion, Born in Sedition, and Nurs'd up in Faction? I would not here be Misunderstood, as if I intended to cast the least Invidious Reflection upon that Indulgence the Government has condescended to give 'em, which I am sure all those that wish well to our Church are very ready to Grant to Consciences truly Scrupulous; let Them Enjoy it in the full Limits the Law has Prescrib'd. But let

them also move within their Proper Sphere, and not grow Eccentrick, and like Comets that Burst their Orb, Threaten the Ruin and Downfal of Our Church, and State. Indeed they tell us they have Relinquish'd the Principles, as well as the Sins of their Fore-fathers: If so, why do they not Renounce their Schism, and come Sincerely into Our Church? Why do they Pelt Her with more Blaspheinous Libels, and Scurrilous Lampoons, than were ever Publish'd in Oliver's Usurpation? Have they not lately Villanously Divided us with Knavish Distinctions of High and Low-Church Men; Are not the Best Characters they can give Us, those of Papists, Jacobites, and Conspirators? And what do they mean by all this Insidious Cant, but by False Insinuations, and raising Groundless Jealousies, and Fears, to Imbroil the Publick, and to bring it into that Confusion, they are Suggesting upon Us? Whether these Men are not Contriving, and Plotting our utter Ruin, and whether all those FALSE BRETHREN, that fall in with these Measures, and Designs, do not contribute basely to it, I leave every Impartial Man that wishes the Welfare of Our Constitution to Determine; And if we find this true in Fact, What Reason have we to think, but that the National Sins are Ripen'd up to a full Maturity, to call down Vengeance from Providence on a Church and Kingdom, thus Debauch'd in its Principles, and Corrupted in its Manners, and instead of the True Faith, Discipline, and Worship, given over to all Licentiousness, both in Opinion, and Practice, to all Sensuality, Hypocrisy, Lewdness, and Atheism? And now are we under no Danger in these Deplorable Circumstances? Must we Lull Ourselves under this sad Repose, and in such a Stupid, Lethargick Security, Embrace our Ruin? When Elisha the Great Prophet of God, was Surrounded with an Host of Enemies, that sought for his Life, his Blind Servant beheld not the Peril his Master was in, till his Eyes were Open'd by Miracle, and he found himself in the midst of Horses and Chariots of Fire. I pray God We may be out of Danger! but we may remember the King's Person was Voted to be so, at the same Time that his Murderers were Conspiring his Death. What I have thus freely spoken, I hope is as much without Offence, as it proceeds from a Good Intention, and a Tender Concern for Her Majesty's Person, and Government, and an hearty Zeal for the Honour and Safety of our Excellent Church, and Constitution. I intreat Your Patience,

III. Briefly to set forth the Heinous Malignity, Enormous Guilt, and Folly of this Prodigious Sin of FALSE BROTHERHOOD.

1. And First, With Regard to God and Religion. It is a most Perfidious Apostacy from, and Reproach upon Both. It is no Less than Renouncing Our Allegiance to our Almighty Sovereign, an Open Denial, and Prostitution of Our most Holy Faith, and Church, upon which Crime God has Entail'd so many Dreadful Threats, and Anathemas. It is Betraying Our most Solemn Oaths, proving False to Our Sacred Trust, and Commission, Administering to, and Indulging Men in the most Mortal Sins, Endangering both our Own, and the Salvation of that Dear Flock, for which Christ Dy'd, by Exposing it to the Corruptions of Heresy and Schism, the Impostures of False Apostles, and the Deceit, and Malice of Wolves in Sheep's Cloathing. It is Deriving the highest Blasphemy, and Dishonour upon the Holy Spirit of God, thus to

Prevari-

Prevaricate with his *Immutable Oracles of Truth*, in Wrestling 'em to maintain the most *Diabolical Falshoods*, and *Errors*, and making *Veracity* itself the *Author* and *Patronizer* of *Lyes*. It is *For-saking Our Baptismal Covenant*, *Basely Deserting* the *Glorious Colours* we are *Listed under*, turning *Refugees* from our *Saviour*, and *Adherents* to his most *Abjur'd Enemies*. In a *Word*, to accomplish any *wretched Secular Design*, to *Gratify* their *Pride*, or *Ambition*, to *Feed* their *Lust*, or *Avarice*, to *wreak* their *Spleen*, or *Revenge*, out of *Envy*, or *Disappointment*, for a *Little*, *Paultry Honour*, *Money*, or *Preferment*: These *FALSE BRETHREN* will *Renounce* their *Creed*, and *Read* the *Decalogue backward*, be the very *Reverse* of *Our Blessed Saviour* (whom like their *Primitive Pattern*, they first *sell*, and then *betray*) *Fall down* and *Worship* the very *Devil himself* for the *Riches* and *Honours* of this *World*.

2. *Secondly*, In *Regard* to the *World*. What a *vast Scandal*, and *Offence* must it give to all *Persons* of *Piety*, and *Integrity*, to see *Men* of *Character*, and *Stations*, thus *Shift* and *Prevaricate* with their *Principles*, and *Starting* from their *Religion* upon any *Occasion* of *Difficulty*, or *Trial*, and like the *Disciples*, *flying* from, and *for-saking* our *Saviour*, when his *Life* lay at *Stake*? To see *Men's Opinions* sit as *loose* about 'em as their *Garmets*, to be put on, or off, for *Convenience*? What can *Unwary Persons* conclude from such *Tergiversation*, and *Hypocrisy*, but that all *Religion* is *State-Craft*, and *Imposture*? That *All Godliness* is *Gain*; and that the *Doctrines* of the *Church* lie not so much in Her *Articles*, as Her *Honours*, and *Revenues*? Without doubt, this *Modern Latitude*, and *Infamous Double-Dealing*, as it can proceed from nothing but the *rankest Atheism*, so it must *Propagate* it where-soever it goes; and 'tis not to be *Question'd*, but that the *Wonderful Increase*, and *Impudent Appearance* of all *Sects* and *Heresies* in this *Kingdom* at present, beyond what was ever known in *Former Ages*, is chiefly to be attributed to it. But this *Crime* is as *Pernicious* to *Human Society*, as *Religion*; for it *Destroys* all *Common Honesty*, *Faith*, and *Credit* in the *World*, and in the place of it sets up an *Universal Trade* of *Cousenage*, *Sharping*, *Dis-simulation*, and downright *Knavery*. For, what *Dependance* can there be upon a *Man* of *no Principles*? What *Trust* in *Equivocations*, *Evasions*, and *Lyes*? Nor indeed could any one be suppos'd so *Sottish*, as to place the least *Confidence* in these *Men*, did they not *Bait* their *Hook*, and *Cover* their *Treachery* with the *Sacred* and *Plausible Pretences* of *FRIENDSHIP*, whereby they are capable of doing *much more Mischief*, than a *bare-fac'd* and *profess'd Enemy*. In what moving and *Lively Colours* does the *Holy Psalmist* paint out the *Crafty Insidiousness* of such *wilely Volpones*? *Wickedness*, (says he) is therein, *Deceit* and *Guile* go not out of their *Streets*. For it is not an *Open Enemy* that has done me this *Dishonour*, for then I could have *born* it: Neither was it mine *Adversary*, that did *Magnify* himself against me, for then peradventure I would have *bid* my self from him. But, it was even *Thou!* my *Companion*, my *Guide*, and mine own *Familiar Friend*. We took *sweet Counsel* together, and walked in the *House* of *God* as *Friends*. There is no *Faithfulness* in their *Mouths*, their *inward Parts* are very *Wickedness*; Their *Throats* are *Open Sepulchres*, and their *Words* are *smoother* than *Oil*, yet be they very *Swords*.

Like *Joab*, they pretend to speak *Peaceably*, and *smite us Mortally under the fifth Rib*. 3. *Thirdly*, With *Regard* to a *Man's Self*, it is hard to distinguish whether our *FALSE BRETHREN* prove themselves *Guilty* of more excessive *Knavery*, or *Folly*. For whatever these *Cunning*, *Temporizing Politicians* may think, they will find, after all their *Shuffling*, and *Compliance*, that the *Plain Road* of *Truth*, *Honesty*, and *Integrity*, is both the most *Prudent*, as well as the *Safest Way* they can follow, and that the *Wisdom* of this *World* is as much *Foolishness* with *Men*, as 'tis with *God*. For certainly there is no *Sin* that so much *Disappoints* its *Own Ends* as *This* does. Perhaps the *Man* may Obtain the *Present Advantage*, He has in *Prospect*, by relinquishing his *Old Friends*, and *Principles*; but is ever such a *Mercenary Convert* received *heartily* into the *Bosom* of his *Former Enemies*? Or are *They* ever found so *Credulous*, and *Good-natur'd*, as to *Forgive*, and *Believe* such an *Apostate Cordial* and *Sincere*, and fit to be *Trusted* in any *Matter* of *Weight*, or *Importance*, who has *Betray'd* his *Own Party* for the *Little*, *Sordid Lucre* of a *Place*, or *Preferment*? And is again ready to be *Retrograde*, whenever the *Wind* shall *Change*, and *Veer* about? Such a *FALSE BROTHER* may serve the *Present Turn* of his *Adversaries*, who may seem whilst they want the *TOOL*, to *Flatter*, and *Caress* him; but let such a *Turn-Coat* rest assur'd, He shall meet with *Hypocrisy*, for *Hypocrisy*; and since he is got upon the *Stage*, shall *Act his Part*, and be *Hiss'd off* when He has done? Such a *Wise Game* do our *Projectors* *Play*, they *Barter*, and *Betray* their *Friends*, only to *sell* themselves *Slaves* into the *Hands* of their *Enemies*, who shall *Treat* them with more *Insolence*, *Disdain*, and *Tyranny*, than *Honest Men* do with *Scorn*, and *Contempt*, if they don't go the *whole Lengths* of their *Party*, *stick at Nothing*, tho' never so *Impious*, and *Ab-surd*, and run from one *Extream* to a quite *Contrary*. Thus *Little*, thus *Base*, thus *Odious*, thus *Contemptible*, thus *Servile*, nay thus *Execrable* is the *Traytor*, and *Double-Dealer*, in the *Sight*, not only of all *Honest Men*, but the most *Profess'd Knaves*, and *Hypocrites*! Who cannot but have a *Tacit Regard*, and *Veneration* for a *Man* of *Steadiness*, and *Probity*, that upon *All Occasions* is *True to Himself*, and his *Cause*, is above the *Threats*, as well as *Flatteries* of this *World*, still *Trusting* in his *God*, and his own *Integrity*, and *Justice*, *Despising* his *Interest*, or *Success*, and is under all *Circumstances* like that *God*, and *Religion* He *Believes* and *Serves*, without *Variableness*, or *Shadow of Change*, but is the same, to day, to morrow, and for ever? Farther, these *FALSE BRETHREN* cannot be more *Odious* to *God*, and *Man*, than they are to *Themselves*, who are always a *Self-Contradiction*, full of *Confusion*, and *Perplexity*, perpetually *Haunting* themselves, the *Worst* of *Demons*, maintaining an *Irreconcilable War* betwixt the *Outward* and *Inward Man*, *Conformists* in *Profession*, *Half-Conformists* in *Practice*, and *Non-Conformists* in *Judgment*. Such a *Mixture* of *Inconsistency* and *Nonsense*, that any one that has the least *Spark* of *Conscience*, or *Reason*, must *Renounce*, and *Detest*. But this *Dismal Effect* has such a *State* of *Habitual Hypocrisy*, that it quite *Damps*, and *Extinguishes* *Boib*, *Quenches* the *Holy Spirit* of *God*, and *Crucifies* his *Son afresh*; and as it finds a *Man* void of *Shame*, generally without a *Miraculous Conversion* leaves him incapable of *Repentance*, and both

Damns

‘ Damns him here, and hereafter ; and as He Chose
‘ it in *This World*, Appoints him in the Next, his
‘ Portion with Hypocrites, and Unbelievers, with all
‘ Lyars, that have their Part in the Lake which
‘ Burns with Fire and Brimstone, with the Grand-
‘ Father of Falshood, the Devil and his Angels.
‘ And so here We leave our FALSE BRETHREN,
‘ in the Company they always keep Correspondence
‘ with.

‘ IV. Now what should be the Result of this
‘ Long Discourse, but that if We bear any True
‘ Concern for the Interest, Honour, and Safety of
‘ Our Church, and Government, We ought stedfast-
‘ ly to Adhere to those Fundamental Principles, up-
‘ on which Both are Founded, and upon which
‘ their Security, under God alone, depends ; and
‘ consequently that it highly Behoves Us, Cautiously
‘ to Watch against, to Mark, and Avoid All those
‘ that thus Treacherously Desert them. And in-
‘ deed it would be both for Our Advantage, as
‘ well as Their Credit, if such Men would throw
‘ off the Mask, entirely Quit Our Church, of which
‘ they are no True Members, and not fraudulently
‘ Eat Her Bread, and lay wait for Her Ruin, Pur-
‘ loin Her Revenues, and ungratefully Lift up their
‘ Heels against Her. For then We should be One
‘ Fold under One Shepherd, all those Invidious Di-
‘ stinctions that now Distract, and Confound Us Lost,
‘ and We should be Terrible like an Army of
‘ Banners to our Enemies, who could never Break
‘ in upon such an Uniform, and Well-compact Body.
‘ This indeed would be a True Peace, and
‘ Solid Union, when we should All with One Mind,
‘ and One Mouth, Glorify God, and not with a Con-
‘ fus’d Diversity of Contradictious Opinions, and in-
‘ consistent Jargon of Worship, which the God of
‘ Peace, Purity, and Order cannot but Abhor. As
‘ it is a Maxim in Politicks, that All Governments
‘ are best supported by the same Methods, and Coun-
‘ sels upon which they were Founded ; so it will
‘ appear undeniably True in its Application to our
‘ Constitution, which can be Maintain’d by no Other
‘ Principles but Those on which it is Built, and
‘ like their Basis, the Gospel, if there’s any Viola-
‘ tion, or Breach made in any Branch of it, it shakes
‘ and endangers the whole Frame, and Body. These
‘ Things, however Little they may be Represented
‘ by Our Adversaries, will be found of the most
‘ Considerable Consequence. Let Us therefore, as
‘ We are unhappily Sharers of St. Paul’s Misfor-
‘ tune, to have our Church in Perils among FALSE
‘ BRETHREN, follow his Example, and Conduct
‘ in a Parallel Case. He tells us in his Epistle to
‘ the Galatians, c. 2. That he was Obstructed, and
‘ Pester’d in his Preaching the Gospel, by FALSE
‘ BRETHREN, unawares brought in, who came
‘ privily to spy out his Liberty, which he had in
‘ Christ Jesus, that they might bring him into Bond-
‘ age. To whom he gave place by Subjection, no
‘ not for an Hour, that the Truth of the Gospel
‘ might continue with the Church. Doubtless this
‘ Brave, and Bold Resolution did the Apostle take
‘ by the peculiar Command, and Inspiration of the
‘ Holy Ghost ; and yet if our Dissenters had Lived
‘ in those Times, they would have Branded him
‘ as an Intemperate, Hot, Furious Zealot, that
‘ wanted to be Sweeten’d, by the Gentle Spirit of
‘ Charity, and Moderation, forsooth ! Schism, and
‘ Faction, are Things of Impudent and Incroaching
‘ Natures ; they Thrive upon Concessions, take Per-
‘ mission for Power, and Advance a Toleration im-
‘ mediately into an Establishment ; and are there-

‘ fore to be treated like Growing Mischiefs, or
‘ Infectious Plagues, kept at a Distance, lest their
‘ Deadly Contagion spread. Let Us therefore have
‘ no Fellowship with these Works of Darkeness, but
‘ rather reprove them. Let our Superior Pastors
‘ do their Duty in Thundering out their Ecclesiasti-
‘ cal Anathema’s, and let any Power on Earth
‘ Dare Reverse a Sentence Rais’d in Heaven. Let
‘ them Discountenance all these Seditious, Luke-
‘ warm, Almost-Christians, and Promote Men of
‘ Probity, Conscience, and Courage. I say Consci-
‘ ence, and Courage, for the One without the Other
‘ is like Faith without Works, Dead, and Insignifi-
‘ cant. A Christian, and a Coward, are such Con-
‘ tradictions, as were never found in the Church
‘ Militant ; Men of Timorous and Dastardly Spirits,
‘ who are Asham’d to Own, or Afraid to defend
‘ their Principles, lest they should lose, or suffer
‘ by it, will prove very Poor Disciples of the Cross !
‘ Such Men (as an Ingenious Prelate Wittily ex-
‘ presses it) are only Honest by Chance. Let us
‘ Despise the sneaking, shuffling Compliances of
‘ such as Consult their Safety, and not their In-
‘ nocence, and dare to be True in the Worst of
‘ Times, with this All-sustaining Cordial Comfort,
‘ that whatever Enemies We gain, or Friends We
‘ lose, We carry One within Us, that can Confront,
‘ Vanquish, and Counter-Balance All. Woe unto
‘ them that have a Fearful Heart, and to the Faint
‘ Hands, and to the Sinner that goeth two manner
‘ of ways ! says the Wise Man, Eccles. 2. 12. And
‘ agreeable to Him the Apostle in very Sarcastic Ex-
‘ pressions, Jude 11, 12, 13. Woe unto them that
‘ have gone in the Way of Cain, and ran greedily
‘ after the Error of Balaam for Reward, and
‘ Perish’d in the Gain-saying of Corah ! These are
‘ Spots in your Feasts of Charity, Clouds without Wa-
‘ ter, carry’d about of Winds, Trees whose Fruits
‘ are wither’d, without Fruit, Twice Dead, pluck’d
‘ up by the Roots : Raging Waves of the Sea, foam-
‘ ing out their Own Shame ; Wandring Stars, to
‘ whom is reserv’d the Blackness of Darkeness for
‘ ever. Let Us therefore, being well assur’d how
‘ much Our Cause Deserves, and how much at pre-
‘ sent it Requires Our bravest Resolutions, hold
‘ fast our Integrity, and Religion, without Wavering,
‘ and earnestly contend for the Faith, which was once
‘ deliver’d unto the Saints. My Brethren, be strong
‘ in the Lord, and in the Power of his Might. Put
‘ on the whole Armour of God, that Ye may be able
‘ to stand against the Wiles of the Devil. For we
‘ Wrestle not only against Flesh and Blood, but against
‘ Principalities, against Powers, against the Rulers of
‘ the Darkeness of this World, against Spiritual Wicked-
‘ nesses in High Places. Wherefore take unto you
‘ the whole Armour of God, that ye may be able
‘ to withstand in the Evil Day, and having done All,
‘ to stand, Eph. 6. 10. &c. Not doubting, but that
‘ if We shew the same Courage, and Indefatigable
‘ Zeal, and Labour, to Defend, as Our Adversa-
‘ ries to Reproach, Divide, and Ruin our Church,
‘ neither their united Malice, nor Power, nor all the
‘ Plots, and Machinations of Rome, nor the very
‘ Gates of Hell it self, shall ever be able to Pre-
‘ vail against Her. And let us Trust in that Gra-
‘ cious Providence, which so Miraculously Deliver’d
‘ Her on this Day, that tho’ She lies Bleeding of
‘ the Wounds she has receiv’d in the House of Her
‘ Friends, Lam. 2. 2, 4. tho’ the ways of Zion may
‘ Mourn for a Time, and Her Gates be Desolate,
‘ her Priests Sigh, and she in Bitterness, because
‘ Her Adversaries are Chief, and Her Enemies at
‘ pre-

* present Prosper; tho' among all her Lovers she has
 * few to comfort Her, and many of her Friends have
 * dealt Treacherously with Her, and are become her
 * Enemies, Zech. 13. 6. Tho' there are few to Guide
 * Her among all the Sons whom she hath brought
 * forth; neither are there many that take Her by
 * the hand, of all the Sons that she hath brought up,
 * Isa. 51. 18. Tho' her Enemies cry Down with her,
 * Down with her, even to the Ground; Yet there is
 * a God that can, and will, Raise Her up, if We
 * Forsake Her not. Let us not therefore ungrate-
 * fully contribute to Her Destruction; but let us
 * continue Stedfast, Immoveable, always abounding
 * in the Work of the Lord, forasmuch as We know
 * that our Labour will not be in vain in the Lord,
 * 1 Cor. 15. 58. Now the God of all Grace, who
 * hath called Us into his Eternal Glory by Christ Je-
 * sus, after that ye have suffer'd a while, make you
 * Perfect, Stablish, Strengthen, Settle You, 1 Pet.
 * 5. 10, 11. To Him be Glory, and Dominion, for
 * ever and ever. Amen.

* Let Us conclude all in that Excellent Collect of
 * Our Church;

O Lord, We beseech thee, let thy continual Pity
 Cleanse, and Defend thy Church; and be-
 cause it cannot continue in Safety, without thy Suc-
 cour, Preserve it evermore by thy Help, and Good-
 ness, through Jesus Christ, Our Lord.

After which the Lords Adjourned to the
 House of LORDS.

Tuesday, Feb. 28. The Second Day.

THE Lords coming down into Westminster-
 Hall, and being seated in the manner before-
 mentioned, Proclamation was made by the Serjeant
 at Arms as follows:

Our Sovereign Lady the Queen doth strictly
 Charge and Command all manner of Persons to
 keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: Henry
 Sacheverell, Doctor in Divinity, come forth, save
 thee and thy Bail, else thou forfeitest thy Recog-
 nizance.

The Doctor appearing at the Bar accordingly,
 with his Council as before.

Lord Chancellor. Gentlemen of the House of
 Commons, you may proceed in your Evidence.

Sir Joseph Jekyll. **M**Y Lords, Yesterday your
 Lordships heard the Ar-
 ticles against Doctor Sacheverell, his Answer, and
 the Commons Replication, read; and the Charge
 being open'd, your Lordships likewise heard the
 Doctor's Sermon preach'd at St. Paul's; and the De-
 dication of his Derby Sermon; so that the Case is
 now fully before your Lordships.

That Part which is assigned to me, and some
 other Gentlemen, is to maintain the First Article
 of the Commons Charge. The Method I shall
 take will be, first, to show the Importance of this
 Article; Secondly, To clear up and vindicate the
 Justice of the Revolution; and, Thirdly, To state
 the Evidence or Proof of this Article, which
 charges the Doctor with traducing and condemning
 the Revolution.

Vol. IV.

My Lords, I must premise, that the Commons
 cannot but think it hard, that in this Assembly of
 the British Nation, they should now after more than
 Twenty Years Enjoyment of the Benefits arising by
 the Revolution, they can't but think it hard, I say,
 that in this Place, and at this Time, they sho ld
 be forced to plead in Vindication of the Justice of
 that Revolution. But since we must give up our
 Right to the Laws and Liberties of the King-
 dom, or (which is all one) be precarious in the
 Enjoyment of them, and hold them only during
 Pleasure, if this Doctrine of unlimited Non-Resi-
 stance prevails, the Commons have been content to
 undertake this Prosecution; and they who share in
 the Legislature with your Lordships, have put them-
 selves into the Condition of Suiters for Justice
 against this Offender, in whom your Lordships
 will find the Reverse of a true British Subject:
 For such an one is dutiful and submissive to his
 Prince, and true to the Liberty of his Coun-
 try; but in this Criminal your Lordships will find
 virulent Faction, and slavish Submission.

As to the Importance of this Article, your Lord-
 ships were rightly told Yesterday, that the whole
 Charge centers in this Article. If the Justice of
 the Revolution be establish'd, the Toleration will be
 rejoic'd in by some, and be acquiesc'd in by all;
 the Resolutions of the Two Houses of Parliament
 will have a just Regard shown to them; Her Ma-
 jesty's Administration will be no longer defamed,
 nor will that unhappy Distinction of Parties be ca-
 pable of being heightned amongst us. But if the
 Justice of the Revolution (which is our Foundati-
 on) be question'd, every Thing that is built on it
 is in some Degree shaken, and Occasion is given for
 Disputes and Factions, never to be ended but by a
 total Subversion of our Constitution.

My Lords, As it is self-evident that the Honour
 of Her Majesty's Government stands upon the Ju-
 stice of the Revolution, so doth the Peace and
 Tranquility of it depend upon that also. The
 Commons may appeal to your Lordships, and
 the whole Nation, in this Matter: From what Quar-
 ter is it, that all that Opposition and Obstruction to
 the Administration of the late King, and Her pre-
 sent Majesty have come? Has it not been from
 those who have question'd the Lawfulness of the
 Resistance made use of in the Revolution? Whose
 Pursuit after Power is indefatigable, and to obtain
 which they would make a willing Sacrifice of the
 Common Liberty; whilst others who have a con-
 trary Principle, and are convinced of the Justice of
 that Proceeding, have acted a quite contrary Part.
 Have they not contributed every thing in their Pow-
 er to strengthen the Government in Her present
 Majesty's Hands, as well as the late King's; and
 that with a Zeal and Constancy thro' several Chan-
 ges, which nothing but a Principle could inspire?
 How much is owing to this Zeal in promoting the
 Settlement of the Protestant Succession, and how
 little to the contrary Principle, every one that re-
 members the State of Things at the End of the
 late King's Reign can tell. Upon the present Que-
 stion therefore, my Lords, depend our present Hap-
 piness, and future Hopes. Hath not this Principle
 of unlimited Non-Resistance been revived by the
 professed and undisguized Friends of the Preten-
 der? Hath it not been prosecuted, with an unusual
 Warmth, since his Attempt upon Her Majesty's
 Crown? Can the Pretender have any Hopes, but
 from the keeping alive such Notions? Or can the
 Queen's Title receive any Advantage from them?

K k k k k

Or

Or can it be seasonable to preach this Doctrine in the Reign of the Best of Princes, which can be of no Use to any but the worst ?

In clearing up and vindicating the Justice of the Revolution, which was the Second Thing proposed, it is far from the Intent of the Commons to state the Limits and Bounds of the Subject's Submission to the Sovereign. That which the Law hath been wisely silent in, the Commons desire to be silent in too ; nor will they put any Case of a justifiable Resistance, but that of the Revolution only ; and they persuade themselves that the doing Right to that Resistance, will be so far from promoting Popular Licence or Confusion, that it will have a contrary Effect, and be a Means of settling Mens Minds in the Love of, and Veneration for the Laws ; to rescue and secure which, was the only Aim and Intention of those concerned in that Resistance.

To make out the Justice of the Revolution, it may be laid down, That as the Law is the only Measure of the Prince's Authority, and the Peoples Subjection, so the Law derives its Being and Efficacy from common Consent : And to place it on any other Foundation than common Consent, is to take away the Obligation this Notion of common Consent puts both Prince and People under to observe the Laws. And upon this solid and rational Foundation, the Lawyers, in all Ages, have placed that Obligation, as appears by all our Law-Books. But instead of this, of later Times, Patriarchal and other Fantastical Schemes have been framed, to rest the Authority of the Law upon ; and so Questions of Divinity have been blended with Questions of Law ; when it is plain, that Religion hath nothing to do to extend the Authority of the Prince, or the Submission of the Subject, but only to secure the Legal Authority of the one, and enforce the due Submission of the other, from the Consideration of higher Rewards, and heavier Punishments. And if this Distinction were attended to, it might serve to bury the useless Labours (to say no worse of them) of several Divines, and others, on these Subjects, in utter Oblivion.

My Lords, Nothing is plainer than that the People have a Right to the Laws and the Constitution. This Right the Nation hath asserted, and recover'd out of the Hands of those who had dispossest them of it at several Times. There are of this Two Famous Instances in the Knowledge of the present Age ; I mean that of the Restoration, and that of the Revolution ; in both these great Events were the Regal Power, and the Rights of the People recover'd. And it is hard to say, in which the People have the greatest Interest ; for the Commons are sensible, that there is not one Legal Power belonging to the Crown, but they have an Interest in it ; and I doubt not, but they will always be as careful to support the Rights of the Crown, as their own Privileges.

My Lords, That the Constitution was wholly lost before, and recovered by the Restoration, is known to all ; and before the Revolution, it is known how Popery and absolute Power had invaded the Constitution. The Regal Supremacy, of such Absolute Necessity to preserve the Peace of the Kingdom, was disclaimed, and the Papal Supremacy, by a solemn Embassy to Rome, owned and acknowledged, and no Footsteps left of the Regal Supremacy but that which was worse than nought, an Illegal High-Commission Court : And at that Time the Popular Rights, in almost all the Species

of them, were invaded. That great Privilege of the People, on which all others depend, that of giving their Consent to the making new, or repealing old Laws, was invaded ; and a dispensing Power, such as rendred all our Laws precarious, and at the Will of the Prince, was exercised. These, and a great many other Acts of absolute Power, are mentioned in that Act of Parliament, called *The Bill of Rights*. It would be to mispend your Lordships Time, to mention all the Instances there given : For, my Lords, the whole Tenor of the Administration then in being, was agreed by all to be a total Departure from the Constitution ; the Nation was at that Time united in that Opinion, all but the Criminal Part of it. And as the Nation joined in the Judgment of their Disease, so they did in the Remedy. They saw there was no Remedy left, but the last ; and when that Remedy took Place, the whole Frame of the Government was restor'd entire and unhurt. This shewed the Excellent Temper the Nation was in at that Time, that after such Provocations from an Abuse of the Regal Power, and such a Convulsion, no one Part of the Constitution was alter'd, or suffer'd the least Damage ; but on the contrary, the whole received new Life and Vigor.

My Lords, As that Doctrine of unlimited Non-Resistance was implicitly renounced by the whole Nation in the Revolution, so divers Acts of Parliament afterwards pass'd, expressing that Renunciation. I beg leave to read a few Passages out of the Laws that were then made. In the First of King William and Queen Mary, was the Act for Abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths. By that Act, the Declaration enjoin'd to be taken by several Acts in the Time of King Charles II. to this Purpose, *That it is not lawful, on any Pretence whatsoever, to take up Arms against the King*, was taken away. Then in the Second Session of that Parliament, was the Act for declaring the Rights and Liberties of the Subject : In that Act Notice is taken, that the Late King James did endeavour to subvert and extirpate the Protestant Religion, and the Laws and Liberties of the Kingdom ; and the particular Instances of Male-Administration are set forth : Then it declares, that that unhappy Prince had abdicated the Government, and the Throne was thereby vacant ; and that it had pleased Almighty God to make the Prince of Orange the Glorious Instrument of delivering the Kingdom from Popery and Arbitrary Power. And if the Instrument, who brought about that Deliverance, be stiled Glorious, surely the Means used by him is (in Consequence) approved and applauded ; and His Late Majesty is mentioned as the same Glorious Instrument, in the Act for paying the *States-General* the Charges of his Expedition. And surely this is an Approbation of the Means used by him, when that Act charges the People with Six Hundred Thousand Pounds for those Means, *viz.* the Force he brought along with him. But if it should be thought these Words are too general, and do not particularly approve the Resistance at the Revolution ; there came a Memorable Occasion, when the Parliament had that Particular under their Consideration ; and that was, when they were considering whether they should meddle with so tender a Thing, as the taking away the Benefit of the Law from a great many of the Subjects of the Kingdom ; which was done by an Act in the same Second Session of that Parliament, entituled, *An Act for preventing vexatious Suits,*

against

against such as acted in order to the bringing in their Majesties, or for their Service. There they take notice, that at the Time of His Majesty's Glorious Enterprize, for delivering this Kingdom from Popery and Arbitrary Power, and in Aid and Pursuance of the same, divers Lords, Gentlemen, and other good People well affected to their Country, did act as Lieutenants, Deputy-Lieutenants, Justices of the Peace, or other Officers, Civil or Military, tho' not sufficiently authorized thereunto; and did apprehend and put in Custody several criminous and suspected Persons; and did seize and use divers Horses, Arms, and other Things; and did enter into the Houses and Possessions of several Persons, and did Quarter, and cause to be Quartered, Soldiers and others there; which Proceedings, in Times of Peace and common Safety, would not have been warrantable: Yet that Act declares they were necessary, in regard of the Exigence of Publick Affairs, and ought to be justified; and provides an Indemnity for those who acted in that Resistance, from the Actions that might be brought by their Fellow-Subjects.

My Lords, I shall conclude this Head with taking notice of the Form of Prayer, appointed by Royal Authority, for the Fifth of November, now doubly memorable: There is in that Form not only Thanks offer'd to Almighty God for the Revolution, but for the Success given to those Means that were used to bring about that wonderful Deliverance: What else is the Meaning of thanking God, for giving his late Majesty a safe Arrival here, and making all Opposition fall before him, till he became our King and Governor?

But, my Lords, notwithstanding the Justice of those Steps that were taken to bring about the Revolution, notwithstanding the Temper and Prudence that was shewn in the Settlement of it, and the Sanction since given to it, not only by the Royal, but the whole Legislative Authority, Dr. Sacheverell hath condemned the Resistance, (which was the principal, if not the only Means) by which that Deliverance was wrought; which was the last Thing I propos'd to shew to your Lordships.

My Lords, This Article is divided into Three Branches: First, The General Charge, that he suggests and maintains, that the Necessary Means used to bring about the Revolution, were odious and unjustifiable. The Second and Third Branches are Particulars of that General; viz. That his late Majesty disclaimed the least Imputation of Resistance; and that to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution.

To maintain this Article, I will not repeat the particular Words of the Sermon, in order to the Application of them; that is a Province which is assigned to another Gentleman, who will speak after me: But I shall offer to your Lordships what I apprehend to be the clear Sense and Meaning of those Passages in the Sermon, which maintain this Article. In the Eleventh Page of the *Quarto* Edition, he lays down a General Position, of the utter Illegality of Resistance, upon any Pretence whatsoever. He says, there are some who deny this Position, who are New Preachers, and New Politicians, who teach divers Antimonarchical and pernicious Doctrines. He goes on, and says, They do not only deny this Position, but urge the Revolution in Defence of their Denial; that is, by producing that as an Instance of a justifiable Resistance. Then he exclaims against these Men, as endeavour-

ing to cast black and odious Colours on the late King and the Revolution; whereas he says, the King disclaimed the least Imputation of Resistance by his Declaration; and the Parliament disowned it, because they declare they only fill'd a vacant Throne, without taking notice how it became so; and they burnt a Book which alledg'd Conquest, because it had that Ingredient of Resistance in it.

This Extract out of the Sermon makes out the First Article, which is, his condemning the Resistance, which the Commons call the Necessary Means used to bring about the Revolution. For first, that general Position of his condemns Resistance in any Case whatsoever. Secondly, he introduces some as denying this Position, and fastens a vile and odious Character upon them. Thirdly, he makes those that deny this Doctrine object to it an Authority or President of a lawful Resistance, viz. that at the Revolution; but, my Lords, this he does only to give up the Lawfulness of that Resistance, and condemn that as well as any other. For, Fourthly, he answers this Objection, by denying there was any Resistance in that Case, a Fact as clear as the Sun at Noon-day, and which all the Nation saw and rejoiced at. He brings the late King and the Parliament to witness against any Resistance in the Revolution; and yet he has shewn by two Quotations out of the Prince of Orange's Declaration, one in his Answer, and the other in the Printed Sermon, that his late Majesty was so far from disclaiming Resistance, that he avowed it, and invited the Subjects of this Kingdom to join in that Resistance; for in his Answer, he cites that Passage in his Declaration; wherein his Majesty takes notice, that he carried a Force with him, sufficient, by the Blessing of God, to defend him from the Violence of Evil Counsellors; and that he designed that Expedition to oblige King James to call a Free Parliament: And by his Quotation of another Passage in the Prince of Orange's Declaration, it appears his late Majesty was, by divers Subjects of King James's, Invited to and Assisted in that Expedition; which being an Expedition by Force, to oblige that King to call a Free Parliament, doth it not carry in it a plain and manifest avowing of Resistance? My Lords, as to what he says in relation to the Parliament's disowning any Resistance at the Revolution, by asserting, that they set the Crown on the King's Head on no other Title than that of the Vacancy of the Throne, that appears to be directly otherwise from the several Passages in divers Acts of Parliament which I have before-mention'd: To which I only add, that in the Conference between the Two Houses, previous to the settling the Crown on the King's Head, the Word *Abdicated* was insisted upon and carried; for that it included in it the Male-Administration of King James, which the Word *Deserted* (desired to be used instead of it) did not: And this appears by the Journal. He therefore knowing that there was Resistance at the Revolution, and that the late King and the Parliament avowed that Resistance; and he pretending to defend it only by denying those Facts, hath (by a necessary Implication) asserted, That that Resistance was not an Exception to his General Rule, but stands condemned by it.

My Lords, I shall not enter upon the Consideration of the Doctor's Answer to this Article, because I don't know whether his Council will think fit to abide by it; nor would I meddle with any Thing that is proper for the Reply.

The Sum of the whole Proof is this : The Doctor lays down a Doctrine, condemning Resistance in all Cases whatsoever : He makes those who deny this Doctrine, Asserters of Antimonarchical Principles : He takes notice of the Revolution, only to give it up : He admits, that if there were Resistance in that Case, that it was as unlawful as any other Resistance. He asserts that to be true, which every one knows to be false : He says, the late King disclaimed the least Imputation of Resistance ; the Parliament disown'd it ; and they who say there was any Resistance in it, cast black and odious Colours on the late King and the Revolution ; and consequently, he condemns the Resistance used to bring about the Revolution, which is the Matter of the First Article.

This, my Lords, is what the Commons rely upon, to maintain and make out the First Article of their Charge against the Criminal at the Bar ; and they refer the Consideration of it to your Lordships Wisdom and Justice.

Mr. Solicitor General. **M**Y Lords, It falls to my Share, to state to your Lordships the several Passages in the Sermon preach'd at St. Paul's, which the Commons rely upon as a Proof of the First Article ; and to shew the particular Weakness and Insufficiency of the Answer given to this Charge.

The Charge is, That the Gentleman at the Bar doth suggest and maintain, That the necessary Means us'd to bring about the late Happy Revolution, were Odious and Unjustifiable ; That his late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance ; and, That to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the said Revolution.

The Passages upon which the First Article is founded, are in the Eleventh and Twelfth Pages of this Sermon ; where Dr. Sacheverell having first asserted, " That the grand Security of our Government, and the very Pillar upon which it stands, " is founded upon the steady Belief of the Subjects Obligation to an Absolute and Unconditional " Obedience to the Supreme Power in all Things " Lawful, and the utter Illegality of Resistance upon any Pretence whatsoever ; which, He says, has " been lately exploded and ridiculed, goes on in these Words :

" Our Adversaries think they effectually stop our " Mouths, and have us sure and unanswerable on " this Point, when they urge the Revolution of this " Day in their Defence ; but certainly they are the " greatest Enemies of that, and his late Majesty, " and the most ungrateful for the Deliverance, who " endeavour to cast such Black and Odious Colours " upon both. How often must they be told, that " the King himself solemnly disclaim'd the least " Imputation of Resistance, in his Declaration ? " And that the Parliament declar'd, that they set " the Crown on his Head upon no other Title but " that of the Vacancy of the Throne ? And did " they not unanimously condemn to the Flames " that infamous Libel, that would have pleaded the " Title of Conquest, by which Resistance was suppos'd ?

These Words the Commons apprehend to be a full Proof of the Assertions charg'd in the First Article, for Resistance was the necessary Means used to bring about the Revolution.

And the Doctor expressly affirms in this Place, that the King disclaim'd the least Imputation of Resistance ; he asserts it as a thing notorious, which no Body could be a Stranger to : He says, the King disclaim'd it solemnly ; he disclaim'd it in his Declaration.

And he as plainly affirms, That to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the Revolution ; for he first lays down the utter Illegality of Resistance upon any Pretence whatsoever, as a Fundamental Doctrine ; and then acquaints his Auditory, that his Adversaries thought they could effectually stop his Mouth, and had him sure and unanswerable *On this Point*, when they urg'd the Revolution in their Defence ; but that they were the greatest Enemies to the King and to the Revolution, who endeavour'd to cast such *Black and Odious Colours upon Both*.

Now *this Point*, which he says his Adversaries thought they had him sure and unanswerably upon, is plainly the Point of Resistance, which he had asserted to be Illegal upon any Pretence whatsoever ; and others, he says, had denied, and had urg'd the Revolution in their Defence.

And the urging of the Revolution in that Case, as an Instance of the Legality of Resistance, in Opposition to his general Doctrine, is what he calls casting Black and Odious Colours upon the King and the Revolution ; for his Argument runs thus. All Resistance is utterly Illegal ; the King disclaim'd the least Imputation of Resistance ; the Parliament set the Crown upon his Head upon no other Title than that of the Vacancy of the Throne ; and burnt a Book because it asserted a Title by which Resistance was supposed ; and therefore to impute Resistance to the Revolution, is to cast *Black and Odious Colours* upon his late Majesty and the Revolution.

This, my Lords, is the Force of his Reasoning, and the plain and obvious Sense of this Part of the Paragraph ; and therefore fully makes out the Charge of his asserting and maintaining, that to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the said Revolution.

I come now to consider the Answer he makes to this Article, which he divides into Three Parts.

" And first, he denies that he doth Suggest and " Maintain, that the necessary Means used to bring " about the happy Revolution were Odious and Unjustifiable ; and says, that he doth not affirm in " any Part of that Sermon any thing concerning " the necessary Means used to bring about the happy Revolution ; the said *Henry Sacheverell* is so " far from reflecting on his late Majesty or the happy " Revolution, that he endeavours in that Sermon " to clear the Revolution, and his late Majesty, " from the Black and Odious Colours which their " greatest Enemies had cast upon Both.

Now the material Part of the Answer to this Branch of the Article is, " That he denies his " maintaining that the necessary Means used to bring " about the Revolution were Odious and Unjustifiable, and his affirming any thing concerning " those necessary Means. But this is no more than saying that he has affirmed nothing by the Words *Necessary Means* ; and 'tis very true, that the Words *Necessary Means* are not used in any Part of the Sermon.

But no Body will say, that 'tis requisite to charge the Assertion in the very Words.

And therefore if Resistance was necessary, and the Means used, in that extraordinary Case of the Revolution, he has asserted the Means to be Odious and Unjustifiable, tho' he has done it in other Terms, and by Words more particular and express.

"And as to that Part of the Article whereby he is charged with Suggesting and Maintaining, That his late Majesty in his Declaration disclaimed the least Imputation of Resistance:

"He acknowledges himself to have made this Suggestion; but says, that he made it not in Dishonour, but in Vindication of his Majesty; the Resistance he represents the King to have Disclaimed, being such a Resistance as tended to the Conquest of this Realm; for which he refers to that Part of the Declaration which is Printed at the Bottom of the Eleventh Page in the Sermon; and upon this Ground he observes, that there are these other Passages in the Declaration-----
"We have thought fit to go over to *England*, and to carry over with us a Force sufficient, by the Blessing of God, to defend our selves from the Violence of evil Counsellors.----- We think fit to declare, that this our Expedition is intended for no other Design than to have a free and lawful Parliament Assembled.

Now in this part of his Answer Doctor *Sacheverell* admits, that he made the Suggestion charged upon him, in the same Words that are used in the Article; but defends himself by alledging, that the Commons have mistaken his Meaning.--- He meant only, that the King disclaim'd a Resistance which tended to Conquest.

But 'tis clear and plain, that the Words have no such limited or restrain'd Sense, and that the Meaning he would now put upon them is a meer Shift and Evasion; for the Proposition is General, The King Disclaim'd the least Imputation of Resistance: And the use he makes of it shews, that his Meaning was as General as his Words; for he is Replying upon those who urge the Revolution in Answer to his general Position, That Resistance is utterly illegal upon any Pretence whatsoever; and how does he answer the Case of the Revolution, or is it possible to be answer'd, but by saying, that there was no Resistance at all in the Revolution; the King, who was principally concern'd in it, disclaim'd the least Imputation of Resistance?

The Question is stated upon Resistance in general; Whether Resistance in any Case, or upon any Occasion, be lawful?

And therefore, if the Lawfulness of Resistance in any Case be allow'd, 'tis impossible that his general Assertion should stand; and 'tis equally impossible to get clear of the Objection, without denying the Resistance.

Doctor *Sacheverell* was aware of this, and therefore denies that there was any Resistance at all in the Revolution, and says, That the least Imputation of it was solemnly disclaim'd and disavow'd.

For had he said, in express Terms, that the King disclaim'd all Imputation of Resistance that tended to Conquest, this wou'd have been no Answer to the Objection: For if there was any Resistance, tho' not the particular Resistance which the King disclaim'd; and if that Resistance which was us'd be agreed to be lawful, his fundamental Doctrine must certainly be shaken. And therefore if your Lordships suppose him to make any use at all of this Assertion, his Words plainly spoke his Meaning, and represent

the King to have disclaim'd all Resistance whatsoever.

But he excuses the making of this Suggestion, by declaring, "That he made it not in Dishonour, but in Vindication of His Majesty; and therefore whether he was mistaken or not in expressing himself, as if the late King had disclaim'd all Imputation of Resistance, when he meant thereby, that the late King disclaim'd the Imputation of a Design of Conquest, he humbly conceives such a Suggestion, plainly design'd for the Honour of the late King, cannot in any reasonable Construction be thought a Reflection upon his said late Majesty, or deem'd any high Crime or Misdemeanor.

My Lords, had these Words been spoken in Vindication of his late Majesty, our great and glorious Deliverer, the Commons, who have so much at Heart the Honour of the late King, and the Justice of the Revolution, had never charg'd them upon this Gentleman as a Crime.

But they carry with them the highest Reflection upon the Honour and Justice of his Majesty; for they suppose that he denied the Lawfulness of Resistance when he was actually engag'd in it; and disclaim'd the least Imputation of Resistance when he brought over an Army on purpose to maintain that Resistance, to which all the People of *England* were invited and encourag'd by his Declaration.

And this Assertion, of the King's disclaiming all Resistance, could never be meant in Vindication of his Majesty from any Imputation of a Design of Conquest; for there was no Occasion for vindicating the King upon this Point, the Subject-Matter of the Discourse did not lead him to it; for the Business of the Sermon, or of this particular Paragraph, is not to vindicate the Honour of the King from any such Aspersions, or to maintain the Liberties of *England*, by asserting, That the Constitution of Government still remains, and was not broken and dissolved by Conquest at the Revolution: Had that been his Ground, his Mistake had been more excusable; for then it had been proper to have urg'd that there was no Step taken towards the Revolution, which look'd like a Design of Conquest; and that the armed Force which was used in it, and had the Appearance of such a Design, was not intended to conquer; for the King, who commanded it, disclaim'd all Imputation of Resistance that tended to Conquest. Upon such a Question these things had been very properly urg'd, and there might have been some Indulgence to a general Expression, that in any Propriety of Speech could have received such a Meaning.

But when the Question is not, Whether the Revolution was brought about by Conquest, or what would be the Consequence of such an Assertion, either in regard to the Honour of the King, or the Condition of the People, there can be no Colour for saying that he meant by this general Expression, which carries no such Meaning in it self, that the King disclaim'd Conquest, or a Resistance which tended to Conquest only.

Especially, my Lords, when the Subject-Matter of his Discourse naturally led him to assert this Proposition in the common and ordinary Sense which the Words import: For he is asserting the Doctrine of absolute Non-Resistance; and shewing, that the Lawfulness of the Revolution was no Argument against it; and why? Because the King disclaim'd the least Imputation of Resistance; there was no such wicked Ingredient as Resistance in it; no other

other Answer would have serv'd him; and therefore it can never be suppos'd that he meant to clear the King from any Design of Conquest, or intended to say any thing in Vindication of his Majesty upon that Head.

And in Truth, it is an apparent Scandal upon the Memory of the late King, to say there was any Occasion to clear him from this Imputation; his Actions spoke the Justice and Sincerity of his Intentions; his Business was not to conquer and enslave us, but to deliver us from Popery and Slavery, the most dreadful Calamities that could befall us, and to settle and establish our Constitution both in Church and State. This was the Ground of the Glorious Enterprize he undertook, and the general Aim and Design of all his Labours through the whole Course of his Reign.

'Tis therefore plain, that what Doctor *Sacheverell* says in his Answer, in Excuse of his Assertion, relating to the King's disclaiming all Imputation of Resistance, was rather made to the Dishonour, than in Vindication of his Majesty; for there was no Colour to suggest that he needed any such Vindication or Defence.

And that the King did not disclaim all Imputation of Resistance, is evident, even from that Part of his Declaration which is cited in the Answer, whereby "He declares to the People (to encourage them to join with him) that he had brought over a sufficient Force to defend himself from the Violence of evil Counsellors---And that his Expedition was design'd to have a free and lawful Parliament assembled, which was a plain Force upon the Executive Power that was directed by those evil Counsellors, who, by subverting the Liberties of Corporations, and practising upon the Freedom of Elections, never intended that any such free or lawful Parliament should be assembled.

This is plain Resistance in the Sense that Doctor *Sacheverell* takes the Word; and is so far from a Justification, that there is no Colour to say, that his Majesty disclaim'd the least Imputation of Resistance.

As to the last Branch of the Article, whereby he is charg'd that he suggests and maintains, "That to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution; he denies that he suggests or maintains any such Position.

But this Negative is fully answer'd by what has been offer'd to your Lordships upon the first Head of this Article, his asserting, That the necessary Means used to bring about the Revolution were odious and unjustifiable; for if Resistance be utterly illegal upon any Pretence whatsoever, and there was Resistance in the Revolution, it necessarily follows, that to impute Resistance to the Revolution, is to cast black and odious Colours upon it. And this is expressly asserted by his stating the Case of the Revolution, in which there was Resistance, as an Objection to his general Doctrine of Non-Resistance upon any Pretence whatsoever; and then answering this Objection, by saying, That the urging of the Revolution, as an Instance of the Legality of Resistance, was casting black and odious Colours upon his late Majesty and the late Revolution: For there could be no black or odious Colours cast, but from the shaking that fundamental Doctrine of Absolute Non-Resistance, the Belief of which he asserts to be the Pillar upon which the Government of *England* stands.

And therefore the imputing of Resistance to the Revolution must, according to the Principle he lays down, cast black and odious Colours upon the Revolution, and upon the great and glorious Instrument of it, his late Majesty, by whom it was happily brought about.

And Doctor *Sacheverell* himself, by the subsequent Part of his Answer, seems to think that this Assertion is fairly and plainly infer'd from the Tenor of his Discourse.

For he is pleas'd to excuse it, by saying, "That he intended to apply it not to such Persons who impute Resistance to the Revolution, of whom he affirms nothing; but to those new Preachers, and new Politicians, who teach in Contradiction both to the Gospel and the Laws, that the People have the Power invested in them, the Fountain and Original of it, to cancel their Allegiance at their Pleasure, and call their Sovereign to Account for High-Treason against his Subjects, and who urge the Revolution in Defence of such Principles; and that, unless those who impute Resistance to the Revolution be the same with those new Preachers and new Politicians, he affirms nothing concerning them.

But, my Lords, this Part of his Answer is far from excusing or extenuating his Crime; for if a Proposition be true, it will lose nothing of its Weight and Force, though the vilest Man upon Earth should make use of it; and it can be no Argument against a true Principle, that it has been made use of to ill Purposes, and to maintain Positions which are not warranted by it. 'Tis rather an Aggravation of his Crime, and a high Reflection upon the Commons, and the Justice of this Proceeding, to suppose that any such wicked Consequences as he mentions, can possibly be infer'd from defending the Resistance at the Revolution. And the Question is, Whether Doctor *Sacheverell* himself asserts, that to impute Resistance to the Revolution, be to cast black and odious Colours upon it; and not, OF WHOM he affirms the casting such black and odious Colours?

I go on to the last Part of his Answer to this Article, where he says, "That upon the strictest Search into his said Sermon preach'd at *St. Paul's*, he doth not find that he hath given the least colourable Pretence for the Accusation exhibited against him in his first Article, but barely by his asserting the utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever; for which he conceives he has the Authority of the Church of *England*, which has taught and inculcated this Doctrine in her Homilies---And he doth further insist, That this Assertion is agreeable to and warranted by the Common Law of *England*, and divers Acts of Parliament now remaining in full Force.

Now it must be agreed, that there is no colourable Pretence to charge him with Suggesting and Maintaining that the Resistance us'd at the Revolution was Odious and Unjustifiable, if the Doctrine of the utter Illegality of Resistance upon any Pretence whatsoever be true; for upon this Principle his Censure is just, and it must necessarily follow, that the Resistance us'd in bringing about the Revolution is not to be maintained.

And therefore the Commons should think themselves ungrateful for the Deliverance, if they did not vindicate the Honour of the late King, and of those Illustrious Persons, who, upon his Invitation, defended the Constitution at that time by Resistance, and

and declare that this Resistance was Lawful, Honourable and Just.

They had Reason to hope, that after so many Years had pass'd in a happy Enjoyment of all the Advantages of a Free-born People, and at a Time when the Subjects of this Kingdom are in the full Possession of their Rights and Liberties under Her Majesty's Gracious Protection, and the wisest and happiest Administration that *England* ever saw, that no Body could have been so wicked as to cast an Odium upon the necessary Means whereby these Blessings were obtain'd, and are continued to us. But since, notwithstanding our blessed Deliverance from Popery and Arbitrary Power, and the Benefits we enjoy by restoring the Constitution both in Church and State; and above all, by Her Majesty's happy Administration, which has improv'd the Lustre of the Crown to the Honour of the Nation, and the common Benefit of every particular Subject; yet there are Men of restless and turbulent Spirits, Enemies to the Revolution, who are continually urging the Resistance then us'd as a Fundamental Error, fatal to every thing that has been built upon it: This, my Lords, strikes so directly at the present Establishment, that the Commons think it their indispensable Duty to demand your Lordships Judgment upon this important Subject.

And they think it the more necessary at this time, because 'tis plain and obvious to every one's Observation, that since the late Attempt made by the Pretender, this Principle of the utter Illegality of Resistance upon any Pretence whatsoever, has been espous'd and maintain'd with more than ordinary Warmth and Zeal; and the Commons apprehend, that it can have no other Aim or Tendency than to blacken the Revolution, and thereby to shake the Foundation of our present happy Settlement.

Your Lordships will therefore, in your great Wisdom, consider the Consequences of this Assertion, in regard to her Majesty, the Protestant Succession, and the future Happiness of this Kingdom.

The Commons must always resent, with the utmost Detestation and Abhorrence, every Position that may shake the Authority of that Act of Parliament, whereby the Crown is settled upon her Majesty, and whereby the Lords Spiritual and Temporal, and Commons, do, in the Name of all the People of *England*, most Humbly and Faithfully submit themselves, their Heirs and Posterities, to Her Majesty, which this general Principle of Absolute Non-Resistance must certainly shake.

For if the Resistance at the Revolution was illegal, the Revolution settled in Usurpation, and this Act can have no greater Force and Authority than an Act pass'd under a Usurper.

And the Commons take Leave to observe, that the Authority of this Parliamentary Settlement is a Matter of the greatest Consequence to maintain, in a Case where the Hereditary Right to the Crown is contested; for her Majesty's most bitter and implacable Enemies, the Friends of the Pretender, (who all assert the utter Illegality of the Resistance us'd at the Revolution) can advance his Title to the Crown, and call him King, upon no other Ground than the Pretence of an Hereditary Right.

The Commons therefore, out of the most profound Duty and Allegiance which they owe, and shall ever pay to her Majesty, and to maintain the Security of her Government, and guard her Throne against every Insinuation that may promote or favour the Interest of the Pretender, think themselves obliged to take Notice of this Assertion, as tending

to weaken the Authority of this Act of Parliament, whereby her Majesty's Title is declared.

Your Lordships will likewise consider of what Consequence the Dishonouring of the Revolution may be to Posterity, and the future Happiness of this Kingdom in a Protestant Succession to the Crown. For by the same Act, all Persons who shall hold Communion with the See of *Rome*, or shall Marry Papists, are declared incapable to Inherit, Possess or Enjoy the Crown. And 'tis Enacted, That the Crown and Government shall from time to time descend to, and be enjoyed by, such Persons being Protestants, that should have Inherited and Enjoyed the same, in case such Popish Prince were naturally Dead.

And the immediate Protestant Succession in the Illustrious House of *Hanover*, is likewise settled by an Act of the same Reign.

This shews of what Importance it is, to the present and future Happiness of this Kingdom, to clear his late Majesty and the Revolution from those Black and Odious Colours which this Gentleman has cast upon Both.

But, my Lords, he makes it part of his Defence, that his Assertion is agreeable to the Common Law of *England*, and divers Acts of Parliament now remaining in Force.

The Gentleman that spoke before me, has shewn how far that Assertion is a direct Contradiction to several Acts of Parliament; and therefore I shall only say, that it can never be suppos'd that the Laws were made to set up a Despotick Power to destroy themselves, and to warrant the Subversion of a Constitution of Government which they were design'd to Establish and Defend.

This would be a strange, absurd and contradictory Imagination, and was thought so at the Revolution by the wisest Men of that Time, by the best Friends to the Monarchy, and Men the most Eminent for their Sufferings in the Cause of the Church.

And it appears, by the several Instances mention'd in the Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown, that at the Time of the Revolution there was a total Subversion of the Constitution of Government both in Church and State, which is a Case that the Laws of *England* could never suppose, provide for, or have in view.

And the same Answer may with equal Reason be applied to the general Doctrine of the Church, express'd in her Homilies.

This, my Lords, is what I have to offer to your Lordships in Maintenance of the first Article; I am sensible how defective I have been, but what I have failed in, will be abundantly supplied by the Gentlemen who are appointed to assist in maintaining this Article.

Sir John Holland. **M**Y Lords, The present Consideration is of the greatest Importance; no less, than whether so many of your Lordships, and the Commons of *Great Britain*, who took up Arms at the Revolution, and were then thought Patriots of your Country, were really Rebels; whether our late Deliverer was an Usurper; and whether the Protestant Succession is Legal and Valid.

All these Considerations depend upon the Lawfulness of the Resistance at the Revolution. That there was a Resistance, is most plain, if taking up Arms in *Yorkshire*, *Nottinghamshire*, *Cheshire*, and almost all the Counties of *England*; if the Deser-

tion of a Prince's own Troops to an Invading Prince, and turning their Arms against their Sovereign, be Resistance. But if Subjects be obliged to *Absolute and Conditional Obedience*, the Convention of the States, the Settlement and Entail of the Crown by them, and the further Settlement in the Protestant Succession under that Settlement, must, from that Resistance, be unlawful and void.

The Criminal was aware of this just Objection to his general Doctrine, when apply'd to the Revolution; as appears from his Endeavouring, upon second Thoughts, to conceal it by his Marginal Note, to hint, that by *Resistance* he meant *Conquest*. And no wonder he endeavour'd to colour so bold a Stroke, which he could not but expect to hear of with the utmost Resentment from the Government.

But it so falls out, my Lords, that what he trusted to for a Screen, aggravates the Heinousness of his Crime; for it shows, that he infills into his Auditors those Notions from the Pulpit, which he dares not own in Print. Nothing can be more manifest, than that he could not by *Resistance* mean *Conquest*, even from his own Expressions: For in the very next Period, he says, *And did they not, i. e. the Parliament, unanimously condemn to the Flames (as it justly deserved) that infamous Libel, that would have pleaded the Title of Conquest, by which Resistance was supposed?* So that he knew 'em to be distinct Notions; and indeed so they must be, because one may be without the other.

It is an unaccountable Presumption, that he could suppose so weak a Pretence could pass upon the World; but much more surprizing it is, that he could apprehend so mean a Subterfuge could prevent your Lordships Justice. But from hence the Commons observe, that he is a Concealed Man, and of a Dangerous Spirit: And as such we have brought him hither to reform him, and to be an Example to others.

My Lords, The Commons would not be understood, as if they were Pleading for a Licentious Resistance; as if Subjects were left to their Good-will and Pleasure, when they are to *Obey*, and when to *Resist*. No, my Lords, they know they are obliged by all the Ties of Social Creatures, and Christians, for Wrath and Conscience-sake to submit to their Sovereign. The Commons do not Abet Humoursome Factious Arms: They aver 'em to be Rebellions. But yet they maintain, that that Resistance at the Revolution, which was so Necessary, was Lawful and Just from that Necessity.

We do agree that the Laws concerning Obedience, both Human and Divine, are very Express and Positive; and no wonder that *the Homilies and Fathers dead and living*, follow the same way of expressing our Duty in general Terms. We readily grant this, but it does not follow that there can be no Exceptions from these General Rules in Conscience.

There is no Law more Positive and Express than that which enjoins the Observation of the Sabbath, for therein we are commanded to *do no manner of work*. But yet we know, that Necessity makes an Allow'd Exception to that General Law. And the Reason why that Necessity is allow'd as a just Exception to that positive Law, will guide us to know, what Laws will admit of Exceptions from Necessity, and what Not. The Reason our Divine Lawgiver assigns is, because *the Sabbath was made for Man, and not Man for the Sabbath*; from whence plainly follows this Corollary; That where there is a Positive Law, and that Law respects not some Principal End for which Man was made, there Necessity may

make a justifiable Exception, how express soever that Law is.

Now, my Lords, whether Government was made for Man, or Man for Government, will easily appear from this short Observation, That Man was made in a State of Perfection; and the Rectitude of that State supposes the Absence of all those Crimes, which are the Objects of Government, and which Government is to Reform. And therefore Government could not be one End of Man's Creation; and these general Rules of Obedience may, upon a Real Necessity, admit a Lawful Exception; and such a Necessary Exception we assert the Revolution to be.

'Tis with this View of Necessity, only Absolute Necessity of Preserving our Laws, Liberties and Religion; 'tis with this Limitation that We desire to be understood, when Any of us speak of Resistance in general. The Necessity of the Resistance at the Revolution was at that Time obvious to every Man. Every one, who either was not, or did not find his easy Mind, prepar'd to be a Tool to Popery and Slavery, dreaded the Instances of that Necessity. The Cancelling all the Security from Laws by a Dispensing Power; the Erecting Commissions to Deprive Subjects of their Property, not according to Law, but Humour; the making the whole Government Depend upon the Arbitrary Pleasure of the then Prince, cannot but be a Justification of that Necessity before God and Man.

And thus, my Lords, it was thought, at the Time this Resistance was on Foot. For then, when the Time was most proper for Admonitions of this Nature, the Clergy were so far from averring the *Unlawfulness of Resistance upon any Pretence whatsoever*, that the *true distinguishing Characteristick of a Church of-England-Man* then was, wishing that Resistance Good Luck, and rejoicing at its Success. And yet the Gentleman at the Bar makes this Exception the Instance of an unjust Resistance, by an Ironical Assertion of the *late King's solemnly disclaiming the least Imputation of Resistance in his Declaration*; for Ironical it must be, when every Body must believe that he himself knew the contrary; a Figure of Speech very well understood, and known to be the most Biting Sarcasm.

My Lords, So much Depends upon the Revolution, that the Commons are highly Jealous of the Honour of it. It is, indeed, Twenty Years since the Revolution was settled; but it is within much less than Twenty Years that a Pretender has attempted to invade our Country, to set this Revolution aside. That Person, even with his own good Opinion of his Right, knows, he can have no Pretence to the Crown, unless the Prisoner's Political Divinity be true, which We Aver it is Not. But lest this Pretender should apprehend that his Friends are much increas'd, when he hears that the Revolution is publicly branded in Sermons as *Black and Odious*; the Commons have Impeached this Preacher, that he might not be Guilty of this High Crime and Misdemeanor *without Discouragement*, and have brought him to your Lordships Bar for Justice, that he may not do it *with Impunity*.

Mr. Walpole. **M**Y Lords, The Commons are now making good their Charge against Doctor Henry Sacheverell contain'd in the first Article, wherein he is accus'd for Suggesting and Maintaining, that the necessary Means used to bring about the happy Revolution, were Odious and Unjustifiable, and that to impute Resistance to the Revolution, is

to cast *Black and Odious Colours* on his late Majesty and the Revolution.

By what has been already offer'd to your Lordships, I make no doubt but you are fully convinc'd, how injurious these Positions must be to the Peace and Quiet of the Kingdom, and how highly they deserve, and loudly call for your Lordships speedy and exemplary Justice.

The great Licentiousness of the Press, in censuring and reflecting upon all Parts of the Government, has of late given too just Cause of Offence; but when only Pamphlets and common Libels are Matters of Complaint; when none but Mercenary-Scriblers, and the Hackney-Pens of a discontented Party, are employ'd to vent their Malice, 'tis fit to leave them to the common Course of the Law, and to the ordinary Proceedings of the Courts below. But, my Lords, when the Trumpet is sounded in *Sion*; when the Pulpit takes up the Cudgels; when the Cause of the Enemies of our Government is call'd the Cause of God, and of the Church; when this bitter and poisonous Pill is gilded over with the specious Name of Loyalty, and the People are Taught for their Souls and Consciences sake to swallow these pernicious Doctrines; when instead of sound Religion, Divinity, and Morality, Factious and Seditious Discourses are become the constant Entertainments of some Congregations; the Commons cannot but think it high time to put a Stop to this growing Evil, and for the Authority of a Parliament to interpose, and exert it self, in Defence of the Revolution, the present Government, and the Protestant Succession. All which the Commons think so materially concern'd in this Question, that if the Doctrines advanc'd by Doctor *Sacheverell*, are not Criminal in the highest degree, it will follow, that the Necessary Means us'd to bring about the Revolution were Illegal, and consequently, that the present Establishment, and Protestant Succession, founded upon that Revolution, are Void and of no Effect.

The Commons cannot but apprehend that the just Resentment and Indignation they have shewn upon this occasion, will meet with the general Applause of all that are heartily and sincerely well affected to Her Majesty, and Her Government; but for all those, whose Principles and Practices render them most justly suspected to have other Views, they are not at all surprized to find them alarm'd, and under the greatest Concern, at this Tryal.

I am very sensible, my Lords, of the Difficulty and Nicety that attends the speaking to this Point, and that whilst a Loyal Subject and Faithful Servant of the best of Queens, is speaking in Defence of the Necessary and Commendable Resistance used at the Revolution, his Arguments may be misconstrued, and misrepresented, as maintaining Antimonarchical Schemes.

But surely, my Lords, to plead for Resistance, that Resistance, I mean, which alone can be concern'd in this Debate, is to assert and maintain the very Being of our present Government and Constitution; and to Assert Non-Resistance in that boundless and unlimited Sense in which Doctor *Sacheverell* presumes to Assert it, is to Sap and Undermine the very Foundations of our Government, to remove the natural Basis and Fundamental Strength of our Constitution, and to leave it under set with imaginary Props and Buttresses, which do, at best, but ill support a shaken Foundation: And 'tis a most surprizing Assurance in the Enemies of our Government, that whilst they are stri-

king at the Root, and digging up the Foundations, upon which our present and future Settlement is built, that they should hope to pass upon the World as Friends to either. But so irreconcilable are the Professions and Practices of some Men, so awkwardly do they speak well of what they do not in their Hearts approve, that in Vindication of his late Majesty (for that's a Part that sometimes they think useful to Act) they declare his most glorious Enterprize to save a sinking Nation, utterly Illegal: To recommend themselves to the Queen, they condemn that Revolution, without which She never had been Queen, and we a most unhappy People: To testify their Zeal and Affection for the Protestant Succession, they invalidate all the Laws that have been made for securing that Blessing to Posterity: And lastly, to manifest their Aversion, and for ever to blast all Hopes of the Pretender, they advance and maintain the Hereditary Right, as the only true Right, to the Crown. But what Interest these Opinions may at one time or other be produced to support, and, in favour of whose Pretensions these Insinuations are easily understood to be, and in favour of what Settlement they can hardly be constru'd, I submit to your Lordships Consideration.

The utter Illegality of Resistance, upon any Pretence whatsoever, is the General Position laid down in the Sermon, which, if it be strictly, and in the most extensive manner true, The assuming and exercising a Power of dispensing with, and suspending the Laws; The Commitment and Prosecution of the Bishops; The Erecting a Court of Commissioners for Ecclesiastical Causes; The Levying Money by Pretence of Prerogative; The raising and keeping a standing Army without Consent of Parliament, The Violating the Freedom of Elections of Members to serve in Parliament; and all the Grievances enumerated in the Bill of Rights, were all meet Pretences, and not sufficient to Warrant and Justify what was then done, in Defence of the true, ancient, and indubitable Rights and Liberties of the People of this Kingdom; which are now again Enacted, Ratified and Confirm'd, and Enjoin'd to be firmly and strictly holden and observ'd. By what Evasions, or Distinctions, the Doctor will explain himself off upon this Head, I cannot easily foresee; unless he will be so ingenuous as now to confess, what there is too much Reason to believe will be his Opinion, if ever a proper Time shall serve for declaring, That the Acts of Parliament made upon, and since the Revolution, are only the Effects of a happy Usurpation, and no part of the true Law of the Land.

Resistance is no where Enacted to be Legal, but subjected, by all the Laws now in Being, to the greatest Penalties; 'tis what is not, cannot, nor ought ever to be describ'd, or affirm'd, in any positive Law, to be excusable: When, and upon what never-to-be-expected Occasions, it may be exercised, no Man can foresee; and ought never to be thought of, but when an utter Subversion of the Laws of the Realm threaten the whole Frame of a Constitution, and no Redress can otherwise be hoped for: It therefore does, and ought for ever to stand, in the Eye and Letter of the Law, as the highest Offence. But because any Man, or Party of Men, may not out of Folly or Wantonness commit Treason, or make their own Discontents, ill Principles, or disguised Affections to another Interest, a Pretence to resist the Supreme Pow-

er, will it follow from thence, that the utmost Necessity ought not to engage a Nation in its own Defence, for the Preservation of the whole? Or on the other side, Because the greatest and most inexpressible Emergencies did sufficiently justify and warrant the Resistance of the Revolution, will it be a Consequence, that therefore, upon ev'ry slight Pretext or common Occasion, the Laws that fence against Treason will be of no Effect? No, my Lords, I hope your just Judgment in this Case will convince the World, that every *Seditious, Discontented, Hot-headed, Ungifted, Unedifying Preacher* (the Doctor will pardon me for borrowing one String of Epithets from him, and for once using a little of his own Language) who had no Hopes of distinguishing himself in the World, but by a matchless Indiscretion, may not advance, with Impunity, Doctrines destructive of the Peace and Quiet of Her Majesty's Government, and the Protestant Succession, and prepare the Minds of the People for an Alteration, by giving them ill Impressions of the present Establishment and its Administration.

The Doctrine of unlimited, unconditional Passive Obedience, was first invented to support Arbitrary and Despotick Power, and was never promoted or countenanc'd by any Government that had not Designs some time or other of making use of it: What then can be the Design of Preaching this Doctrine now, unask'd, unsought for, in Her Majesty's Reign, where the Law is the only Rule and Measure of the Power of the Crown, and of the Obedience of the People? If then this Doctrine can neither be an Advantage or Security to Her Majesty, who neither wants, nor desires it, to what End and Purpose must every thinking Man conclude 'tis now set on Foot, but to unhinge the present Government, by setting aside all that has been done in Opposition to that Doctrine; and when, by these Means, the Way is made clear to Another's Title, the People are ready instructed to submit to whatever shall be imposed upon them.

It may be expected, after I have said thus much in general, that I shou'd proceed to shew in what Parts of the Sermon these Aspersions are contain'd: But, my Lords, that Part has been so fully and distinctly spoke to, by those Learned Gentlemen who are more proper, and a great deal more able, to manage that Province, that I will not mispend your Lordships Time, by repeating what has been already so fully and justly made out; but so much I will venture to say, That if we remove the Rubbage, with which the Doctor has an excellent Talent at puzzling Common Sense, and bring together the several Sentences, that can only be Relative to one another, 'tis impossible for the Art of Man to make any Inferences or Constructions, so close and strong, as the plain and genuine Sense of the whole Scope of his Sermon, must, at first View, suggest to every Man's Understanding. And all that the Doctor alledges in his Defence, is, That in the Revolution there was no Resistance at all; and that the King did utterly disclaim any such Imputation. But surely, my Lords, it cannot be now necessary to prove Resistance in the Revolution; I should as well expect that your Lordships would desire me, for Form's sake, to prove the Sun shines at Noon-day. If then, there was most undoubtedly Resistance used to bring about the Revolution, it will follow that all the Censures, which are so freely bestowed upon Resistance in general, must attend, and will be imputed to the Revolution: And if *Resistance be utterly Illegal, upon any Pretence whatsoever*; if it is a *Sin*,

which unrepented of, by the Doctrine of the Church of England, carries *sure and certain Damnation*; if, upon *Repentance*, there is no *Remission of Sins* without a stedfast Purpose to amend the Evil we have done, and to make all possible *Restitution*, or at least to do our utmost Endeavours for that Purpose; I beg your Lordships to consider what a Duty is here pressed, upon the Peril of Damnation, upon every Man's Conscience, that knows, or believes, that there was Resistance in the Revolution, and is conscious to himself, of being any ways assisting, or even consenting, to this *Damnable Sin*; and what must be the Consequence, if these Doctrines, without any Reserve or Exception, are with Impunity preach'd throughout the Kingdom. All which, my Lords, I hope is sufficient to satisfy your Lordships, that Doctor Sacheverell is guilty of the Charge exhibited against him in the first Article; and that he is an Offender of that Nature and Malignity, that this Court only could be the proper Judges of such High Crimes; and from your Lordships Justice, the Commons hope, That his Punishment will be adequate to the Heinousness of his Offence.

Sir John Hawles. **M**Y Lords, I am commanded by the Commons of Great Britain to be assisting to the Gentlemen that spoke before me, for the proving the Prisoner at the Bar guilty of the Crime charged in the first Article of his Impeachment; which is, That he did Suggest and Maintain, in his Sermon preached at St. Paul's, That the Necessary Means used to bring about the happy Revolution were odious and unjustifiable; and that his late Majesty in his Declaration disclaimed the least Imputation of Resistance; and that to impute Resistance to the said Revolution is to cast black and odious Colours on his late Majesty. In making good which Article against the Doctor, I hope the Gentlemen that have spoke before me will Excuse me, if I make use of another Method than what they have done; which I shall do, not mistaking the Course they have taken, nor that I think the Method I shall take is better than theirs, but only because I would not repeat what's said by them, which I am sure would come with a worse Grace from me, than it did from them; and because I am sure what was said is very well remembered by your Lordships. What I shall offer is, I think, somewhat to the Purpose, and was not mentioned by the Gentlemen before. As to the Passages taken out of the Sermon to prove the Doctor Guilty of the Fact of this First Article, they have been so fully open'd, and so very well apply'd, that I have very little to add to what has been said; I shall therefore only say, that the Clause of his Sermon, wherein he Asserts that "The grand Security of our Government, and the very Pillar on which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power in all things Lawful, and the utter Illegality of Resistance upon any Pretence whatsoever", he lays down not as a Doctrine he would teach his Congregation; but in order to draw an Argument from thence for some other Purpose; and what that is, appears plainly afterwards. For having alledged some Things not proper for the Occasion for which the Day upon which he preach'd was Solemniz'd, he adds, "Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence; but certainly they are" the

“ the greatest Enemies of that, and his late Majesty, and the most ungrateful for their Deliverance, who endeavour to cast such black and odious Colours upon both. How often must they be told, that the late King himself solemnly disclaim’d the least Imputation of Resistance? By which ’tis plain, that the Position of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power laid down, was only to shock and lay odious Colours upon the Revolution, or the Means whereby it was brought about; he knowing that the Means whereby the Revolution was brought about was by Force, and he knew it was so declared by the Act of Parliament made in the first Year of King *William* and Queen *Mary*, for preventing vexatious Suits against such as acted in Order to the bringing in the late King and Queen. And tho’ he would insinuate that the same was not done by Force, I must own he does not assert that either it was or was not done by Force; but he strongly insinuates it was not done by Force, when he asserts, tho’ untruly, that the late King disclaim’d any Resistance upon his coming. I’ll say nothing more as to that Matter; and nothing as to that other, that has been largely open’d, relating to the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power; the rather, because, if it was doubtful, the Acts of Parliament mention’d in the Preface to the Articles, whereby the Revolution has been declar’d to be a glorious Enterprize, and the Means whereby it was brought about justified, have determin’d that Matter; and because your Lordships, as I think, will not suffer the Doctor or his Council to say any thing against the Revolution, or the Means whereby it was brought about.

The Commons of *Great Britain* own your Lordships to be the Supreme Court of Judicature in this Government, but yet they think that Acts of Parliament, whereof your Lordships are in part the Makers, are as binding upon your Lordships, as a Court of Judicature, as they are upon any Court of *Westminster-Hall*, where Matters determin’d by Act of Parliament are never suffer’d to be disputed afterwards; but I own, what is practis’d in *Westminster-Hall* is not a Rule whereby your Lordships ought to be govern’d, and therefore I rely only upon the Reason of what I asserted; for altho’ your Lordships are the Supreme Court, and from whom no Appeal lyes to any other Court of Judicature, yet your Lordships, as you are Part of the Legislature, are greater than you are in your Judicial Capacity, in which you are subject to the Law; tho’ in your Legislative Capacity, in Concurrence with two other Powers, you are above the Law. It is therefore incongruous, that a Court of Persons of less Power should judge otherwise than the Court of greater Power had determin’d; but this I submit to your Lordships, and am sure the Gentlemen of Council with the Doctor know their Duty so well in this Matter, that they will not give your Lordships the Trouble of an Admonition upon this Occasion. I won’t add more upon this Subject, but proceed, with your Lordship’s Permission, to prove the Doctor Guilty of what he is charg’d with in this First Article, by the Doctrine by himself laid down in his Sermon, and admit for Argument-sake the same to be true; tho’ this I must assert, that he carries the Doctrine somewhat farther than the Apostles did in some Respect, but in other Respects seems to restrain it more than they did. In the restraining Part he seems to confine

the absolute and unconditional Obedience to Things lawful; which Restraint looks like something, but in Truth, upon Examination, is nothing; for suppose the Supreme Power Commands the Subject to do something which it thinks is Lawful, but the Subject not willing to Obey, pretending the thing to be Unlawful, the true Reasons being that they are chargeable, troublesome, hazardous, or the like; in this Case who is to be Judge, the Supreme Power, or the Subject? In the Reason of the thing, neither of them are proper Judges; for the Supreme Power will be byass’d, by reason of the Command given by them at first, and will be asham’d to own what they commanded was Unlawful, and therefore will give Judgment on their own side, to justify themselves in what they have commanded; and the Subject will be as much byass’d for the same Reason that he was at first dissatisfied with the Command. And there being no higher Power or Authority to Appeal to than the Supreme Power, that must needs be the Judge, from whom there can be no Appeal. But perhaps the Doctor and I differ in the Persons in whom the Supreme Power is lodg’d; for the Doctor has not mention’d that Matter, either in his Sermon, or in his Answer to the Articles; but I hope, in the Answer he is to give to what’s now objected against him, he will tell us in whom that Power is lodg’d. I’ll tell him in whom I think it is lodg’d, I think it is lodg’d in the Queen’s Majesty, the Lords Spiritual and Temporal and Commons in Parliament assembled: And I think when the Acts mentioned in the Impeachment did pass (except the Act for declaring the Rights and Liberties of the Subject) the Supreme Power was lodg’d in the late King *William* and Queen *Mary*, and the Lords Spiritual and Temporal and Commons in Parliament assembled. But as the Doctor seems to have restrain’d his Doctrine of Non-Resistance, he has as much enlarged his Doctrine of Absolute Obedience; for, as I think, what hitherto written or asserted, upon the Occasion of that Matter, went no further than Passive Obedience and Non-Resistance; but the Prisoner’s Doctrine extends to Active Obedience as well as Passive; because, as I think, the Words of the Apostles, from whom this Doctrine is taken, seems to restrain it only to Passive Obedience and Non-Resistance; and the Reasons why the Apostles inculcated no other Obedience, as I believe, was, because that was sufficient to secure the Government under which the Apostles liv’d, which was the *Roman* Government, and which stood in Fear of no Foreign Force, and which Government was said and believ’d could not be ruin’d but by its own Subjects, which afterwards prov’d to be true. That that their Doctrine was the Doctrine of Christianity, and truly so call’d, I’ll readily agree to the Prisoner; but I do not think that Christianity introduc’d that Doctrine into the World; for I think, as the Doctor does, that it was as ancient as Government, because it was impossible that Government could subsist, unless supported by its Subjects; but how ancient that Doctrine was, can’t be asserted, without knowing how Government came to be introduc’d into the World. If it was Patriarchal, as some have asserted, it was as ancient as *Adam*; if it was introduc’d by Conquest, then its Date was no higher than *Nimrod*; if it was by Compact, then I can’t say when it began; but this is certain, that it was as ancient as the *Roman* People, which was above seven Hundred Years before the Coming of our Saviour; but how long before the *Roman*

Name was known, I can't take upon me to say. But tho' this Doctrine was not introduc'd by Christianity, yet I think it may well and properly be call'd the Christian Doctrine; for tho' amongst the Heathens it was a Political Law, and oblig'd (as other Laws did) for fear of Punishment; yet Christianity first press'd this Doctrine upon the Conscience of the Subject, which no other Religion did, and that was sufficient to entitle it to the Name of Christian. But the Doctor, as I said, has carry'd it farther than the Words of the Apostles did, extending it to an Active Obedience, which the Words of the Apostles do not warrant, in the Strictness of the Expressions. But yet I won't contest with the Doctor in that Matter; for if the Doctrine, as preach'd by the Apostles, was sufficient to secure the Government they liv'd under, as it was, and that Doctrine is not sufficient to secure the Government we now live under, as it is not; the Doctor might very well think, that what he now asserts, by the Equity, as we call it (that is) the Reason of the Doctrine preach'd by the Apostles, was well warranted.

Having thus stated the Matter of the Subjects Obedience to the Supreme Powers, in which I have agreed with the Doctrine set forth in the Sermon, I can't imagine how the Doctor can justify himself in declaring against the Revolution, as he has done; when he knows, as well as any, that the Revolution has been justify'd by the Supreme Power, in the Acts of Parliament mention'd: For certainly it must be granted, that the Doctrine that commands Obedience to the Supreme Power, tho' in Things contrary to Nature, even to suffer Death, which is the highest Injustice that can be done a Man, rather than make an Opposition to the Supreme Power; because the Death of one, or some few private Persons, is a less Evil than disturbing the whole Government; that Law must needs be understood to forbid the doing, or saying any Thing to disturb the Government, the rather, because the obeying that Law cannot be pretended to be against Nature: And the Doctor's refusing to obey that implicit Law, is the Reason for which he is now prosecuted; tho' he would have it believ'd, that the Reason he is now prosecuted, was for the Doctrine he asserted of Obedience to the Supreme Power; which he might have preach'd as long as he had pleas'd, and the Commons would have taken no Offence at it, if he had stopt there, and not have taken upon him, on that Pretence or Occasion, to have cast odious Colours upon the Revolution. If he is of the Opinion he pretends, I can't imagine how it comes to pass, that he that pays that Deference to the Supreme Power, has preach'd so directly contrary to the Determinations of the Supreme Power in this Government; he very well knowing that the Lawfulness of the Revolution, and of the Means whereby it was brought about, has already been determin'd by the aforesaid Acts of Parliament; and do it in the worst manner that he could invent. For questioning the Right to the Crown here in *England*, has procur'd the shedding of more Blood, and caus'd more Slaughter, than all the other Matters tending to Disturbances in the Government put together. If therefore the Doctrine which the Apostles have laid down, was only to continue the Peace of the World, as thinking the Death of some few particular Persons better to be born with than a Civil War; sure it is the highest Breach of that Law, to question the first Principles of this Government.

It is not forgotten how much Blood was spilt upon the Account of the Title between the Houses of *York* and *Lancaster*, in which the Learned in the Law did differ; and the setting on Foot that Question of the Title of the present Government, which was above Twenty Years ago determin'd, and that Determination acquiesc'd in from that Time till now, in all Probability, if not suppress'd, would tend to as great Mischief as that War entail'd on the Nation. But yet the Doctor, who preaches up the Subjects Submission to the Supreme Power, even to Death it self, thinks he hath not only a License, but a Command from God, to enquire into the late King and Queen's Right to the Crown; and to blow a Trumpet, to set his Fellow-Subjects to cut one another's Throats upon that Account. This surely is the absurdest Construction of a Text that ever was made; and yet this I'll say is the Case, if you'll compare the Prisoner's Practice with his Doctrine.

Methinks the Doctor ought to have consider'd what our Saviour and his Apostles did in their Time: We don't find that any of them ever question'd the Title of the Emperors under whose Government they liv'd; or ever said any thing relating to their Titles, or that Power they exercis'd; and yet if they had thought it lawful or expedient, they had just Occasions to have done it. *St. John*, the Survivor of the Apostles, liv'd (as 'tis said) to the Time of *Trajan*; so that by that Account he liv'd under Thirteen Emperors, including *Augustus* and *Trajan*; and yet neither of them had so much as a Pretence of Right to the Empire, according to the Opinion we have of that Right now. The first and last of those Emperors were the very best the *Romans* had, except perhaps *Titus Vespasian*; and yet *Augustus* came to the Empire by the worst Means of any of them, for he waded thro' a Sea of Blood, and was guilty of a great many Acts of Treachery and Cruelty: But after the World had reap'd so many Benefits by his Excellent Government, it forgot the Iniquity of the Means whereby the Empire was obtain'd. And the best Means of obtaining the Empire, by the following Emperors, till the Time of *Titus Vespasian*, were by Force, and most of them by Treacherous Murders; and yet we don't find, that either our Saviour, or his Apostles, reproach'd any of those Emperors with the Injustice of the Means whereby they became so. And methinks it would have become the Doctor to have follow'd those good Examples. But the Doctor is of another Opinion, and thinks the aforesaid Words of *Isaiah*, to Cry aloud, &c. do well warrant that his Opinion; not considering that that Prophet had that Express Command from God, for reproving the Hypocrisy of the *Jews*: And if the Doctor had the like Command for Preaching as he has done, I think he has quoted a good Authority for so doing; but he must give us a better Proof of such Command than hitherto he hath done.

If he thinks the Command given to *Isaiah* extends to him; how came it to pass that the Apostles did not think that the same Command extended to them? Did not they live nearer the Time of *Isaiah*? Were not they acquainted with the Writings of *Isaiah*, as well or better than the Doctor, and so might have known the Authority given to that Prophet better than the Doctor? but yet forbore to do as the Doctor has done: And their having forbore so to do, cannot proceed from any other Reason, than that they thought those Words did not extend to the Apostles; or that they thought

thought it was not Lawful or Expedient for them to question the Title of those Princes, or the Justice or Means whereby they obtained it.

I'll only add to this Matter, That if the Doctor had been contented with the Liberty he took of Preaching up the Duty of Passive Obedience in the most extensive manner he had thought fit, and would have stopp'd there, your Lordships would not have had the Trouble in relation to him that you now have; but it is plain, that he preached up his Absolute and Unconditional Obedience, not to continue the Peace and Tranquility of this Nation, but to set the Subjects at strife, and to raise a War in the Bowels of this Nation; and it is for this that he is now prosecuted; tho' he would fain have it believed, that the Prosecution was for Preaching the peaceable Doctrine of Absolute Obedience.

I can't but take notice of the Scandal the Doctor charges upon the late King, as if when he landed here, he had disclaimed all manner of Imputation of Resistance; than which nothing is more untrue, even by his own Confession in his Answer, and the Words of the Declaration mention'd in the Print of the Sermon, tho' no Part of the Sermon; whereby he pretends to explain himself, by saying, He intended a Disclaimer of Resistance in order to a Conquest; than which nothing could be more absurd: For never was a Conquest made, or ever will be made, by bare Resistance; nor ever was there a weaker Thing charged upon a Prince, than to make him disclaim all Resistance, at a Time when he was actually making War: For his bringing an armed Force of that Number he did into this Kingdom, with a great Train of Artillery with him, was making War by the Law of Nations, and then and now by the Law of Great Britain: And he hath charged the Prince of Orange with an Act of the highest Treachery, in pretending Peace, when he actually made War.

The last Matter I shall take notice of, are the Words in the Nineteenth Page of the Doctor's Sermon; viz. *That old Leaven of their Forefathers is still working in the present Generation; that this traditional Poyson still remains in this Brood of Vipers, to sting us to Death, is sufficiently visible, as to the dangerous Encroachment they now make upon our Government, and the treasonable Reflection they have published upon Her Majesty, God bless Her! whose Hereditary Right to the Throne they have had the Impudence to Deny and Cancel, to make Her a Creature of their own Power; and that by the same Principles they placed a Crown upon Her, they tell us, they (that is, the Mob) may Reassume it at their Pleasure.* Now I think it cannot be doubted who it is the Doctor means by the Word *Mob*, which is the People of England: For tho' the Word *Mob* is a Cant Word amongst a Sort of People called Gypsies, and with them signifies the Meanest, or the Scum or Dregs of the People, yet as the Doctor has used it in this Place, it can signify nothing else than the Body of the People of England; of whom, I think, your Lordships do not think it beneath you to be thought a Part, and the Chiefest Part: For he asserts, They say, that they placed a Crown upon Her Majesty; and from thence makes an Inference, that they may reassume it at their Pleasure; which can be intended nothing else than what was done in respect of Her Majesty by the Bill of Rights; wherein 'tis said, "That the Lords Spiritual and Temporal, and Commons in Parliament assembled, did declare Her Majesty, after the Death of the late King and late Queen,

"without Heirs of her Body, was Lawful and Rightful Queen of this Realm. Now, tho' Her Majesty hath an Hereditary Right and Title to the Crown, and so She is not so much concerned in the Declaration by the said Act, as the last King and Queen, in what that Act conferred upon them, which was done only by the People of England, under the Denomination of Lords Spiritual and Temporal, and Commons in Parliament assembled: And if that did not confer a Title to the Crown on the late King and Queen, they, who were in their Lives Time thought to be lawful and rightful King and Queen of these Realms, by the Doctor's Reasoning, were no better than the Usurpers of another's Right. And tho' that Bill of Rights was afterwards confirmed by an Act in the Second Year of their Reign, yet that will not at all mend the Matter; for if they did not obtain a Right, by the Bill of Rights, to the Crown of these Realms, they were no more King and Queen of these Realms, than they were before the said Bill of Rights. But the Truth is, that when a Government is brought out of Frame, by the extraordinary Steps of a Prince, 'tis a vain Thing to hope that it ever can be set right by regular Steps; this never was done, nor ever will be done: But those Methods which were necessary to set the Government in a right Frame again, have been always taken to be Legal, tho' by the Nicety of Law it could not be well justified. Upon the Change of Government from Richard the Second to Henry the Fourth, the Parliament called in the Time of Richard the Second, and by his Authority, continued to sit in the Time of Henry the Fourth, and passed several Acts in the Time of Henry the Fourth; which was never practised before, nor warranted by any Laws that we know of; yet what was done, was allowed to be Legal. To the same Purpose was that which was done in the Time of Henry the Seventh: For he and those of his Friends being attainted of High Treason, which, according to the Rules of Law at that Time, prevented the Descent of the Crown on him; and his Friends being mostly attainted, were incapable of Sitting in Parliament till those Attainders were reversed, which could not be done but by Act of Parliament, or the Court of King's-Bench; and he did not care to have a Parliament, till his Friends were capable of sitting there; nor could he make Judges, till he was King; which Difficulty seemed to be insuperable: But the Judges made a Resolution according to the Exigence of the Thing, and declared that Sir William Stanley's placing the Crown upon the Earl of Richmond's Head, purged his Attainder, and he thereby became from thenceforwards King of England, and the King thereby enabled to Constitute Judges, and the Judges to reverse the Attainder of all the King's Friends. 'Tis true, Henry the Seventh married the Heiress of the House of York, and was thereby (as we now think) King in Right of his Queen; but he never would own her Title to the Crown, nor ever suffered her to join with him in any Act of Government, nor ever declared by what Title he possess'd the Crown; but yet none of the Acts pass'd in his Time, nor any Thing then transacted, was afterwards question'd upon the Account of his Title to the Crown. 'Tis true, there was an Act pass'd in his Time, that indemnified such as should Obey, or Assist the King that was in Being, whether he had Right to the Crown or no: But if he had not been allowed to be King before the passing of that Act, the Acts of Parliament that passed in his Time would have been of no more Validity,

lidity, than the Acts passed in the Time of *Cromwell*, or any other Usurper. Whereby 'tis plain, that the Doctor now, and the Persons who had the best Knowledge of Matters of this kind in those Days, disagreed in Opinion. And I can't but take notice, that the Doctor, notwithstanding his little Knowledge in the Matters he discourses of, makes the Declaration by Parliament of the Queen's Title to the Crown, to be the Cancelling of Her Title by Descent; and therefore he seems to advise Her Majesty, to quit that Title She claims from Her People, and to rely upon Her Title by Inheritance. Whereas, if the Doctor had but known what our Law allows, or if he had read any thing of this Matter, he would have known that those Titles did by no means disagree, but were consistent with one another; and that Princes that sometimes have claimed by several Titles, would not make their Choice of which they relied on. *Henry the Eighth*, who was Heir of the House of *York* and *Lancaster*, never declared on which Title he relied. *Queen Elizabeth*, after the Death of her Brother and Sister, claimed as Heir to *Henry the Eighth*, and was likewise Devisee of the Government of *England* by the Will of her Father, who was (by Act of Parliament) enabled to give it by his Will to whom he pleased: But notwithstanding that, she desired to have an Act of Parliament, which she had, declaring her to be Queen of *England*, &c. Which Act of Parliament was to the same Purpose, as was the Bill of Rights in respect of Her Majesty's Title to the Crown. I'll trouble your Lordships with no more, to prove the Prisoner guilty of the Crimes charged upon him by the First Article of the Impeachment; but I cannot but observe some aggravating Circumstances of the Prisoner's Crime. As first, That the Doctrine in the Impeachment was preach'd by a Divine of the Church of *England* as by Law Established: For a Divine of the Church of *England* is a Person of that Credit, that the People are ready to assent to what he says, without considering what the same is, or how made out. In the next place, 'Twas preach'd in the Cathedral-Church of the Metropolis of this Kingdom: Had it been preach'd in some obscure Country Town, 'twould have hardly been taken notice of. In the Third place, 'Twas preach'd before the Lord-Mayor and Court of Aldermen of the City of *London*, and so far approv'd of by them, or some of them, as to be Commanded to be printed; for which Reason, what he preach'd hath done more Mischief than otherwise 'twould have done; there having been about Forty Thousand printed, to vilify the Revolution, on which depends the Security of the Protestant Religion both at Home and Abroad, and the Succession of the Crown in the Protestant Line, the Union of the Two Kingdoms, the Queen's Bounty to the poor Clergy, and several other Benefits we enjoy by the Revolution, and amongst others, that Her Majesty was and is so peaceably possess'd of the Crown. For if the Force before the Revolution, which suppress'd Her Majesty's Hereditary Right to the Crown, had not been removed by the Revolution, as 'twas, that Her Majesty's Title would never have been able to have exerted it self: And if ever the Doctor, or any of his Accomplices, should ever be able so to shock the Revolution, as to remove what is built upon it, I doubt that Force which the Revolution removed, will return again, and oppress the Queen's Title to the Crown, as it did before.

I can't pass by the Doctor's Answer to the Articles, without taking Notice of one Passage in the

same, viz. *Hard is the Lot of the Ministers of the Gospel, if when they Cite the Word of God in their general Exhortations to Piety and Virtue, the several Texts by them Cited should be said to be by them meant of particular Persons and Things.* Now I must submit to your Lordships Judgment the Unreasonableness of this Complaint; and whether the several Texts and Passages cited by him in his Sermon, can bear any other Construction than what has been made; and whether it be not the Duty of the Preacher to deliver himself so in the Pulpit, that his Meaning should not be doubtful to his Congregation. The Commons of *Great-Britain* don't go about to make him Assent or Swear to what the Supreme Power hath determin'd, tho' the Doctor in his Sermon has thought fit to impose Matters of that kind upon other Persons, so as to make them Swear to them: No, the Commons of *Great-Britain* would only have him restrained from publishing any thing, and especially in the Pulpit, which reflects upon the Supreme Power; or what they have or shall determine, which even the nicest Conscience never yet boggled at. I can add more Aggravations of the Doctor's Crimes, but will forbear to do it, rather following the Example of the Commons of *Great-Britain*; who have, indeed, demanded Judgment against this Person of your Lordships, but they have done it in Mercy; for they might have charged these Matters against the Doctor as High-Treason, and so it has been done in Indictments against some Divines, in a Reign known to your Lordships, for Matters in their Sermons less Heinous than those for which he is Impeached; yet the Commons have called the Matters of this Impeachment only High Crimes and Misdemeanors; and it is a Rule in our Law, that the Court in which a Prosecution is had, cannot call the Crimes greater than what the Prosecutor thought fit to charge them, and cannot adjudge a greater Punishment to the Crimes than usual; but in some Cases may lessen the Punishment for such Crimes; and whatsoever Censure your Lordships shall pass upon this Criminal, the Commons of *England* will acquiesce, and be well satisfy'd with the same.

Major-General **M**Y Lords, The Gentlemen who *Stanhope*. spoke before me to this Article, have said so much to it, that they have left little to me, who am last in it. I shall therefore particularly apply my self to make out to your Lordships, that as the Prisoner at the Bar is guilty of the Matter charg'd in this First Article, so he has done it (as the Preamble of the Article sets forth) with a Wicked and Malicious Intention to Undermine and Subvert Her Majesty's Government, and the Protestant Succession as by Law Established; to Defame Her Majesty's Administration; to Asperse the Memory of His late Majesty, and to Traduce and Condemn the late happy Revolution; as in the same Preamble to the Articles it is charged against him.

My Lords, if it be Truth, (as your Lordships have been told by most of the Gentlemen who went before me) that Non-Resistance, asserted in general Terms, does destroy the Foundation of the Revolution, the present Establishment, and Her Majesty's Title to the Crown, and the Settlement of the Protestant Succession; If that be true, it is as true, that the Doctor, who has advanced that Doctrine in general Terms, is guilty of that Charge of intending to subvert the Government: And then your

your Lordships ought to proceed against him, as an Enemy to the Government.

What has been said by the Gentlemen that spoke before me, concerning the Doctrine of Non-Resistance, has been said with so much Regard to Truth, to Her Majesty and Her Government, that I am persuaded, nothing that has been said on that Subject can justly be misconstrued. But on the contrary, to assert in general Terms the absolute Illegality of Resistance, on any Pretence whatsoever, (as this Doctor, and all the profess'd Enemies of the Government avowedly do) must be understood, by all impartial and thinking People, to overthrow Her Majesty's Title and Government; since at the same Time that they screen themselves under the specious Notion of professing Absolute and Passive Obedience to the Supreme Powers, they cannot conceal their true Meaning; That the true and real Object of their darling Doctrines, such as *Jus Divinum, Non-Resistance, the Undefeasible, Unalienable, Hereditary Right*, that (I say) the true Object of these Doctrines, is a Prince on the other side the Water. They could not otherways be consistent with themselves. For in the same Breath, in the same Discourse, to preach Passive Unlimited Obedience to Magistrates, and to revile and defame the Magistrates; to preach Non-Resistance on any Pretence whatsoever, and to encourage Sedition, by inveighing in the strongest manner against the Administration; these are such Contradictions, as can no otherways be reconcil'd, no otherways, than by concluding, what is very plain from their Conduct, that however they are pleased to colour and disguise their Discourses, their true End is only to disengage and alienate the People's Affections from their present Governors; to insinuate to them, that the Foundation of the Revolution was wrong; that the Revolution it self was an Usurpation; that whatever has been built upon that Foundation, can have no Weight; and to misrepresent those who had a Hand in it, as Rebels and Traytors.

As to the Doctrine it self of absolute Non-Resistance, it should seem needless to prove by Arguments, that it is inconsistent with the Law of Reason, with the Law of Nature, and with the Practice of all Ages and Countries. Nor is it very material, what the Opinions of some particular Divines, or even the Doctrine generally preach'd in some particular Reigns, may have been concerning it. It is sufficient for us to know what the Practice of the Church of *England* has been, when it found it self oppressed. And indeed, one may appeal to the Practice of all Churches, of all States, and of all Nations in the World, how they behaved themselves when they found their Civil and Religious Constitutions invaded and oppressed by Tyranny: I believe one may further venture to say, that there is not, at this Day, subsisting any Nation or Government in the World, whose first Original did not receive its Foundation either from Resistance, or Compact: And as to our purpose, it is equal, if the latter be admitted. For where-ever Compact is admitted, there must be admitted likewise a Right to defend the Rights accruing by such Compact. To argue the Municipal Laws of a Country in this Case, is idle. Those Laws were only made for the common Course of Things; and can never be understood to have been designed to defeat the End of all Laws whatsoever; which would be the Consequence of a Nation's tamely submitting to a Violation of all their Divine and Human Rights.

That there is a Latitude left to the Subjects in such a Case, is allowed by the most strenuous Advocates of Passive-Obedience: And I shall on this Occasion quote to your Lordships, the Sermon of a Reverend Divine, who, I am sure, is not thought to be a Favourer of Antimonarchical Principles; nor to deserve any of those pretty Epithets, which the Doctor so liberally bestows on those who differ from him in Opinion. 'Tis the *Latin* Sermon of Doctor *Atterbury*, preached to the Convocation. The Scope and Drift of that Discourse, my Lords, was to preach up Absolute Obedience; yet such is the invincible Force of Truth, and such the Nature of this Argument, that the Doctor, not to betray his own Conscience, after having well thought upon it, is obliged to express himself in the following Words, which your Lordships will give me Leave to read to you out of his Sermon, which I have here in my Hand. *Quando autem, quibusq; de causis Magistratum imperia detestare, Nospetipfos in libertatem vindicare liceat, ne verbulo quidem indicant: nisi cum aliquid ab hominibus forte imperatum fuerit, latis à Deo legibus contrarium. Id ubi acciderit, quid agendum sit, Petri vox illa declarat, Obedi-re oportet Deo magis quam Hominibus.*

The Sense of this Passage, my Lords, if I mistake not, is this: "But when, and upon what Causes it may be lawful to oppose the Power of the Prince, and assert our Liberties, the Scriptures do not say; unless in Cases when Men shall command Things contrary to the Laws of God. When that shall happen, St. Peter tells us what we must do, *We must Obey God before Men.*"

To apply this, my Lords, to our present Argument; I appeal to the Memory of your Lordships, whether King *James* did not command Things contrary to the Laws of God; whether his Commands to the Reverend Fathers of our Church were consonant to the Law of God; whether his Commands to execute a Dispensing Power; whether his Commands to all such of both Houses, as he could influence to vote for a Dispensing Power, contrary to their own Consciences, were agreeable to the Law of God; or, in short, whether the whole Course of his Reign was not a Series of illegal Commands, calculated to destroy our Holy Religion, and to violate all our Religious and Civil Rights. Your Lordships thought so (my Lords;) the Commons thought so; and the Nation thought so; and in Consequence of this Doctrine, preach'd by St. Peter, they chose to obey God before Men.

But to return to Dr. *Atterbury's* Sermon, he goes on thus, my Lords. *Petenda sunt ista (si quidem peti necesse sit) à Jurisconsultis, à Thesium Politicarum tractatoribus; è legibus, è Rerumpublicarum Formis, cuiq; Genti propriis, tanquam è fonte suo, sunt haurienda.*

In *English* thus.

"But in such Cases, you must advise with the Lawyers, and those learned in Politicks; and have Recourse to the Laws and Constitutions peculiar to each several Country, as to the Springs and Fountains of this Knowledge."

My Lords, in Compliance to what is recommended by this Reverend Dean, I have endeavoured to follow his Advice, to consult with those learned in the Laws of Nations, and Politicks. I have heard that *Grotius* is of as good Authority on those Subjects as any that have wrote about them; that he has ever been reckon'd a Favourer of Monarchy, and held in great Repute amongst the Divines of our Church.

Church. I shall beg Leave, out of the many Passages to be found in his excellent Treatise *de Jure Belli & Pacis*, which support this Argument, to quote only one, for the saving of your Lordships Time. 'Tis in his First Book, the 4th Chapter, and 13th Section. *Si Rex partem habeat summi Imperii, partem alteram Populus, aut Senatus, Regi in partem non suam involanti vis justa opponi poterit, quia eatenus imperium non habet: quod locum habere censeo, etiamsi dictum sit, Belli potestatem penes Regem fore; id enim de bello externo intelligendum est, cum alioquin quisquis Imperii summi partem habeat, non possit non jus habere eam partem tuendi.*

The Sense of this Passage I conceive to be this,
 “ If the King hath one Part of the Supreme Power,
 “ and that the other Part is in the Senate, or People,
 “ when such a King shall invade that Part that
 “ doth not belong to him, it shall be lawful to oppose
 “ a just Force to him, because his Power doth
 “ not extend so far. Which Position I hold to be
 “ true, even tho’ the Power of making War should
 “ be vested only in the King; which must be understood
 “ to relate only to Foreign War: For as for
 “ Home, it is impossible for any to have a Share of
 “ the Supreme Power, and not to have likewise a
 “ Right to defend that Share.

This Passage, my Lords, is exactly adapted to the Constitution of *England*; and the latter Part of it is perfectly agreeable to what I have always heard quoted as a Maxim of our Law, *That where-ever there is a Right, there is a Remedy.* That your Lordships have Rights, no Body will presume to deny; that the Commons have Rights, no Body will deny; that every Subject of *Britain* has Rights, no Body will deny. Now to say that, when a Prince shall invade all these Rights at once; to say that the whole Collective Body of the Nation has no way to vindicate those Rights, is so inconsistent, so contrary to Reason, that ’tis to be wonder’d it could ever enter into the Mind of Man.

If I did not fear to tire your Lordships, I might, from many Passages out of *Fortescue**, and Mr. *Hooker*†, evince beyond Contradiction, that the Constitution of *England* is founded upon Compact; and that the Subjects of this Kingdom have, in their several publick and private Capacities, as legal a Title to what are their Rights by Law, as a Prince to the Possession of his Crown.

Your Lordships, and most that hear me, are Witnesses, and must remember the Necessities of those Times which brought about the Revolution: That no other Remedy was left to preserve our Religion and Liberties; that Resistance was Necessary, and consequently Just. It was then by no good Man thought a black and odious Crime to take up Arms for the Defence of his Country. Many of your Lordships were Actors in that Resistance. The greatest Part of the Nation did either actually resist, or countenance, abett, and support those who set them the glorious Example. I hope we have all so much Gratitude to the best and greatest of Queens, as to retain for ever a grateful Memory, how great a Share Her Majesty had in promoting that Revolution. When these Facts are so fresh in our Memories; What must we say to those who give the injurious Names and Epithets of *Republicans*, of *Enemies* and *Traytors to Church and State*, to those who were concerned in that Resistance which

brought about the Revolution? Sure it might have become them to consider *who* were concerned, and *who* had a Share in it. It is not only traducing the late King and Queen, our Glorious Deliverers; it goes yet further: But I shall out of Respect forbear to mention what they not only think, but have frequently the Insolence to own.

My Lords, If it be true that this Doctrine of Non-Resistance, asserted in so unlimited a Sense, as not to except the Revolution, does certainly sap the Foundation of the said Revolution, and the present Establishment which is built upon it; If it be true that to arraign as guilty of black and odious Crimes, all such as were concerned in the Resistance at the Revolution, doth involve the greatest Part of this Nation in the Guilt of Rebellion, and Treason; If it necessarily follows, from the same Positions, that our Allegiance is not due to the present Government; I think we may as necessarily conclude, that this Sermon of the Doctor’s, before your Lordships, does tend, as is set forth in the Preamble of the Impeachment, to undermine and subvert Her Majesty’s Government, and the Protestant Succession, which stands on the same Foundation.

My Lords, If the Doctor had in this Sermon only preached up Obedience to the Supreme Power, as a Christian Duty, without meddling with Politicks, he might have been allow’d perhaps to plead for Excuse, that he was ignorant of the Consequences that might be deduced from such general Propositions; that his only Aim was Charity, Peace, and Submission to the Magistrates in Being. We must therefore pray your Lordships to compare one Part of his Sermon with the other; and your Lordships will then, I am persuaded, be of Opinion with us, not only that the Conclusion we have drawn from his Positions, does necessarily flow from them, but that the Doctor himself must have been conscious of it; and consequently that what he has done, must have been, as we set forth in our Charge, *with a wicked and malicious Intention.*

Had the Doctor, my Lords, in the remaining Part of his Sermon, preach’d up Peace, Quietness, and the like; and shewn how happy we are under Her Majesty’s Administration; and exhorted Obedience to it, he had never been called to answer a Charge at your Lordships Bar. But the Tenor of all his subsequent Discourse, is one continued Invective against the Government. Passive Obedience is set down as an indispensable Duty: But ’tis evident, by the whole Sermon, that it is not due to Queen *ANNE*, or Her Administration. Now what can that be, but to usher in a *Rightful Title* (I think they call it) of one on the other side the Water?

There is such an Affinity, my Lords, between this Sermon, and the Doctrines which are preached and propagated by a certain Set of Men, that I cannot but observe to your Lordships on this Occasion, how industrious they have been ever since the Revolution, to prepare a Way for another. They are the Pure and Undeiled Church of *England*! The only Men of Loyal and Steady Principles! They never took the Oaths to the Government; never bent their Knee to *Baal*! They have their own Archbishops, Bishops, and Pastors, and constitute the only true and pure Church of *England*! We are all Schismatics, that is, all the rest of *England* are Schismatics, Hereticks, and Rebels! Now pray, my Lords, What are the peculiar and distinguishing Characteristicks, the Favourite and Darling Tenets of these Men? What else but *Passive-Obedience*, *Jus*
Divinum,

* *Fortescue de Laudibus legis Angliae*, Cap. 10, 11, 12, 13.

† *Ec. Polity*, Pag. 86, 444, 446, 470.

Divinum, an Hereditary, Indefeasible Right of Succession, which no Necessity, no Act of Parliament, no Prescription of Time, no natural or legal Incapacity, can ever invalidate or set aside? If they are in the right, my Lords, What are the Consequences? The Queen is not Queen; Your Lordships are not a House of Lords, for you are not duly summoned by a Legal Writ; We are no House of Commons, for the same Reason; all the Taxes which have been rais'd for this Twenty Years have been Arbitrary and Illegal Extortions; all the Blood of so many brave Men, who have died (as they thought) in the Service of their Country, has been spilt in Defence of an Usurpation; and they were only so many Rebels and Traitors.

My Lords If these Puritans, (I think I may call them) these undefiled pure Church-Men, would confine themselves to their own Conventicles, to get Money from a few deluded Women; it may, perhaps, be consistent with the Indulgence of the mildest of Governments, to suffer them to enjoy the Benefit of that Toleration which is allowed to Protestant Dissenters, how pernicious and destructive soever to the Publick may be their Principles. But when they shall come and vent their Treasons abroad; when they shall occasionally conform, and take the Oaths to the Government, in order the better to destroy it; when they shall abjure the Pretended Prince of *Wales*, but not forget him; when they shall invade the Pulpits of the true Church of *England*, when the Pulpit of your Metropolis, instead of teaching the People to pay their Anniversary Tribute of Praise and Thanks to Almighty God for the many wonderful Successes with which he has bless'd those Arms which were taken up in Defence of the Revolution; when (I say) that Pulpit shall be prostituted and polluted by venting Sedition against the best of Queens; it is high Time for your Lordships to animadvert upon it, for the Honour of those glorious Princes who are dead; for the Honour of Her Majesty, who so happily rules over us; and for the Peace and Tranquillity of all Her Subjects.

My Lords, If I was not afraid of being thought too tedious to your Lordships, I would offer to you a few Words, concerning that Administration which the Doctor has so maliciously defamed; for as fond as this Gentleman, and those like him, are of meddling with Politicks in the Pulpit; and, as himself expresses it, *of setting the People right in their Principles*; I do not find they ever teach what the Ends of Government truly are.

My Lords, *Tully*, who takes it from *Aristotle*, states the ultimate End of Government, and the Mark which Rulers ought to aim at, to be *Ortum cum Dignitate*, or Peace with Reputation. Towards attaining this End, he enumerates the several

Particulars which it requires the greatest Application and Vigilance of good Governors to promote and maintain. And the chief Branches, as he states them, are, Religion; the just and legal Powers and Rights of the Legislative, and of the Magistrates subordinate to that; a due Administration of Justice; the Publick Treasure and Credit; Military Virtue; and concludes with *Laus Publica*; which, indeed, is the Result of a good Administration of the several Branches mention'd. For Praise both at Home and Abroad will never fail to attend good Management.

Now, my Lords, if any Man will but reflect on every one of these Particulars, and instance when in any Age there has been in this Island, a more uni-

versally glorious Administration, I will allow what the Doctor says to be true.

To begin with Religion, my Lords, let any one look upon that Reverend Bench, and say when it was ever filled with greater Examples of Piety, Learning, and Christian Charity. That truly Christian Moderation, and extensive Zeal, and Charity to the Protestant Religion, will, in all human Probability, my Lords, (if our selves, by little Animosities, do not obstruct it,) will, I say, raise the Lustre and Reputation of our Church to such a Degree, that, as the Glory of our Arms justly entitles our Nation at present to hold the first Rank, so shall our Church be looked upon as the Mother of all the Reformed Churches in *Europe*.

As to the just Rights and Powers of our Legislative, your Lordships, and all of us know, whether ever any Prince on our Throne, has had a more tender Concern for them than Her Majesty; or whether at any time there has been a more due and impartial Administration of Justice.

For the Treasure and Credit of the Nation, I appeal to all that hear me, whether ever such large Sums were more chearfully given, or more justly administred. Never were there greater Demands than during this necessary War, nor ever Demands more freely complied with by the People. Such is the Confidence they have in the Publick Management, and so ineffectual this Doctor, and his Brethren's sounding a Trumpet to Sedition.

As for our Arms, and Reputation; the many unparallel'd Successes during Her Majesty's Reign, by Sea and Land, speak sufficiently, and do sufficiently proclaim, that Her Majesty has far exceeded all Her Predecessors. Our *Henrys* and our *Edwards* have justly left behind them Immortal Fame, for having broke and subdued in their Times, the Power of *France*. Queen *Elizabeth* will be ever Glorious for having humbled the Pride of *Spain*. Those Two great Monarchies have each in their Turn aimed at the Universal Monarchy of *Europe*; and each hath been near compassing it, notwithstanding that the one always opposed the other. But it was never imagined, that if they once became united, any Force in *Europe* could have disputed with them. Yet, my Lords, we have lived to see those two formidable Powers united, and threatening Destruction to all the Liberties of *Europe*. It was a Task reserv'd for Her Majesty to encounter this united Force. She has attacked, and reduced them to sue for Peace; and we are perhaps just now at that very decisive Period of Time, when we are to reap the Fruits of a long, and expensive War, by the Conclusion of a solid and lasting Peace.

Now, my Lords, at such a critical Juncture, at a Time when it behoves us more than ever to preserve that Union amongst our selves, upon which the Union of the whole Alliance does so much depend; upon which the happy Conclusion of this War, and consequently the Safety and Honour of our Church and State does depend; What does this Pious Son of the Church? What does this Loyal Subject, this Passive-Obedience Gentleman do? He is preaching to the City of *London*, from whence we are to receive the greatest Part of the Supplies granted for carrying on the War: Does he say one Word to them to promote and carry on the Publick Good? No, my Lords: He does, to the utmost of his Ability, endeavour to create in them groundless Mistrusts and Jealousies of the Administration. And I will appeal to the Conscience of every one that hears me, and desire, that laying their Hand upon their Heart,

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they

they will truly determine within themselves, whether, if those Citizens who heard this Sermon had been byassed by it, we could have expected one Penny of Money from them, to support a Government which was represented so odious. But those honest Citizens, my Lords, heard this Trumpeter of Sedition with Indignation. Their Affection to the Government is not to be shaken. Her Majesty is Absolute in the Hearts of Her Subjects; which is the best way of being Absolute: And all the artificial Suggestions of these *Falſe Brethren* (to use his own Language) will never lessen their Affections to Her.

But, my Lords, how impotent and weak soever the Malice of these Men may prove; yet when such Doctrines are broached, and publickly preached, as tend to inflave a free Nation, to foment Divisions and Parties, to seduce us from our Allegiance to the best of Princes; it becomes the House of Commons, who are Guardians of the Constitution and Liberties of the People, to bring such Delinquents to Justice; and it will become your Lordships, who are Guardians of the Constitution of the People, to prevent the growing of such an Evil. This Man, my Lords, is an inconsiderable Tool of a Party; no ways worth the Trouble we have given your Lordships. But we look upon it that your Lordships Judgment in this Case, will be giving a Sanction which shall determine what Doctrines of this kind shall or shall not be preached. We are persuaded therefore that your Lordships, in giving Judgment on this Case, will have a Regard to the Honour of the late King and Queen, so highly aspersed; to the Security of Her Majesty and Her Government; to the Protestant Succession; to the Preservation of the Peace at Home, and Reputation Abroad; where, if it shall be heard that you have Men amongst you, insolent enough to vent such Notions, they may likewise hear that it has not been done with Impunity. For all these Reasons, we do hope that your Lordships will inflict such condign Punishment on this Offender, as may deter others from the like Insolence for the future.

Sir Peter King. **M**Y Lords, The Gentlemen who have gone before me, having finish'd the First Article of the Impeachment, by Command of the House of Commons, I proceed to make out the Second, which relates to the Toleration, one of the principal Consequences of the Revolution. It is well known that great Severities had been formerly used against Protestant Dissenters, which were fomented by Popish Practices, in order to divide us, and thereby weaken the common Protestant Interest, and particularly that of the Church of *England*: This the whole Church of *England* plainly saw in the Reign of the late King *James*, when Popery was coming in like a Flood, and threatned an universal Ruin; and then they did universally profess their Readiness and Intention to show all manner of Tenderneſs to other Protestants, when it should be in their Power to do it.

The Seven Bishops, who, to their everlasting Honour, made so noble a Stand for the Liberties of the Church and Kingdom, did in their Petition to King *James*, declare, That their not reading the Declaration for Liberty of Conscience, was not from any want of due Tenderneſs to the Dissenters, in relation to whom they were willing to come to such a Temper as should be thought fit, when that Matter should be considered and settled in Parliament and Convocation.

And to the Glory of the Church of *England*, it must be remembered, that when the Revolution was afterwards effected, they were as good as their Word, and an Act pass'd, in the very First Year of their late Majesties King *William* and Queen *Mary*, Intituled, *An Act for Exempting their Majesties Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws*. This is that Act that is commonly called *The Act of Toleration*, and was confirmed by another Act made in the succeeding Parliament. As this Act is agreeable in it self to the Profession of the Christian Religion, and particularly to the Doctrine of the Church of *England*; so it hath been found by Experience so much for the Honour of the Kingdom, and for the Credit of the Church, that Her Majesty has been pleased to declare from the Throne her Intention inviolably to maintain it; and both Houses of Parliament have done the same in the most solemn Manner.

Here the Duke of Buckingham moved the Lords to adjourn to their own House; which they did: And the Lords being returned to the Court, and Proclamation commanding Silence made:

Lord Chancellor. Gentlemen, you that are the Managers for the House of Commons may proceed in the Method you were in.

Sir Peter King. My Lords, The Act of Parliament that I was mentioning to your Lordships, is the Act relating to the Toleration, referr'd to in the Preamble to the Articles; your Lordships, and every one else, remember the Necessity there was for that Act; and having experienced the Benefit of it, Her Majesty and both Houses of Parliament have concurred in a Declaration, that that Act shall be inviolably observed: This being then not only a positive Law, but also a beneficial One, as well for the Benefit of the Church in particular, as the Welfare and Support of the Protestant Interest in general, it very ill became any private Person to endeavour to bring that Law, by any publick Discourse, into Contempt or Disrepute.

The Article the Doctor is charged with, in relation hereto, is, "That he suggests and maintains, "That that Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable; "and asserts, that he is a False Brother, with relation to God, Religion, and the Church, who defends Toleration and Liberty of Conscience; that "Queen *Elizabeth* was deluded by Archbishop "Grindall, whom he scurrilously calls a False Son "of the Church, and a perfidious Prelate, to the "Toleration of the *Genevian* Discipline; and that "it is the Duty of the Superior Pastors to Thunder "out their Ecclesiastical Anathema's against Persons "intituled to the Benefit of the said Toleration, and "insolently dares and defies any Power on Earth to "reverse such Sentences.

My Lords, The first Part of this Article, which is the principal Part, contains a general Charge against the Doctor, for affirming and maintaining, "That the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable." The rest of the Article consists of particular Passages, taken out of his Sermon, tending to make good and prove that general Charge.

As to the general Charge contain'd in the first Part of this Article, of his maintaining the Toleration granted by Law to be unreasonable, and the Allowance

lowance of it unwarrantable : His Answer is very observable, and is, That upon the most diligent Enquiry, he has not been able to inform himself that a Toleration hath been granted by Law ; but admits, that an Act did pass in the first Year of King William and Queen Mary, intituled, *An Act for Exempting their Majesties Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws.* Which Exemption, he saith, he doth not any where maintain to be unreasonable, or the Allowance of it unwarrantable ; but hopes that he had prevented any such Misapprehension, by declaring in his Sermon preach'd at St. Paul's, that he intended not to cast the least invidious Reflection upon that Indulgence which the Government had given.

Indeed, it is almost difficult to be serious in giving a Reply to that part of his Answer, That he cannot inform himself that a Toleration hath been granted by Law. 'Tis true, the Word Toleration is not mention'd in that Act, neither is the Word Indulgence to be found in that Law ; but every Body knows that the Exemption granted by that Act is commonly called *The Toleration*, and the Act it self, *The Toleration Act* : What is the Intent of that Act, but to tolerate and allow Persons, qualified by that Act, to exercise their Religion, notwithstanding Penal Laws to the contrary. Toleration is really a Word of less Import than Indulgence, it is a bare Permission, and Allowance ; and this Word has gain'd such a known and fix'd Notion and Signification in every one's Mind, that whenever it is mention'd, there is not any Doubt what is meant by it : It is now become a Word of Art, that not only in common Conversation, but even in the most publick Acts of State, the Exemption granted by the Act made in the 1st of King William and Queen Mary, is called *the Toleration*. Did not her Majesty, in Her Speech to both Houses of Parliament from the Throne, in the Year 1705, declare that she would always inviolably maintain *the Toleration* ? Did not both Houses of Parliament, in their several Addresses to Her Majesty for that most gracious Speech, express their deep Satisfaction of Her Majesty's Resolution to maintain *the Toleration* ? In the free Conferences between the Lords and Commons about the Bill for preventing Occasional Conformity, in the Year 1702. Is not this Act of the 1st of William and Mary, called *the Act of Toleration*, and the Exemption granted by that Act called *the Toleration* ? So that it seems strange the Doctor should not know that a Toleration had been granted by Law ; and it is more strange yet, when he himself, in this very Sermon, called the Indulgence granted by that Act, *the Toleration*.

In the 14th Page of his Sermon, where he is complaining of False Brethren in the Kingdom, who are permitted and suffered to combine into Bodies and Seminaries, wherein Atheism, Deism, Tritheism and Socinianism, and a great many other wicked Principles are taught ; he concludes thus, " Certainly, (says he) *The Toleration* was never intended to indulge and cherish such Monsters and Vipers in our Bosom." What was it possible for the Doctor to mean in that Place, by the *Toleration*, but the Indulgence ; as he calls it, granted to the Dissenters by the Act of 1 *Gul. and Mar.*

In the 19th Page of the Sermon, speaking of the Dissenters, he says, " Now they have advanced themselves, from the Religious Liberty our gracious Sovereign has indulged them, to claim a Civil

" Right, as they term it, and to jussle the Church " out of her Establishment, by hoisting *their Toleration* into its Place !" What could he possibly mean here by these Words, but that Toleration, or that Indulgence, which was granted in the Time of the late King and Queen to the Dissenters ? So that it is plain, that when he made, and preached, and published this Sermon, he knew very well, that that Indulgence that was granted by the Law made in the First Year of King William and Queen Mary, was commonly called *the Toleration* ; and this Toleration, granted by that Law, is that which the Commons in their Impeachment say he maintains to be unreasonable, and the Allowance of it unwarrantable ; and this is what I am now to make out and prove.

But I must do the Doctor Justice to own, that Page 20. of his Sermon preach'd at St. Paul's, he doth use these Words, referr'd to by him in his Answer, *viz.* " I would not here be misunderstood, " as if I intended to cast the least invidious Reflection upon that Indulgence the Government has " condescended to give them ; which I am sure all " those that wish well to our Church, are very ready to grant to Consciences truly scrupulous ; " let them enjoy it in the full Limits the Law has " prescribed.

The Doctor, by putting in that Caution, seems himself to be apprehensive, his Words were otherwise in danger to be esteem'd a Reflection upon that Indulgence or Toleration that the Government had given. Having just before commended the Severities that were used in the Reign of Queen Elizabeth against the Dissenters ; which could not be spoken in Commendation of the Toleration ; but would reasonably be understood to be a Condemnation of it, because it removed and took away those Severities ; he then subjoins the fore-mention'd Passage ; which dry Caution will not excuse the Doctor, if in the other Parts of his Sermon he doth visibly and plainly condemn the Toleration, and censure it as unreasonable, and the Allowance of it unwarrantable ; which that he doth, I shall endeavour to prove from other direct and formal Passages in his said Sermon.

The first Passage that I shall Cite to this Purpose is in the 10th Page of the Sermon, and is in these Words ; " So that, in all those Cases before-mentioned, whosoever presumes to innovate, alter, or misrepresent any Point in the Articles of the Faith of our Church, ought to be Arraign'd as a Traytor to our State ; Heretodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion and High-Treason in the other, and consequently a Crime that " concerns the Civil Magistrate, as much to punish, " and restrain, as the Ecclesiastical. The beginning of this Passage is tied up to the Cases before-mentioned, so that in all those Cases before-mentioned, which being a term of Relation, must be expounded in Reference to what went before.

This Passage is contained in his second Head of False Brethren, of those who are False Brethren with Relation to the State, Government or Society of which they are Members. And on Perusal thereof I do not find any one Article of the Faith of our Church before-mentioned under that Head, to which these relative Terms do refer ; for all that he saith before under that Head is, " That the Constitutions of most Governments differing according to their several " Frames ; and Laws, upon which they are built " and

“ and founded, it is impossible to lay down any
 “ one universal Rule, as the Scheme and Measure
 “ of Obedience, that may square to every one of
 “ them: Only this Maxim in general, he presumes,
 “ may be Establish’d for the Safety, Tranquility
 “ and Support of all Governments, That no Inno-
 “ vation whatsoever should be allowed in the Fun-
 “ damental Constitution of any State, without a
 “ very pressing, nay, unavoidable Necessity for it;
 “ and whosoever singly or in a private Capacity should
 “ attempt it, is Guilty of the highest Misdemean-
 “ our, and is an Enemy to that Politick Body of
 “ which he is a Member.

Then the Doctor applies this Maxim to our Go-
 vernment: “ Our Constitution, saith he, both in
 “ Church and State, has been so admirably con-
 “ trived, with that Wisdom, Weight, and Sagaci-
 “ ty, and the Temper and Genius of each, so
 “ exactly suited, and modell’d to the mutual Sup-
 “ port and Assistance of one another, that ’tis hard
 “ to say, whether the Doctrines of the Church of
 “ England contribute more to Authorize and En-
 “ force our Civil Laws, or our Laws to Main-
 “ tain and Defend the Doctrines of our Church.
 “ The Natures of both are so nicely correspon-
 “ dent, and so happily intermixt, that ’tis almost
 “ impossible to offer a Violation to the one, with-
 “ out breaking in upon the Body of the other:
 “ So that in all those Cases before-mentioned,
 “ whosoever presumes to alter, innovate or mis-
 “ represent any Point in the Articles of the Faith
 “ of our Church, ought to be Arraign’d as a Tray-
 “ tor to our State, &c.

I read your Lordships this whole Paragraph, to
 shew, that the Cases said to be before-mentioned,
 are not contained in this Head of the Sermon, but
 they are plainly contained in a former Paragraph,
viz. in his first Head of false Brethren, with re-
 lation to God, Religion, and the Church in which
 they hold Communion; under which Head the
 Doctor enters into a long Description of such kind
 of false Brethren, and enumerates several Articles
 and Rites of the Church, the Disbelievers or De-
 niers whereof are termed False Brethren; and a-
 mongst other of his Characters, in *p.* 8. he brands
 him for being false to the Interest of the Church,
 that gives up any Point of her Discipline and Wor-
 ship; these are the exterior Fences to guard the
 Internals of Religion, without which they are left
 naked, without Beauty, Order, or Defence. Should
 any Man out of Ignorance, or Prejudice to the An-
 cient Rights and Essential Constitution of the Ca-
 tholick Church, affirm, “ That the Divine Aposto-
 “ lical Institution of Episcopacy is a novel Doctrine,
 “ not sufficiently warranted by Scripture, and that
 “ ’tis indifferent whether the Church be Governed
 “ by Bishops or Presbyters: Is not such an one
 an Apostate from his own Orders? So that one of the
 before-mentioned Cases of False Brotherhood is,
 the affirming that the Divine Apostolical Instituti-
 on of Episcopacy is a novel Doctrine, not suffici-
 ently warranted by Scripture, and that it is indif-
 ferent whether the Church be Governed by Bishops or
 Presbyters. This is affirmed and held by all the Dis-
 senters; and tho’ they should be mistaken in their
 Opinion, yet still it is their Opinion; and they are
 notwithstanding tolerated, and are exempted by the
 Toleration Act from Subscribing the 36th Article,
 that the Book of Consecration of Archbishops and
 Bishops, and of the Ordination of Priests and Dea-
 cons, set forth in the Times of King Edward the
 Sixth, contain in it all things necessary to their

Consecration and Ordination, and hath nothing in
 it either Superstitious or Impious: Now notwith-
 standing this Innovation or Alteration of this Arti-
 cle of the Church by the Dissenters, the Law doth
 nevertheless Tolerate and Indulge them.

But the Doctor is of another Opinion, and he
 affirms, That whoever Innovates, Alters, or Mis-
 represents this Point in the Articles of the Faith
 of our Church, ought to be Arraign’d as a Traytor
 to the State, and ought to be punished, as well by
 the Temporal, as the Ecclesiastical Magistrate. For
 he goes on, and carries it yet a great deal further,
 by the Reason he gives for his Assertion, which is,
 “ Heterodoxy in the Doctrines of the one, natu-
 “ rally producing, and almost necessarily inferring,
 “ Rebellion and High Treason in the other; and
 “ consequently a Crime that concerns the Civil
 “ Magistrate, as much to punish and restrain, as
 “ the Ecclesiastical. Here’s an Assertion to the Pur-
 pose; that Heterodoxy, that is, the holding a dif-
 ferent Opinion from any Article of the Faith of
 our Church, naturally produces, and almost neces-
 sarily infers Rebellion and High-Treason in the State,
 and consequently a Crime that concerns the Civil
 Magistrate to punish, as well as the Ecclesiastical.
 He himself, in the immediate subsequent Words,
 doth own, That this Assertion at first View may
 look like an High-flown Paradox; and I believe it
 will still appear to be so upon a Review, That who-
 soever is of a different, or other Opinion, in any
 of the Articles of the Faith of the Church, is
 Guilty of High-Treason; and the Temporal, as
 well as the Spiritual Magistrate, ought to punish
 him as a Traitor for it. The Articles of the Church
 are in number Thirty nine; some of the Dissenters
 are by the Act of Toleration exempted from Sub-
 scribing three and a half of them, *viz.* the 34th
 Article, which relates to the Traditions and Cere-
 monies of the Church, and the Power of the
 Church to Ordain, Change, and Abolish Ceremo-
 nies and Rites: The 35th Article, concerning the
 Book of Homilies, and reading of them in Churches:
 The 36th Article, concerning the Consecration of
 Archbishops and Bishops, and the Ordination of
 Priests and Deacons; and the former Part of the
 20th Article, which Asserts the Power of the Church
 to Decree Rites and Ceremonies, and Authority in
 Controversies of Faith. Other Dissenters, who scruple
 the Baptizing of Infants, are also exempted
 from Subscribing that Part of the 27th Article
 which relates to Infant Baptism; and the Quakers
 are exempted from Subscribing any of the Articles,
 and are only required to Subscribe a short Declara-
 tion of the Trinity, and that the Scriptures are gi-
 ven by Divine Inspiration. All these several sorts
 of Dissenters, notwithstanding their Heterodoxy in
 these Points, are exempted by the Toleration Act
 from the Penalties of the former Laws, and are
 by this Act preserved in the free Exercise of their
 Religion or Worship; and not only the Penalties
 inflicted on them by former Laws are taken away,
 but several Immunities and Privileges are given
 them, as an Exemption of their Teachers from Pa-
 rish Offices, and a Penalty for disturbing their
 Congregations. Now when this is Establish’d by a
 Law, and that Act of Toleration is in full Force,
 for the Doctor to affirm, notwithstanding all this,
 that Heterodoxy, or a different Opinion from any
 of the Articles of Faith of our Church, almost ne-
 cessarily infers Rebellion and High-Treason in the
 State, and is a Crime that concerns the Civil Ma-
 gistrate to punish, as well as the Ecclesiastical;
 What

What can be a more direct breaking in upon, and disavowing of the Toleration than this? Is not this to maintain the Toleration granted by Law to be unreasonable, and the Allowance of it unwarrantable?

Another Passage that I shall Cite to prove the general Charge against the Doctor, is in the 16th and 17th Pages of the Sermon: *What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pulled down, it may be blown up; and no matter with these Men how 'tis destroyed, so that it is destroyed.* In this Place the Doctor is speaking of the great Mischiefs and Perils of his false Brethren to the Church. And to prevent any mistaken Notions of the Church, he intimates, that we are to understand the true genuine Notion of it, as it stands contradistinguish'd in its Establish'd Doctrine, Discipline and Worship from all other Churches and Schismatics, who would obtrude upon us a wild Negative Idea of a National Church, so as to incorporate themselves into the Body as true Members of it; whereas that Latitudinarian Heterogeneous Mixture would render it the most Absurd, Contradictory and Self-inconsistent Body in the World: And from thence he proceeds to shew that this Design of a Comprehension miscarried, and that that long projected Scheme of the Ecclesiastical *Achitophel's* was blasted; "But, says he, since this Model of universal Liberty and Coalition failed, and these false Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will plausibly and sily effect her Ruin". And how is that to be done? Why, "What could not be gain'd by Comprehension and Toleration must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish; if the Church can't be pulled down by Comprehension and Toleration, it may be blown up by Occasional Conformity and Moderation; and no Matter with these Men how 'tis destroy'd, so that 'tis destroy'd." Is not this calling the Toleration an open Violence to the Church? That it was an Attempt made to destroy the Church, tho' the Church it self came into, and settled this Toleration? I say, the Legislature in the Time of their late Majesties King *William* and Queen *Mary*, and particularly the Bishops, the Fathers of the Church, were very well satisfied that this Toleration granted to the Dissenters, was no way prejudicial to the Safety and Security of the Church. Now for the Doctor to come and say, the Toleration was intended to pull down the Church, and that it is an open Violence to the Church; is not this to maintain, that the Toleration is unreasonable, and the Allowance of it unwarrantable?

My Lords, These Passages which I have cited to your Lordships, do prove the general Charge of this Article: There are other Passages in the Sermon, particularly refer'd to in the Article, which likewise prove this general Charge, to which I shall next proceed. And,

The next part of the Charge in the second Article is, That he asserts, that he is a false Brother with relation to God, Religion or the Church, who defends Toleration and Liberty of Conscience.

These Words are contained in so many express Terms in the 8th Page of his Sermon, where after he hath copiously described his false Brethren, he comes and Sums up the whole in these Words; *If upon all Occasions to comply with the Dissenters both in publick and private Affairs, as Persons of tender Conscience and Piety, to promote their Interests in Elections, to sneak to 'em for Places and Preferment, to defend Toleration, and Liberty of Conscience, and under the pretence of Moderation to excuse their Separation, and lay the Fault upon the True Sons of the Church for carrying Matters too high; If to Court the Fanaticks in private, and to bear them with Patience, if not Approbation, Rail at and Blaspheme the Church, and upon Occasion to justify the King's Murder; If to Flatter both the Dead and the Living in their Vices, and to tell the World, that if they have Wit and Money enough, they need no Repentance, and that only Fools and Beggars can be Damn'd; If these, I say, are the Modish and Fashionable Criterions of a true Church-Man, God deliver us from all such False Brethren!*

So that one Mark of these False Brethren, in this part of his Sermon, is to defend Toleration and Liberty of Conscience. As to this, the Doctor gives two Answers, one by way of Inference or Presumption, and the other Direct; that by way of Inference is, "That he having so plainly declared himself in Favour of the Exemption granted by Law; when he blames those who upon all Occasions defend Toleration and Liberty of Conscience, he cannot be thought to reflect on the Defenders of that Legal Exemption or Indulgence, which he himself approves and defends.

Now if he had not in other Parts of his Sermon condemn'd the Toleration expressly, it might have pass'd for an Answer. But now, if the Doctor has more than once in other Parts of his Sermon directly inveighed against this Toleration, then his Meaning is more naturally to be understood by so many several Passages, than by one single Sentence, and with what View thrown in, the reading of the Sermon will plainly shew. And therefore the true way to come at the true Meaning of his Words, is to take them as they stand in his Sermon, and that is what your Lordships will judge by. In the next Place he gives a direct Answer to this Part of the Charge, which is, that he does not mean by this Description of a False Brother, those who only defend Toleration and Liberty of Conscience, and do no more; but he only blames those who upon all Occasions defend Toleration and Liberty of Conscience, and to excuse their Separation, lay the Fault upon the true Sons of the Church for carrying Matters so high; so that I don't reckon him, says he, as a False Brother who barely defends Toleration and Liberty of Conscience; except that at the same time that he is defending Toleration, he lays the Fault of the Separation upon the true Sons of the Church for carrying Matters too high. Now I submit to your Lordships, upon reading of this Passage, whether it is capable of such an Interpretation. If it be look'd into, it will be found that the several particular Characters there mention'd, are all of them so many particular Marks of a False Brother; it is not necessary that two, or three, or all of them meet together in one Person to make up the Character of a False Brother; but if any one of them be found in any Person, 'tis sufficient to Characterize him a False Brother: Whoever is guilty of any one of those Acts, of which defending Toleration is one, is a False Brother;

ther ; and his asserting the defending of Toleration to be a Mark of a False Brother, is an evident Declaration against the Justice and Expediency of the Toleration.

The next particular Charge upon him in this Article is for Asserting, " That Queen Elizabeth was deluded by Archbishop Grindall, whom he scurrilously calls a False Son of the Church, and a Perfidious Prelate, to the Toleration of the Genevian Discipline". This Charge upon him is founded on those Words of his Sermon, in the 19th Page ; these are his Words : *Have they not, ever since their first unhappy Plantation in this Kingdom, by the Intercession of that False Son of the Church, Bishop Grindall, always improv'd, and rise upon their Demands in the Permission of the Government ? Inasmuch that Queen Elizabeth, that was deluded by that perfidious Prelate to the Toleration of the Genevian Discipline, found it such an Headstrong and Encroaching Monster, that in Eight Years She foresaw it would endanger the Monarchy, as well as the Hierarchy ; and like a Queen of true Resolution, and pious Zeal for both, pronounc'd, That such were the restless Spirits of that factious People, that no Quiet was to be expected from them, till they were utterly suppress'd : Which, like a prudent Princess, she did by Wholesome Severities, that the Crown for many Years sat Easy and Flourishing on her Head.*

As to that Part of the Charge where he says, That Queen Elizabeth was deluded to the Toleration of the Genevian Discipline by Archbishop Grindall, the Doctor's Answer is, " That he humbly conceives he hath good Authority from the Histories and Monuments of those Times for such Assertion ; but whether he hath, or hath not, humbly apprehends such Assertion to be no Proof of his Maintaining or Suggesting, That the Exempting of Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws, granted by an Act made in the First Year of the Reign of King William and Queen Mary, (which Exemption he supposes to be intended by the Legal Indulgence, or Toleration granted to Dissenters, mention'd in the Preamble of the Articles, and by the Toleration granted by Law mention'd in this Second) is unreasonable, or the Allowance of it unwarrantable.

My Lords, It might not perhaps be difficult to shew that there are some Mistakes in this Fact ; but whether there be or no, will not now be worth spending your Lordships Time ; for I do agree with him, That the material Point is what he puts it upon, Whether this Assertion, as printed and delivered by him in his Sermon, be a Censure or Condemnation of the Toleration Act. Now whether it be so or no, will appear by taking the whole Clause together. This Passage is in the 19th and 20th Pages, and is in that Part of his Sermon where he is shewing the great Perils and Mischief of his False Brethren to the State, and that they are destructive to our Civil Rights and Liberties ; and in the Pursuit of his Argument he plainly shews that the False Brethren there meant are the Dissenters, who are Toleraed by this Act of Parliament. " These False Brethren, says he, have now advanced themselves from the Religious Liberty our Gracious Sovereign has indulged them, to claim a Civil Right, and to juggle the Church out of her Establishment, by hoisting their Toleration into its Place". So that 'tis plain, these false

Brethren here spoken of are the Dissenters, those who have the Benefit of the Toleration Act. And then he goes on ; " And to Convince us what alone will satisfy them, insolently demand the Repeal of the Corporation and Test Acts, as an Ecclesiastical Usurpation, which indeed under Her Majesty (whom God long preserve for its Support and Comfort) is the only Security the Church has to depend upon ; and which they have so far eluded by their abominable Hypocrisy, as to have undermined her Foundations, and endanger the Government, by filling it with its profess'd Enemies. These Charges are so flagrant and undeniable, that a Man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gain'd or won over by any other Grants and Indulgences, than by giving up our whole Constitution : And he that recedes the least Tittle from it, to Satisfy or Ingratiate with these Clamorous, Insatiable and Church-devouring Malignants, knows not what Spirit they are of, or he ought to shew who is a true Member of our Church.

These Passages I have read to your Lordships, to shew that these False Brethren here spoken of are the Dissenters, who are now Toleraed by the Law granted to them in the Time of their late Majesties King William and Queen Mary ; and of these Dissenters follows this Passage : " Have they not, ever since their first unhappy Plantation in this Kingdom, by the Intercession of that False Son of the Church, Bishop Grindall, always improv'd, and rise upon their Demands in the Permission of the Government ? Inasmuch, that Queen Elizabeth, that was deluded by that perfidious Prelate to the Toleration of the Genevian Discipline", *id est*, The Discipline and Polity of the Dissenters, so called because taken from Geneva, " found it such a Headstrong and Encroaching Monster, that in Eight Years she foresaw it would endanger the Monarchy, as well as the Hierarchy ; and, like a Queen of true Resolution and pious Zeal for both, pronounc'd, That such were the restless Spirits of that Factious People, that no Quiet was to be expected from them, till they were utterly suppress'd ; which, like a prudent Princess, she did by Wholesome Severities, that the Crown for many Years sat Easy and Flourishing on her Head.

In this memorable Passage he represents Archbishop Grindall as a False Son of the Church, and a perfidious Prelate, for deluding the Queen into a Toleration of the Genevian Discipline. Whether that Fact be true, or not, is not material to our Purpose ; but this is, that he charges it for a Fault on the Archbishop, and for which he calls him a False Son of the Church, and a Perfidious Prelate, for inducing the Queen to give a Toleration to the Dissenters in those Days : The Fault is not, that it was a Regal Toleration only, but the Fault was in the Toleration itself, in consenting to a Liberty to the Dissenters. Now what is this in Effect, but to preach to the whole World, That the Parliament are in the Wrong to grant a Toleration to the Dissenters ; That the Lords and Commons, who consented to the Toleration, are not true Sons of the Church, And that the Bishops, who are for Toleraing the Dissenters, are neither Fathers nor Sons of the Church, but corrupt and perfidious Prelates ?

That this Character of Archbishop Grindall was design'd for a Censure of the present Toleration, will appear more fully by the contrary Character he gives

gives of Queen *Elizabeth*; he commends her Resolution and pious Zeal for "the Monarchy and Hierarchy, in declaring that no Quiet was to be expected from the restless Spirits of that Factious People, till they were utterly Suppress'd; which, like a prudent Princess, she did by Whole-some Severities, that the Crown for many Years sat Easy and Flourishing on her Head". Now what can the *English* of all this be, but to inflame the Government against the Dissenters? What could be said more prevalent for this Purpose, than to recommend it as a noble Resolution and pious Zeal in Queen *Elizabeth*, utterly to suppress the Dissenters? And if that Resolution be to be followed, the Legislature must Repeal the Toleration Act. And what could be said more contrary to the Toleration Act, than to recommend the Severities used in Queen *Elizabeth*'s Reign, because they were Whole-some in themselves, and of happy Consequence to the Person and Government of that Renowned Queen. If there were not a Necessity for it on this Occasion, I would not mention what those wholesome Severities were, but rather cast a Veil over that Part of the Reign of that Great and Glorious Queen.

To give a short View of these Whole-some Severities, some Hereticks were burnt, other Persons were hang'd, some had their Goods confiscated, others had their Persons imprison'd; and to mention more particularly a publick Act in Writing that cannot be falsified or misrepresented, and which is since relax'd by the Toleration Act, an Act pass'd in the 35th Year of Queen *Elizabeth*, Intituled, *An Act to retain the Queen's Majesty's Subjects in their due Obedience*; by which the Dissenters are, among other Penalties, to Abjure the Realm in Forty Days, or suffer Death without Benefit of the Clergy.

This Penalty of Abjuration of the Realm was taken from the ancient Common Law of *England* in relation to Felony, by which if a Man committed any Felony, excepting Sacrilege, and fled to a Parish Church, he might within Forty Days before the Coroner confess the Felony, and take an Oath to Abjure the Kingdom for ever; and if he thus confess'd and took that Oath, he was thereby Attainted of the Felony, and then he had Forty Days from the Coming of the Coroner to provide and prepare for his Voyage; and the Coroner assign'd him such a Port as he chose for his Departure out of the Kingdom; and if he did not go straitway out of the Kingdom, or being gone out, did return without License, he had Judgment to be Hang'd, except he was a Clerk, and then he had his Clergy.

This Practice was what the Law call'd Abjuration; and being by several Regulations (in the Time of *Henry* the Eighth) in effect taken away, the Revival of this Practice was thought to be a whole-some Severity, fit to be inflicted on the Protestant Dissenters of those Times: And therefore the 35th of Queen *Elizabeth* doth enact, "That if any Person, obstinately refusing to repair to some Church or Chapel, or usual Place of Common-Prayers, and forbearing by the Space of a Month to hear Divine Service, should after Forty Days after the End of that Session of Parliament, willingly join or be present at any Conventicle or Meeting, under Pretence of Religion, contrary to the Laws and Statutes of the Realm; that then such Person should be committed to Prison, till he should conform and come to Church: And if within Three Months after Conviction he should

not conform and come to Church, and make his publick Confession and Submission, being thereunto required according to the Form of the said Act; that then such Offender should abjure the Realm; and if, being thereunto required, should refuse to make such Abjuration, or after such Abjuration made, should not within the Time appointed him depart the Realm, or after such Departure should return without the Queen's License; then, in every such Case, every Person so offending, should be a Felon without Benefit of Clergy." So that the Abjuration inflicted on Protestant Dissenters by this Act, was worse than Abjuration for Felony at the Common Law; in that they had the Benefit of the Clergy, in this they had not.

This is one of the Severities of Queen *Elizabeth*'s Reign. Whether it be a wholesome Severity or not, Human Nature will determine: However wholesome it might have been esteem'd in those Days, by those who had the Power and Will to punish others, yet the Legislature have in *Terminis* declar'd it unwholsome for these Times; and the Toleration-Act doth expressly, and by Name, exempt the Protestant Dissenters from the Penalties of this Act of the 35th of Queen *Elizabeth*.

Now when the Toleration-Act hath granted this Exemption, for the Doctor to come and publicly represent an Archbishop as a False Son of the Church, and a Perfidious Prelate, for being for the Toleration of Dissenters in his Time; and at the same Time recommend the Resolution and pious Zeal of Queen *Elizabeth*, for declaring that she would utterly suppress them, and her great Prudence in exercising wholesome Severities against them, which were of happy Consequence to her Person and Government; What could be said more against the Toleration-Act, than this is? The Toleration-Act exempts the Dissenters from the Penalties and Severities inflicted in Queen *Elizabeth*'s Reign; the Doctor recommends them all again, as wholesome and necessary. Let any Person judge, whether this is not an express Declaration against the Toleration-Act?

There is yet one Thing more charged upon the Doctor in this Part of the Second Article; *viz.* That he scurrilously calls Archbishop *Grindall* a False Son of the Church, and a Perfidious Prelate, for deluding Queen *Elizabeth* to the Toleration of the *Genevian* Discipline. Whether this, consider'd abstractedly by it self, be in Law a Crime; or not, is not necessary for me here to examine. The Doctor conceives, that no Words spoken of an Archbishop, above One Hundred and Twenty Years since deceased, will in Construction of Law amount to an High Crime and Misdemeanor: Whether it be so or not, in it self, I shall say nothing of at present; because I take it, that this is only taken notice of as an Aggravation of the Crime charged upon him, and to shew his Zeal against the Toleration; That he was not contented with Censuring the Toleration it self, but rakes into the Ashes of an Archbishop, that had been in his Grave One Hundred and Twenty Years, and blackens his Memory, because he was for the Toleration of those People who are now by Law tolerated.

My Lords, I would on this Occasion say a Word or two to the Memory of that Archbishop. The Doctor says, He was under the Displeasure of Queen *Elizabeth*; that is very true: And he pretends, the Occasion of his being under her Displeasure, was, for permitting Innovations to be ob-

truded upon the Church. Those Innovations were no other than what several other Bishops at the same Time likewise practis'd, and some Bishops since have done not much unlike : It was for encouraging the Meetings and Exercisings in those Days, call'd Prophesyings ; which were Meetings of the Clergy, to improve one another in the Knowledge of the Scriptures, and tended to make a Learned and Industrious Clergy. This was misrepresented to the Queen, and was the visible Cause of his Disgrace. But the true Reason of his Disgrace, as Historians say, sprung from the Hatred of the Earl of Leiceſter, who was then in great Power and Credit with the Queen, and her great Favourite. This Earl of Leiceſter caſt a Covetous Eye upon Lambeth-Houſe, and would have had the Archbiſhop to have alien'd it, but he would not comply with him ; which, as the Hiſtorian ſays, made the Leiceſterian Party to malice him. The Earl was likewiſe provoked and incenſed againſt him for another Reason, viz. for Proſecuting one *Julio*, a Phyſician of the Earl's, an *Italian* Phyſician, for having Two Wives, one of which was the Wife of another Man, with whom he lived in Adultery : For theſe Two Offences againſt the Earl of Leiceſter, who bore a mighty Power at Court with the Queen at that Time, was this Storm raiſed againſt him. But, my Lords, for his Life and Doctrine, the Archbiſhop was one of the moſt Pious, Learned and Conſiderable Prelates of that Time. 'Tis very true, that he was one of thoſe Biſhops that look'd upon the Exercisings uſed in thoſe Times by the Clergy, call'd Prophesyings, to be very neceſſary for their Improvement, and for the Benefit of the Church ; and ſome of the beſt Biſhops of thoſe Times concurr'd with him in the ſame Opinion. He was a Man of a moſt Exemplary Life and Converſation, free from the Suſpicion of a Crime. In his younger Days he was Chaplain, with *Rogers* and *Bradford*, to *Ridley* Biſhop of *London*, who gave this Character of him, That he was known to be a Man of Virtue, Honesty, Diſcretion, Wiſdom and Learning. In the Perſecution under Queen *Mary*, when his Maſter and Fellow-Chaplains were burnt for Religion, he became an Exile on the ſame Account, and quitted his Eaſe, Preferments, and Hopes at Home, to enjoy the Liberty of his Conſcience in a Foreign Country, and went to *Strasburgh* : And when the famous Troubles begun at *Frankfort*, about the Uſe of the *Engliſh* Service, where the Foundations were laid of the Diviſions that have ſince divided and rent the Church, he was ſo far from diſliking the *Engliſh* Method, that he went from *Strasburgh* to *Frankfort*, to encourage and perſuade the Congregation there to ſubmit to the *Engliſh* Eſtabliſhment ; and he himſelf ſtuck cloſe to it all his Life-time. At his coming Home, in the Beginning of the Reign of Queen *Elizabeth*, he had a great Hand, and was very inſtrumental, in preparing the Liturgy and Book of Common-Prayer : And the firſt Time that the *Engliſh* Service-Book was introduc'd at *St. Paul's* in *London*, the Privy Council, and Great Officers of State, for the greater Solemnity, came to *St. Paul's* ; and *Grindall* was appointed to preach to that Great Audience, upon that Solemn Occaſion. He was one of the firſt Five Biſhops made by Queen *Elizabeth* ; and was firſt Biſhop of *London*, afterwards Archbiſhop of *Tork*, and laſt of all Archbiſhop of *Canterbury*. And when afterwards, by the Earl of *Leiceſter's* Artifice, he was out of Favour, and under the Queen's Diſpleaſure ; yet he had ſo great

an Intereſt in the Clergy, and their Eſteem of him was ſo extraordinary, that even whiſt he was under Diſgrace at Court, and the Diſpleaſure of the Queen, a conſiderable Number of the Convocation, then met, preſented an Elegant Petition in *Latin* to the Queen, to reſtore him ; wherein they repreſent to Her Maſteſty, ' That the Archbiſhop had led ' a Life free, not only from all Crime, but even ' from the Suſpicion of a Crime : That he had preſerved his Religion from all, nor only Corruption ' of Popery, but Schiſm ; and had ſuffer'd Perſecution for Righteouſneſs ſake, having wander'd ' abroad in other Countries for the Cauſe of the ' Goſpel : And therefore they moſt humbly beſought Her Maſteſty, not only to liſt up the Archbiſhop broken with Grief, but to reſtore the ' Church to the Archbiſhop, and the Archbiſhop ' to the Church, to her Subjects, to his Brethren, ' to Foreign Nations, and, in a word, to all Pious ' People.' Theſe were the Thoughts of the Clergy of the Archbiſhop at that Time, even when he was under the Diſpleaſure of the Queen ; ſo that there was no Reason for the Doctor to aſperſe him as a Falſe Son of the Church, or a Perfidious Prelate ; for it appears on the contrary, that he was a Man univerſally eſteem'd for his Virtue, Piety, and Learning.

The laſt Charge of this Article is, that he aſſerts, " That it is the Duty of Superior Paſtors to thunder out their Eccleſiaſtical *Anathemas* againſt " Perſons entitled to the Benefit of the Toleration ; and inſolently dares or deſies any Power on Earth to reverſe ſuch Sentences.

To which the Doctor gives this Answer ; " That the Perſons entitled to the Benefit of the Toleration, are not by him mentioned or intended : " But if theſe Expreſſions in his Sermon muſt be determin'd to any one Sort of Perſons, he conceives that the Connection of his Diſcourſe will determine them to thoſe Schiſmatical and Factious Perſons, who take Permiſſion for Power, and advance Toleration immediately into an Eſtabliſhment.

Now be it ſo, that he means thoſe Schiſmatical and Factious Perſons ; the next Queſtion, which will ſet this Matter in a clear Light, will be, Who thoſe Schiſmatical and Factious Perſons are, who take Permiſſion for Power, and advance Toleration immediately into an Eſtabliſhment ? And it is plain from the Paſſage it ſelf, which is in *Page 25* of the Sermon, that he means the Diſſenters, thoſe who are entitled to the Benefit of the Toleration.

" If our Diſſenters, ſaith he, had lived in the " Times of *St. Paul*, they would have branded him " as an intemperate, hot, furious Zealot, that " wanted to be ſweeten'd by the gentle Spirit of " Charity and Moderation, forſooth. Schiſm and " Faction are Things of impudent and inſolent " Natures ; they thrive upon Conceſſions, take Permiſſion for Power, and advance a Toleration immediately into an Eſtabliſhment ; and are therefore to be treated like growing Miſchiefs, or infectious Plagues, kept at a diſtance, leſt their deadly Contagion ſpread. Let us therefore have no Fellowship with theſe Works of Darkneſs, but rather reprove them. Let our Superior Paſtors do their Duty, in thundering out their Eccleſiaſtical *Anathemas* ; and let any Power on Earth dare reverſe a Sentence ratified in Heaven." And indeed the Doctor doth, in the following Part of his Answer, in effect own it : For, ſaith he,

“ As to the last Part of the Second Article, where-
 “ by the said *Henry Sacheverell* is charged with in-
 “ solently daring, or defying any Power on Earth
 “ to reverse the Ecclesiastical Sentences there men-
 “ tion'd ; He the said *Henry Sacheverell* saith,
 “ That the Sentence which he the said *Henry*
 “ *Sacheverell* dares any Power on Earth to reverse,
 “ is such, and such only, as is ratified in Heaven ;
 “ and such Sentence he still affirms to be by any
 “ Earthly Power irreverfible : And hopes it will
 “ not be thought Insolence in him to affirm, what
 “ he conceives would be Blasphemy in any one
 “ to deny : And doth further acknowledge him-
 “ self firmly to believe, that some Sentences pro-
 “ nounced by the Pastors of the Church are rati-
 “ fied in Heaven ; and that some Persons exempted
 “ from Punishment by the particular Laws of the
 “ Land, may yet by the Laws of Christ be just-
 “ ly liable to such Sentence ; and that Schism, or
 “ a causeless Separation from a Church enjoining
 “ no sinful Terms of Communion, is a Sin, which
 “ exposes the Person guilty thereof to the Censures
 “ of the Church.

The House of Commons charge the Doctor with Insolence, in daring or defying any Power on Earth to reverse the Ecclesiastical Sentences mentioned in his Sermon ; and he, by Insinuation, retorts upon them the Charge of Blasphemy. This the House of Commons thought they had Reason to resent, and to call upon your Lordships for immediate Punishment of him, for treating them in this manner ; but they leave it to your Lordships, in what manner you will think fit to do them Justice, in vindicating them against such a Charge. But as to this Passage now before you, he affirms, “ That some Sentences pronounced by the Pastors of the Church, are ratified in Heaven ; That some Persons exempted from Punishment by the Laws of the Land, may yet by the Laws of Christ be liable to such Sentence : And that Schism, or a causeless Separation from a Church enjoining no sinful Terms of Communion, is a Sin, which exposes the Person guilty thereof to the Censures of the Church.” Now what is this but to say, The Dissenters causelessly Separate from the Church, which imposes no sinful Terms of Communion, and so are guilty of Schism ? Tho' the Law of the Land doth exempt them from Punishment for this Schism, yet for this Sin they are expos'd to the Censures of the Church ; those Censures, when inflicted, are ratified in Heaven : Therefore, notwithstanding the Law of the Land hath given them this Exemption, let the Ecclesiastical Superiors do their Duty, in thundering out their *Anathema's* against them, and let any Power upon Earth dare to reverse their Sentences if they can. As to the Power of the Church in Censuring or Excommunicating, it is not necessary for me to say any Thing of it upon this Occasion : But the Doctor is a Minister of the Church of *England*, who hath submitted to the Queen's Supremacy, and by the Canon is bound to maintain and preach the Queen's Supremacy ; Her Majesty is Supreme over all Causes, and over all Persons, as well Ecclesiastical as Civil ; and by an Act of Parliament made since Her Majesty's happy Accession to the Crown, *viz.* the Act relating to Her Majesty's Bounty for the Augmentation of the Maintenance of the poor Clergy, she is Owned and Recognized to be the only Supreme Head on Earth of the Church of *England* : Her Majesty hath by Law a Supreme controlling Power over all the Censures and Excommunications of the

Church ; this Power she Exercises according to the Rules of Law, by her several Officers and Ministers of Justice. The exercise of the Church's Censures, Jurisdiction and Power, must be according to Law ; and if any Person be Excommunicated against Law, the Queen's Courts may and will command the Ecclesiastical Judge to absolve such Excommunicated Person, and restore him to the Communion of the Church again : This is the Supremacy of the Queen, which is the Doctrine of the Church of *England* ; and by Verrue of this Supremacy, if any Judge of the Spiritual Court shall pretend to excommunicate any of the Dissenters for any Thing which by Law they are not obliged to do, or which by Law they are excused or exempted from, the Courts of Justice in *Westminster-Hall* will in such Case award a Prohibition, and compel the Ecclesiastical Judge to absolve him. Suppose that notwithstanding the Toleration Act, a Dissenter should for not coming to the Church, be sentenced in the Spiritual Court by the Judge there, or be proceeded against there, in order to an Excommunication ; a Prohibition will lye to that Judge from the Queen's Courts upon the said Act, and the Courts of Common Law will prevent him from such Proceeding ; and if Sentence be pass'd, will compel the Judge to annul the Excommunication, and receive the Party again. Now, for the Doctor to come and say, That though the Dissenters are tolerated by this Act of Parliament, and though they are exempted by Law from Penalties, yet let the Law of the Land be what it will, let the Ecclesiastical Pastors do their Duty, let them fulminate their Excommunications, and thunder out their *Anathema's*, and let the Civil Magistrate, the Earthly Powers, dare to reverse them, if they can : I submit this to your Lordships, whether this is not directly impugning the Queen's Supremacy, as well as weakning and censuring the Toleration, which is what he is charg'd with in this Article.

My Lords, I will not take up more of your Lordships Time ; there are other Gentlemen to come after me, who will abundantly supply my Defects, and offer to your Lordships some farther Considerations to make out the Charge contained in the Second Article.

Lord William Pawlet. MY Lords, The Charge against the Doctor in this Second Article is a Crime of a very heinous Nature : It has always been esteemed one of the happy Consequences of the late Revolution, that Her Majesty's Protestant Subjects, by a Legal Indulgence granted to Dissenters, were united in Interest and Affection, in the Defence of her Majesty's Sacred Person and Government.

It is too well known, my Lords, how in former Times, when Popery had almost prevailed in the Ruin of our State and Church, the Protestants of the Kingdom were, by the Artifice of Papists, set against each other, that by such Divisions Popish Tyranny might be Established among us.

The Act of Parliament, made in the first Year of the Reign of their late Majesties King *William* and Queen *Mary*, to exempt Protestant Dissenters from the Church of *England* from the Penalties of certain Laws, was made to defeat any such future Attempts of the Papists ; The Preamble of the Act declares, that *some Ease to scrupulous Consciences, in the Exercise of Religion, may be an effectual Means to unite Her Majesty's Protestant Subjects in Interest and Affection.*

We have seen, my Lords, the good Effects of the Wisdom of the Legislature in making this Act; Her Majesty's Protestant Subjects are now all easy under Her Administration; and how many Dissenters have we seen, who since the Toleration are become sincere Converts to the Church. And I may say, that by this Toleration the Prejudices of the Dissenters in general wear off, and their Number daily decreases.

And yet with what odious Colours, and Language unbecoming a Divine, does the Doctor paint out this Toleration, and how does he factiously endeavour to excite and stir up People against it?

'Tis, my Lords, a poor Shift which the Doctor makes in his Answer, that he knows of no Toleration granted by Law; and yet in the same Answer he owns there is an Indulgence which the Government hath condescended to give Dissenters. My Lords, the word *Indulgence* is no more in the Act of Parliament than the word *Toleration*; and it is well known that the Act of Parliament he alludes to is every where, not only in Courts of Justice, but even in Parliament, called *The Toleration Act*; and is frequently so called by your Lordships in the Account of your Lordships Proceedings in Parliament, in Relation to the Bill against *Occasional Conformity*, which Account was Published and Printed by your Lordships Order.

When the Doctor says, that he has not been able to inform himself that a Toleration hath been granted by Law, it plainly seems to import, as if the Doctor doubted of the Authority of the Parliament that made that Law; it looks like the common Sophistry of Papists and Jesuits, who pretend to own the Church of England as by Law Established; because they disown the Authority of all our Laws made since the Reformation.

My Lords, Her Majesty hath always been pleased graciously to declare She will defend this Toleration, and this Her gracious Resolution has, among the innumerable Blessings of Her Reign, united all Her Protestant Subjects in their Loyalty and Duty to Her.

The Commons rest assured that your Lordships will always assist these gracious Purposes of Her Majesty; and that as there can hardly be any Instance given of so Seditious and Barefaced an Attempt against the Peace and Quiet of the Kingdom, as the Doctor hath been guilty of, so your Lordships will, by an Exemplary Punishment suitable to so high a Crime, vindicate the Authority of Parliaments, and give an effectual Discouragement for the future, to all such Turbulent and Seditious Preachers.

Mr. Cowper. **I** Think, my Lords, it is unnecessary at this Time to urge all the Arguments which might be made use of, to justify the Reasonableness of the Toleration granted to Protestant Dissenters, by exempting them from the Penalties of certain Laws. It may suffice to say, that this Indulgence is required from us as Christians, and as we are Men professing Humanity and good Will towards one another.

Whoever maintains, that the Toleration is unreasonable, and the Allowance of it unwarrantable, seems necessarily to assert, that the Exemption granted to Her Majesty's Subjects from the Penalties of former Laws, ought to be reassumed; unless we are to suppose, that it can be reasonable to allow what is unwarrantable.

This Assertion therefore evidently Arraigns the Act of Toleration, a Law now in being, a Law by

which the People (throughout the whole Series of this dangerous War) have been more firmly United, in Interest and Affection, than formerly; I mean, in the Days when the Penalties of those Laws were inflicted with intemperate Zeal.

My Lords, Before I proceed to make good the Charge contained in the second Article of the Impeachment exhibited against the Prisoner by the Commons, I must beg leave to take notice of the Introduction to his Answer: It seems he cannot, upon the most diligent Enquiry, be able to inform himself, that a Toleration has been granted by Law. I take it, the *Stat. 1. Will. and Mar.* which exempts Dissenters from the Penalties of former Laws, amounts to a Legal Indulgence, or Grant of Liberty of Conscience; for by that Repeal a Liberty is given, which was before restrained, so that without Impropriety it may be said, that Toleration is granted by Law. Doctor Sacheverell I find had rather it should be called an Exemption, for no other Reason, that I see, but because he has not said much, if any Thing of the word *Exemption* in his Sermon, how free soever he has made with the Toleration.

Now taking it for granted (as I think with reason I may) that Indulgence, Toleration, or Exemption from Penalties, signifies one and the same Thing, (especially as ordinarily made use of amongst us,) Can any Thing be more plain, than that many Passages in this Infamous Libel cast black and odious Reflections upon the Toleration? They have been all read, and for fear (after what has been already said) of being too tedious, I will mention one only. The Words are these,

What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no matter with these Men how it is destroy'd, so it is destroy'd, &c.

Pray, my Lords, Is it reasonable to allow Toleration, or rather is not the Allowance of it unwarrantable, if it was the open and violent Means made use of to destroy the Church of England? And is not this a most uncharitable Censure, highly reflecting upon the Act of Toleration, and the Legislative Authority? Is not this maliciously and falsely Suggested, with a wicked and seditious Purpose, to create Jealousies and Misunderstandings amongst Her Majesty's People?

Comprehension and Toleration are represented as open Violence; Moderation and Occasional Conformity, as secret Treachery, by which the Church may be blown up, though it could not be pulled down by the violent Means of Comprehension and Toleration.

I should waste too much Time unnecessarily, if I should take particular Notice (after what has been already so well urged in Maintenance of the second Article) of all the Passages which seem to be equally liable to Censure.

The *Antistasis* throughout this Paragraph is so very plain, that I hope it is not one of those mentioned in the Doctor's Answer to carry a dubious Sense. The Prisoner seems to have taken care to explain himself, for fear his Meaning should have been doubtful; and therefore after having said,

What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; then he adds, that is, what they

they could not do by open Violence, they will not fail by Treachery to accomplish.

Having thus inveighed against the Toleration, with much ill Nature and Bitterness of Spirit, he is pleased in the next Place to assert, That he is a False Brother with relation to God, Religion, or the Church, who Defends it.

The Answer to this Branch of the Second Article is long, and, as I apprehend, seems to be Evasive. First, there is a Difference again taken, between Toleration and Liberty of Conscience, and an Exemption or Indulgence; and under this Distinction, which, for the Reasons I have mentioned, is a Distinction without a Difference, the Doctor takes the Liberty to maintain and justify, that he is a False Brother who Defends Toleration and Liberty of Conscience.

I must own he endeavours to evade the Charge, by saying he means those only, who at the same Time they defend Universal Toleration and Liberty of Conscience, do also excuse the Separation, and lay the Fault upon the true Sons of the Church, by carrying Matters too high.

Whatever he is pleased to say he meant, in Answer to this Part of the Article, surely no such Meaning can be collected from his Sermon. Throughout the whole Libel, I presume to say there is not one Word of Universal Toleration, or Universal Liberty of Conscience; this is another Kind of Toleration, never heard of, 'till it was new Coined, in order to extenuate his vile and uncharitable Assertions.

Here he is pleased to sum up the modish *Criteria's*, as he terms them, of a true Church-Man, in a figurative and ironical Manner, and plainly Asserts they are the several Characteristicks of a false Brother; amongst the rest, to defend Toleration is said to be one; and under Pretence of Moderation to excuse the Separation (*i.e.*) of the Dissenters, of whom he had next before spoken, is another; and concludes the Paragraph with this pathetick Expression, *God deliver us all from such False Brethren.*

Having thus treated those who defend Toleration, his Superior Pastors are in the next Place to be admonished of their Duty, which is to thunder out their Ecclesiastical *Anathema's* against the Persons entituled to legal Indulgence; which *Anathema's* are stiled Sentences ratified in Heaven, and such as no Power on Earth dare reverse.

Far be it from me to say, that Sentences ratified in Heaven can be reversed by the Powers of this World. But if Doctor *Sacheverell* were a Superior Pastor, and should Anathematize, or, in plain *English* Curse and Sentence all those who enjoy the Benefit of Toleration, to Damnation, he must excuse me, if I could not believe that such a Sentence would be Ratified in Heaven.

And as to any Ecclesiastical Censure not ratified in Heaven, it is downright Insolence to say, there is no Power upon Earth that can Reverse it.

But since our Superior Pastors will exercise a truly Christian and noble Spirit of Charity and Moderation, and indulge scrupulous Consciences, the Doctor is pleased however to bear his Testimony against it, and is not contented with delivering over to Satan those only who enjoy the Indulgence, but they who defend Toleration must also bear them Company.

His indeed is a very comprehensive *Anathema*, and is conceived in these Words; *viz. And as he chose it in this World, appoints him in the next his Portion with Hypocrites and Unbelievers, with all*
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Liars, that have their Part in the Lake, which burns with Fire and Brimstone, with the Grand Father of Falshood, the Devil and his Angels. And so here we leave our False Brethren, in the Company they always kept Correspondence with.

This, my Lords, is a most dreadful unchristian Sentence, a Sentence so Barbarous, so Astonishing, that I am at a loss to imagine, how it could enter into the Mind of Man to conceive it?

Perhaps, my Lords, it may be equally dangerous to defend the Ashes of the Venerable Prelate Archbishop *Grindall*; he, it seems, was a false Son of the Church, and a perfidious Prelate, because he deluded Queen *Elizabeth* to a Toleration of the *Genevian* Discipline. Here we may observe the Doctor's great Aversion to all kind of Toleration.

Methinks, for the sake of the Reformation, better Language should have been given, and more decent Expressions should have been bestowed, upon a Man we all know bore so considerable a Part in the Establishment of it.

Here likewise we may observe the Doctor's Inclination to wholesome Severities, such as Queen *Elizabeth* made use of, which were such as I hope will never be seen more in this Kingdom. And by the Way, what a Spirit is this Man of, who can find nothing to commend in the Reign of that Glorious Queen, but the blackest and worst Part of it.

I cannot agree, that these harsh Expressions, as the Answer owns they are, are the rather to be excused, because the Remains of the Archbishop were so long since deposited, especially when we consider that his Memory has been had in the highest Esteem and Veneration by all the Reformed Churches in *Christendom*, from that Time down to the Fifth Day of *November* last.

For my own Part, I think it very Immoral to cast Reflections upon the Dead, how ill soever they may have deserved from us; and the longer a Man has been so, in my Opinion, rather aggravates than lessens the Immorality.

I am free to own, he whose Morals will permit him to reflect upon the Departed, is not therefore to be Impeached for it, as for an High Crime and Misdemeanor; but that is not the present Case. Archbishop *Grindall* is thus severely treated upon a Supposition he deluded the Queen to a Toleration; and all the hard Words which are falsely and unreasonably bestowed upon him, are evidently levelled at the present Toleration, and designed maliciously to Asperse and Traduce it, by representing it as injurious to the Character of all concern'd in it, dangerous to Her Majesty, and destructive to the Constitution both in Church and State.

By these Means, my Lords, and others (if possible worse than these) one Part of the People, through groundless Fear and Jealousy, unreasonably and maliciously instilled, are to be stirred up to Arms and Violence; others, upon the Peril of Damnation, are not so much as to utter one Word in Defence of Toleration; whilst the third and last Part are to have the Doctor's wholesome Severities executed upon them.

My Lords, 'Tis too notorious that this Incendiary, for so the Articles of the Commons of *Great-Britain* have called him, has already stirred up unaccountable Feuds and Quarrels throughout the Nation; the Commons are too sensible of it, and have therefore brought the Offender before your Lordships in Justice and in Judgment.

Many are the Seeds of Sedition which he has sown ; and the Fruit to be expected, is Civil Discord and Confusion, unless some Remedy shall be applied to prevent it.

The Commons, for Her Majesty's Safety, and for the Security of the Constitution, have thought it absolutely necessary to bring him to answer for these High Crimes and Misdemeanors before your Lordships Tribunal ; conceiving his Offences to be of so Exorbitant a Nature, that they deserve the Solemnity of this Proceeding.

And then the LORDS Adjourned to their House Above.

Wednesday, March 1. The Third Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows :

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made : *Henry Sacheverell*, Doctor in Divinity, come forth ; save thee and thy Bail, else thou forfeitest thy Recognition.

The Doctor appearing at the Bar accordingly, with his Council, as before :

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your Evidence.

Mr. Thompson. MY Lords, Your Lordships having heard what has been produced in Maintenance of the Two first Articles of this Impeachment, I shall take the Liberty to proceed, and endeavour to discharge the Trust reposed in me by the Commons, to support the Third Article, and the Accusations contained in it. I will not waste your Lordships Time, by making any Apology for my Inabilities, and being unequal to this Undertaking ; not doubting but that I shall find from your Lordships a candid Interpretation of whatever I shall offer upon this Occasion.

This Article, my Lords, is founded on a Vote or Resolution of your Lordships, and the Commons, in Parliament assembled, which is recited in the Preamble of these Articles, and the Occasion of which it may be necessary to mention to your Lordships. It was some few Years ago that there were many scandalous and seditious Rumours spread abroad, of the Danger of the Church of *England*, as Established by Law. There were several Libels dispersed over the Kingdom, reviling Her Majesty's Administration in Church and State ; and among the rest, one entitled, *The Memorial of the Church of England*. Her Majesty was pleased to take notice of these seditious Reports from Her Throne to the Parliament ; and thereupon your Lordships and the Commons, on the 17th of *December*, 1705. came to the Vote or Resolution mentioned in the Preamble, and an Address, which is recited to this effect ; " That your Lordships, and the Commons, in Parliament assembled, did address and lay before Her Majesty a Vote or Resolution, That the Church of *England*, as Established by Law, and which was rescued from the extremest Danger

" by his Late Majesty, of Glorious Memory, was, " by God's Blessing, under Her Majesty in a safe " and flourishing Condition ; and that whoever " should go about to suggest and insinuate that " the Church is in Danger under Her Majesty's " Administration, is an Enemy to the Queen, the " Church, and the Kingdom.

" And that your Lordships, and the Commons, " by their said Address, did humbly beseech Her " Majesty to make the said Vote or Resolution " publick, and to take effectual Measures for the " punishing the Authors and Spreaders of such " malicious and seditious Reports. And that on " the 20th of the same *December*, Her Majesty " was pleased to issue Her Royal Proclamation accordingly.

Now, my Lords, this Article charges, " That " in Opposition to, and Defiance of, and in order " to arraign and blacken that Vote or Resolution, " Doctor *Sacheverell*, in his Sermon preach'd at " *St. Paul's*, does suggest and assert the Church " of *England* to be in a Condition of great Peril " and Adversity under Her Majesty's Administration." The Article further says, " That he wickedly and maliciously insinuates, That the Members of Parliament, who passed that Resolution, " were themselves conspiring the Ruin of the " Church, which they voted to be out of Danger : And this by way of Parallel, or Allusion to " that Assembly, who voted the Person of King " *Charles the First* to be out of Danger, at the " same Time when they were Conspiring his Destruction.

My Lords, I will now do the Doctor the Justice to take notice of what he says in his Answer, and alledges as his Justification. He denies that he asserts the Church to be in Danger, under Her Majesty's Administration ; or otherwise than from Vice and Infidelity, Blasphemy and Prophaneness. And as to the Parallel in the Vote, and the Insinuation of the Members conspiring the Ruin of the Church ; He says, he never mentions that Vote, nor did he design the Parallel as laid to his Charge. He only meant, That while some Men were Conspiring the Death of the King, others, not privy to this Design, voted him out of Danger : So, tho' the Members voted the Church to be out of Danger, yet others were conspiring against the Church, and by their Vice and Infidelity were drawing down Vengeance on the Church and Kingdom. And as to that Vote made Four Years ago, He says, it concerns only those who did then insinuate the Church of *England* to be in Danger under Her Majesty's Administration.

Now, my Lords, having stated the Charge, and the Defence, I shall proceed to acquaint your Lordships with the several Passages of the Sermon, which the Commons apprehend will make out their Accusation. And here, my Lords, I shall take Leave to say, That no strained or forced Constructions can be desired by the Commons, or expected from your Lordships, or any Inferences to be deduced, but what naturally arise from a fair, impartial, and candid Interpretation.

My Lords, The first Passage which the Commons apprehend is for their Purpose, is in the 5th Page ; the Doctor, just before, enumerates *St. Paul's* Misfortunes that befel him, while he was propagating the Gospel, and says, " There is a " very observable Gradation in his Sufferings ; but " that, of all his Calamities, the highest of them " proceeded from False Brethren : And taking Notice

rice of the Condition of the Church of *Corinth*, then follows these Words; "Tho' it were very obvious to draw a Parallel here betwixt the sad Circumstances of the Church of *Corinth* formerly, and of the Church of *England* at present, wherein her Holy Communion has been rent and divided by factious and schismatical Impostors, her pure Doctrine has been corrupted and defiled; her Primitive Worship and Discipline prophaned and abused; her Sacred Orders denied and vilified; her Priests and Professors (like *St. Paul*) calumniated, misrepresented and ridicul'd; her Altars and Sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say, without Discouragement, I am sure with Impunity, not only by our professed Enemies; but, which is worse, by our pretended Friends, and False Brethren.

It may be observed, that the Doctor is very free in his Parallels; and when either Church or State is to be represented by Comparisons, he is pleased to make use of the worst he can find. He says, The Church of *Corinth* was in the utmost of Perils; and then it was to his Purpose to make the Allusion, and bring the Church of *England* into the same Condition.

Here are many Particulars in this Passage, whereby the Church is said to be in sad Circumstances, and I cannot tell how to apply them according to the Doctor's Way of Interpretation; for he says, all these Enormities are practised, not only without Discouragement, but with Impunity; not by professed Enemies, but by False Brethren: So he plainly shows who he aims at, as the Authors of these Calamities. He excludes vicious Infidels, Blasphemers, and Hereticks, who are professed Enemies; and lays it upon False Brethren. And he explains what Sort of False Brethren he means; For who can prostitute Altars and Sacraments to Deists, Atheists, and Socinians; but some of his own Order? And who are to punish such Offences among the Clergy, but their Spiritual Superiors? And whether they are not Part of Her Majesty's Administration, I submit to your Lordships.

But, my Lords, supposing the Fact to be true, That there are Erroneous Doctrines published; to what End must the World be told in this manner that they are vented with Impunity, but to reflect on those who should punish them? And can that be done without a Prosecution? If the Doctor had produced any of his undeniable and ample Proofs of these Matters, (which he mentions in his Answer) before any Court that had a proper Connusance of them, and been denied Justice, he might have had more Reason for Complaint: But to blame his Superiors for not punishing what they might be ignorant of, and which he says he was not, (and for which he might have promoted a Prosecution) seems to retort the Guilt upon himself, which he would lay upon them.

My Lords, The Second Passage is in *Page* the 16th. He is talking of a Comprehension which was designed, not long since, to unite the Church and Dissenters; and complains of the Persons who were concerned in that Heinous Intention; and then he asserts, "That since this Model of an Universal Liberty and Coalition failed, and these False Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will more plausibly and slyly effect her Ruin. What could not be gained by Comprehension and Tole-

ration, must be brought about by Moderation and Occasional Conformity; that is, What they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pull'd down, it may be blown up; and no Matter, with these Men, how it be destroyed, so that it is destroyed." Now, my Lords, who were these False Brethren that were concerned in this Design of Comprehension, which failed, and who introduce worse Mischiefs? Do these Dangers proceed from Vice and Infidelity, from Blasphemy and Erroneous Doctrines? No, my Lords, these False Brethren are described in the *Page* before, under his Second General Head, to be in Church and State: Which must be Persons in Power and Authority; the Expression it self imports it; nor could they otherwise be capable of accomplishing that Design, of uniting the Dissenters and the Church: To which Design, and the Authors who intended it, he is pleased to give the most vile and scurrilous Names imaginable; and afterwards he lays to their Charge an Intention to blow up the Church by Moderation. And this, I suppose, is one of the Vices which the Doctor mentions in his Answer, as one Means of Danger to the Church. If Moderation be a Vice, I will do the Doctor the Justice to acquit him from the least Tincture of it, in any of his Works that I have ever met with.

My Lords, The Third Passage is in *Page* the 18th: He is continuing his Observations of the Danger from the same False Brethren in Church and State; and then his Words are, "Falseness always implies Treachery; and whether that is a Qualification for any one to be trusted, especially with the Guardianship of our Church or Crown, let our Governors consider." This, my Lords, must relate to Persons, who (as he would insinuate) are not fit to be trusted with the Guardianship of the Church or Crown: And whether this Reflection does not seem to aim higher than the Administration, I submit to your Lordships.

The next Passage is in *Page* the 20th: The Words are these; "And now are we under no Danger in these deplorable Circumstances? Must we lull our selves under this sad Repose, and in such a stupid Lethargick Security embrace our Ruin? When *Elisha*, the Great Prophet of God, was surrounded with an Host of Enemies that fought for his Life, his blind Servant beheld not the Peril his Matter was in, till his Eyes were open'd by a Miracle, and he found himself in the midst of Horses and Chariots of Fire. I pray God we be out of Danger; but we may remember, that the King's Person was voted to be so, at the same Time that his Murderers were conspiring his Death.

Now, my Lords, the Doctor, to excuse this Passage, says, the deplorable Circumstances we are in, proceeds from the Maturity of National Sins, &c. as in his Answer. But who are mention'd in his Sermon as the Occasion of the Maturity of National Sins but the Dissenters, who, he says, are plotting the Ruin of the Church, and False Brethren join with them? So that here neither is the Danger asserted from Vice and Infidelity, but as it is occasioned by the Dissention from the Church, which the Law has thought fit to apprehend as no Danger to the Church; and therefore it did not become him to assert the contrary. Then as to the Parallel of the Assembly who Voted King *Charles* the First out of Danger, and of the Members who made

the Vote about the Danger of the Church Four Years ago, he says, he meant no Reflection on any of the Members who passed that Vote, because he never mentioned that Vote; and as to the Vote about King *Charles*, others were conspiring his Ruin than those who voted him out of Danger; so while the Parliament voted the Church out of Danger, there were other Enemies conspiring her Ruin. If the Doctor intended no Reflection upon that Vote, Why was Voting in any Case mention'd? Can any one imagine that the Doctor did not know of that Vote, since the Danger of the Church is so much his Topick? Nor can I presume him ignorant of the Time when that Vote about King *Charles* was passed; which, as far as I can observe from the History of that Time, was in *November* 1648, that he was voted out of Danger; and when he was Tried and Beheaded, I need not mention to your Lordships: And whatever Alteration might be made in that Assembly after the Vote, and before his Death, was done by those Persons who conspired his Destruction, and who were Part of that Assembly who voted him out of Danger. So that it seems plain, that the Vote of Safety, and the Conspiracy of Ruin, came from most of the same Persons; and it does not seem very strange to suppose the Doctor intended his Allusion in the same manner.

And as to the Scripture he quotes to this Purpose, "That the blind Servant beheld not the Peril his Master *Elisba* was in, 'till his Eyes were opened by Miracle, and he found himself in the midst of Horses and Chariots of Fire." My Lords, these Horses and Chariots of Fire were not the Prophet's Enemies, but his Friends; nor was there any Danger to be feared from them; on the contrary, they were a Security from his Enemies; so that he plainly perverts the Sense of that Text, to make a stronger Impression, and more effectually to delude the People.

My Lords, The last Passage is in the last Page: He is still talking of the Danger of the Church, and quotes a Text as in the *Lamentations*, (viz.) "Tho' she lies bleeding of the Wounds she receiv'd in the House of her Friends." Indeed, my Lords, I can't find it there; therefore it seems to me to be a Lamentation of the Doctor's own making. Then he goes on, "Tho' the ways of *Sion* may mourn for a Time, and her Gates be desolate, her Priests sigh, and she in Bitterness, because her Adversaries are Chief, and her Enemies at present prosper; tho' among all her Lovers she has few to comfort her, and many of her Friends have dealt treacherously with her, and are become her Enemies." My Lords, I mention these Passages only to shew, that the Doctor, by the most Pathetick Expressions of his own, mixt with these Texts of Scripture, endeavours to represent the Church of *England* to be in the utmost Danger.

I shall trouble your Lordships no further with the Passages in this Sermon; but should not omit to take Notice, that there is a Suggestion in the Doctor's Answer, that the Vote Four Years ago did not concern him; but that it related only to them that then did assert the Church to be in Danger: If he had minded the Words of the Vote, he would have found there was no Pretence for that Objection; for it is, "Whoever shall go about to insinuate, that the Church is in Danger under her Majesty's Administration;" which must relate to any Time during the Continuance of her Majesty's Reign.

And now, my Lords, I beg Leave to observe some Circumstances attending this Offence, which

give it the highest Aggravation. That Memorial which was published some Years ago, and was the chief Occasion of the Vote in Parliament, was a Libel that reviled her Majesty and her Administration, as the Occasion of the Danger of the Church. The Author was pleased to conceal himself, and durst not avow his Doctrine; but the Book had the Fate it deserved: And from the Ashes of that Phoenix arose another Memorial, with many of the same virulent Expressions against Her Majesty's Administration, agreeing in the whole Scope of it, as to the same scandalous Purpose; but far exceeding it in Malice and Inveteracy.

And this new Memorialist has presumed to publish his Seditious Reflections in the most open manner imaginable; first at the Assizes at *Derby*, and afterwards in the great Church of this Metropolis; and has thought fit to Print and Disperse about Forty Thousand of them over the Kingdom. From whence could this extraordinary Zeal proceed? Was it to exhort Men to revere their Governors, and to submit to those in Authority over them? Was it intended to preserve Peace and Good-will amongst Men? To promote Charity, Brotherly Love and Affection? No, my Lords, there is plain Evidence to the contrary, *Ex ore suo judicabitur*. He tells you the Reason of his Topicks in that Place; he says, he intended "To open the Eyes of the deluded People in that great Metropolis; to set the Rich and Powerful Inhabitants right in their Notions of Government in Church and State." They were obliged to him for his pious Design, and for instilling those Doctrines, which, as your Lordships were told Yesterday, would make their Religion, Liberty, Property, and all that is dear and valuable, Precarious: He tells you further, "That our Constitution of Church and State is vigorously attack'd from without, and lazily defended from within; that there are Attempts upon the Friends of the Church, to shut their Eyes and Mouths, in order to Undermine and Destroy them; that he thinks the Pulpit a proper Place for Politicks; and that it is the Business of a Clergyman to sound a Trumpet in *Sion*, to cry aloud and spare not." And in his Preface to the *Derby* Sermon he explains himself still further upon this Topick, "That the Church is shamefully betrayed and run down; that there are some still who will defend it with their Lives and Fortunes." And states the Case as if there was an immediate Necessity to take up Arms for a Holy War upon this Occasion.

My Lords, This Crime is more heinous, for that there is the least Reason for these Seditious Murmurs, that has been in any Reign whatever. Is there any Invasion or Attempt upon the Liturgy, even the least Ceremony of the Church, or any Part of the Ecclesiastical Constitution? Are her Revenues impaired, or any of her Temporal Rights violated? No, my Lords; but our Royal Sovereign has distinguished Her Care for this Church in a more peculiar manner than any of her Predecessors; She has given from Her own Revenue to increase that of the Clergy, for their more creditable Support, and to enable them to Preach sound Doctrine for the Welfare of Her Subjects; nor is Her Majesty wanting to promote Religion, Piety and Virtue, by Her own Royal Example, the most effectual Encouragement. These are the true Basis of the Church, and the best Pillars to support it. And what Occasion was there for these Reflections on Her Majesty's Administration? Has not that venerable

Bench given the World abundant Proof of their Care and Vigilance to preserve that Church, of which they are the Guardians, by their Learning and unblameable Conduct; by their zealous and resolute Defence of her in the worst of Times, and against all her Enemies? It is very surprizing that a Gentleman, whose Education has been in the Fountain of Learning and Religion so many Years, (who cannot be presumed to err through Ignorance) that he should presume in his private Capacity to contradict the Sense of the whole Nation, and cast such Aspersions on his Superiors. To what End could he so zealously disperse his Notions, if not to animate a deluded People to the Execution of Seditious Designs.

It were to be wished, that a Government could be supported by Mildness and Clemency; but such is the State of depraved Nature, even these most Passive-Obedience Natures, that they are not contented to be only ungrateful for the Benefits they enjoy from the Church and State, but they must Rebel against Principle, and fly in the Face of that Government from which they receive their Support and Protection.

The Doctor cries aloud, and there are many others that spare not: Some have presumed to censure this very Proceeding before your Lordships, as a Persecution of the Church. And what must be the Consequence of Tolerating such bold daring Spirits to go on in their Seditious Practices!

If your Lordships do not vindicate your own Resolutions, and exert your Power and Authority to suppress that audacious and unparallel'd Insolence, that daily flies abroad from the Pulpit and the Press, (which, as the Doctor says truly, are become the Mints of Faction and Sedition) I may take Leave to say, there will be too much Reason for his Assertions of Danger both to Church and State: But the Commons are so well satisfy'd of your Lordships true Concern for the Preservation of our Constitution, that they cannot imagine you will suffer any Attempts that may be pernicious to the Welfare of the Government, to pass without condign Punishment; and therefore they entirely rely on your Lordships Wisdom and Justice.

Mr. Compton. **M**AY it please your Lordships, I am commanded by the Commons to assist in maintaining the Third Article of their Impeachment against Doctor *Henry Sacheverell*, which has been fully opened to your Lordships by the Learned Gentleman that spoke before me.

My Lords, The Commons think they have good Reason to assert, that Dr. *Sacheverell*, in his Sermon Preach'd at St. Paul's, doth falsely and maliciously contradict and arraign a Resolution of both Houses of Parliament, approv'd of by Her Majesty, and made publick by Her Royal Proclamation.

My Lords, Your Lordships cannot but have observ'd, that it has been one of the constant Artifices of the Enemies of the present happy Establishment, who very well know the just Value the People of this Nation have for the Establish'd Church, to suggest and insinuate, that this Church is in a Condition of great Peril and Adversity, in order to foment Animosities, and to cover Designs which they dare not publicly own. But how frequent soever this has been, I believe I may safely affirm, that this scandalous and seditious Assertion was never so boldly maintain'd, nor with such invidious and aggravating

Circumstances, as by the Criminal at your Lordships Bar.

The Learned Society, of which he is a Member, reap'd such signal, such immediate Advantages from the Revolution, that he could not be unmindful, he could not be ignorant of the extreme Danger from which our Laws and Liberties, our Church and Constitution were rescued by his late Majesty. But such is his Ingratitude to our Great Deliverer, such is his Inveteracy to the Revolution, that he makes that very Revolution the Period of Time from whence the Enemies of our Church first had Hopes to deliver her up to her worst Adversaries. Nor does his Malignity cease there, but he endeavours to persuade the People, that from the Revolution to the present Time, there has been a continued Series of Contrivances to ruin and destroy the Church: At the Revolution, by open Violence; but *Now*, that is, under Her Majesty's Administration, by *secret Treachery*; and since neither the late nor the present Reign can escape his Invectives, for what Person he reserves his Panegyrics, is submitted to your Lordships to determine.

My Lords, I would not take up any of your Lordships Time unnecessarily; but I must not conclude, without expressing the Indignation the Commons have at his traducing and vilifying the last Parliament, by that odious Parallel in the 21st Page of his Sermon preach'd at St. Paul's.

My Lords, The Parliament he thus endeavours to blacken, was opened with so full an Appearance in both Houses, that Her Majesty observ'd it with Satisfaction from the Throne; and at the same time Her Majesty with Grief observ'd the Malice of such Persons, who suggested the Church was in Danger; and desired the Assistance of Her Parliament to discountenance and defeat such Practices. And in Duty to Her Majesty, to secure the Quiet and Peace of the Kingdom, and to disappoint the Designs of the Enemies of our Church and Constitution, both Houses of Parliament came to the Resolution, set forth by the Commons in the Articles of the Impeachment which have been read to your Lordships. And the same Parliament proceeded in this and other Matters which were before them, with so much Vigor, as well as Prudence, that in less than six Weeks Her Majesty graciously took Notice, that their Proceedings had had a good Effect all over *Europe*. And at the Conclusion of the Session, Her Majesty, with great Goodness, declares how much she was pleased to observe their Unanimity and Zeal throughout the whole Session, against every thing that tended to Sedition. It was this Parliament that so cheerfully concurr'd with Her Majesty in promoting and compleating the Union of the Two Kingdoms. And it was the Gentlemen that compos'd this Parliament, join'd by the Representative of the other Part of the united Kingdom, who readily and unanimously assisted Her Majesty in disappointing the Attempt of the Pretender to Her Crown, whose chief Dependance was in the restless and arbitrary Principles of some of Her Majesty's Subjects, ill-affected to their Country.

And now, my Lords, is there any Ground to compare the dutiful Proceedings of such a Parliament, with what was done in those unhappy Times, with which he wou'd maliciously draw a Parallel? No, my Lords. And I may safely venture to say, that 'tis impossible to find the least Resemblance between Her Majesty's Glorious Reign, and that un-

fortunate Administration, except that there were then, as there are now, *Ministers of the Church, who by their Function, being Messengers of Peace, set up to be the Trumpeters of Sedition, and Incendiaries to Rebellion*. But, my Lords, the Commons hope, That the happy Period is now come, when even this Resemblance shall have its Determination; for they entirely rely on your Lordships Justice to inflict such an Exemplary Punishment on this Offender, as may deter others from endeavouring to distract the Kingdom with such groundless Distrusts and Jealousies for the future.

Lord Coningsby. **M**Y Lords, I am commanded by the Commons of Great-Britain to assist, and endeavour to make good, the important Charge they have Exhibited against the Criminal at the Bar: And because I am least able, amongst all the Gentlemen that have that Honour, out of Indulgence to me I am assigned to the Third Article, that wants least to be supported.

The Sermon Preached by the Doctor at St. Paul's, and which has been read to your Lordships, from the first Word in the Title Page, to the last Line in the Conclusion, is one false, malicious, and seditious Assertion, That the Church of England was under the last Reign, and is under the present, in the utmost Peril and Danger.

The Proclamation which your Lordships have heard mentioned, and which was designed by our Glorious Queen, from whose Speech it took its Rise, by your Lordships, and the Commons who concurr'd in it, to be a Warning to such Incendiaries, as the Criminal, not to trumpet amongst the People Suggestions so seditious, in order to cover Designs more dangerous, and which, God be praised, they are not yet strong enough, nor never I hope will be, Publickly to own; shews this Malignant Offender committed this Offence in Defiance of Her Majesty, your Lordships, and the Commons.

The Proofs, which almost every Gentleman has brought to the two preceding Articles; and those particular Instances that have been so fully open'd by these Gentlemen who have spoke before me to the present, shews that it would be vain in me, and mispending your Lordships Time, to pretend to enforce those Points, already so fully made good.

I shall therefore very shortly, tho' I hope very plainly, lay before your Lordship what are those pernicious Designs the Doctor intends to cover, and at last hopes to bring to pass, by his Preaching, Printing, and Publishing, not only round this Kingdom, but amongst his Friends on the other side of the Water, this seditious, I may say, rebellious Discourse, for which he stands at present Impeached by the Commons.

And as it has been shewn your Lordships, by the Gentlemen that made good the first Article, that the Doctor, by reflecting on the Necessary Means to bring about the Revolution, the Foundation on which our present happy Establishment is built; by asserting that Her Majesty ought to depend upon no other Title to the Crown but Her Hereditary one; design'd, by such destructive Positions, to bring back the Pretender, with Popery and French Tyranny attending him, to govern the State.

So it is as plain, from the whole Scope of his Sermon, that the Doctor, and all those in Combination with him, having nothing more at Heart than to destroy the present Church, as Establish'd by the wholesome Laws of this Land, and that because it's

most consonant in its Doctrine and Discipline to that of the Primitive Christians, of any since the Time of the Apostles; and consequently less agreeable with the flaming Opinions of such Firebrands, who know not of what Spirit they are of: And this in order to set up a Scheme of a Church, agreeable to the Tyrannical one they have projected for the State: A Church, the Doctor's I mean, though in Pretence Protestant, that would be ready soon to be turn'd into a Monster, by adding to it self a Popish Head.

A Church that will destroy all those that brought about, and have since supported the Happy Revolution.

A Church, which upon Anti-Christian Principles professes Burning for Conscience-sake; which the Doctor, like those wicked Men whose Mercies are Cruel, calls wholesome Severities.

A Church that will turn all the Blessings we enjoy under the present Administration, into all those Miseries we got rid of by the late Glorious Revolution.

I cannot doubt therefore but your Lordships will out of Duty to the best of Queens, and in Justice to your Lordships and the Commons, deter others from ever being guilty of the like Heinous Offence.

Mr. Dolben. **M**Y Lords, This Article of the Commons Impeachment contains one Criminal Position, That the Church of England is now in a Condition of great Peril and Danger under Her Majesty's Administration, aggravated by an odious Parallel that affords a pregnant Proof of the true Spirit and Designs of this bold Offender.

The Accusation has already been fully made out by plain and positive Words in his Sermon; from which, as well as from many other Passages, I shall beg leave to submit to your Lordships Judgment, whether that wicked Parallel may not justly be turn'd upon him, Whether there is not more than Suspicion that he, and all his Abettors, are conspiring the Ruin and Destruction of the Church, when under the Disguize of a False Zeal they prostitute her Sacred Name, to carry on dark and deep Designs, fatal both to Church and State.

I shall only briefly take Notice to your Lordships, that the Guilt of this Offence arises from a plain Contempt of Her Majesty's Proclamation, and of the Resolutions of both Houses of Parliament; moved by no Inducement, but an Eagerness and Industry not to let any Shadow or Colour escape, that may contribute to his Part in the grand Design, to be only effected by fomenting Divisions and Distractions amongst us.

But, my Lords, in order to unveil the Doctor's Pretences, and to take away his trivial Excuses, I beg leave to represent to your Lordships, that if the whole Legislature had not, from a full Conviction of the Church's Security and Safety, laid a severe Injunction against the publishing such a false and pernicious Suggestion, yet evident Truth ought to have taught him not to have transgress'd in so notorious a Manner.

My Lords, When it appears that the Church has the Sanction of so many and so good Laws to establish and defend it; when the Veneration and Devotion to it, of so great a Majority of the People, is so visibly fixt in their Hearts, that the bad Examples and provoking Behaviour of this False Brother, and of several others of the same Stamp, have

have not made the least Abatement, or Impression to its Disadvantage; when the Parliament on all Occasions appears so forward and unanimous in their Zeal and Affection for it; when 'tis recommended and illustrated by the Learning, Piety, Wisdom, Charity and Christian Moderation of so many of its chief Pastors; but above all, when 'tis under the Protection and Government of a Supreme Head, a true and constant Defender of its Faith and Discipline, who having already exposed Her Royal Person to Hardships and Dangers, to rescue it in a Time of its utmost Peril, does continue daily to manifest the same Devotion, Piety and tender Concern for it: Under this powerful Alliance for its Support, can ought but Malice and Envy at its Prosperity, can any one but an Incendiary or disguis'd Enemy insinuate, that the Church of England is not fenced and fortified with an impregnable Barrier against all Danger, from open Attacks or Violations?

'Tis true indeed, my Lords, that no human Care or Policy can prevent the Attempts and secret Conspiracies of intestine Traytors. Vipers in the Bosom may sting, tho' the Body be covered with the strongest Armour. All that can be done is, to be watchful to discover and expose the Hypocrite, to detect and punish his Crimes. The Commons, on this Occasion, are here exerting their part of this Duty, fully assured of Success from your Lordships equal Zeal and Justice.

My Lords, You have now brought to your Bar a Clergyman, bound, by the strongest Tyes and Duty of his Function, to instruct and propagate the Necessary Means for the Peoples true Happiness in this World, as well as the next; yet your Lordships will find him proved to be a Trumpeter Itinerant of Sedition and Rebellion, first at Derby, then in London; an Agent detached from that dark Cabal, whose Emissaries appear in all Shapes, and almost in all Places; an Asserter of such pestilential and unparallel'd Doctrines, as at once overthrow the whole Constitution both of Church and State. He may perhaps urge a Precedent, in which it has been pleaded, and from the Pulpit, that an urgent Necessity can justify the Breach of Laws; and from others, that in particular Cases they may be dispensed with; but this Gentleman must be allowed the Infamy, to have stretch'd and improv'd those pernicious Tenents to the exalted height of making all our Laws, Liberties, Religion, and Lives, held only at the precarious Pleasure of any bold Invader; for nothing can be a plainer Exposition or Consequence, when 'tis taught, that no Oppression, no Violation can justify an Opposition to it.

My Lords, The Commons have brought this Offender before you, with a View, not only to detect and punish his Offence, but to obtain an Occasion in the most Publick and Authentick manner to avow the Principles, and justify the Means, upon which the present Government and the Protestant Succession are founded and Established; and this more out of a generous Concern for Posterity, than for our own present Security. My Lords, we are so happy as to have a Sovereign on the Throne, whose Goodness, Justice and Piety leaves no room for the least Fear or Jealousy; but we hope the Record of this Proceeding will remain a lasting Monument, to deter a Successor, that may inherit her Crowns, but not her Virtues, from attempting to invade the Laws, or the Peoples Rights; and if not, that it will be a noble Precedent to excite our Posterity to wrestle and tug for Liberty as we have

done. My Lords, I doubt not but Her Majesty will with the greatest Satisfaction, see the Government thus put upon a right and equal Foot, since thereby those Blessings will be secured to future Ages, which her happy Reign has Planted amongst us, since thereby she will entail a lasting Felicity on her People, and prevent those real Dangers both to Church and State which at this Time are so falsely insinuated. But my Lords, if this should not now be effectually obtain'd, and by such wholesome Severities as the Doctor applauds and recommends, give me leave to conclude, with a juster Complaine than that in his Answer, That hard is the Fate of that People who after having been twenty Years in War, in Conjunction with so many great Allies, with the Expence of so much Blood and Treasure, contending only again Tyranny and Oppression, and which we may justly hope is at last subdued, shall then see all Europe enjoy the Fruits and Benefits of our Labours; and at the same time, tho' Her Majesty's well chosen General shall at last bring home Peace, as he has so often the Laurels of Victory, to lay with humble Duty at Her Royal Feet, yet we, only we, must be rendred incapable of the common Blessing, *betrayed at home to a perpetual Condition of Bondage, by such false Brethren as are at your Lordships Bar.*

Then the Lord Haversham moved to Adjourn to their House above; and being returned, and seated as before, Proclamation for Silence was made by the Serjeant at Arms.

Lord Chancellor. Mr. Dolben, the Lords have taken Notice that at the Conclusion of what you spoke, you us'd this Expression, * *as are at your Lordships Bar*; which Words are so general, that their Lordships are of an Opinion that they want an Explanation.

Mr. Dolben. My Lords, those Words had relation only to the Prisoner at the Bar.

Serjeant Parker. **M**Y Lords, Your Lordships have heard the three first Articles of this Charge largely spoken to; it is my Duty, in Obedience to the Command I have been Honoured with by the Commons, to make good the Charges in the Fourth. I am sensible how unequal I am to such a Work, both from my want of Capacity, and my present Indisposition; but however, in such Manner as I can, I shall endeavour it.

This Article sets forth, That *He the said Henry Sacheverell, in his said Sermon and Books, does falsely and maliciously Suggest, that Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution; and that there are Men of Characters and Stations both in Church and State, who are false Brethren, and do themselves weaken, undermine and betray, and do encourage and put it in the Power of others, who are professed Enemies, to overturn and destroy the Constitution and Establishment: And chargeth Her Majesty, and those in Authority under Her, with a general Male-Administration; and as a publick Incendiary, he persuades Her Majesty's Subjects to keep up a Distinction of Factions and Parties, instills*

* Exception had been taken, that the Word are might carry the Reflection to the Council and Solicitor assigned by the Lords to assist Dr. Sacheverell, who were also at the Bar.

groundless Jealousies, and sements Destructive Divisions among 'em, and excites and stirs 'em up to Arms and Violence: And, that his said Malicious and Seditious Suggestions may make the stronger Impressions upon the Minds of Her Majesty's Subjects, be the said Henry Sacheverell does wickedly wrest and pervert divers Texts and Passages of Holy Scripture.

This Article in general, is a Charge of Sedition under several Aggravations, and made good by almost every part of the Sermon and Dedications, read before your Lordships in Evidence.

The avow'd Design of the Sermon, is to represent the extreme Perils and Distresses of the Church and Constitution from False Brethren, that are in the Administration, and countenanc'd by it.

He represents the Church in the utmost Extremity, those Fences broken down, without which she is naked and unguarded, her Altars and Sacraments prostituted, her self deserted, betray'd, undermin'd, and persecuted with open Violence, bleeding of her Wounds, her Enemies openly calling for her Destruction.

The Nation, sunk into the lowest degree of Corruption, swarming and over-run with Atheists, Deists, Socinians, Hypocrites, Villains, Rebels, Traytors, Correspondents with the Devil, nay, with Men that are themselves the worst of Demons.

The Government, so far from applying a Remedy, that all this is done Openly, with Impunity, without Discouragement: Nay, the Persons from whom the Mischiefs arise, are suffer'd to form themselves into Seminaries, to Propagate Atheism and other Hellish Principles; are let into the Administration, they are in Places, Places are given 'em as the Reward of betraying their Parties, they engross all Places, they are Persons of Characters and Stations, nay, they are Chief.

Nor is this done in any Representation to those, that by making new Laws, or putting in Execution the old, might regularly cure these Mischiefs; but in a popular Harangue from the Pulpit: Not in terms of Lamentation, not as grounds of Humiliation, or in a Language that might become one that thought the only Arms of the Church to be Prayers and Tears; but with all Malice, Bitterness, Reviling, Insolence, endeavouring to raise in his Auditors the Passions himself puts on, and pointing out (as far as he dares) to Arms and Violence for a Cure, and not so much as offering any other.

These are the Colours in which he Paints our Condition, and thus he chuses to shew the Zeal and Duty he professes to the Best of Queens.

But since he pretends in great Measure to deny or evade the Charge, it may not be amiss to look a little more particularly into his Sermon, and take a view of the Scheme of it, and of several Passages therein.

The Crime he professes to show the Mischiefs of in this Sermon, is false Brotherhood: The Method he proposes to Treat it in is,

1. To describe the Crime, and to show who are False Brethren, and upon what Accounts; and he considers it both with respect to the Church and to the State.

2. To show the Dangers: And

3. The Guilt and Folly of this Sin. And

4. (That it may appear that all the Crimes and all the Treacheries he mentions are not mere Suppositions, but Realities, at this time,) He undertakes, as a Consequence of all, to shew what mighty

Reason we have at all times, more especially AT PRESENT, to stick to the Principles of our Church and Constitution, and to beware of and mark all those false Brethren who desert or betray 'em.

I believe the first Clause of this Article will so clearly be prov'd from the Passages that more directly concern the second and the third, that I desire, for saving your Lordships Time, to begin with those two Clauses, and then to return to the first afterwards.

I begin therefore with the second Clause, That the said Henry Sacheverell, in his Sermons and Books, doth falsely and maliciously Suggest, that there are Men of Characters and Stations in Church and State who are False Brethren, and do themselves weaken, undermine and betray, and do encourage and put it into the Power of others who are professed Enemies, to overthrow and destroy the Constitution and Establishment.

To make this out, I beg leave to observe, that in entering upon his second Head, that is, to show the great Peril and Mischiefs of these False Brethren both in Church and State, he asserts, pag. 15. That they weaken, undermine and betray in themselves, and encourage and put it in the Power of our profess'd Enemies to overturn and destroy the Constitution and Establishment of both. This therefore runs thro' his whole Discourse; and, being affirm'd of False Brethren in general, must be applicable to every sort of false Brother. If then there be any Persons of Characters and Stations whom he represents as False Brothers, then he has, in the place mentioned, affirm'd of THEM, and undertaken to prove, that THEY weaken, undermine and betray, and put it into the Power of others to overturn and destroy the Constitution and Establishment.

And as to that, he comes under his third Head, pag. 21. to show the Malignity and Guilt of this Sin, in respect of the World, and begins it thus, (pag. 21, 22.) "What a vast Scandal and Offence must it be, to all Persons of Piety and Integrity, to see Men of Characters and Stations thus shift and prevaricate with their Principles, and starting from their Religion, upon any occasion of Difficulty or Tryal, and like the Disciples flying from and forsaking our Saviour, when his Life lay at stake; to see Mens Opinions sit as loose almost as their Garments, to be put on or off for Convenience; what can unwary Persons conclude from this Tergiversation and Hypocrisy, but that all Religion is State-craft and Imposture? That all Godliness is Gain, and that the Doctrines of the Church lie not so much in her Articles, as her Honours and Revenues?"

This is a full Charge of False Brotherhood upon those Persons of Characters and Stations, and exemplifying in them the Malignity of that Crime, which is the Subject of his Discourse: The Consequence is plain, that he here charges 'em with False Brotherhood, and having before asserted, that all such False Brothers weaken, undermine and betray, and put it into the Power of others to overturn and destroy the Constitution and Establishment; he has not only suggested but maintain'd, that there are Persons of Characters and Stations that weaken, undermine and betray, and put it into the Power of others to destroy the Constitution and Establishment.

In his Answer, put in before your Lordships to the Articles of Impeachment, he would divide the Charge in this Clause; and (1.) as to the suggesting that there are such Persons who are False Brethren;

thren: he says, That if he had said *there are Persons of Characters and Stations* that are False Brethren, not restraining it to the *highest*, it would not be either false, malicious, or highly Criminal.

(2.) As to the weakening, undermining, and betraying in themselves, and putting it into the Power of professed Enemies to overturn and destroy the Constitution, he says, he has not suggested *that* of Persons of Characters and Stations; but the mention of those *Persons*, and the Expression of *weakening and betraying in themselves, and enabling others to destroy the Constitution*, are twelve Pages asunder.

(3.) He mentions some, which he thinks do weaken and betray the Constitution, but has not said any of *them* are Men of Characters and Stations.

In answer to these Glosses, I might say, that if this were meant, *not* of the *highest* Characters and Stations, nay though it were *true* too, the affirming this of them would be Criminal, and in the manner he does it, *highly* so. All subordinate Magistrates, of whatever Station, may be regularly complained of, and call'd to account; but the Meanest are not to be traduced and libell'd, nor the Government upon their Accounts.

But this I offer. The Words, if not *restrained* to those of *highest* Characters and Stations, neither are they *restrain'd* to the *lowest*; and, in Truth, strike *all*, and so were *intended*, as other Parts show.

It is no Excuse, if he scandalizes Persons of the *highest* Characters and Stations, that he does not scandalize them *only*.

It is no Excuse, when he speaks opprobriously, in *general* Terms, of Men of Characters and Stations, without distinguishing to his *Auditory*, to distinguish upon his *Defence*, and pretend he meant only some few of the *meaner* Sort; that is, that when he was speaking of the Mischief and Malignity of this Crime, and showing how *Great* it was, his Assertion concerning Men of Characters and Stations *in general*, was meant *only* of those, in whom the Mischief and Malignity is *least*.

No, it is a general Arraignment of the Government throughout, and as such he must Answer for it. And to put this out of Doubt, he has told us, Page 26, in Scripture Words, That *the Church's Adversaries are chief*.

For what he talks of several *Senses*, in which he says he takes False Brethren in the Sermon, 'tis not at all material in *what Sense* he charges those Persons with False Brotherhood, if *in Consequence thereof* he charges them with *betraying* the Church, and empowering its Enemies to destroy it. The charging them with being False Brethren, had been a *Fault*, as *that* is a Term of Reproach, which, with him, carries just as much Malignity as he pleases, even to *something analogous to the Sin against the Holy Ghost*, and rendring them the *worst of Demons*. But the *Stress* of this Accusation, is the *Treachery* they are charged with as *False Brethren*.

2. In the next Place, therefore, he denies that Part of the Charge; and for this *shrewd Reason*, that the Two Expressions are Twelve Pages asunder: An Answer I admire to see put in upon so solemn an Occasion! As though the False Brotherhood he shows the *Danger of*, and the False Brotherhood he shows the *Malignity of*, had no Relation to one another, because Twelve Pages asunder.

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3. He mentions *some* that he affirms to be *Weakeners and Betrayers*, &c. but says he does not suggest *those* to be *Men of Characters and Stations*. All the Inference to be drawn from that, is, either that there are, besides *those*, some *other* Weakners and Betrayers, that are Men of Characters and Stations; or that *some* of *those* are Men of Characters and Stations, though he have not said so; which is no Excuse for him. For though he have not describ'd *every Sort* of Weakner or Betrayers; and though he have not told us *which Sort* of Weakner or Betrayers he ranks the Men of Characters and Stations under; yet he has in general charg'd Men of Characters and Stations with False Brotherhood, and as False Brethren to be Weakners and Betrayers, &c.

IN the next Place, I would lay before your Lordships the Proof of the Third Clause of this Article, which says, *That Dr. Sacheverell charges Her Majesty, and those in Authority under Her, with a general Male-Administration*. Every Part of the Sermon makes out this, representing the whole Nation in the utmost Disorder and Confusion, and the Magistrates, instead of *applying* a Remedy, rather *increasing* the Distemper.

Page the 14th is a very home and a direct Charge upon the Government. It comes under that Part of the Sermon, where he is describing False Brethren with Relation to the State, And when he has declared very largely what they *do*, and what they *hold*; he goes then to what they are *suffer'd to do*: He says, "These False Brethren in our Government do not singly, in private, spread their Poison; but (what is lamentable to be spoken) are *suffer'd* to combine into *Bodies and Seminaries*, wherein *Atheism, Deism, Trutheism, Socinianism*, with all the Hellish Principles of *Fanaticism, Regicide* and *Anarchy*, are *openly profess'd* and taught, to corrupt and debauch the Youth of the Nation in all Parts of it, down to Posterity, to the present *Reproach* and future *Extirpation* of our *Laws and Religion*."

The *suffering* these Things is a direct Charge upon the *Administration*; and he in Effect *declares* it so, when he concludes, that this is to the *Reproach of our Laws and Religion*; that is, of those that do not *mend*, or do not *execute* the Law: And he brings it home to the first Clause, when he declares the Consequence to be the *Extirpation of our Laws and Religion*.

The Passage I before read, Page 22. concerning Persons of Characters and Stations, likewise proves this: For, what can be a greater Charge upon the Administration, than to accuse the Ministry of putting into *publick Stations False Brethren*, that *betray* the Church, and *empower* others to *destroy* it? That the Expression there is so general, as to reach *all* in publick Stations, I have before observ'd; and that it is so *meant*, may be thus made plain. In the same Passage he is apprehensive that those Persons Behaviour should give Occasion for believing *Religion to be but State-Craft*; that is, a Stratagem us'd by the State to serve its own Ends: "That the *Doctrines of the Church lie not so much in its Articles, as its Honours and Revenues*"; which Honours and most tempting Revenues are in the Hands of the Crown, and those that are byass'd by them, must be byass'd by the Crown and the Administration.

Page 23. "A False Brother is represented as *relinquishing his old Friends and Principles*, and *betraying*"

"traying his own Party for the little sordid Lucre of Place or Preferment." Here is a plain Representation of a Villain, selling his Conscience; the Price is Place or Preferment, the Buyer that pays him that Price, must have the Disposal of those Places and Preferments; so that, those False Brethren are not only suffer'd, but made such by the Administration.

That the False Brethren, which he mentions, as put into Places, are put in by our Governors, he plainly suggests, Page 18. when he bids the Governors consider whether they are fit to be entrusted, especially with the Guardianship of our Church and Crown: For to what Purpose is that qualified Admonition, if the Governors put such Persons into no Places at all? Admonitions to Temporal Governors, with respect to meer Matters of Government, tend only to affront 'em, if present, but can have no other Effect, when they are absent.

Let the Preface to the Derby Sermon, without any Observation or Comment upon it, conclude this Head: "Now when the Principles and Interests of our Church and Constitution are so shamefully betray'd and run down, it can be no little Comfort to all those, who wish their Welfare and Security, to see, that notwithstanding the secret Malice and open Violence they are Persecuted with, there are still to be found such worthy Patrons of both, who dare own and defend them as well against the rude and presumptuous Insults of the one Side, as the base undermining Treachery of the other." For I omit to repeat what has been observ'd upon the Third Article, or upon the former Clause spoke to by my self.

I RETURN now to the first Clause of this Article, which runs thus: "That he suggests that Her Majesty's Administration, both in Church and State, tends to the Destruction of the Constitution."

This is made out from what has been said on the other Two; for, if Men of Characters and Stations in Church and State, that betray our Constitution, and encourage and enable others to destroy it, come into their Places through the Administration; if the general Male-Administration of Her Majesty and those in Authority under Her, consist in Part, in Preferring and Encouraging, at least not Discouraging those Persons that betray and destroy the Constitution; the necessary Consequence is, that all those fatal Mischiefs complain'd of arise from the Administration, which therefore plainly tends to the Destruction of the Constitution.

Besides, having involv'd all those, in this Description of False Brotherhood, who defend Toleration; and having declar'd the Church's Adversaries Chief: Considering who is Chief, and what Promises have been made for Continuance of the Toleration; his Insolence ought to be treated rather with Indignation and Contempt, and a just Punishment, than vouchsaf'd an Answer.

As to the next Clause; "And as a Publick Incendiary, he persuades Her Majesty's Subjects to keep up a Distinction of Factions and Parties, instills groundless Jealousies, and foment destructive Divisions among them, and excites and stirs them up to Arms and Violence"; 'tis sufficient in short to say this:

What he advances against the Foundation of the present Establishment, and against the Administration, is as an Incendiary.

That he persuades Men to keep up Distinctions, and instills groundless Fears and Jealousies among them, is plain, from the Drift of all he says; from his Language of Foraking old Friends and Principles, Betraying their Party, which he makes to be the great Crime of those in Places, and goes to shew the Folly of it, pag. 23.

And though he pretends, in his Answer, that he invites Schismatics into the Church, it is only on those Terms, that they comply with his Notions to a Tittle: He makes no Allowance for Human Frailty, for Prejudice or Ignorance, and in some Instances expressly disallows 'em; and those who are so weak as to fancy the Church in any Particular not to be in the right, though in all others they would sincerely and constantly conform to it, even they must continue Schismatics still: If, with these mistaken Opinions, they Communicate with the Church, they are False Brethren, and as such to be abhorr'd: And yet if they do not, they are not to be Tolerated.

Nay, whoever has so much Compassion for such a Case, as to think it might be Tolerated, is a false Brother too, as defending Toleration, which is giving up one Point of the Discipline of the Church, and encouraging Schism.

For, though he seems in Words to approve of an Indulgence to Consciences truly scrupulous, yet in Reality he approves none; since he admits not any one to have a Conscience truly scrupulous that differs from him, but all such are False Brethren, Villains, and to be stigmatiz'd with all the other Names of Reproach he is so liberal of.

As to Fears and Jealousies, those are naturally produc'd by these Representations of the Dangers the Church and Constitution are in; and as those Dangers are merely imaginary, those Fears and Jealousies are groundless.

As to his inciting Her Majesty's Subjects to Arms and Violence, that he does it, is most manifest.

The spreading among the People such hideous Representations of an evil Government, such Outcries of the Church and true Religion being undermin'd, betray'd and expos'd by those in the Administration, naturally tend to Rebellion. And therefore at Common-Law, as we find it express'd in our Law-Books, to * bear the People in Hand (I give the very Words) that the King's Government was erroneous, heretical or unjust, whereby the manner of the Government was Arraign'd or Impeach'd, was High Treason.

The Passion, Heat and Violence in this Sermon preach'd in publick, could be intended for nothing else but to raise the Passions of those that heard it.

The People are call'd upon to put on Resolution and Courage; they are assur'd the Cause at present requires the bravest Resolutions; he exhorts them to contend earnestly for the Faith; having elsewhere shewn against whom, against False Brethren, against the Enemies he had describ'd, such as have Places and Preferments, are Men of Characters and Stations; such as are Chief and at present prosper, and denounces Woe against the fearful Heart and faint Hands.

The Expression of standing by Her Majesty with Lives and Fortunes, and of Sacrificing them in Her Service, being now become a familiar Phrase, for assisting Her in War, those Expressions are affected.

* In William's Case in 2 Rolls Reports, pag. 89, 90.

In the Dedication of the *Derby Sermon* he extols those, who are for maintaining what he calls *forfeaken Truth*, with their *Lives and Fortunes*.

And in the Sermon at *St. Paul's*, pag. 9, 10. the Readiness to *Sacrifice Lives and Estates* in Vindication of the Church, is represented as so *Noble* a Resolution, that in Comparison to that, Obedience to her Precepts, that is, a *good Life*, is but as the *one thing necessary* in the Gospel, only an extraordinary pitch of Perfection, only as the selling all his Goods, and giving the Price to the Poor, was to an exact Observance of the whole Moral Law.

But in the Dedication of the *St. Paul's Sermon* he seems to *avow* this Design; he pretends not his Sermon to be *Christianity*, but *owns* it to be *Politics*, not *preaching Peace*, but *sounding a Trumpet*. For he states the Objection, *that the Pulpit is not a Place for Politicks, and that 'tis the Business of a Clergyman to preach Peace, and not to sound a Trumpet*. What's his Answer? Does he deny the Objection to extend to himself? No, he admits it, and justifies it by Pretence of a Divine Command, and treats the Maxim laid down in the Objection with Scorn, as contrary to the express Word of God.

In his Answer to this last Part of this Clause, he seems first to represent it as *inconsistent* with his Position of the utter Illegality of Resistance to the Supreme Power on any Pretence whatsoever, and with his *Professions* of Loyalty to Her Majesty; and then attempts to *confute it* (as his Expression is) by a Passage in the *Derby Sermon*.

As for the latter, I think it rather a Justification of the Charge; for the Passage asserts, *That every Man has, by God and Nature, a Commission to ENGAGE the Enemies of the Constitution*; that is, (as he has painted 'em) the Queen and Her Ministry.

The other is founded on a Supposition that he is never inconsistent, a very civil Compliment to himself, but as it happens, very false.

But to consider this Part of the Answer a little more particularly. As he has here manag'd the Matter, I own there is in this Particular no Inconsistency. We say, *he has stirr'd up Her Majesty's Subjects to Arms and Violence*: He says, *he has declar'd all Resistance unlawful*; yes ——— all Resistance to the Supreme Power; but he has never declar'd Resistance to Her Majesty unlawful. He maintains the utter Illegality of Resistance on any Pretence whatsoever to the *Supreme Power*, but nowhere says, that in the Supreme Power he *includes Her Majesty*, or that it is *illegal to Resist Her*. The utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever, Her Majesty's professed Enemies will come into, and labour for; meaning only to condemn the Resistance that was made against King James the Second, which brought about the Revolution, and any Resistance that *shall be made against the Pretender*, whenever he comes; and Dr. Sacheverell goes no further.

Those Enemies of Her Majesty, have ever since the Revolution, made it their Business, to blacken it, to raise Scruples in People's Minds about it, and to make the Administration odious: The same Methods are advanc'd by Dr. Sacheverell into the Pulpit; and if those Methods are to appear in the greatest Assemblies, on the most solemn Occasions; if the Revolution must be *attack'd* on a Day when Her Majesty has appointed it to be *Commemorated*; if Her Majesty's Reign is to be arraign'd in Publick, and an Appeal made to the Passions of the

People; let it be attended with what *Professions* it will, it equally strikes at Her Majesty and the Establishment; and the Commons could not but think themselves oblig'd, in Duty and Gratitude to Her Majesty, and in Justice to the whole Nation, to call him that us'd 'em thus, to a publick Account: And let this Gentleman commend his own Loyalty, as much as he pleases, 'tis plain that in this Sermon he is doing the very same *Work*, and in the very same *Method*, with those that *disown Allegiance* to Her Majesty.

My Lords, Permit me to observe a little his Management of this Text: Supposing the Doctor to be *right* as to his *Doctrine*, and that he believes himself to be so; and that he is *sincere* in his *Professions* of Loyalty to the Queen. For I am not now going to dispute or limit the Doctrine of Non-Resistance, which was the Business of those Gentlemen that spoke to the first Article.

By *False Brethren* in the Text of this Sermon were meant, those who *pretended* to be Christians, but really *were not*. Dr. Sacheverell seems so to understand it; and therefore to declare those to be *False Brethren in the CHURCH*, that pretend to be of the Communion of the Church of England, but are not; that live in its Communion, but own not its Doctrines and Authority. By like Analogy, *False Brethren in the STATE* are such, that perhaps swallow the Oaths to the Queen; or if they go not so far, yet take the Benefit of Her Laws, Her Courts, Her Protection, yet deny Her Allegiance, and are for another Prince. A just and well-managed Reproof of these had been a noble Topick for one that pretends all this Zeal for the Queen. But they are wholly pass'd by, they are not to be blam'd, there's no Danger from *them* either to Church or State. Who then, according to the Doctor, are *False Brethren in the State*? (He was hard put to it to substitute some others in their Place.) They must be only those who *one Way or other* oppose the Doctrine of Non-Resistance upon any Pretence whatsoever, whom he describes in several invidious Instances, and in all possible Terms of Reproach. This seems strange.

1. This being, as he states it, an Error in a Doctrine of the Church, the holding it is only one Branch, one Instance of *False Brotherhood in the CHURCH*; and therefore not so proper to stand for a distinct Head of *False Brethren in the STATE*.

2. The bare denying or not believing the Doctrine of Non-Resistance, supposing it true, does not denominate a Man a *False Brother in the STATE*.

Suppose then a Man own the Queen's Title, be satisfied with Her Administration, in Love with Her Reign, convinc'd that she has principally at Heart his Interest, and the true Interest of all Her Subjects; believes that upon the Continuance and Quiet of Her Government depends the Preservation of our Liberties, and those of all Europe, and accordingly obeys and serves Her with Sincerity and Zeal, and thinks all Resistance to Her utterly unlawful; is this Man a *False Brother in State*, a Rebel, a Traitor, because he thinks Resistance was lawful at the Revolution, and may be so whenever the same Breaches of the Constitution are repeated?

Is he a Rebel to *THIS QUEEN*, because there possibly may happen a Case, wherein he may resist another Prince, if that Prince should do what he's sure SHE never will?

At most, that Mistake only *exposes* such a Person more easily to be misled: He may be in more Danger

Danger of becoming a Rebel to a Prince, he shall be dissatisfied with, but *is not* therefore a Rebel to a Queen he loves.

How then comes this single Instance of False Brotherhood in State to be insisted on, which at most shows, not that the Person *is*, but only that perhaps he *may become* a False Brother; and those Instances pass'd over, where Persons *plainly are* False Brethren in State?

Further, This Doctrine being, as the Doctor says, a *fundamental Doctrine in State*, urg'd with *Warmth and Vehemence*, one would expect some *Inference* to be drawn from it: One would expect that he, who had so great a Zeal as the Doctor professes for Her Majesty, and had so triumphantly establish'd absolute Non-Resistance, would have fallen in so far with the *Business of the Day*, and have made so much use of his *Favourite Doctrine*, as to *dissuade* from Rebellion; and when he had taken Notice of these false Steps in the Administration, that he should have persuaded the People to make proper Applications for Redress, but to be careful not to let the *Faults of the Ministry* cause 'em to forget their *Duty to the Queen*. But there's not the least Exhortation to that purpose.

All this seems strange, taking it for granted that the Doctor is sincerely zealous for the Queen.

Give me leave therefore to make another Supposition: Suppose this Zeal is but *pretended* to the Queen, but *really* for another, and that he thinks the other his rightful Prince; your Lordships will find, all consistent, every Expression, and the whole Procedure, exactly just.

In Consequence of that *concealed Sentiment*, tho' he dare not directly commend those who own the Pretender, yet neither will he reprove them as *False Brethren in the State*; they being, according to this Opinion, the only Persons who perform their Duty in it. Therefore the *true* Notion of False Brotherhood must be dropt; and instead of it, they that hold Resistance lawful in Cases of *Extremity*, and particularly in that of the *Revolution*, are to be fallen upon; for they are really Rebels and Traytors in his Sense, because they directly overthrow all the Title which the Disaffected here would fancy for the Pretender.

As long as the *Revolution* stands unimpeach'd, *that Person* can have no Title, let his Pretence be as favourable as he pleases: If the *Revolution* stand, the *Laws* which are founded upon it stand too, and those Laws concerning the *Right and Succession* of the Crown, are absolutely binding; and therefore whatever *Right* he *could wish* People to believe him to have, all *that Right*, all *that Pretence* of Right, *is* as effectually barr'd, as all the Right which those who stand in the Course of Descent before the Princess *Sophia* of *Hanover* would have had but for the Act of Settlement, *will be* bound, whenever God, for our Sins, shall take from us Her Majesty, without Issue.

This Principle therefore *is fundamental* to the Pretender; and, taking the Matter thus, accounts for all that Rage against those that dispute this Doctrine, *as extended* to the Case of the *Revolution*, for his so often repeating this to be the *Basis*, the *fundamental Principle* of the Constitution.

This shows clearly, why neither in the *Sermon*, nor *Defence*, he has once maintain'd the Illegality of *Resistance to Her Majesty*.

This shows, why this *fundamental Principle* is totally forgot to be *press'd* by him upon the People; no *Inference* from it, that those Mismanage-

ments ought not to make them forget their Duty to the Queen; not one *Persuasive* to Obedience to Her; not one *Admonition* against the Consequence of False Brotherhood in the State, that it was apt to make People rebel; *no cooling* the People, with telling 'em That Prayers and Tears were the only Arms of the Church; that they ought to do their own Duty, submit wholly to the Queen, and *those in Authority* under Her, and leave the rest to God. These were the natural Consequences of this Doctrine of Non-Resistance, so violently contended for, but not one of them pursu'd or mention'd.

And perhaps *this* made him chuse to describe the Case of our Church, P. 26, in the Words of the Prophet in the *Lamentations*, which are in *ch. i. ver. 4, 5.* (tho' not truly cited in his printed Sermons;) *The Ways of Sion mourn for a time, and her Gates are desolate, her Priests sigh, and she in Bitterness, because her Adversaries are chief, and her Enemies AT PRESENT prosper.*

My Lords, That Book was wrote just after *Nebuchadnezzar's* taking *Jerusalem*; and the Condition of the *Jews then*, which is thought proper by him to give an Image of *ours now*, was this:

They were enslav'd, their King in a Foreign Country, stripp'd of his Crown, and the Prince then Reigning was an Oppressor, that had no other Title, but Possession and Force.

Thus has the Doctor, out of his *tender Concern for Her Majesty's Person and Government*, thought fit to express his Sentiments.

THE last Part of this Charge is that of *Wresting and Perverting divers Texts and Passages of Holy Scripture*. This may not perhaps seem so proper for me to speak to, but being part of my Province, I shall apply to it without any Apology.

My Lords, As wicked and corrupt as Doctor *Sacheverell* would represent this Nation, he very well knew, that the Holy Scriptures are had in that just Veneration and Regard, that whatever is cited thence has a particular Influence upon the Minds of the People; whatever *Story* can be brought thence as a Parallel, whatever *Expressions* taken thence are made use of, to paint the Beauty, the Deformity, the Dangers of the Preacher's Subject, give a strong *Impression*, fire the Zeal of the People, alarm their *Passions*, and make 'em fancy they hear the *Voice of God*, when they hear *His Words* repeated.

This the Doctor *knew*, and your Lordships will see what *use* he makes of it.

When he speaks of the *Perils of the Church*, which Her Majesty, your Lordships, and the Commons, could not see, the *Scripture* is to be search'd for a *Story*, that may be brought to match the Case, and to give an opportunity, under other Names, to speak a *bold Falshood* concerning all *these*.

It happens, there is *one remarkable Story* in the Holy Scripture about a *Mistake of Danger*, but unfortunately it *suits not* the Case, as told *there*, however it *gives a Handle*, and he can make from it a *Story to his Purpose*.

Accordingly he says, *pag. 21.* "When *Elisha* the great Prophet of God was surrounded with an Host of Enemies that fought for his Life, his Blind Servant beheld not the Peril his Master was in, 'till his Eyes were opened by a Miracle, and he found himself in the midst of Horses and Chariots of Fire.

This Story thus told is extremely happy for him; for hence the People are to understand him to be the *Inspired Prophet*; and the *Queen, Lords, and Commons*, blind at least, tho' not his Servants.

But the Story in Holy Writ is directly contrary; and it was only the *blind Servant* fancied they were in Danger, when really they were not.

The Story is in 2 Kings, Chap. vi. and, as told there, is thus: The King of Syria, at War with Israel, being inform'd, that what he said in his Bed-Chamber was told to the King of Israel by Elisha the Prophet, resolved to seize Elisha; and hearing he was at Dothan, Ver. 14. (I now give your Lordships the very Words) *He sent thither Horses and Chariots, and a great Host, and they came by Night, and compass'd the City about.* Ver. 15. *And when the Servant of the Man of God was risen early, and gone forth, behold an Host compass'd the City both with Horses and Chariots: And his Servant said unto him, Alas, my Master, how shall we do?* [This is the *blind Servant*, that the Doctor says, saw no Danger.] Ver. 16. *And he answer'd, Fear not, for they that be with us are more than they that be with them.* Ver. 17. *And Elisha pray'd, and said, Lord, I pray thee open his Eyes, that he may see.* And the Lord open'd the Eyes of the young Man, and he saw; and behold the Mountain was full of Horses and Chariots of Fire. The Doctor's Exposition is, That this Heavenly Guard, these Horses and Chariots of Fire, which were there only to defend the Prophet, were to destroy him; and from them arises the Danger, which the Doctor fancies the miraculous Opening the Servant's Eyes disclos'd to him.

I think I may give the Doctor his Choice, what this proceeded from, whether from his *not knowing* this Passage, but taking it upon *Hearsay*, or his Resolution *knowingly* to pervert it.

The next Passage is, Pag. 26. the Words of St. Paul, Eph. vi. with which, after a Discourse where all the social and good-natur'd Virtues are taught in the highest Perfection; where he had recommended, Chap. 4. Ver. 2. *Lowliness, Meekness, Long-suffering, forbearing one another in Love; endeavouring to keep the Unity of the Spirit in the Bond of Peace: Where he had commanded, v. 31. that all Bitterness, and Wrath, and Anger, and Clamour, and Evil-speaking be put away, with all Malice: And Ver. 32. that those to whom he writes, should be tender-hearted, forgiving one another, even as God for Christ's Sake had forgiven them: Ver. 37. That had forbidden giving place to the Devil, but not to any other.* The Apostle concludes, that in this *Spiritual Warfare*, and that they might be able to withstand the Wiles of the Devil, they should put on the whole Armour of God; because they were stled not against Flesh and Blood; but against Principalities, against Powers, against the Rulers of the Darkeness of this World, against Spiritual Wickedness in High Places.

This Gentleman, after a Discourse full of Bitterness, Reviling, Wrath, Clamour and Evil-speaking, forbearing no Man in Love, nor forgiving any that differs from him one Tittle; and having shown other Devils incarnate, (Pag. 23, 25.) the worst of Demons, other Powers, others in Places and Stations, against whom his Auditors were to contend earnestly; repeats those Words, not in the *Spiritual Sense* the Apostle us'd 'em, but (as the whole Subject and Drift of his Discourse shows) as an odious Description of the Government, in Scripture

Words: And whether he meant the *Armour* in the Apostle's *Spiritual Sense*, any more than any of the other Words there, or whether he intended it a *Literal Earthly Armour*, which the Cause would make the *Armour of God*, I leave to your Lordships to determine. However, 'tis no Defence for him, what he says, That the *Arms of Resistance to Princes, is no Part of the Spiritual Armour recommended by St. Paul*; because he has plainly departed from St. Paul's *Spiritual Meaning*.

And that this is his *Meaning*, to paint here our present Circumstances in Scripture Language, is further plain from what follows; That the Church is bleeding of the Wounds which she has received in the House of her Friends; borrow'd from Zech. 13. Ver. 6. That the Ways of Sion may mourn for a Time, and her Gates be desolate; tho' her Priests sigh, and she in Bitterness, because her Adversaries are Chief, and her Enemies AT PRESENT prosper. I have before observ'd, from what Circumstance of the Jews this Image is borrow'd; and your Lordships will take notice, what Changes in the Expressions he has made, to render them more *Emphatical*.

My Lords, There can be no greater Perverting of Scripture, than to make use of the Language of the Holy Ghost, to revile our Neighbours, to scandalize the Government, and to raise Wrath, Sedition, and Rebellion in the People.

The last I shall mention, is that in the Dedication of the St. Paul's Sermon; where proposing it as an Objection, that it is the Business of a Clergyman to preach Peace, and not to sound a Trumpet in Sion; he affirms that to be expressly contrary to the Command of God; and to prove that Command, cites those Words, Cry aloud, and spare not, which are in Isa. 58. 1.

My Lords, This I apprehend to be not only Perverting, but that to Men of Understanding it will seem Ridiculing Scripture. To infer, that because they were to speak loud, they were to sound a Trumpet, seems ridiculous.

Or if he had cited the rest of the Words, Cry aloud, and spare not; lift up thy Voice like a Trumpet, and shew my People their Transgression, and the House of Jacob their Sins; he had indeed found the Word Trumpet, but little to his Purpose: For because the Prophet was to imitate a Trumpet in the Loudness, that the People might hear; was he to imitate it too, as it is an Instrument of War, that they might prepare themselves for Battel? Because he was loudly to tell 'em their own Sins, that they might repent; was he likewise to trumpet to 'em the Faults of the Government, that they might take up Arms, and redress 'em by Rebellion?

If he find any other Place in the Old Testament, to command the Priests to found a Trumpet, I shall refer him to the 10th of Exodus, where he'll find the Priests were literally to found the Silver Trumpets in the Army, in the Field; but he'll not find, they ever sounded it from the Pulpit.

My Lords, I shall offer nothing further to your Lordships on this Head, tho' there is Room for it.

But there are Two Things in the Answer to this Article, I cannot omit taking Notice of.

The first is in his Answer to the first Part of this Article, that charges him with suggesting, That Her Majesty's Administration, in Church and State, tends to the Destruction of the Constitution; where he takes great Comfort, that in this Article he is charg'd not with Suggesting and Maintaining, but Suggest-

Suggesting only; and hopes that bare Suggestions, or Insinuations, shall not involve an *English Subject* in the Guilt and Punishment of High Crimes and Misdemeanors. I don't envy him his *Comfort*, nor shall labour to take it from him, tho' it seems *strangely founded*: For tho' it is expressly said, that he charges *Her Majesty with a General Male-Administration*; tho' the Accusation be *positive*, that as a *Publick Incendiary*, he persuades the Subjects to keep up Parties, foments Divisions amongst them, and stirs them up to Arms and Violence, and perverts divers Texts of Scripture; notwithstanding all these positive Charges, yet the first Expression happening to be only, Suggest, and not, Maintain, it seems, he is very happy in it.

But, my Lords, this is an extraordinary Step; that let a Man cast never so many Scandals and Reproaches on the Government, tho' in never so publick a Manner, yet if it be done by way of Suggestion and Insinuation, and the Charges not expressly maintain'd and avow'd, there is no Crime in it, or not any high one. That is, in short, Sedition, and Exposing the Government, is lawful; only the Manner is to be taken care of. Don't do it directly and avowedly, for that would be dangerous; but do it by Suggestions that every body will understand, and which will have their full Effect, and all's safe: For those that come to judge you, are not to understand you, tho' every body else does.

My Lords, Here are Two Extraordinary Claims of Right before your Lordships, and of great Consequence, if you allow 'em; one, that the Clergy may sound a Trumpet in *Sion*, in a *Military Sense*, and are not to be restrain'd to the Preaching of Peace; the other, that every *Englishman* is at Liberty to asperse the Government at Pleasure, by whatever Suggestions and Insinuations he pleases; and these made by a warm Advocate for *Passive Obedience*, the most peaceful and submissive Doctrine in the World.

My Lords, In the Case *de Libellis Famosis*, in the Fifth Report, there was a Prosecution for a Libel, not indeed set forth at large in the printed Book, (as was not fit) but thus far particularly taken notice of, that it traduc'd and scandaliz'd one Person dead, and him an Archbishop too, by Descriptions and Circumlocutions, and not in Express Terms; and no body ever doubted but it was Criminal. But tho' there should be a greater Strictness observed in respect of private Persons, yet when the Queen and Government are concern'd, when *Allies* at Stake, a Man ought to guard himself, and his Expressions, not to touch in the least there: And every Man that's truly Loyal, and desires the Peace of his Country, will do it. And knavish Designers against the Publick Peace, are not to be suffer'd to go on in overthrowing it, because they have contriv'd crafty Ways of doing it.

I mention this only to oppose the present Claim; tho' in our Case, the Reflections are plain and full.

The other is his Lamentation at the Close, which I cannot but take notice of, as an insolent Reflection on the Honour and Justice of the House of Commons. "Hard is the Lot of the Ministers of the Gospel, if when they cite the Word of God in their General Exhortations to Piety and Virtue, or in the Reproofs of Mens Transgressions, or when they are lamenting the Difficulties and Conflicts, with which the Church of Christ, while Militant here on Earth, must always strug-

gle, the several Texts and Passages by them cited, shall be said to have been by them meant of particular Persons and Things, and shall be consider'd in the most Criminal Sense, and be made (by such Construction) one Ground of an Impeachment for High Crimes and Misdemeanors.

My Lords, This was put into the Answer, not by way of Defence, but to make that Use which has been made of it, to print it before it came to be consider'd, and lay hold of that as an Handle, as has been done, to say Dr. Sacheverell has been prosecuted only for doing his Duty as a Clergyman, which is a scandalous Reflection.

Is the Story of *Elisha*, as told by him, an honest Citation of a Passage of Scripture?

Are *Enemies* that are Chief, and the Adversaries that at present prosper, no particular Persons now in being; tho' to the Scripture Expression he has added the Words, *At Present*, for fear the Application should not be close enough?

Is this Sermon an Exhortation to Piety and Virtue? Or is it not manifestly a Trumpet to Rebellion? Is it a shewing the Audience their own Faults, that they may cure 'em, and amend their Lives? Or is it not plainly the Exposing the Faults of others, the Faults of their Governors, that they may bate the Persons?

Even the Doctrine of *Passive Obedience*, is it here so warmly contended for, that People may be dutiful and submissive; or that they may be enraged against those that deny it? In short, Is there one *Christian Virtue* taught in it? Except your Lordships will honour with that Name the sticking, not to the Church and Christianity, but (according to the Doctor's own Expression in another Place) to a Party; and *Courage*, not only a *Passive*, (which he no where recommends) but an *Active* against the Government, to which the whole Discourse in-cites.

My Lords, The Commons have the greatest and justest Veneration for the Clergy of the Church of England, who are Glorious thro' the whole Christian World for their Preaching and Writing, for their Steadiness to the Protestant Religion, when it was in the utmost Danger. They look upon the Order as a Body of Men, that are the Great Instruments, thro' whose Assistance, the Divine Providence conveys inestimable Advantages to us. They look upon the Church Establish'd here, as the best and surest Bulwark against Popery; and that therefore all Respect and Encouragement is due to the Clergy: And it is with Regret and Trouble, that they find themselves oblig'd to bring before your Lordships in this manner one of that Order.

But when we consider Dr. Sacheverell, stripping himself of all the becoming Qualities proper for his Order, nay, of all that peaceful and charitable Temper which the Christian Religion requires of all its Professors, deserting the Example of our Lord and Master, and of his Holy Apostles, and with Rancour and Uncharitableness branding all that differ from him, (tho' thro' Ignorance) with the Titles of Hypocrites, Rebels, Traytors, Devils; reviling them, exposing them, conducting 'em to Hell, and leaving 'em there; treating every Man that falls in his way, worse than Michael the Arch-Angel us'd the Devil; coming himself more near the Character in *St. Jude*, (Part of which he would apply to others) despising Dominion, speaking evil of Dignities; like raging Waves of the Sea, fuming out his own Shame; forgetting (when his

Text and his Doctrine led to it) to recommend the Peace of his Country, in a Time when all Europe is in War, and nothing can preserve us from falling into the Hands of the Grand Enemy and Oppressor, but our Unanimity under Her Majesty: Then labouring to sap the Establishment, and railing and declaiming against the Government; crying, To Arms, and blowing a Trumpet in Sion, to engage his Country in Seditions and Tumults, and overthrow the Best Constitution, and betray the Best Queen that ever made a People happy; and this with Scripture in his Mouth!

The Commons look'd upon him by this Behaviour, to have sever'd himself from all the rest of the Clergy, and thought it their Duty to bring to Justice such a Criminal; and are in no Fear of being thought Discouragers of those who preach Virtue and Piety, because they, in the Supreme Court of Justice, prosecute him that preaches Sedition and Rebellion; or to have any Design to lessen the Respect and Honour that's due to the Clergy, by bringing him to Punishment that Disgraces the Order.

Mr. Secretary Boyle. **M**Y Lords, I am commanded by the House of Commons to have a Share in Maintaining the Articles of Impeachment against Doctor Sacheverell; and it falls to my Lot to speak to this Fourth Article, which contains no less a Charge than Endeavouring to Excite and Stir up Her Majesty's Subjects to Arms and Violence.

The Ground of this Accusation, is the Dedication of a Sermon Preach'd at Derby at the last Assizes; and another Sermon Preach'd at St. Paul's the Fifth of November last, a Day set apart to commemorate the Preservation of the King and Parliament from the Gunpowder-Treason; and to give Thanks to Almighty God for the Deliverance wrought by his late Majesty, in rescuing these Kingdoms from Poverty and Arbitrary Power.

The whole Nation doth now enjoy the Benefit of that Happy Revolution, and all the good Subjects of Her Majesty are thankful for it. One would have thought, that on such a Day, that Matter should not have been so handled as only to be expos'd; and I am perswaded, that whoever goes about to asperse and vilify the late Revolution, would rejoice to see another.

I shall not trespass upon your Lordship's Patience so far, as to repeat the many Passages in the Sermon that make good our Accusation, they having been so fully laid before your Lordships already by a Gentleman that spoke before: And indeed there is the less Reason to descend into Particulars, since the whole Scope and Design of the Sermon is to instill groundless Jealousies into the Minds of People, and to cast the most virulent Reflections imaginable upon Her Majesty's Administration.

One might suppose, from the Doctor's Discourse, that the Church of England was now suffering under the most severe Persecution; that the Laws were no longer in Force; and that the whole Government was unhinged. Aspersions more violent could not be used, if we lived in the Reign of the worst of Heathen Emperors, while we are Partakers of so many Blessings under the Government of the best of Queens.

The Prisoner at the Bar lays some Stress upon the Word Suggest, as expressed in the Fourth Article, which has already receiv'd an Answer; and would insinuate that there are no plain Words in the Sermon to support the Charge. But if that Objection

were true, which we are far from admitting, and the Consequences drawn from it were allowed, I must say, Hard would be the Case of the Government, if Men might make the most odious Suggestions against it, and cast Reflections with Impunity, under the Shelter of some doubtful Expressions, and equivocal Sentences, at the same time that the Sense and Malice of the Reflections are plain to be understood, and can hardly be mistaken.

He doth indeed affect in his Answer, and in one Part of his Sermon, to profess great Duty to Her Majesty; but let those Expressions be compared with the Calumnies that are heaped upon her Administration, and I conceive they will not mitigate his Crime, and will avail him no more than the Pretence that he makes to be for Liberty of Conscience, when he condemns the Toleration. I believe these Excuses will equally weigh with your Lordships, and his Sincerity in both will equally appear.

My Lords, It is no new Thing among those who design to stir up Sedition, to bestow great Encomiums on the Person of the Prince; it has been a common Practice, and the same Method was pursu'd in the late unhappy Times. The Incendiaries of those Days pretended that the Protestant Religion was in Danger under that Government, as the Enemies of our Constitution cry the Church is in Danger under this.

But, my Lords, every thing is in Danger from such seditious Discourses. What a Scene of Distraction and Wickedness is here display'd to the Understandings of the People, to excite and inflame them to Sedition and Rebellion? Who can fit still, if they are perswaded that the Altars and Sacraments of our Church are prostituted to Hypocrites, Deists, Socinians and Atheists; and this done with Impunity, and without Discouragement? What can be more provoking to all good Christians and good Subjects, than to be told that People are suffer'd to combine into Bodies and Seminaries, wherein Atheism, Deism, Trutheism, Socinianism, with all the Hellish Principles of Fanaticism, Regicide, and Anarchy, are openly professed and taught.

No Man can think he is long to enjoy his Religion, Liberties or Property, if he can be made to believe that the Foundations of the Church are undermin'd, and the Government endanger'd, by filling it with its profess'd Enemies. What is the Meaning of all this, but only to make out, that Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution? And what must be the Consequence of such an Opinion instill'd into the Minds of the People, but black and melancholy Thoughts, seditious Practices, and at last open Force and Violence?

The Priests must cry aloud and spare not; they must blow the Trumpet in Sion; and we are told there are those that have Lives and Fortunes to maintain such Truths as Doctor Sacheverell has laid down. What those Truths are, may be seen thro' the whole Course of the Sermon; they are such, my Lords, as we apprehend do not at all tend to the strengthening the present Government, tho' they may be serviceable towards setting up another.

This is not the Spirit of the Gospel, nor agreeable to the Principles of the Church of England; and we submit it to your Lordships Judgment, whether this Sermon is not Seditious, and whether the Prisoner at the Bar is not guilty of High Crimes and Misdemeanors.

Mr. Chancellor of the Exchequer. MY Lords, I am commanded by the Commons of Great-Britain to bear my Part in the Management of the Impeachment against Doctor Henry Sacheverell, and particularly on this Article. My Lords, I believe, after what you have heard already, you will think there is little Need for me to say any thing on this Head; yet I shall take the Liberty to mention a few Particulars.

I cannot but take Notice, that in a Sermon Preach'd on a Day appointed to commemorate the Blessings we enjoy by the late happy Revolution, there is not one particular Clause to show forth those Blessings, or the Mischiefs that were then likely to come upon us. There is a little, indeed, upon the Gunpowder-Treason; but upon the Revolution there is nothing, nor doth he take Notice of the Dangers we were in before it, in order to raise the Devotion of the People, and their Thanks to God for their Deliverance. But all the Tenor of his Discourse is to show the Male-Administration of the Government, and the Dangers that have been coming upon the Church ever since the Revolution; so that it is plain, that he had no Thoughts of the Blessings of that Deliverance, nor any Dislike to the Conduct of those Times.

My Lords, This Sermon was Preach'd in a Place well chosen to attempt Mischief in. He well knew that if he could raise an evil Spirit in this great City, it would do more Mischief than in another Place where he had often attempted it: But, God be thanked, he was disappointed; and he own'd himself in another Place, that he did not expect the Thanks of the Court of Aldermen for it.

I shall take Notice of his Dedication, where he carries on the same Design, and owns it on Second Thoughts. He's not only warm in Preaching the Sermon; but in his Dedication he shows with what Spirit he compos'd it: He says, *That if honest Gentlemen will sit still, and give up their Cause for want of Courage, or a just Sense of the dangerous Attempts of our Enemies, without the Spirit of Prophecy we may foretell what will become of our Constitution, when it is so vigorously attack'd from without, and so lazily defended from within.*

My Lords, I shall not explain the Meaning of those Words, *Sitting still, and Want of Courage*; but I cannot but take Notice of these Words, *The vigorous Attack from without, and the lazy Defence from within.* I would desire to know who the Doctor takes to be the Defender of the Faith; and who under that Defender is to protect the Church? It must necessarily be meant as a Reflection on Her Majesty, and upon those that under Her Authority are to take Care of the Church. The next Passage is a plain Confession of his Seditious Intentions. He tells us his Business was not to preach Peace, but to sound the Trumpet. If a Minister will declare it, not to be his Duty to preach Peace, your Lordships will easily judge what his Intentions were.

I know it is the Business of those that are Professors to this Gentleman, to give out that we design to narrow our Obedience to Her Majesty. But, my Lords, we are far from it; and own the greatest Duty and Submission to our Sovereign: But we cannot bear, that a Reflection should be cast upon the Resistance that was us'd at the Revolution; and we hope your Lordships will never admit a Question to be rais'd of the Legality of it.

My Lords, The Acts of Settlement of the Crown depend upon that Legality: If that be illegal, the

others in Consequence are void; and tho' Her Majesty has an Hereditary Right to the Crown, yet I take those Acts to be Her great Security; and I can make no Question, but that if the Foundations of those Acts were shaken, the Doctor would soon find another Hereditary Right to resort to.

My Lords, The Toleration is certainly grounded upon the best Principles, upon a Principle of Religion and a Principle of Policy. I think every Body will allow, that nothing can establish Peace in a Kingdom so well, as the granting Ease and Quiet to Mens Consciences. If they pay due Submission to the Government, they ought not to be persecuted for their Religion: It is for Her Majesty's Interest and Honour. For how can Her Majesty be the Head of the Protestant Interest abroad, if Protestants are not protected at home?

It was the Observation of the Lord Clarendon, in his History, that some Eminent Clergymen press'd King Charles the First to make Distinctions among Persons; and that by their Advice, his Ambassador in France was order'd not to go to the Hugonot Churches there, as he us'd to do. He lays it as an Imputation on those that gave the Advice; and makes this Remark, That it was with a Design of an Union with the Church of Rome; which prov'd of very ill Consequence to his Affairs at that Time.

My Lords, We take it, that it is contrary to the Duty of any private Man to find Fault with a Law in Being, or to declaim against the Reasonableness of the same; it is raising in the People an ill Opinion of the Lawgivers, and the Administration.

My Lords, There are some People, and I wish their Numbers do not increase, who will not allow the Church to be out of Danger, whilst the Civil Magistrate has the Government of the Church. These appear publicly, and in Print; they cancel the Queen's Supremacy, deny the Authority of the Laws, and erect a Church Independent on the Civil Government. Of this Church I take the Doctor to be, and very properly for his Purpose; for here he may thunder out his Bulls and Anathemas without Controul: Here is a Field for him to open his Commission in, where he may sound his Trumpet, and not preach Peace.

But, my Lords, the Commons can never admit the Church, as Established by Law, to be in any Danger during Her Majesty's Administration; it being guarded by Her Majesty's Piety and Care of it; by the Reverend Bishops, who are so diligent and watchful in their Functions; and which will always have the utmost Assistance of the Commons and your Lordships, to support and maintain. As for their Independent Church, I hope it will ever be in Danger; and cannot but think that wholesome Severities were very proper to be apply'd to the Broachers of such Seditious Doctrines; they are Popish Principles, and if they should obtain here, would certainly bring in Popery along with them.

My Lords, I cannot conclude, without taking Notice of a very unjust Reflection made upon the Commons in the Doctor's Answer, wherein he charges them with Designing to restrain the Ministers of the Gospel from doing their Duty, in recommending Piety and Vertue to their Auditors. These are Doctrines so proper to come from the Pulpit, that those that recommend them, will always meet with the Countenance and Encouragement of the House of Commons. But when a Clergyman acts contrary to his Function, and instead of reproofing Vice and Immorality, takes upon him to reproach the Government; when instead

of Preaching Peace, and Charity, and other Moral Vertues, he takes upon him to raise Jealousies, foment Divisions, and stir up Sedition, 'tis high time for the Justice of the Nation to put a Stop to it: As such a Person, we charge Doctor *Sacheverell*, and think we have made good our Charge, and cannot doubt your Lordships Justice upon the Offender.

And then the Lords Adjourned to their House above.

Thursday, March 2. The Fourth Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner before-mention'd, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your Evidence.

Mr. Lechmere. MY Lords, Your Lordships adjourned Yesterday, when the Commons were proceeding on their Fourth Article, a Share of which Service was appointed to me: The Proofs, we insist on, in Maintenance of this Part of our Charge, have been laid before you with great Exactness; and all the Enforcements they can well receive, have been already offer'd to you, by those Gentlemen, that have gone before me; so that I find my self acquitted from giving your Lordships much Trouble upon it.

The Charges contain'd in the precedent Articles, are particular and distinct; Of so high a Nature in themselves, and of such eminent Consequence to Her Majesty and Her Government, that we have held our selves obliged, to treat each of them, with all imaginable Clearness and Solemnity; and this, my Lords, from that true Zeal and necessary Concern, with which the Commons, upon this great Occasion, are so justly inspired, for the Honour of Her Majesty, and the Prosperity of Her Kingdoms.

The Subject of this Article is laid down in General Positions, some of which are the Result and Consequence of the former Articles; and this will make it necessary to remind your Lordships of the Passages produced in support of them: The Application of them, to the several Branches of this Charge, is easy and obvious: The further Passages, that were Yesterday pointed out to you, are many in number, and the Assertions positive, scarce liable to any Constructions more innocent in themselves, or more favourable for the Prisoner, than what hath been put upon them: But tho' the more flagrant Parts of the Prisoner's Discourses have been distinguish'd to you, your Lordships can't fail of discerning that implacable Enmity that runs through the whole: How little will your Lordships find in it of the Spirit of the Gospel, of the Temper of a Christian, or a good Subject, much less of a Messenger of Peace? No, my

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Lords, when the Heart is poisoned, the Corruption will be diffused throughout; when Principles are delivered from the Pulpit, that strike at the Root of the present Government, and our future Establishment, and are taught as Fundamental Rules both of Law and Conscience; what kind of Proofs, what Exhortations are to be expected from such a Preacher? Surely, such only, as you have heard from this Man, such only, as may create universal Dissatisfaction, will disquiet the Minds, and tend to pervert the Obedience of the Subjects; such only, as shall be most likely to cherish and cultivate those Seeds of Sedition, which, when sufficiently Propagated, and brought up to their full Growth, can terminate in nothing less than a Total Destruction.

My Lords,

I am now to acquaint you, That the Commons have gone through their Charge, wherein they have been heard by you with great Candour and Patience: And that imperfect View, which was the best I was able to give you, in opening the Charge, has been amply supply'd by the great Sufficiency of what has followed: And from thence, I think, I have good Grounds to say to your Lordships, that this Impeachment of the Commons in every part of it, is substantially and effectually maintain'd.

And now, my Lords, craving leave of the Doctor to borrow a Phrase which stands at the Head of the last Paragraph of his Sermon, *What is the Result* of this Proceeding hitherto? In opening the Charge, we considered him in the Condition of a Person accus'd; but the Proofs having been produced, and the Evidence being unquestionable, even from his own Mouth, and by the Endeavours of other Gentlemen, to whose Provinces the several Tasks have fallen, the false Colours of his Discourse being taken off, and his Scheme reduced to its true Consistency, give me leave to represent him to your Lordship in a true Light, and in his proper Colours.

Your Lordships now see this Gentleman, under the Reign of the greatest and best of Princes, that ever wore a Crown, whose Title to the Throne stands upon a more solid and indisputable Foundation than that of any Prince upon Earth, guarded and defended by the best Laws in the World, and the entire Affection of all Her true Subjects, and which none can draw in question with any other Design than to weaken its Support:

You see him, under an Establishment and Constitution, excellently contrived and adapted to answer all the good Ends of Government, and which has withstood the open Assaults of Arbitrary Princes, and the more crafty Attempts of Papal Encroachments; and which, since the true Religion was Established among us, has been preserved in despite of the dangerous Endeavours of Papists, by dividing Protestants, to make way for its Destruction: A Constitution, which happily recovered its self at the Restoration, from the Confusions and Disorders which the horrid and detestable Proceedings of Faction and Usurpation had thrown it into, and which after many Convulsions and Struggles, was providentially saved at the late happy Revolution; and by the many good Laws pass'd since that time, stands now upon a firmer Foundation: Together with the most comfortable prospect of Security to all Posterity, by the Settlement of the Crown in the Protestant Line:

Your Lordships have found this Person, at a Time when the Church of *England* as by Law Etablised is in perfect Prosperity and Safety at Home, and in higher Reputation abroad, than in any Age that has gone before it; At a time when the Nation enjoys Peace and Tranquillity, and all the good Effects of a prudent and successful Administration, demonstrated by the Harmony and Unanimous Endeavours of all Her Majesty's true Subjects to support it,

In the most solemn and publick Manner, leveling the most virulent Discourse against Her Majesty's Title to the Crown, and against our present Establishment, and calculated to favour the Pretension of another.

Your Lordships find in it the same Principles reviv'd and avow'd in the same dangerous Extent by him, as in a late Reign by the profess'd Instruments of Popery and Arbitrary Power, and apply'd in Condemnation of the Glorious Work of the late Happy Revolution, which delivered us from them.

Your Lordships have found him Arraigning the Honour of Her Majesty and Her Parliament, aspersing Her Administration both in Church and State, and with all imaginable Ardour and Vehemence stirring up Sedition, and exhorting to Rebellion; and that in the Name of Almighty God, as a Person commissioned from Heaven to that End, and in the most prophane and prostitute Manner abusing and wresting Scripture to those Impious Purposes.

'Tis on those Grounds, that the Commons have charg'd the Crimes to have been committed by him with an Intent to undermine Her Majesty's Government, and to stir up Arms and Violence: And do your Lordships want further Evidence of this? Let us remind you of the Rebellion that has been rais'd, and that High-Treason that was committed, the last Night, by those Persons who abet the Prisoner!

I can't aggravate the Offence; your Lordships will duly consider the Height and Quality of it, you will think of a Satisfaction suitable to that, and to the just Expectation of the Commons.

My Lords,

The Nature and Length of this Proceeding having occasion'd many Interruptions, we are yet assur'd, that no Misconstruction will be permitted by your Lordships, of what may have fall'n from any of us. We likewise take Notice to your Lordships, that the Commons have very readily acquiesc'd in your Appointment of Council to assist the Prisoner. Your Lordships informed us in the beginning of the Cause, that you did this in great Benignity to him, in assigning him those Council which he himself had ask'd, and doubtless such as are according to his own Heart's Desire: And the Commons are assur'd, that those Gentlemen will understand that Regard which is due to the Nature of this Cause, and to the Dignity of a Proceeding wherein the Commons of *Great Britain* appear as Prosecutors.

The Commons conceive, they have Reason to take great Satisfaction from this Proceeding, whereby they have the Opportunity, in the most solemn Manner, before the most August Judicature in the World, to assert the Freedom and Excellency of our Government, and the Justice of the present Establishment: This single Consideration shews your Lordships of what Malignity the Prisoner is capable, who has thus set himself to disorder

and destroy so happy and so beautiful a Constitution.

We desire to put your Lordships in mind of those Felicities, which in our Opinions, accompany this Prosecution; when we see so many of your Lordships the Judges of this Great Cause, who had so great a Share in that Deliverance which we are now called upon to vindicate; so many others of your Lordships, the Sons of those Fathers, who joined in it; and who have the same Blood still running in your Lordships Veins. And when we consider that firm and steady Zeal which every one of your Lordships have shewn in Support of the present Settlement, what Doubt can we entertain of your most impartial Justice?

We further observe it, as the great Security of our Impeachment, That no Endeavours can prevail to prevent your Judgment upon it, nor any Means succeed to defeat its Effects.

And on t'other Hand, we have before our Eyes the many good Consequences, which that Part which the Commons have taken on themselves, will certainly produce; that Strength and Vigor 'twill add to the great Affairs of the Kingdom, and of all *Europe*, at this Critical Juncture, when the World shall see that the Commons of *Great-Britain*, who have been so unanimous in Defence and Support of the Common Cause of Peace and Liberty Abroad, are thus zealous to find out and extirpate that Malignant Humour, which alone can endanger it at Home; that whilst the Common Oppressor feels the Effects of Her Majesty's Arms, the intestine Enemies of the Nation, and of Her Government, (in the Instance of the Prisoner) may see and consider the Force and Weight of the highest Resentment of the Commons.

Those good Effects will receive yet greater Enforcements from your Lordships Judgment; which, when it becomes Publick, will be an effectual Confutation, or an unanswerable Treatise against the pestilent Doctrines advanced by the Prisoner.

The Firmness of your Proceedings will give the same Steadiness and Vigor to all other Parts of the Administration, which will henceforward strive to imitate your Lordships in so great an Example; and 'twill strike due Terror on those Minds, in which the same destructive Errors have taken Root.

And, my Lords, What Comfort and Peace must it bring to all Her Majesty's faithful Subjects, to see Her Majesty's undoubted Title, the Wisdom of Her Administration, and the Protestant Succession, so effectually supported by your Lordships Judgment?

My Lords, We have thought it necessary, in Discharge of the great Trust reposed in us by the Commons, to go thorough the whole Charge together, that your Lordships might have it entire. I am now only to add, That they do reserve to themselves the Liberty of replying to what shall be offered on behalf of the Prisoner, and of every other Legal Advantage that shall arise to them in the Progress of their Impeachment.

Lord Chancellor. Gentlemen of the House of Commons, Have you gone through the Charge?

Mr. Lechmere. My Lords, we have.

Lord Chancellor. Then you that are appointed Council for Doctor *Sacheverell*, may proceed to his Defence.

Sir Simon Harcourt. My Lords, There having been already three whole Days spent by the Gentlemen of the House of Commons in Maintenance of their

their Charge; and this Day being so far spent, I am bound in Duty humbly to represent to your Lordships, that it will be impossible for us to go through the very first Article, so as to finish in any reasonable Time. My Lords, We humbly expect your Lordships Commands.

Lords. Go on, go on.

Sir Simon Harcourt. My Lords, We must receive your Lordships Commands. We think it of great Importance to go through the first Article at once, if your Lordships please to give us Leave.

Then the Lords Adjourned to their House above.

Friday, March 3. The Fifth Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner before-mention'd, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save Thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Council for the Prisoner, may proceed to his Defence.

Sir Simon Harcourt. MAY it please your Lordships, I am Council for Doctor *Sacheverell*, who stands Impeached in the Name of all the Commons of *Great-Britain* of High Crimes and Misdemeanors. The Crimes suppos'd to have been committed by him are contain'd in Four Articles. I beg Leave to postpone the Three last, without mentioning any thing of them, 'till we have all concluded what we have to offer and lay before your Lordships, as to the several Charges contain'd in the First; and endeavour'd to satisfy your Lordships, That notwithstanding what has been objected by the Gentlemen of the House of Commons against the Doctor, in Maintenance of that Article, he is an innocent Man. The First Article contains Three distinct Charges; we shall proceed on them as they lie in Order. The First of them is, "That he suggests and maintains, that the Necessary Means us'd to bring about the late Happy Revolution were odious and unjustifiable." Your Lordships have been inform'd, that by this Expression of, *The Necessary Means*, mention'd in the First Article, the Gentlemen of the House of Commons intend his late Majesty's Glorious Enterprize for Delivering this Kingdom from Popery and Arbitrary Power, and the Subjects of this Realm well affected to their Country, joining with, and assisting him in that Enterprize. In a shorter Description, it has been explain'd, that these *Necessary Means* were the Subjects Resistance to their Unfortunate Prince then upon the Throne. Of this Resistance the Doctor has made no Mention in his Sermon. He has, indeed, affirm'd the utter Illegality of Resistance on any Pretence whatsoever to the Supreme Power; but it can't be pretended, there was any such Resistance us'd at the Revolution. The Supreme Power in this Kingdom is the Le-

gislative Power; and the Revolution took effect by the Lords and Commons concurring and assisting in it. Whatever therefore the Doctor has assert'd of the utter Illegality of Resistance, his Assertion being applied to the Supreme Power, can't relate to any Resistance us'd at the Revolution; and consequently can't be an Affirmance, that such Resistance, or such Necessary Means, were Odious and Unjustifiable. One of the Learned Gentlemen, who spoke the Third Day of this Trial, in Maintenance of the last Article, concurr'd with me in this; and object-ed it to the Doctor, That he had guarded himself, by confining his Assertion to the Supreme Power; and that he had not averr'd the utter Illegality of Resistance to the Queen: But had he in express Terms affirm'd the Unlawfulness of such Resistance, yet by the same Arguments which have been us'd, the Doctor would have been told, he had been preaching a slavish Doctrine. My Lords, another Gentleman of the House of Commons (I think there were but two of them who took Notice of this Expression of the Doctor's of *the Supreme Power*) observ'd, that the Doctor had assert'd the Illegality of Resistance to the Supreme Power on any Pretence whatsoever; which Power he admitted was the Legislative; and declar'd, if the Doctor had really meant that Power, he should not have differ'd from him; and without doubt, your Lordships and all Persons will concur with him in this, that 'tis utterly unlawful to resist the Supreme Power. But that Gentleman being satisfy'd, that tho' the Doctor expressly mention'd the Supreme Power, which is the Legislative, yet he certainly intended the Supreme Executive Power, concluded he was guilty of this Charge in the First Article; and mention'd it as an Instance of the great Mercy and Lenity of the House of Commons, that they had not proceeded against him for High-Treason, as a *Parson* in one of the late Reigns was prosecuted for Words which he thought less offensive and dangerous than this Assertion preach'd by Dr. *Sacheverell*. And yet that Gentleman was pleas'd to say, That had a Dissenter, whose Affection to the Government was unsuspected, express'd himself as the Doctor did, the Gentlemen of the House of Commons would not have thought fit to have prosecuted him. That Case which was alluded to, I take to be the Case of Mr. *Roswell*, a Nonconformist Minister. He was indicted in the 36 Car. II. for Words spoke by him in a Sermon preach'd at a Meeting-House. 'Twas a Prosecution carried on through the Violence of those Times; and generally detested. He was convicted; but on cooler Thoughts, and Consideration of the Uncertainty in his Expressions, that they could not amount to such a Crime as he stood charged with, Judgment was Arrested, and Mr. *Roswell* was discharg'd. Another Learned Gentleman who open'd the Charge, was of Opinion, that the Doctor, in his Assertion of the Illegality of Resistance to the Supreme Power, does really neither mean the Legislative nor Executive Power, but that he had the Pretender in his View. This is diving into the Secrets of his Heart, and searching into his Thoughts, which God only knows. This was urg'd, to avoid the strange Inconsistency, in concluding, that the Doctor was endeavouring to undermine the Government, by Preaching up the utter Illegality of Resisting it.

My Lords, If there be a double Sense, in either of which those Words are equally capable of being understood; if in one Sense the Doctor's Assertion be undeniably clear, but in the other some Doubt might

might arise, whether his Words be Criminal or not, the Law of *England* is more merciful than to make any Man a Criminal, by construing his Words against the natural Import of them, in the worst Sense. This is the great Justice and Clemency of our Law, in every Man's Case. But some Persons are intitled to have a more favourable Construction put on all their Words and Actions, than others are; such as Persons acting in the Execution of their Offices, in Obedience to Authority, or by a Commission from the Crown; such Persons are look'd upon as under the immediate Protection and Care of the Law: How much more reasonable is it, that Ministers of the Gospel, who have their Commission from God, and speak in the Name of God, should have the most candid Interpretation made of whatever they say? This, I am persuaded, was one of the chiefest Reasons which in the Case of Mr. *Roswell* allay'd the Rage of that Reign; and at that Time obtained Mercy for him, tho' a Nonconformist Minister under a Conviction of High-Treason. 'Tis a hard Fate attends this unhappy Gentleman, if he must inevitably lie under the Imputation of being thought an Enemy to the Revolution, and to our present happy Establishment on that Foundation. What Evidence will your Lordships expect he should produce to clear himself? He has shown his Submission to the Revolution, from the first Moment his Years made him capable of doing so. He has given all the publick Testimonies of his Fidelity and Affection to the last Reign, as well as the present, which the Government has at any time required from the most suspected Persons. He has taken the Oath of Allegiance, signed the Association, and took the Abjuration. 'Tis a miserable Case any Man is in, if after he has taken the Abjuration, the utmost which is required, he shall still be told, he has indeed abjur'd the Pretender, but hath not yet forgot him. If neither the Inoffensiveness of the Doctor's Behaviour, neither his Words, nor Oaths can satisfy; if after all these Demonstrations the Doctor has given of his Fidelity, he is still liable to be censured, What Satisfaction is it possible for him to give?

My Lords, If the Manner of this solemn Prosecution has not alter'd the Nature of Things, I hope I may insist, without putting in a Claim of Right in behalf of all the factious and seditious People in the Kingdom to revile the Government at Pleasure, That by the happy Constitution under which we live, a Subject of *England* is not to be made Criminal by a labour'd Construction of doubtful Words; or when that can't serve, by departing from his Words, and resorting to his Meaning. Too many Instances there were of this Nature before the late happy Revolution; but that put an End to such Arbitrary Constructions.

I might trouble your Lordships on this Head with Multitudes of Authorities; but I shall mention only one: 'Tis an Authority of your Lordships, upon a Writ of Error, immediately after the Revolution; Sir *Samuel Barnardiston's* Case; and I beg Leave to refer to your Lordships Journal, May 14, 1689. 'Twas that Gentleman's Misfortune to be called in Question in the Reign of King *Charles* the Second (*Hill. Term, 1683.*) for writing some Letters supposed to be Seditious, and highly reflecting on the Government, and the publick Justice of the Nation at that Time. Upon his Tryal he was represented as a Seditious Man, and one of a turbulent Spirit; and being so painted by the Chief Justice who try'd him, tho' his Actions were inoffensive;

notwithstanding his Innocence, a Verdict was obtain'd against him; and when he came to receive Judgment, not being look'd upon as an inconsiderable Man, not as a Tool of his Party, but as one of the Heads of it, a Fine of Ten Thousand Pounds was set on him. I beg Leave to lay before your Lordships what you did in that Case. Your Lordships reversed that Judgment; and as a Glorious Instance of your Justice, not contenting your selves with the Right you had done in the Case then before you, at the same time provided, as far as was possible, that no innocent Person, in After-Ages, might suffer Wrong. Your Lordships therefore, in an extraordinary Manner, order'd the Reasons of your Judgment to be enter'd in your Journal, and they are enter'd in the following Words: "First, 'The Information in this Case being grounded upon Letters, which in themselves were not Criminal, but made so by Innuendo's, your Lordships declar'd, that Innuendo's, or suppos'd or forc'd Constructions, ought not to be allow'd; for all Accusations should be plain, and the Crimes ascertain'd.'" My Lords, I hope it's unnecessary to my present Purpose, to read to you the Second Reason; but as it was another Instance of your Lordships Justice, which ought never to be forgot, I shall take the Liberty of doing it: It relates to the Fine of Ten thousand Pounds. Tho' Sir *Samuel Barnardiston* was a Gentleman of a very considerable Estate, your Lordships declar'd, "Secondly, That this Fine of Ten thousand Pounds is exorbitant, and excessive, and not warranted by Legal Precedent in former Ages; for all Fines ought to be with a *Salvo contentemento suo*, and not to the Party's Ruin." These were your Lordships Declarations in that Case. If there be any Uncertainty or Doubt in the Doctor's Expressions, your Lordships, I hope, will put the most favourable Construction on them. What I have hitherto offer'd is, with Relation to these Words, *The Supreme Power*; but that which I take to be the main Objection in this Case, is, that the Doctor's Assertion of the Illegality of Resistance must be necessarily understood with Reference to the Executive Power. And if it be utterly illegal, in any Case, upon any Pretence whatsoever, then 'twas unlawful at the Revolution; and from thence the Consequence is drawn, That the Doctor is guilty of this first Charge, of maintaining, That the necessary Means used to bring about the happy Revolution were odious and unjustifiable. This I take to be the Force of the Objection.

My Lords, I admit the Doctor has in General Terms asserted this Proposition of the Illegality of Resistance to the Supreme Power on any Pretence whatsoever; and yet I am not altogether without Hopes, but that I shall be able to satisfy even the Gentlemen of the House of Commons, whether that Expression be understood of the Legislative, or Executive Power, that he is an innocent Man, notwithstanding that Assertion.

My Lords, There is nothing further from our Hearts, nor is any thing less necessary to the Doctor's Defence, than for us to dispute or to call in Question the Justice of the Revolution. We are so far from it, that we look on our selves to be arguing for it, whilst we are endeavouring to show your Lordships, that the Resistance used at the Revolution is not inconsistent with the Doctrine of the Church of *England*, and with the Law of *England*; and that the Doctor uses no other Language than what they both speak. When your Lordships have laid aside what was urg'd the Second Day, to show

the Justice of the Revolution, and to aggravate the Doctor's Offence, supposing him guilty, this Matter will lie in a very narrow Compass; and I am in Hopes there will not appear to be so great a Difference as hath been represented, between the Doctor, in his Assertion concerning the Illegality of Resistance, and some of the Gentlemen of the House of Commons. I can't say, that I differ from many of them in their Notions of Allegiance, as stated the Second Day of this Tryal.

My Lords, The first thing on which I humbly insist, supposing this general Assertion to relate to the Supreme Executive Power, is, that the Doctor has not in any Part of his Sermon apply'd it to the particular Case of the Revolution.

'Twas insisted on the first Day, That he had not only asserted the utter Illegality of Resistance to the Supreme Power, on any Pretence whatsoever; but also that he had expressly affirm'd, that the Revolution was not such a Case, as ought to be excepted out of his General Rule. This I deny: If such an Expression can be found in the Doctor's Sermon, I shall think no Punishment too great for him. 'Tis one Thing, expressly to affirm the Revolution is such a Case as ought not to be excepted out of the General Rule; and another Thing, not to make the Exception. The Apostle, who in general Terms enjoins the Duties of Obedience and Non-Resistance to the Higher Powers, makes no Exception when he lays down those Precepts; nor (on the other side) does he say, no such Case can ever happen, wherein Obedience is not to be paid, or Resistance not to be made. He is silent in that Matter; and the Doctor's Expression, in this Case, is agreeable with that of the Apostle. To prove the Doctor guilty of this first Charge, and that he had directly applied his General Rule of the Illegality of Resistance to the Supreme Power, to the particular Case of the Revolution, a Learned Gentleman, (whose Province 'twas to maintain the first Article) on the Second Day of this Tryal, first stated to your Lordships the Page wherein the Doctor mentions the utter Illegality of Resistance, and read that Passage in the following Words: "The Grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an Absolute and Unconditional Obedience to the Supreme Power, in all Things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever." And then, says he, the Doctor goes on, and says, "Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence." This might very reasonably make an Impression upon your Lordships, not comparing those several Passages in the Doctor's Sermon, at the same Time that Objection was made. But I beg your Lordships will observe the Distance of these Two Passages from each other, between Twenty and Thirty Lines, in which several distinct and entire Sentences are contain'd, to which that last Passage of *Our Adversaries*, &c. plainly relates. The next Method us'd to prove the Doctor guilty, was, by taking the Passage in it self, independently, from any other; and this I own to be the true way of considering it: And taking it thus, 'tis objected, If in no Case whatsoever 'tis lawful to resist, 'twas then unlawful at the Revolution. Such a Doctrine must be a slavish Doctrine. An unlimited Passive Obedience and Non-Resistance is a slavish Notion.

My Lords, Dr. *Sacheverell* does not contend for it; nor is there any Thing mentioned in his Sermon, of such an Obedience or Non-Resistance. There is but this small Difference between the Gentlemen of the House of Commons, who think this Expression so highly Criminal, and the Doctor, who still conceives it to be otherwise; whether, when the General Rule of Obedience is taught, the particular Exceptions, which may be made out of that Rule, are always to be express'd; or whether, when the General Rule is laid down, the particular Exceptions, which might be made out of that Rule, are not more properly to be understood or implied.

I humbly apprehend, my Lords, that Extraordinary Cases, Cases of Necessity, are always implied, tho' not express'd, in the General Rule. Such a Case undoubtedly the Revolution was, when our late Unhappy Sovereign, then upon the Throne, misled by Evil Counsellors, endeavour'd to subvert and extirpate the Protestant Religion, and the Laws and Liberties of the Kingdom. The General Rule ought always to be press'd; but the Exceptions of Extraordinary Cases, of Cases of Necessity, are never particularly to be stated. To point out every such Case before-hand is as impossible, as it is for a Man in his Senses not to perceive plainly when such a Case happens.

Every Minister of the Gospel is sufficiently instructed from the Doctrine of his Church, from the written Laws of the Land, and the Law of God, to press the General Duty of Obedience; but such Extraordinary Cases, wherein Resistance is lawful, wherein it becomes an indispensable Duty, are no where laid down. The same Apostle, who enjoins Obedience and Non-Resistance to the Higher Powers, commands also Servants to obey their Masters, and Children their Parents, in all Things: Notwithstanding which General Precepts, many Cases may happen, wherein it may be not only unfit, but sinful for Servants to obey their Masters, or Children their Parents. And yet the Apostle never thought it proper to state, or mention those Cases, but contented himself to press the Duty of Subjection in general, leaving such Cases (when they happen'd) to justify themselves.

Such Cases, my Lords, with respect to Resistance against the Supreme Power, are no way fit to be consider'd, but in Parliament; and even the Parliament it self hath never yet thought fit otherways to consider them, than by way of Retrospect, to justify what had of Necessity been done in those Cases; but never went so far as to enumerate the Cases of that kind, which might happen for the future, wherein it might be lawful for the Subject to resist; nothing being more evident, than that the Subjects would be, some time or other, thereby tempted to exceed their just Liberty.

I beg Leave to close what I have humbly offer'd to your Lordships on this Head, with an Observation I borrow from Mr. *Pym*, at his delivering the Charge against Dr. *Mumfaring*. Mr. *Pym*, speaking of the Dutchy of *Normandy*, observes, that that Dutchy having been oppress'd with some Grievances, contrary to their Franchises, made their Complaint to *Lewis* the Tenth; who by his Charter, acknowledging the Right and Custom of the Country, and that they had been unjustly griev'd, did grant and provide, That from thenceforward they should be free from all Subsidies and Exactions to be impos'd by him, and his Successors, yet with this Clause, *Unless when great Necessity required*:

Which

Which small Exception, Mr. Pym observed, had devoured all their Immunities granted by that Charter. I think I may as reasonably conclude, That if Clergymen, or others, in their Sermons, Writings, or publick Discourses, instead of Preaching up the General Rule of Obedience, are permitted to state the several extraordinary Cases, which may arise, the several excepted Cases which, notwithstanding the General Rule, are implied; such Exceptions will in Time devour all Allegiance.

Having thus stated to your Lordships the Question between us, Whether such excepted Cases as the Revolution was, are not more proper to be left as implied, than to be express'd, when the General Duty of Obedience is taught; I shall endeavour to satisfy your Lordships, First, That the Doctor's Assertion, of *the Illegality of Resistance to the Supreme Power on any Pretence whatsoever*, in general Terms, without expressing any Exception, or that any Exception is to be made, is warranted by the Authority of the Church of England: And, Secondly, That this Manner of Expression is agreeable to the Law of England.

First, That 'tis warranted by the Authority of the Church. Your Lordships were informed, on the first Day of this Tryal, with how much Bravery even our Popish Ancestors asserted the Legality and indispensible Duty of Resistance, whenever they thought the Liberty of their Country requir'd it; but that at the Reformation, when Truth began to shine out, then it became evident, that this Notion of the Illegality of Resistance was a slavish Doctrine. The Learned Gentleman undoubtedly pitch'd on a very proper Time to begin his Search after Truth; and from thence I shall endeavour to trace it.

One very early Authority I find; 'twas indeed in the Dawn of the Reformation, in a Book entitled, *A Necessary Doctrine and Erudition for any Christian Man*; publish'd by the King's Command, 34 H. VIII. 'Twas a Treatise compos'd by the Direction of Cranmer, by Ridley, Redmayn, and other very Great and Learned Men. I find it highly commended in the *History of the Reformation*, Part 1. Book 3. Pag. 286. The Reverend Author of that History gives an Account how well the Reformers were employed, (*Anno 1540.*) tho' not in the way of Convocation: That a select Number of them sat, by Virtue of a Commission from the King, confirm'd in Parliament; and that their first Work was to draw up a Declaration of the Christian Doctrine, for the necessary Erudition of a Christian Man; and (*Pag. 293.*) that 'twas finish'd and set forth, with a Preface, written by those of the Clergy who had been employ'd in it, declaring with what Care they had examin'd the Scriptures, and the Ancient Doctors, out of whom they had faithfully gather'd that Exposition of the Christian Faith. In this Treatise I find these Passages. In the Exposition of the Fifth Commandment: "And by this Commandment also, Subjects be bound not to withdraw their Fealty, Truth, Love, and Obedience towards their Prince, for any Cause whatsoever it be; nor for any Cause they may conspire against his Person, nor do any Thing towards the Hindrance or Hurt thereof, nor of his Estate." In the Exposition of the Sixth Commandment: "Moreover, no Subjects may draw their Swords against their Prince, for any Cause whatsoever it be." The Reverend Father of our Church, to whom the Publick is so much indebted for that Excellent History of the Re-

formation, and who has received the just Thanks of both Houses of Parliament for it, (*Pag. 291.*) declares those Expositions of the Commandments to be very profitable.

My Lords, Tho' the Treatise, in which I find these Expositions, was publish'd in a Popish Reign, yet (as an undeniable Evidence that the Doctrine of Non-Resistance, there taught, is a Protestant Doctrine) I shall show your Lordships, the Reverend Author of the History of the Reformation has himself asserted it, in much stronger Terms, than Doctor Sacheverell has done. In *Edward the Sixth's* Time, the Glorious Light of the Gospel shone out. The first Book of the Homilies, prepar'd by the Clergy, was then publish'd by the Royal Authority; in which were Three Parts of a Homily, or rather Three distinct Homilies of Obedience: In one of which is the Passage mentioned in the Doctor's Answer. "Here, good People, mark diligently: It is not lawful for Inferiors, and Subjects, in any Case, to resist and stand against the Superior Powers; for St. Paul's Words be plain, that whosoever withstandeth, shall get to themselves Damnation; for whosoever withstandeth, withstandeth the Ordinance of God." In Queen *Mary's* Reign, the Light of the Gospel was eclips'd, and the Darkness of Popery again overspread the Nation. Resistance to Princes being a Doctrine of the Church of Rome, your Lordships will not expect any Authentick Evidence to be produced out of that Reign, in Maintenance of the Doctrine of Non-Resistance.

When Queen *Elizabeth* came to the Crown, the Truth of the Gospel shone forth in its full Lustre, and then Six Homilies were added to the other Three against Disobedience and wilful Rebellion; in which your Lordships will find many Passages, wherein the Duty of Non-Resistance is pressed and inculcated, in much stronger Terms than it hath been asserted by Dr. Sacheverell. In that Glorious Reign, the Thirty Nine Articles of our Religion were agreed upon by the Archbishops and Bishops of both Provinces, and the Clergy in Convocation; by the 35th of which, the Homilies are declared to contain a *Godly and Wholesome Doctrine*, and are order'd to be read in Churches, by the Ministers, diligently and distinctly, that they may be understood of the People. In the Thirteenth Year of that Reign, a further Sanction was given to the Homilies; the Thirty Nine Articles were then confirm'd, and every Person in Holy Orders, to be admitted to any Benefice with Cure, was requir'd (by Act of Parliament made in that Year) to Subscribe and Read them in the Church, and declare his unfeigned Assent thereto.

My Lords, We have now a most Gracious Sovereign on the Throne, as far surpassing Her Renowned Predecessor Queen *Elizabeth*, in the effectual Support She gives to the Protestant Interest, and in Her Pious Care for the perpetual Security of the Church of England, as in all the other Successes and Glories of Her Reign. In this Reign, a perpetual Sanction is given to the Books of the Homilies, by inserting in the Act of Union the Act made the 13th *Eliz.* which confirms the 39 Articles; by the 35th of which, the Doctrine of the Church (taught in the Homilies) is approv'd; and declaring that Act, 13 *Eliz.* to be an *Essential and Fundamental Part of the Act of Union*: So that I may now conclude, the Doctrine of the Church of England, taught in her Homilies, must continue as long as the Union of the Two Kingdoms, which I heartily

tily pray may be to the World's End. On these Authorities do the Homilies of our Church subsist : And as they are thus ratified by the Articles and Acts of Parliament, the Doctor has the concurrent Authority of the Church and State, for what he has said concerning the Illegality of Resistance.

My Lords, Is this Doctrine of Non-Resistance taught in the Homilies in general Terms, in the same manner as Doctor *Sacheverell* has asserted it, without expressing any Exception ? Do the Articles of our Religion declare the Doctrine taught in the Homilies to be a Godly and Wholesome Doctrine ; and will your Lordships permit this Gentleman to suffer for Preaching it ? Is it Criminal in any Man to preach that Doctrine, which 'tis his Duty to read ? The Doctor is not only required by the 35th Article to read this Doctrine diligently, and distinctly, that it may be understood by the People ; but to shew your Lordships, the Doctrine taught in the Homilies did not die, nor was alter'd at the Revolution. I must observe to your Lordships, that the Rubrick of the Office appointed for the Fifth of *November*, by the late Queen of Blessed Memory, directs the Clergy on that Day, if there be no Sermon, to read one of these Homilies against Rebellion. Since the Doctor chose rather to preach, than to read a Homily on that Day ; how could he better comply with the Command of Her late Majesty, than by preaching the same Doctrine as was contain'd in those Homilies he was commanded to read on that Day, if he did not preach ? Does an Act of Parliament, inserted in the Act of Union, enjoin him to Subscribe to this Doctrine before the Ordinary, and declare his unfeigned Assent to it in his Parish-Church ? And shall he be condemn'd in Parliament, for asserting the Truth of it ? I must admit, this 35th Article of our Religion is not by the *Toleration-Act* (I will give no Offence, by calling it by its true Name) required to be Subscribed by any Persons Dissenting from the Church of *England*, to entitle them to their Exemption from the Penalties mentioned in that Act. But that Act of Parliament no way varies the Case with respect to the Clergy ; so that whatever Duty was incumbent on them before, is so still ; and therefore I hope, your Lordships will not think this Gentleman has so highly offended.

As a further Proof that this Doctrine of Non-Resistance, as laid down by the Doctor in general Terms, without making any Exception, is the Doctrine of the Church of *England*, I shall shew your Lordships, that it has been so preach'd, maintain'd and avow'd, and in much stronger Terms than the Doctor has express'd himself, by our most Orthodox and Able Divines from the Time of the Reformation. 'Twould be endless to offer to your Lordships all the Authorities I might produce on this Occasion ; but we shall beg your Lordships Patience to lay before you some Passages out of the Learned Writings of several Reverend Fathers of our Church, of Nine Archbishops, above Twenty Bishops, and of several other very Eminent and Learned Men.

That your Lordships may not think this Doctrine died at the Revolution, I shall humbly lay before your Lordships the Opinions of Three Archbishops, and Eleven Bishops, made since the Revolution, which will fully shew the Doctrine of Non-Resistance is still the Doctrine of our Church ; I would not willingly give Offence in naming them, I am sure I mean no Reflection, nor can it, as I think, be

any Reproach to them : I find no other Doctrine in this Case taught by them, as far as I am able to judge, than what the Apostles taught before them. With your Lordships leave, I will therefore presume to name them ; Archbishop *Tillotson*, the Two present Archbishops, Bishop *Stillingfleet*, late Bishop of *Worcester*, the present Bishops of *Worcester*, *Rochester*, *Salisbury*, *Ely*, *Bath and Wells*, *Lincoln*, *Exeter*, *St. Asaph*, *Carlisle*, and *Chichester*. If I am able to shew your Lordships that all these Right Reverend Fathers of our Church have preached the same Doctrine the Doctor has, Are the same Words coming out of Their Mouths to be received as Oracles of Truth, but spoke by the Doctor fit for Articles of Impeachment ? I am sure it's impossible to enter into the Heart of Man to conceive, that what these Reverend Prelates have asserted, that any general Position they have laid down concerning Non-Resistance, is an Affirmance that Necessary Means used to bring about the Revolution were *Odious* and *Unjustifiable* : Why then is Doctor *Sacheverell*, by having taught the same Doctrine, in the same Manner as they did, to be charg'd for having Suggested or Maintain'd any such Thing ?

My Lords, I dare not suppose this Doctrine, thus Establish'd by so many Reverend Fathers of our Church, to be Erroneous. If an intemperate Expression of one single Archbishop above a Hundred Years since dead, is fit to be inserted in an Article of Impeachment of High Crimes and Misdemeanors, what Punishment should I deserve, could I suppose the Doctrine taught by so many Archbishops and Bishops to be erroneous. But if I might hope to be excus'd, if I made the Supposition, that the Homilies of our Church contain false Doctrine, and that so many of the Right Reverend Fathers of our Church are capable of erring, or being ignorant in the Doctrine of their Church, I humbly propose it to your Lordships, whether a Clergyman who errs after such great Examples, might not reasonably have hop'd for a more moderate Correction, than an Impeachment ! Had this slavish Doctrine of Non-Resistance been first branded with its indelible Mark of Infamy, and the Right and indispensable Duty of Resistance to Princes plainly shewn ; had all the slavish Notions of the Common Law which we find dispers'd throughout our Law-Books, which give Countenance to this Doctrine of Non-Resistance, been first weeded out of them, and some few Acts of Parliament, entirely agreeable with this slavish Doctrine, been first repealed ; had the People been set right in the Notions of their Obedience, and the Ministers of the Gospel been instructed by Act of Parliament what Doctrine they ought to Preach, and what not ; had all these Things been first done, and the Doctor had afterwards err'd, your Lordships might have then look'd upon him, as an obstinate Offender.

The next Thing I beg leave to consider is, the Law of *England* ; whether the Doctor's Assertion of the utter Illegality of Resistance to the Supreme Power on any Pretence whatsoever, in general Terms, is agreeable to the Law of *England*. I hope I need not again explain my self as to this Particular, I mean, that as the General Rule is always taught and inculcated by the Church, so has it always been declar'd by the Legislature, without making any particular Exception ; and if this Rule holds both in Church and State, this Gentleman is strangely unfortunate, if he can't be comprehended under one or other of them.

My Lords, Whatever may at any Time heretofore have been thought proper to be done by Parliament; whatever Measures, in Cases of the last Necessity, may at any Time have been taken by the People in general, for preserving their Liberty, or asserting the Rights of their Country, and keeping themselves from Slavery; yet in no Age can any Instance be shew'd, not in the Reigns of those Princes who have been Depos'd, that this Doctrine, of the Right of Resistance, as it has been term'd, was ever permitted to be asserted by any particular Person. A memorable Case to this Purpose happened in the Reign of King Edward the Second: An Act of Parliament pass'd in the Fifteenth Year of that Reign, Entituled, *Exilium Hagenis de Spencer Patris, & Filii*. The Two *Spencers* were banished by that Act; and the first Article in that Act against them is, "That they had affirm'd and publish'd in Writing, that Homage and Oath of Allegiance were due more by reason of the Crown, than by reason of the Person of the King; and that if the King did not demean himself according to Reason, in the Exercise of his Government, his Subjects might remove him; And that since that Removal could not be by Course of Law, they might therefore remove him by Force". The Time when this Act pass'd, and what afterwards happened, is remarkable. The Act, very soon after the making it, was repeal'd, and 'twas thought necessary in that Reign the People should assert that Right, and thereupon the King was Depos'd. But your Lordships will find in his Successor's Reign, they were so far from casting any Blot on the Act of Exile, that in the 1. *Edward 3.* by one of their first Acts, the Repeal of the Exile was annulled, and the Act of Exile confirm'd. It is true, that in the 21st Year of *Rich. 2.* the Act made the 1st *Edw. 3.* for annulling the Repeal of the Exile, was repeal'd, and the Reversal of the Act of Exile confirm'd; but in the 1st of *Hen. 4.* the whole Parliament held the 21st *Rich. 2.* and all the Proceedings in it, for their Extravagance, were annulled, and from thence the Act of Exile of the Two *Spencers* continued untouch'd. I must humbly observe to your Lordships, that though there were Two Repeals of the Act of Exile, yet neither of them mentioned the Matter contain'd in the Articles as insufficient, but the Reasons assign'd in the Acts of Reversal are, that "in the Proceedings against the *Spencers*, the great Charter was not observ'd, that the Prelates were not present, and did not assent thereto; and some other Defects in Form". What Opinion our greatest Lawyers have since had of this Act of Exile, sufficiently appears, *Co. 7. 11. Calvin's Case*, the Words are these: "In the Reign of *Edw. 2.* the *Spencers*, the Father and the Son, to cover the Treason hatched in their Hearts, invented this damnable and damn'd Opinion, That Homage and Oath of Leigance was more by Reason of the King's Crown (that is, of his Politick Capacity) than by reason of the Person of the King; upon which Opinion, says the Lord Chief Justice *Coke*, they infer'd most execrable and detestable Consequences. First, If the King do not demean himself by Reason in the Right of his Crown, his Lieges are bound by Oath to remove the King. Secondly, Seeing that the King could not be reformed by Suit of Law, that ought to be done by Force: All which were condemned by Two Parliaments, one in the Reign of *Edw. 2.* called, *Exilium Hagenis Le Spencer*; and the other 1. *Edw. 3. Cap. 1.*" I barely mention these Acts to show, that however

applicable the Case of the Revolution might be to that of King *Edw. 2.* yet that those very Persons by whom the King was depos'd, thought it so high a Crime in the Two *Spencers* to take on them to publish such Positions, as to deserve Banishment. The next Law I beg leave to mention, is the 25. *Edw. 3. Cap. 2.* By which, *the levying War against the King in his Realm* is declar'd, in general Terms, to be *High Treason*, without any Exception whatsoever: This is an Instance of what I am contending for, that the Law, in all Cases concerning our Allegiance, lays down the general Rule, without making any Exception. So the Oath of Obedience (as enjoin'd 3. *Ja. 1. 4.*) all Persons are to Swear to defend the King to the utmost of their Power, against all Conspiracies and Attempts whatsoever, which shall or may be made against his Person, Crown or Dignity. The Oath is in General, without any Exception express'd in it; and no Man will presume to say, that Oath, which was taken from the 3. *Ja. 1.* till after the Revolution, was not true. But the Answer to be given is, what I give in this Case, that Cases of Necessity, such as the Revolution, were implied, they are improper to be express'd; and why ought not the like Implication equally to be allow'd in the General Assertion made by Dr. *Sacheverell*? By the Act made 12. *Car. 2. C. 30.* for Attainder of the Regicides, it is declar'd, that by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People, collectively, or representatively, nor any other Persons whatsoever, ever had, have, hath, or ought to have, any coercive Power over the Kings of this Realm.

My Lords, I can't apprehend this Act to be repeal'd: If it be not, I beseech your Lordships, let Dr. *Sacheverell* be tried by it; and that you will be pleased to consider, whether the Doctor's Assertion concerning Resistance, hath out-gone the Declaration in this Law.

Your Lordships hear, how fully the Fundamental Law of the Kingdom is declared by this Act: The Doctor has only said, *'Tis Illegal to resist the Supreme Power on any Pretence whatsoever.* The Expression at the End of that Declaration may possibly be observ'd, that it extends only to a Coercive Power over the Person of the King; I know not what Inference may be drawn from thence, but certainly there is nothing in the Doctor's Sermon but what may be abundantly justified by the Declaration in that Act.

The Militia Act, the 13th and 14th *Car. 2. Cap. 3.* for ordering the Forces in the several Counties of this Kingdom, contains a Declaration as strong as the former: By that Act 'tis declared, That neither both or either of the Houses of Parliament can, or lawfully may, raise or levy any War, offensive or defensive, against his Majesty, his Heirs, or lawful Successors. When I perused this last Declaration in the recital of the Acts, I read carefully to the End of it, to look for the Exception, but could find none. If there be no Exception in that Act, but that it stands as a general Declaration of the Law; if neither, nor both the Houses of Parliament can or may raise or levy War, offensive or defensive, against the King, is it a high Crime and Misdemeanor to assert in general Terms that Resistance to our Prince is unlawful? Pray, my Lords, compare the Doctor's Assertion in his Sermon with the Declaration in this last Act of Parliament.

By the Corporation Act, 13. Car. 2. Sess. 2. Cap. 1. all Mayors, Aldermen, Common-Council-Men, and other corporate Officers there enumerated, are required to take an Oath, That it is not lawful upon any Pretence whatsoever to take Arms against the King. By the Militia Act, which I have already mentioned, the same Oath, That it is not lawful on any Pretence whatsoever to take Arms against the King, is required to be taken by every Peer of the Realm, before he is capable of acting as a Lieutenant or Deputy-Lieutenant; and by every Commoner of England, before he can be capable of acting as a Lieutenant, Deputy-Lieutenant, Officer or Soldier in the Militia. By the Act of Uniformity, 13. & 14. Car. 2. Cap. 4. all Ecclesiastical Persons, and many others under the several Denominations in that Act, are required to subscribe to the Truth of that Assertion, That it is not lawful on any Pretence whatsoever to take Arms against the King. This is the Language of our Laws, and the like do the Apostles use in their Precepts touching Obedience and Non-Resistance to the Supreme Power.

But here I ought to observe, an Objection has been made to these several Acts, that by an Act made in the Second Year of the late King and Queen, 'tis Enacted, "That from thenceforth the Oath enjoined to be taken or subscribed, by the several Acts I have mention'd, should not be required to be taken by any Person whatsoever; and that the former Acts of Parliament, as to that Oath, are thereby repealed." 'Tis a very tender Repeal, my Lords, if it be one; but admit it to be one, it seems to have been argued from thence by a Learned Gentleman, with whom in many Things he said I no Way differ, that this Doctrine of Non-Resistance was become the more Unlawful, because that Oath was not to be taken from thenceforward.

My Lords, As the Corporation Act required the Swearing 'twas not Lawful to take up Arms against the King, so does it direct the Subscribing to the Unlawfulness of the Solemn League and Covenant; Now by the same Argument, the Solemn League and Covenant may be proved to have been a Lawful Oath.

I beseech your Lordships to consider, whether the Repeal of this Oath can have any Weight with your Lordships. 'Twas a general Assertion, to which all the Peers and Commons, in the Employments I have mention'd, were to swear; there is no Exception in the Oath, but what is implied in it. Was not the Proposition as true before it was sworn, as after? Was it therefore true because 'twas sworn, or was it sworn because it was true? Did the Swearing it make it true; or the Truth make it fit to be sworn? If it was true when it was sworn, the Proposition was equally true before, and since. I believe, since the Oath was taken by so many Peers and Commons, no Man will pretend to question the Truth of the Proposition.

My Lords, I have gone thro' the several Laws I shall lay before your Lordships on this Occasion; and let me once more humbly beg your Lordships, that you will be pleased to compare the Doctor's Assertion in his Sermon, concerning the Illegality of Resistance, with them; Whether it be stronger than the Declaration of the Undoubted and Fundamental Law of the Kingdom, in the Act against the Regicides; than the Declaration in the Militia Act; than the Oath required to be taken by so many Acts of Parliament; than the Declaration in the 25th of Edward III. All the Doctor has said, is, That Resistance to the Supreme Power is Illegal, on

any Pretence whatsoever: All the Peers and Commons of England, under the Characters and Employments I have mention'd, have sworn to the Truth of it; the 25th of Edward III. declares it to be High-Treason; and your Lordships have heard what St. Paul says.

My Lords, I began this Discourse, relating to the Doctrine of our Church and the Laws of the Land, with the most sincere Protestation; That it was far from my Intention to offer any Thing inconsistent with the Justice of the Revolution: I think the Justice of it consistent with our Laws, the Exceptions to be made being always implied. And surely none can shew themselves truer Friends to the Revolution, than those who prove that the Revolution may stand without Impeaching the Doctrines of our Church, or any Fundamental Law of the Kingdom. Doctor Sacheverell being impeach'd for not making the Exception, when he laid down the General Rule; I beg Leave to turn the Case, and suppose he had made it. Had he been stating the Case of a Revolution, on a Day when he press'd the Illegality of Resistance, on a Day when, if he did not Preach, he was obliged to read one of the Homilies against Rebellion, in which there is no Exception; Had he been picking Holes for the Subject to creep out of his Allegiance, and had he been cited before his Diocesan; might he not have been question'd, on what Authority he presumed to preach in that manner? Whether he found such Doctrine taught by the Apostles, by the Homilies, or by any of the Reverend Fathers of our Church? Might he not have been told, it was his Duty, in Imitation of those Great Examples, to press the General Duty of Obedience, and the Illegality of Resistance, without making any Exception whatsoever? Had he been question'd before the Temporal Power, for Preaching in the manner he has done; had an Indictment been fram'd against him on his General Assertion, and brought before the Twelve Judges; I humbly apprehend, not one of them would have declar'd he went too far. But had he been making Exceptions out of the General Rule of Obedience, especially if he had been tried by such Judges as were before the Revolution; might he not have been told, 'Twas easy to discern what Spirit he was of, of what Party he was, and what he aim'd at, what he intended; That he had not been Preaching in Defence of the late Revolution, to shew the Justice of it; but that he was covering the Treason of his Heart, and under Pretence of justifying one Revolution, he was labouring to bring about another. He, who knew how far the Design had gone of Landing the Pretender but Two Years since; what else could he mean, by picking Holes in the Rules for our Obedience?

I have but a Word or two to add to the other Charges of this Article. The Gentlemen of the House of Commons were pleas'd to observe, That tho' there were Four Articles, the Substance of them all center'd in the first. The Second Charge in this Article is, That His Late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance. It is not, I hope, a sufficient Ground for an Article of Impeachment, if the Doctor has express'd himself in an obscure manner. I must confess, I can't easily comprehend him my self; but it may be any Man's Misfortune to express himself in such a manner, as to make it decent and fit for him to explain himself: And I hope the Doctor has explain'd himself, so as to show, that tho' he may

have spoken improperly, he has yet spoken innocently. The Gentlemen of the House of Commons declare, by Resistance they mean the Resistance of the Subject to their Sovereign: But Resistance, where the Doctor mentions His Late Majesty to have disclaim'd it, cannot have that Meaning. He was a Sovereign Prince, and might resist whom he pleased. Perhaps the Passage in the Doctor's Sermon may be capable of different Constructions, but the Doctor has taken care to prevent all manner of Mistakes that might possibly arise from thence: He has not only (as was observed by one of the Gentlemen of the House of Commons) made a Marginal Reference, to show what he meant; which might have been done when he apprehended that Expression would be found Fault with; but he has in the Sermon it self quoted what the Parliament did, in burning a Treatise which related to the King's having conquer'd the Kingdom.

My Lords, it was ask'd, What had he to do to take notice of that Matter? What led him to justify the late King? Was there ever any body living that imputed any such Thing as Conquest to him? My Lords, If there never was but that one Imputation endeavour'd to be cast on his Memory, as I never heard of any other, surely then he did well to wipe off that Imputation; and that this has been laid to his Charge, I must refer to the Journals of both Houses of Parliament. Your Lordships resolv'd the Assertion of King William's and Queen Mary's being King and Queen by Conquest, was injurious to their Majesties Rightful Title to the Crown, inconsistent with the Principles on which this Government is founded, and tending to the Subversion of the Rights of the People: And on the 25th of January, 1692. your Resolution being communicated to the Commons, was unanimously agreed to.

The last Part of this Article is, *That to impute Resistance to the Revolution, is to cast Black and Odious Colours on His Late Majesty and the said Revolution.* My Lords, There are these Words in the Doctor's Sermon, of *casting Black and Odious Colours on His Late Majesty and the Revolution*: They are in the Close of a Sentence, which immediately precedes the Expression of His Late Majesty's disclaiming the least Imputation of Resistance. It is impossible to mistake the Place; your Lordships will examine it; and from thence let him take his Fate, Whether that Passage is applicable to what went before it, or to what follows after. Those Words of *casting Black and Odious Colours*, are so far from referring to *His Late Majesty's disclaiming the Imputation of Resistance*; that they conclude the Sentence which went before it; in which the Doctor mentions *New Preachers, and New Teachers, that broach'd abominable Positions, That the People have a Right to cancel their Allegiance at Pleasure, to call their Sovereign to Account, and who pretend to justify the horrid Murder of the Royal Martyr King Charles the First, and endeavour to screen themselves, and their vile Notions, under the Revolution.* The Doctor having mention'd these New Preachers and their Doctrine, goes on: *Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly they are the greatest Enemies of that, and His Late Majesty, and the most ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon both.* I pray,

my Lords, what does this refer to? Don't it clear the Revolution against the Venom of those Miscreants, who publish such villanous Assertions as these? But 'twas objected by a Learned Gentleman, What has a Minister to do to meddle with these Things? If any Man offend against the Temporal, or Ecclesiastical Laws, the Courts are open; the Magistrates are to punish.

My Lords, I don't find, if this Doctrine holds, that he must preach against any Thing: If he must not preach against any Thing which may be prosecuted, either in the Temporal or Ecclesiastical Courts, he must not preach against any Offence that is forbid by the Ten Commandments. Perhaps it will be urg'd, that there are no such People as these New Preachers, and New Teachers; that he is raising a Phantom, and then throwing it down; He is only imagining Cases, of which there are no Instances; That there are no such Men, who endeavour to justify the Murder of King Charles, or defend it by the Revolution. We will show there are too many Instances of such Persons, who make no Scruple to publish these Positions, and cast Reflections on the Queen and Her Government, whom the Doctor has been defending. He is not the Person he has been represented; he hath no disloyal Thoughts about him: Sure I am, he would rather die in Her Majesty's Defence. We shall show your Lordships, that there are such as run most vile Comparisons between the Revolution and the most Execrable Murder of King Charles the First, and can find no better Difference between them, than this abominable Distinction of a *Wet Martyrdom* and a *Dry One*.

Mr. Dodd. MY Lords, I am likewise a Council for Dr. Sacheverell; and I cannot but think, by the same Arguments that have been used to maintain these Articles, any Book or Sermon, be it never so innocent, may be represented to be a Libel.

The Gentlemen Managers of the House of Commons, with Submission, have scarce any Three of them agreed in any one Principal Point; only in this most of them have agreed, That the Doctor is a Criminal before he is condemned. He has been in the whole Debate (generally speaking) so called; the usual Expression having been, The Criminal at the Bar: This (as it is not usual in other Places) would have been a great Discouragement to us that are his Council, and great Discouragement in his Defence, but that we consider that the Judgment is your Lordships, and that by your Justice he must stand or fall. It has been represented, as if this Sermon had been perused and approved by Lawyers; but this is only suggested, (as other Matters have been) yet there is not the least Proof thereof. We have had different Facts charged upon us; sometimes we are taxed for having said too much, and sometimes for having said too little, and not mentioning Things that were the proper Subject of the Day.

My Lords, We apprehend these Matters are objected for want of observing the Sermon it self; for as it was preach'd on the Fifth of November, so your Lordships will find an Account given for a Leaf together, setting forth the horrible Design of the Powder-Plot. Your Lordships will also find, both in the Body and Conclusion of the Sermon, Notice taken of our Deliverance on this Day.

There

There have been some Acts of Parliament cited by the Gentlemen Managers for the House of Commons; that of the 25th Henry 8. about the Supremacy, which we apprehend is not to the present Purpose. It only asserts the Supremacy, that is, the Independency of the Crown, which was usurp'd by the Papal Authority; for surely King Henry the Eighth was a Prince that would as little bear the Doctrine of Resistance, as any Sovereign that ever wore the Crowns of these Kingdoms.

There have been many things said by the Gentlemen of the House of Commons that we heartily agree with them in. The Revolution was a Case we all agree out of the general Rule; and so in every thing we say, we hope your Lordships will understand it. We neither do nor can understand it; it is against our Judgment and Interest to think otherwise. We are hearty Well-wishers to the Revolution, and to the Happiness of England, that is in a great measure built upon it. We agree the Law of the Land is the Measure of the Prince's Authority, and the People Rights; that in the Case of the Revolution, when the Laws were overturn'd, Popery was coming in upon us, and Property signified nothing: The People of England being invited by his late Majesty, did resort to the last Remedy, even that of Necessity; and that Necessity did induce Resistance, and justify 'em in it; and upon that Foot the Revolution succeeded. We totally deny that the Doctrine of Non-Resistance, as laid down by the Doctor, and as asserted by him, was intended for the Pretender, or any other but Her Majesty and Her Government; or can be construd a thwarting the Revolution: His Assertions are General; those General Assertions will have their particular Exceptions.

Sure it has not, nor can be made out, that we had an Eye in favour of the Pretender in any Part of this Discourse. Now it has been by some of the Gentlemen admitted to us, that the Doctrine in the main is Right; but, say they, you had your Thoughts, your Eyes on the Pretender. Now this is so very contrary to what the Doctor has asserted in his whole Sermon, that I hope there is no Ground for it: For the Doctor (as a Dutiful Subject) takes Notice that Her Majesty is the last of the Lineal Descent, as the Relict of the Royal Family; which quite disowns the Pretender and his Right. And can any one imagine, that in such Expressions he could have an Eye to the Pretender? For if there be any Pretence of Title in the Pretender, it must be as a Descendant of that Family. But he takes Notice, that Her Majesty is the only one left of that Family in a Lineal Descent; and I think that is enough to acquit the Doctor of having any Eye to Him beyond the Water.

Having, my Lords, made these Remarks, I shall now consider the Articles as they lye before your Lordships. In the Preamble to the Articles, there is Notice taken of Three Acts of Parliament. The first is the Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown. The Second is the Act for preventing Vexatious Suits against such as acted in order to bring in their Majesties, and for their Services. The Third is the Act for paying the States-General of the United Provinces their Charges for his Majesty's Expedition into this Kingdom, and for other Uses. These are the Three only Acts that are cited in the Preamble of these Articles: I shall say but a Word to each of them. As to the Act called The Bill of Rights, I don't find that that Act meddles with the Points of

Resistance or Non-Resistance; the whole Ground and Tenor of that Act is upon the Abdication. It settles the Crown upon the Vacancy of the Throne. It is said, *Whereas the late King James the Second having abdicated the Government, and the Throne being thereby Vacant, &c.* There is no other Fact stated; there is no mention of Resistance. But the Throne being Vacant, the next Head in that Act says, *That King James having abdicated the Government, and their Majesties having accepted the Crown, did become Lawful King and Queen, &c.* These are the only Passages in that Act as to this Matter: It has preserved the Liberties of the Subject; establish'd several Rights which are their Ancient Inheritance; told the People that the Throne was Vacant; and being so, that their late Majesties were Lawful and Rightful King and Queen, as undoubtedly we all agree they were.

My Lords, The next Act mention'd, is the Act for preventing Vexatious Suits against such as acted in order to the bringing in their Majesties, or for their Service. This goes further than the Bill of Rights; but whoever reads it, will find, it is but the same Act in effect, that was Enacted in the Reign of Edward III. after Edward II. was depos'd. It is a meer Act of Indemnity, an Act of Pardon for Officers Civil and Military. It only exempts them from Prosecution, that having been Transgressors against the strict Rules of the Law, were subject to private Actions; and no less could be done than to exempt them from such Prosecutions; and therefore that Law pardons all Actions of Trepass that were committed upon that Occasion.

My Lords, The next Act taken Notice of is, *That for paying the States General.* That, I don't see, takes any other Notice; but is only for paying the Dutch 600000*l.* for their Assistance to his Majesty at his coming into this Nation, for our Deliverance from Popery and Arbitrary Power.

Then the Preamble charges the Doctor with *Preaching and Publishing the Sermon and Dedications; and that is said to be done with a wicked, malicious and seditious Intention, to undermine and subvert Her Majesty's Government, and the Protestant Succession as by Law Established; to defame Her Majesty's Administration; to asperse the Memory of his late Majesty; to traduce and condemn the late Happy Revolution; to contradict and arraign the Resolutions of both Houses of Parliament; to create Jealousies and Divisions among Her Majesty's Subjects; and to incite them to Sedition and Rebellion.* These are the Corollaries that are drawn from the Preamble of the Articles of Impeachment; and these are the Facts which must make these Articles Criminal, or they can't be so at all. These Facts we utterly abhor and deny, and say we are not guilty of them; and hope it will so appear to your Lordships.

My Lords, I shall now come to the First Article it self, and shall shortly speak to the Three Divisions of this Article: It consists of Three Heads. The first is, *That the Doctor Suggests and Maintains, that the Necessary Means used to bring about the Happy Revolution were Odious and Unjustifiable.* The second is, *That his late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance.* And the third is, *That to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the Revolution.*

As to the first, *That he Suggests, that the Necessary Means used to bring about the Revolution were Odious and Unjustifiable;* My Lords, we can't have a better

better Answer to this, than utterly to deny that we have made any such Assertion: We have not done it in Words, nor in any Words that will bear that Construction. We insist, that as it can't be proved out of the Sermon, so neither out of any other Action of his Life, or any other Sermon by him Preach'd. We say, that in no Part of his Sermon he has affirmed any thing of the *Necessary Means used to bring about the Revolution*; that was a Point not fit for the Doctor to meddle with, the Legislature had taken Care of that. On the contrary, we have all along endeavour'd in that Sermon to clear the Revolution and his late Majesty (and we hope we have done it effectually) from the black and odious Colours which their greatest Enemies had endeavour'd to cast upon them. To this Part of the Article we have pleaded Not Guilty. We have denied the Fact; it has not been proved upon us; the Sermon don't prove it, nor does the Declaration prove it; but they prove quite the contrary, as by several Paragraphs of the Sermon compared together will appear.

The second Division of this Article is, *That his late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance*. This Fact we do acknowledge, if it be understood as the Doctor explains it, and proves it by the Declaration it self. We take it to be very just and true; the Resistance the Doctor mentions, being such a Resistance as tends to Conquest only, as by the Words plainly appear, which are Printed, and referred to in the Sermon. It can have no other Consideration, or Meaning, as will appear to any that read that Part of the Sermon with any Candor, or any Ingenuity. The Doctor has taken Care to express it in Words, that there might be no room for Exception. *His Highness declares, in Opposition to those who give out, that we intend to Conquer and Enslave these Nations, that we have thought fit to add a few Words to our Declaration. It is not to be imagined that either those who have invited us, or those who are already come to assist us, can join in a wicked Attempt of Conquest, to make void their own lawful Titles to their Honours, Estates and Interests.* And undoubtedly it is so. He did not come to Conquer and Enslave us, but to make us a Free People; to preserve and restore our Religion, Laws and Liberties; which, my Lords, with humble Submission, has been the Sense of the Nation; and Notions of a different kind, and such Assertions in Printed Sermons, have been Animadverted upon.

Now if the Doctor, having his Eye in that Expression on the Matter of Conquest that others had insinuated, and that the late King did disclaim any such Pretence, did express the same by Resistance, the Expression, we hope, is applicable to the Subject-Matter that was before him, and ought not to be wrested or turn'd to any other Purpose. Nothing can shew more his Meaning than his own Quotation: He refers to King William's Declaration, to justify him in that Matter.

The next Head is, *That to impute Resistance to the said Revolution, is to cast black and odious Colours upon his late Majesty, and the said Revolution*. This we likewise utterly deny to have Maintained; we have said no such Thing quite thro' the Sermon; we have not taken upon us to meddle with that Point: It was an improper Subject for him to meddle with. The Doctor neither affirms, nor says any thing of those that impute Resistance to the Revolution; but those which the Doctor intended, and which are plainly meant, if the preceding Words

must be the Words to which the Subsequent and Conclusion of the Sentence relates, then they are Persons of dangerous Dispositions, that place the Power in the People; that pretend to a Power to call their Sovereign to an Account at their Will and Pleasure; Positions that are condemned by the Laws of the Church and State, and then vouch the Revolution in Defence of these Principles. These are the Persons mentioned and intended by the Doctor, whose Principles and Practices cast black and odious Colours upon the Revolution.

My Lords, The Doctor, we own, in his Sermon, has asserted this general Proposition, *viz. Absolute Obedience in all things Lawful to the Supreme Power; and the utter Illegality of Resistance of the Supreme Power upon any Pretence whatsoever*. And this being the Article, if we understand some of the Gentlemen of the House of Commons aright, on which the whole Impeachment turns; and that if we were clear of this Article, there would be no Reason to follow us upon the others; it gives us an Occasion to enlarge a little further upon this Point.

My Lords, Non-Resistance in general we do assert as a Rule; yet we agree there is an Exception implied in that Rule, and that Exception, we say, was the Case of the Revolution. When this general Rule has an Exception in it, it must be in a Case of the utmost Necessity implied, and is not expressed, stated, or determined in any Law or Act of Parliament that I know of, except in the Particular herein after-mentioned.

My Lords, This Doctrine is agreeable to the Scriptures; is Taught by the Church of England in her Homilies, Articles and Injunctions; by Her Bishops and Fathers; and in all Admonitions we have had from the Bishops and Pastors of the Church, from time to time. I shall not name them, some of them have been named. We shall produce Sermons Preach'd before Her Majesty, your Lordships, and the House of Commons, on the most solemn Occasions, where this Doctrine has been fully asserted, even beyond what the Doctor has laid down. Both your Lordships and the Commons have returned Thanks to the Bishops and Clergy that have Preach'd them; and therefore we can't apprehend our selves to be worthy of this Reprehension. We shall produce them in Evidence, and vouch Authorities before the Reformation, and in the Infancy of it: The Homilies which are allowed by the Church, and Establish'd by several Acts of Parliament.

This we take to be agreeable to the Laws and Statutes of the Realm. The Law makes it High Treason, for particular Persons to Resist the Supreme Power.

The *Spencers* in Edward the Second's time asserted, That if the King did not Govern well, the People might remove him, and that by Force; but that was condemned by two Acts of Parliament, in E. II. and E. III.'s Reign. The Act of 25 E. III. that famous Act that has been the Standard for Treason for many Ages, is agreeable to the Doctor's Assertion; and when there were Breaches made in that Law in Queen Mary's Time, those Acts were again repeal'd: Now I need not repeat, that to resist the Executive Power, and the Person of the King by that Act, is compassing his Death, and levying War against him. They have always look'd upon it, that Resisting the King is levying War, it is a compassing and imagining the Death of the King; I shall therefore say no more on that particular Act of Parliament, but come to later Times.

In the Act of 12 Car. II. Cap. 30. it is declared, *That it is the Undoubted and Fundamental Law of this Kingdom, that neither the Peers of this Realm, nor the Commons, nor both together, in Parliament or out of Parliament, nor the People collectively or representatively, nor any other Persons whatsoever, ever had, have, or ought to have any Coercive Power over the Persons of the Kings of this Realm.* Here is a Declaration as full as can be, I am sure as full as the Doctor's Sermon; and yet this Declaration, I do agree, must have an Exception in a Case of the utmost Necessity: And I hope there is as much Reason to allow the Doctor an Exception, as in this Act of Parliament.

The next Act is the Corporation Act, 13 Car. II. in which all the Officers of Corporations are directed to Swear, *That they do believe, That it is not lawful, upon any Pretence whatsoever, to take Arms against the King.* Here is as full a Declaration to be made by all the Magistrates of Corporations, as general Words can carry, and yet I would be understood in every one of these, that there is an Exception of Necessity; but whether the Doctor was a proper Judge of that Necessity, I shall take Notice by and by.

The next is the Militia Act, 13 and 14 Car. II. and there is the same Declaration to be made by every Lord-Lieutenant, Deputy-Lieutenant, Officer and Soldier, *That it is not lawful, upon any Pretence whatsoever, to take Arms against the King.* And the Preamble of that Act is stronger, for in the Preamble of that Act it is declared, *That both or either of the Houses of Parliament, cannot nor lawfully may raise or levy any War, offensive or defensive, against his Majesty, his Heirs, or lawful Successors.*

The next Act is the Act of Uniformity 13 and 14 Car. II.

The next is the Act for Select Vestries, which enjoins all Deans, Parsons, &c. to make this Declaration, *That it is not lawful, upon any Pretence whatsoever, to take Arms against the King.*

The next Act is the Act of Association, whereby all Persons are engaged to stand by and assist one another, *against all his Majesty's Enemies, without any Limitation.*

The next is the Act which establishes the Abjuration Oath, 13 and 14 W. III. which was taken in the late Reign, and the Acts of 1 and 6 of Her Majesty's Reign, whereby all Persons in Office are to swear to defend the King and Queen, to the uttermost of their Power, against all Traiterous Conspiracies and Attempts whatsoever, which shall be made against Her Person, Crown or Dignity. And that these Words may have the plain Sense put upon them, *They are to declare that they make that Recognition, Acknowledgment, Abjuration, Renunciation, and Promise, heartily, willingly, and truly, upon the true Faith of a Christian.* Now this Resistance can't be agreeable to this Abjuration, for to resist is, not the way to Defend.

My Lords, We think that the Doctrine of Non-Resistance, as a general Proposition, is warranted by the Laws of the Land; and when there is an Exception implied therein, must only be determined by the Wisdom of the Nation, and not by any one Doctor or private Person whatsoever. The Doctor's Proposition is about Non-Resistance of the Supreme Power, and we have no Reason to take a greater Weight upon us than the Words of our Sermon; and whatever Construction may be put upon it, in Relation to the Executive Power, yet the Proposition holds as to the Supreme Power,

which is all the Doctor has asserted. The Supreme Power is the Queen and Parliament, and to this Supreme Power the Doctor has press'd the utter Unlawfulness of Resistance; and I have not heard it said by any that it is lawful to resist the Queen in Parliament. Here is the Strength of the Nation, and here there ought to be a Standing Obedience, otherwise it is setting up the People to be Judges, and not the Collective Body of the People assembled in Parliament.

My Lords, In a particular Case of the utmost Necessity, what Construction must be made as an Exception out of the General Rule, must be left to Time and Circumstances (when such a Case shall happen) to determine, and must be determined by the Wisdom and Strength of the Nation, if ever such a Case should happen, which I hope never will more.

There is indeed one Exception made in one particular Case in the Bill of Rights, where it is Enacted, *That if the King or Queen shall be reconciled to the See of Rome, or profess the Popish Religion, or marry a Papist, then such Person shall be excluded to inherit the Crown, or have Regal Power in the Realm, and that the People shall be absolved of their Allegiance.* And this I take to be the first stated and determined Exception to this general Rule that ever was made in any Act of Parliament.

My Lords, We think the Government can scarce be just to it self; that don't encourage and command this Obedience, this Non-Resistance. This is a Rule profitable to all Governments, let the Nature of them be what they will; it is for the Peace and Quiet both of Church and State. It would be wise Work to have the Exception to this Rule stated by every one that comes into a Pulpit. I know not whether it would not be High Treason in them to do it, sure I am, it would be a high Crime: And if these Points are doubtful or disputable (as at least must be agreed) sure they are no Grounds for an Impeachment.

What Doctrines should a Minister of the Church of England preach, if not those that are delivered in the Scriptures, and in the Doctrines of the Church? Must he search another Rule than the Scriptures, the Laws and the Fathers of the Church, have laid down? Must he tell the People, that the Doctrine of Non-Resistance of the Supreme Power is the Doctrine of the Church of England? Or must he limit this Rule, and state the Exceptions to it? Sure this would be very strange for the Doctor to do: He must tell them Resistance is unlawful, but there is an Exception to that Rule; but what that Exception is, I must not tell you, but you must find it out as you can. Is not this to pick Holes in the Duty and Allegiance of the Subject, and would look like the Blind leading the Blind.

My Lords, We think it would be a very strange thing for a Minister of the Gospel to distinguish in this Case: It would not be allowed him, it would be an Offence for any Preacher to do it. He must preach the general Proposition, he must inculcate the General Rule, and he must preach in the Words that the Laws of God, and of this Land, have delivered it in; he must not vary it, to find Meanings to help the People, like a good Casuist, to distinguish themselves out of their Allegiance.

Now so far we apprehend is the whole Sermon of the Doctor's to be understood, as not razing the Foundations of the Government, not inciting to Rebellion, but preaching Obedience to the Laws of God and Man. It is a great Misfortune for the Doctor

to be represented as preaching this Doctrine for the sake of the Pretender. We think at least it may be a Comfort to him, that there is not a Syllable of Proof or Truth in it; and that on the contrary, the Doctor disclaims all Right in the Pretender, by asserting and acknowledging Her Majesty's Right, and expressing a passionate Concern, that Her Majesty is the Relict of the Royal Family.

We have given all the Assurance of our Fidelity the Law demands, we have taken the Oath of Abjuration, and been always submissive to her Majesty, and the Laws of the Nation, given all the Security of our Allegiance and Loyalty that the Government required.

The Doctor fully declares his Meaning in this Sermon: Does he not all along submit to the Government, and pray for the Queen and Government? He has done it in several Places of his Sermon, particularly in one Place, which will carry a great Weight in it. *What (says he) I have thus freely spoken, I hope is as much without Offence, as it proceeds from a tender Concern for Her Majesty's Person, and a hearty Zeal for the Safety of our Church and Constitution.* Surely after this Declaration, in Common Justice, there ought to be no Construction of a Man's Meaning made by Inference. Here is a full Declaration, that what he has done he has done in Service and Zeal to Her Majesty and the Constitution in Church and State.

When there is not through the whole Sermon any plain Words to ground such a Construction, when there is not the least Proof offered, but only by such forc'd Constructions, when different Words are pick'd out from different Places, and Words so distant are joined together to make up Sentences; and then Arguments framed, and Conclusions drawn from those Sentences to make good the Impeachment, we think it is much too hard, and hope it never will be endured, to pick Part of a Line here, and fix or eight Lines after to pick part of another, and to join the Conclusions of one Sentence, and the Beginning of another; this would be to confound all Reason and Understanding whatsoever. This we take not to be a right way of Reasoning, nor a proper Evidence to maintain an Impeachment, and we hope your Lordships will therefore acquit the Doctor of this Article.

Mr. Phipps. **M**Y Lords, I am also assign'd by your Lordships to be one of the Council for Doctor Sacheverell, who, I beg leave to say, I cannot yet think to be a Criminal; and, when we have been heard, I hope your Lordships will not think him such.

I do admit, as the Case is stated by the Gentlemen who are the Managers for the Commons, that it is a Cause of very great Moment, and is worthy of your Lordships Determination, because it deserves the greatest Deliberation; it being a Cause as considerable in its Consequences to Her Majesty, the Church, and these Kingdoms, as ever came before your Lordships. And therefore, since it has been the Doctor's Misfortune to incur the Displeasure of the House of Commons, and to lye under the Weight of an Impeachment by that Great and Honourable Body, it is his greatest Comfort (next to his being Innocent) that he has the Honour to have your Lordships for his Judges, and the Opportunity of so publick a Vindication of his Innocence; for he does not doubt to give your Lordships, and all by whom we have the Honour to be heard, full Satisfaction, that he is not Guilty of

any of the Crimes charged upon him in any or either of the Articles.

My Lords, We agree with the Managers, that his late Majesty, when Prince of Orange, did, with an armed Force, undertake a glorious Enterprize for delivering the Kingdom from Popery and Slavery. We admit, that divers Subjects well affected to their Country joined with and assisted him in that Enterprize; and that the Enterprize being crown'd with Success, the late happy Revolution took Effect, and was Establish'd. We also admit, that the blessed Consequences of the Revolution are, the Enjoyment of our Religion and Laws, the Preservation of Her Majesty's Person, the many Advantages arising by Her Majesty's wise and glorious Administration, the Prospect of Happiness to future Ages by the Settlement of the Succession, and the Union of the two Kingdoms.

But there are other Matters suggested in the Preamble, in which we differ with the Gentlemen of the House of Commons; for it is therein alledg'd, *That Doctor Sacheverell Preach'd and Publish'd his two Sermons with a malicious and seditious Intention, to Undermine the Government and Protestant Succession, to Defame Her Majesty's Administration, to Asperse the Memory of His late Majesty, and Traduce and Condemn the Revolution, to Arraign the Resolution of both Houses of Parliament, to create Jealousies and Divisions among Her Majesty's Subjects, and to Incite them to Sedition and Rebellion.* And all this we totally deny.

The Offences charged upon the Doctor are of a very high and heinous Nature, and the greater the Crimes are with which a Man is charged, the clearer and plainer ought the Evidence to be to maintain and make good that Charge. And to make the Doctor a Criminal within these Articles, every Branch of the Articles must be prov'd as they are laid. It must be prov'd that he Preach'd and Publish'd these Sermons with such wicked, malicious and seditious Intention, as is alledg'd in the Preamble; and the Proof ought to be plain and positive; for the Laws of England have so guarded the Persons and Properties of the Subjects, that their Lives, Liberties, or Estates, cannot be subject to Forfeiture, or Restraint, by uncertain or conjectural Evidence, by strain'd or unnatural Inferences, Insinuations, or Inuendo's. And altho' I could cite many Authorities and Determinations in the Courts of Westminster-Hall, wherein the Judges have express'd their Dislike and Detestation of Convicting Men of Offences, either Capital or Criminal, by Inuendo's or Inferences; yet I forbear to trouble your Lordships with any of them, because I have an Authority Superior to them all to warrant what I have said, and that is the Determination and Resolution of your Lordships in Sir Samuel Eynardiston's Case, which having been read by Sir Simon Harcourt, I forbear to trouble your Lordships with a Repetition of it.

The next thing therefore to be considered is, Whether the Sermons were Preach'd with such malicious and seditious Intention as is asserted in the Preamble, and if there be such plain, direct and positive Proof, as is by your Lordships Determination, in Sir Samuel Barnardiston's Case, declared to be necessary.

But before I come to speak to any particular Article, I beg leave to observe something, which though it hath not been made a particular Charge against the Doctor in any one Article, yet it has been urged and insinuated almost by every one of the Managers of the House of Commons to enforce every

every Article, and that is, That *notwithstanding the Doctor's Expression of Loyalty to the Queen, yet his Intention is to bring in the Pretender.*

It has been Objected, as I apprehended (and I beg Pardon if I am mistaken) "that the Doctor confines his Doctrine of Passive Obedience and Non-Resistance to a *Jure Divino* King or Queen, and that from thence it was easy to understand against what Queen the Doctor excites the People to take up Arms". If the Queen, who has an Hereditary Right, and also a Right confirm'd and establish'd by Act of Parliament, cannot be said to be a *Jure Divino* Queen, I do not know who can. I did not think that the Doctor, who Asserts the Hereditary Right of the Queen, could be charg'd with an Intention to bring in the Pretender. I am in your Lordships Judgment, whether the denying Her Majesty's Hereditary Right be not the most likely way to bring him in: For I submit to your Lordships, whether the denying the Hereditary Right of the Queen, be not to suppose an Hereditary Right in somebody else; and whether that does not leave a Way open (when the Queen's Enemies are strong enough) to bring in that Person in whom the Hereditary Right is suppos'd.

It is Asserted, "That the Doctor's pretended Zeal is for Her Majesty, but his real Zeal is for the Pretender: It is hard to say a Man means contrary to what he speaks, and that, though he declares that the Safety, Rights and Establishment of Her Majesty's Government, with those of the Church, are the things which he so earnestly contends for, and are his only Aim and Intention; and though he prays that God will Preserve Her Majesty, for the Comfort and Support of the Church and Nation, yet it is suggested that his chief Aim and Design is to Dethrone Her Majesty, to set the Crown upon the Head of the Pretender, and to establish Popery, or at least a Church independent on the State. And altho' he Preaches up Passive Obedience and Non-Resistance under Her Majesty's happy Administration, yet it is objected he stirs up the People to Rebellion, and means Non-Resistance and Passive Obedience to the Gentleman on the other side the Water."

I do agree these Things have been urg'd with great Ingenuity, but what Proof, what Evidence is there of any of these Matters thus suggested?

My Lords, By the Law of England Men are not to be Harangu'd out of their Lives, Liberties or Estates, but, as I have observ'd, it must be plain and positive Proof alone that can subject them to a Forfeiture: And I submit to your Lordships, where a Man affirms a Thing in his Sermon, if an Averment by any Body else that he means quite the contrary, be a sufficient Evidence to Convict a Man of High Crimes and Misdemeanors.

There is another Matter which I confess puts me under a great Difficulty, to determine which way to apply our Defence to the first Article, and that is the different Construction which the Gentlemen of the House of Commons have made of that Part of the Doctor's Sermon, on which the first Article is founded. The Gentlemen that spoke to the first Article (if I apprehend them right) affirm, "That the Doctor asserts an unlimited Obedience, and the utter Illegality of Resistance to the Queen, as the Supreme Executive Power, and that such an Assertion was a Reflection upon the Revolution, which was brought about by the Resistance that was given to the late King James". And all their

Arguments on the first Article were grounded on this Assertion. But a very Learned Gentleman, who spoke Yesterday to the fourth Article, was pleas'd to object, "That tho' the Doctor Asserted the utter Illegality of Resistance to the Supreme Power, yet he had no where Asserted the utter Illegality of Resistance to the Queen, thereby leaving himself at liberty to resist the Queen, and bring in the Pretender."

Now the Question is, which of these Constructions we must believe; if the Construction made by the Gentlemen who spoke to the first Article be true, then the Doctor has taken that Care of Her Majesty's Person which he ought, by asserting the utter Illegality of Resisting Her, and hath not left himself at liberty to take up Arms against Her Majesty to bring in the Pretender; and so the great Objection made against the Doctor by the Learned Gentleman who spoke to the fourth Article falls. But if his Construction prevails, there is no Reflection on the Revolution, and the first Article falls to the Ground; for the Reflecting on the Revolution can be only by asserting the Illegality of Resistance to the Queen, as the Supreme Executive Power; because the Resistance which brought about the Revolution was made to the late King James only, and not against the Legislature: But whichever of these Gentlemen your Lordships shall be of Opinion is in the Right, I beg leave to say, that this may certainly be concluded and infer'd, That the Construction of that Sentence must be very doubtful, in which such Learned Men differ, and consequently cannot be a Charge sufficient and certain enough to ground a Conviction for High Crimes and Misdemeanors. These Matters being submitted to your Lordships Judgment, I come next to consider the Articles themselves, and shall humbly propose to your Lordships Consideration what I have to offer in Answer to them, and shall take Notice of the several Branches of the respective Articles, which the Doctor mentions in his Answer to them.

As to the first Branch of the first Article, which charges, the Doctor does *Suggest and Maintain, that the necessary Means used to bring about the happy Revolution were Odious and Unjustifiable*; the Doctor denies there are any such Expressions in his Sermon at St. Paul's: And I beg leave to say, that there is not one Paragraph or Sentence in his Sermon that can support this Charge; the Necessary Means used to bring about the Revolution not being once mentioned in his Sermon; and therefore I at first doubted whether I had the right Sermon; for I could no more find that Sentence in the Doctor's Sermon at St. Paul's, than one of the Learned Managers could find a Text of Scripture, quoted by the Doctor, in his Bible.

One of the Gentlemen who spoke to this Article, was pleas'd to admit, that the Words charged in this Part of the Article are not in the Doctor's Sermon, but said there are Words that are *tantamount*; so that this Branch is to be proved by Inuendo's, and yet they have not been pleas'd to let us know what those Words are which do amount to the same Signification, and we deny there are any such Words.

The last Part of the first Article (for I shall consider that next, because it relates to the Revolution) charges, that the Doctor does *Suggest and Maintain, that to impart Resistance to the Revolution, is to cast Black and Odious Colours upon his Majesty and the Revolution.* In answer to which I

must beg leave to take notice, that the Words of the Sermon are here transpos'd and misplac'd; for the Doctor does not say, that *to impute Resistance to the Revolution is to cast Black and Odious Colours upon his Majesty and the Revolution*; but he says, that *to urge the Revolution to justify the Doctrine of Dethroning and Murdering of Princes, is to cast Black and Odious Colours on his Majesty and the Revolution*; for the Doctor in Page 11th, says, that "the New Preachers and New Politicians pretend to have a Power to cancel their Allegiance at Pleasure, to call their Sovereign to an Account for High-Treason, to Dethrone and Murder him for a Criminal, as they did the Royal Martyr by a Judiciary Sentence, and that to justify this Doctrine, they urge the Revolution of this Day: But, says he, *they are the greatest Enemies of that, and his late Majesty, and the most ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon both*; so that what he says is no more than that to justify the calling the Sovereign to an Account for High-Treason, and the Dethroning and Murdering of him, by the Revolution, is to cast Black and Odious Colours upon both. And is there any Body that has any Respect for the glorious and happy Revolution, that has any Regard for the Preservation of our Constitution, can say less? Can there be a greater Reflection on the Revolution, than to urge That in Vindication of the Rebellion in Forty One, as if the Cases were alike?

I humbly submit it to your Lordships, if there be any Thing in his Sermon that can be constru'd to reflect on the Revolution, if the Words be taken according to the Natural and Genuine Sense of them; nor can it be thought the Doctor would cast the least Reflection upon it: Can it be imagined, that he who is a Member of *Magdalen College in Oxford*, should so soon forget the Attempts that were made on their Liberties, and would reflect on the Revolution, by which not only he and the rest of the Fellows of that College, but all the Colleges in both the Universities, nay, all Her Majesty's Protestant Subjects, now enjoy their Religion, Rights and Liberties? That he who is a Church-of-England-Man should calumniate the Revolution, by which the best Establish'd Church in the World is preserv'd from Popish Superstition and Idolatry? That he who contends so earnestly for the Preservation of our Constitution, should cast Black and Odious Colours on that, by which alone the Succession is settled and secur'd in the Protestant Line, and Her Majesty is now Lawfully and Rightfully seated on the Throne of Her Royal Ancestors, on which the Doctor prays, and I hope we all join with him, *that she may long continue for the Support and Comfort of this Church and Nation*? No, my Lords, it is not the Revolution in 1688, but the Revolution in 1648, that he endeavours to blacken, and the Principles by which that was brought to pass, those Principles which made Rebellious Subjects take up Arms against one of the best Princes that ever Sway'd the Sceptres of these Kingdoms; those Principles which brought that Pious Martyr to the Block, Banish'd the Royal Family, and set an Usurper upon the Throne; this is the Dethroning, this is the Murdering which he means: And can any Colours be too Black, any Colours too Odious for such Crimes? No doubt, my Lords, they cannot; and therefore instead of charging the Doctor with reflecting on the late happy Revolution, I hope your Lordships will be of Opinion he vindicates it in the highest degree, when he distinguisheth

it from that in 1648, and shews what a wide Difference there is between them.

As to that Part of the first Article which says, *That his late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance*; If the Doctor had not Explain'd himself, it is humbly submitted how far he is justified by his Majesty's Declaration. The Declaration says, *We have thought fit to go over to England, and to carry with us a Force sufficient, by the Blessing of God, to defend us from the Violence of evil Counsellors; and that his Expedition is intended for no other Design but to have a free and lawful Parliament*: So that this Expedition was to have a Free Parliament, and his Forces were to defend him from the Violence of Evil Counsellors, in carrying on that glorious Design; and when the late King James Abdicated the Government, what Resistance was it to supply the Vacancy, by settling his late Majesty on the Throne?

In Construction of Words and Sentences, if any part be ambiguous, and may be taken in a double Sense, it ought in favour of Life and Liberty to be taken in the best Sense. But when the Author declares what his Sense is, what he means by it, there it cannot be taken in any other Sense than that: And this is the Doctor's Case; for he shews, both in his Sermon, and by a Note printed at the Bottom of the Page, that by Resistance he means such Resistance as tended to a Conquest: And is he not justified in that by his Majesty's Declaration, wherein he disowns the wicked Attempt of Conquest? And by the Vote of both Houses of Parliament, who so highly resented the Design of making that Expedition a Conquest, that they ordered a Pamphlet which attempted to prove it such, to be Burnt by the Common Hangman?

And therefore, if the general Words would have carried such a Reflection, yet the Clause which explains it, being Printed with it, prevents such a Construction; for there is no Reason to apprehend any Danger from the Poyson, when the Antidote is administred at the same Time. Thus, my Lords, I take it, I have answered every Branch of this Article, and shewn, that there are not any Expressions in the Sermon, that can Warrant or Support any Part of it: But, from what I observ'd from the Gentlemen who are the Managers, and spoke to this Article, the great Foundation and Stress upon which this Article depends, is in the Sentence in Pag. 11. of the Doctor's Sermon, where he says, *The Grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power in all things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever*. But I take it, the Charge in this Article can never be supported by any Words in this Sentence; for it is Evident, that the absolute and unconditional Obedience, which he says Subjects are obliged to, is to the Supreme Power in all things lawful; and the utter Illegality of Resistance upon any Pretence whatsoever, (being in one and the same Sentence) must be intended to be of the Supreme Power in all Things lawful; so that it is no more than if he had said, 'Tis utterly Illegal, upon any Account whatsoever, to resist the Supreme Power in Things lawful. Can any Aphorism be truer than this, viz. *That where the Thing commanded by the Supreme Power is lawful, the Resistance given to it must be unlawful*? And this is all the Doctor hath asserted in this Paragraph.

If I may have Leave to cite a Foreign Author, *Puffendorf* says, The Supreme Power is that in which the Legislature is vested; for he says, *Human Laws are the Decrees of the Supreme Power, concerning Matters to be observ'd by the Subjects for the Good of the State.* And one of the Learned Managers, who spoke to this Article, admits it to be so. And then the Doctor's Assertion is, That the Security of our Government, and the very Pillar on which it stands, is founded upon the steady Belief of the Subjects Obligation to an Absolute and Unconditional Obedience to the Laws made by the Queen, Lords and Commons, in Parliament assembled, and the utter Illegality of Resisting such Laws on any Pretence whatsoever. And if this be not so universal a Truth, as not to admit any Exception, is humbly submitted to your Lordships: And this is an Answer to all that hath been said against us on the first Article. For all the Gentlemen have founded their Discourse on a Supposition, that the Doctor preach'd up an Absolute Unconditional Obedience to, and the utter Illegality of Resistance of the Queen; whereas he preaches up the Illegality of Resisting the Supreme Power, and that in all Things lawful.

Suppose it could be collected, that by the Supreme Power the Doctor meant the Supreme Executive Power, which is the Queen; yet the Doctor cannot be thought by this to reflect on the Revolution, or to condemn that Opposition given to King *James*.

For can it be imagin'd, that he condemns the Opposition given to that Prince in the Dispensing Power, in committing the Bishops, depriving Men of their Freeholds and Liberties, by Ecclesiastical and other unlawful Commissions, and endeavouring to establish Popery, by introducing a Foreign Power? I say, Can it be imagin'd the Doctor condemns that Opposition, when he urges the Illegality of Resistance to the Supreme Power in all Things lawful? If those Proceedings of King *James* were lawful, then the Doctor condemns the Opposition given to 'em; but those Proceedings being Illegal, the Opposition given to them is no where condemn'd by the Doctor, nor hath this Paragraph in his Sermon any Relation to it.

To carry this yet further; Suppose that the urging the Illegality of Resistance on any Pretence whatsoever had been a Substantive Clause, and had no Relation to, or Dependence upon any other Clause or Sentence; or suppose such a General Assertion can be collected from any Part of the Doctor's Sermon, yet it must be taken only for a General Proposition: And if such General Propositions are true in the general, and to a common Intent, tho' they are subject to particular Exceptions, yet it is submitted, whether the Doctor is not well warranted in asserting such a General Proposition, without mentioning the particular Exception? For all General Rules have Exceptions; and yet the Person that cites them, seldom or never mentions the Exceptions; for whenever such General Propositions are urged, the Exceptions are always understood and implied. And there was less Reason to mention the Exception in this Case, because it is so universally known: It had the Concurrence of the whole Nation, and was so often establish'd and approv'd by the Legislature.

And the Doctor entirely concurs with the Gentlemen of the House of Commons, that the Revolution is an Exception; and is not Adversary to one of the Learned Managers, who was pleas'd to ad-

mit, it was the only Exception from this General Rule. And I submit to your Lordships, if the naming that Exception, would not be a greater Reflection on the Revolution, than the Preaching that Doctrine in general Terms, without naming it; for to name it now, since the Revolution, would be to suppose, that it was not implied and understood as an Exception out of that General Proposition, before the Revolution; and then the Exception is to be warranted by the Revolution; which is to infer, that no Resistance was lawful till the Revolution: Whereas we say, That such an Extraordinary Case as that of the Revolution, was always implied as an Exception out of that General Doctrine, and so the Doctrine justifies the Revolution.

And therefore, the Doctor urging this Doctrine of Non-Resistance in such general Terms, as all other General Propositions are usually urged, it is humbly submitted, Whether he can for this be esteem'd guilty of High Crimes and Misdemeanors; especially since this very Doctrine hath been affirmed in such general Terms, by Learned Men in all Ages, by our Church, and by the Legislature; of which I'll beg Leave to give some few Instances.

When the Duke of *Monmouth* was to be executed, his present Grace the Archbishop of *Canterbury*, the present Lord Bishop of *Bath and Wells*, the then Bishops of *Ely* and *Bath and Wells*, were appointed by the King to attend his Grace: They press'd him to make a particular Confession of his Crime, and to acknowledge himself guilty of Rebellion: His Answer was, *He died a Protestant of the Church of England.* They replied, *My Lord, If you be of the Church of England, you must acknowledge the Doctrine of Non Resistance to be true.*

Archbishop *Tillotson*, in his Letter writ to my Lord *Russel*, July 20. 1683. offers these Considerations concerning the Point of Resistance. "(1.) That the Christian Religion doth plainly forbid the Resisting of Authority. (2.) That in the same Law which establishes our Religion, it is declared, It is not lawful upon any Pretence whatsoever to take up Arms against the King.

Bishop *Sanderson*, in his Works, Pag. 522. says, *No Conjunction of Circumstances whatsoever, can make that expedient to be done at any time, that is of it self, and in the kind, unlawful. For a Man to take up Arms (Offensive or Defensive) against a Lawful Sovereign, being a Thing in its Nature simply, and de toto genere, unlawful; may not be done by any Man, at any Time, in any Cases, upon any Colour or Pretence whatsoever.*

Thus your Lordships observe, how much higher these Great and Learned Men carried this Doctrine, than Doctor *Sacheverell* hath done in his Sermon: And Multitudes of Instances there are, which shew, That it hath been the Concurrent and Universal Opinion of all the Learned Men of our Church, in all Ages, that Resistance of the Sovereign Power is not lawful upon any Pretence whatsoever. And what Punishment, what Censures have been inflicted upon, nay, what Fault has been found with any of them to this Day? One of the Learned Gentlemen, to enforce the Legality of Resistance, was pleas'd to urge the Original Contract, as the Foundation of the Prerogative of the Crown, and the Liberties of the People; and to assert, That if the Supreme Executive Power invaded the Rights of the People, the Contract was dissolv'd, and the People discharg'd from their Allegiance. I will not

be positive as to the very Words, but I take this to be the Purport of them.

When the Original Contract was made, that Learned Gentleman did not think fit to inform us. Was it before *Magna Charta*? If so, why not compriz'd in it? All the Liberties the Subjects then laid Claim to, being included in that Act; and 'tis much, a Thing of that Moment, and which was the Source and Spring of all their Liberties, should not be so much as mentioned in it. I never met with it in any of our Law-Books, in my little Experience. - - I never heard it urg'd in any Court before. Was it before the Statute of 25 *Edw. III.*? I never knew it pleaded to any Indictment for High-Treason, nor objected, to enervate or take off the Force of that Statute: And our Law-Books being silent in it, I think it is too tender a Point for us, who are no Members of any Part of the Legislature, to meddle with. And therefore, till the Legislature have declar'd what the Original Contract is, and determin'd what Act of the Supreme Executive Power shall amount to a Dissolution of that Original Contract, and discharge the Subjects from their Allegiance; I must beg Pardon, if I think, that as to Resistance in general, the Law stands still upon the Foot of the 25th of *Edward III.* and that all Resistance, except in the Case of the Revolution, is still Treason within that Act.

But to give some further Instances, in Vindication of the Doctrine of Passive Obedience and Non-Resistance. Archbishop *Tillotson*, in his Letter to the Lord *Russel*, says, *The Doctrine of Non-Resistance is the Doctrine of all Protestant Churches*: I may add, it was the Doctrine of Christ and his Apostles: It was the Doctrine in *David's* Time; for it was this Doctrine that restrained *David* from offering Violence to King *Saul*, tho' that King sought to take away his Life. It was that Holy Man's Opinion, that he could not lift up his Hand against the Lord's Anointed, and be guiltless. Can it be done now with greater Innocence than it could then? Is the Person of the Lord's Anointed now less Sacred than it was then? Or have the People now a greater Liberty to resist, than *David* had then? My Lords, One of the Learned Gentlemen said, That in respect of the Patriarchal Right, it is a Doctrine as old as *Adam*, and I will not pretend to carry it further.

The next Thing therefore to be consider'd, is, Whether this Doctrine, that is of so great Antiquity, has had any Alteration; whether it hath been preach'd, or urg'd in any other Terms since the Revolution, than it was before. Bishop *Beveridge*, in a Book call'd *Private Thoughts upon Religion*, Pag. 247, 249, 250, says, *Upon any seeming real Defect or Defect of our Sovereign, we are to be more earnest in our Prayers and Intercession for him, but upon no Account to fight or rebel against him*. This Book had Her Majesty's Royal License, and was countersign'd by a Noble Lord, eminent for Learning, and Her Majesty's Principal Secretary of State; I mean, the Right Honourable the Earl of *Sunderland*.

I beg Leave to cite next a Learned Gentleman, whose Affection to the Government, and Understanding in Antiquity, no body can doubt: 'Tis Dr. *Kennet*, who in his Sermon preach'd before the House of Commons, *January 30. 1705.* says, *This is the true Foundation of that common Axiom, The King can do no Wrong; because there is no Right nor Remedy against his Royal Person*. And in the same Sermon he says, *It was declarative of our O-*

iginal Constitution, (which one would think should be the Original Contract, unless the Original Contract and the Original Constitution differ) *that our Legislature, upon Occasion of this Day would have it express'd, That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons nor both together, in Parliament, or out of Parliament, nor the People, collectively or representatively, nor any other Persons whatsoever, ever had, have, or ought to have, any Coercive Power over the Persons of the Kings of this Realm*. And I think it is evident, where there can be no Coercive Power, there cannot be any Resistance. This was but in the Year 1705. And was the Original Contract found out since? If not, then it is plain, the Commons did not think this Doctrine to derogate from that Contract, or to reflect upon the Revolution; for the Doctor had the Thanks of the Commons for his Sermon, and their Order to Print it.

I do most readily concur with the Learned Gentlemen of the House of Commons, That that Reverend Bench is fill'd with Fathers of the Church, who are as great an Ornament to it for Learning and Piety as any of their Predecessors, and are most justly fam'd for their Religious Moderation; and therefore Instances of their asserting this Doctrine since the Revolution, will have the greatest Weight with your Lordships, and tend the most to the Satisfaction of that Honourable House, upon whose Impeachment the Doctor is brought hither.

The Bishop of *St. Asaph*, in his Sermon on the 30th of *January, 1699.* preach'd before the Lord-Mayor, Pag. 18. says, *It is plain, that a Government can't possibly subsist for any Time, where any kind of Violence is allowed against the Magistrate: Government is at an End, where Rulers are expos'd to Popular Assaults*.

The Bishop of *Lincoln*, in his Sermon Preach'd before your Lordships the 30th of *January, 1708.* pag. 15, 16, 17, says, *Where-ever that Supreme Power and Authority is Lodg'd, or in whomsoever it resides, we are bound to pay either an Active or Passive Obedience, must either do what it requires, or suffer what it inflicts. This is, without Controversy, the standing Doctrine of Christianity, and has been confirm'd by the Practice of the best Christians in all Ages of the Church*. My Lord Bishop likewise cites the Words of the Statute of the 12th of *Charles II.* which were mention'd by Dr. *Kennet*; your Lordships were pleas'd to thank my Lord Bishop for this Sermon, and desir'd him to Print it.

My Lord Archbishop of *York*, in his Sermon Preach'd before your Lordships in 1700, has stated this Doctrine so fully and clearly, that it is not capable of the least Contradiction or Doubt: His Grace expresses himself thus, *That there is such a Submission due from all Subjects to the Supreme Authority of the Place where they Live, as shall Tie up their Hands from opposing or resisting it by Force, is evident from the very Nature and Ends of Political Society; and I dare say, there is not that Country upon Earth, let the Form of their Government be what it will, (Absolute Monarchy, Aristocracy, or Commonwealth) where this is not a Part of the Constitution. Subjects must obey Passively, where they cannot obey Actively, otherwise the Government would be precarious, and the Publick Peace at the Mercy of every Malecontent; and a Door would be set open to all the Insurrections, Rebellions and Treasons in the World. Nor is this only a State-Doctrine, but the Doctrine also of Jesus Christ; and that*

that a Necessary and Indispensible one too, as sufficiently appears from these famous Words of St. Paul's, Rom. 13. 1, 2. which are so plain that they need no Comment: So that so long as this Text stands in our Bibles, the Doctrine of Non-Resistance or Passive Obedience must be of Obligation to all Christians.

Is not this Doctrine confirm'd by our Church in her Homilies, and enjoin'd to be read on certain Days in the Church? Are not these Homilies allow'd by the Articles? Are not these Articles establish'd by the 13th of Eliz. Chap. 14? And is not that very Act confirm'd and made Perpetual by the Act of Union made in the Fifth Year of Her Majesty? Is it not likewise ratify'd and establish'd by the Legislature, by the Act of the 12th of Charles the Second, cited in the Sermons of the Bishop of Lincoln and Dr. Kennet; by the Act of the 13th of Charles the Second? For that Act of the 13th of Charles the Second, Chap. 4. obliges all Ministers, &c. to subscribe a Declaration: The first Part whereof was this, *I A. B. Do declare that it is not Lawful upon any Pretence whatsoever to take up Arms against the King.* Was not that Declaration to be Swore to by all Officers of Corporations, by the Corporation-Act; by all Lieutenants, Deputy-Lieutenants, and all Officers and Soldiers of the Militia, by the Militia-Act? And can any Man doubt the Truth of that Doctrine, which the Legislature has obliged the greatest Part of the Nation so solemnly to subscribe and swear to? We have collected many more Instances of this kind, which we will offer to your Lordships in the Course of our Evidence.

Thus your Lordships observe how this Doctrine hath been Preach'd and Maintain'd by Archbishops, Bishops, and Eminent Divines, confirm'd and establish'd by the Church, and by the Legislature: And is this Doctrine alter'd; or hath it receiv'd any Diminution or Restriction by the Revolution? I will not presume to say, but are in your Lordships Judgment, on the Consideration of the several Sermons before-mention'd, Preach'd and Publish'd with the respective Approbation of both Houses of Parliament since the Revolution. I beseech your Lordships, How many Revolutions have there been in this Kingdom, and yet this Doctrine always continued the same; and I submit, whether we have not the Authority of your Lordships on this very Point; for in a Sermon Preach'd before your Lordships on the 30th of January 1702, by my Lord Bishop of Carlisle, his Lordship expresses himself thus. *Our Foundations, 'tis to be hoped, are not shaken by the Weight of those many Great and Extraordinary Revolutions that have pass'd upon us. The All-wise Providence of God has frequently of late (and, as some of us always thought, very graciously) exchange'd our Governors; but if we ungratefully alter our Notions of the Divine Right of Government, and throw off our Ancient and Primitive Rules of Obedience, we shall make an unworthy Return for the Mercies we have receiv'd.* I hope I may have your Lordships Leave to conclude your Lordships are of the same Opinion, since my Lord Bishop had your Lordships Thanks for his Sermon, and your Desire to Print it. I also presume to offer it to your Lordships Consideration, whether this very Doctrine be not establish'd and enjoin'd under the Obligation of an Oath, by the Legislature, in the Reign of his late Majesty, and of her present Majesty; I mean in the Abjuration-Oath, in which Oath there is this Clause, *viz. And I do Swear that I will bear Faith and True*

Alliance to Her Majesty, and Her will defend to the utmost of my Power against all Traiterous Conspiracies whatsoever, which shall be made against Her Person, Crown and Dignity. I believe it will not be deny'd by any Lawyer, that taking up Arms against Her Majesty is High-Treason, by the Statute of the 25th of Edward the Third; and therefore the Parliament having enjoin'd all Persons in Office, &c. to defend Her Majesty against all Traiterous Conspiracies and Attempts, shew, that it was their Opinion, that the taking up Arms and Resisting Her Majesty, upon any Pretence whatsoever, is unlawful; because wheresoever Resistance is Lawful, the Defence must be Unlawful.

I would only beg Leave to add, that the Punishment inflict'd by our Law in this World for Resistance, and the Judgment denounc'd against it in the Next, sufficiently evinces the Illegality of it. Taking up Arms and Resisting against the Queen, by the Statute of the 25th of Edward the Third, is High-Treason; the Punishment of which is to be Drawn, Hang'd and Quarter'd. And in what Condition they are to be in a future State, St. Paul informs us: For he says, *They that Resist shall receive to themselves Damnation.* And surely no Body will contest the Truth of that Doctrine, the Breach of which is attended with such dismal Consequences. I hope, therefore, since this Doctrine has been so universally preach'd and approv'd, the Preaching of it now shall not be thought to reflect on the Revolution, more than it has done hitherto, since Her Majesty's Happy Accession to the Throne; and more than it did in the Reign of his late Majesty, who was the Glorious Instrument of that Happy Revolution. Was not his Majesty appriz'd of the Necessary Means by which the Revolution was brought about? Had not His late Majesty as tender a Regard for the Honour of the Revolution, as any Body else can be suppos'd to have? No body can doubt it: And yet this Doctrine was preach'd in his Time, in as general Terms as the Doctor has preach'd it; and not only without Objection, but with the Approbation of his Majesty, and both Houses of Parliament. And if all this will not vindicate the Doctrine; yet, I hope, it will at least excuse the Doctor from being a Criminal.

Can he be a Criminal for Preaching that Doctrine which has been assert'd by so many Archbishops, Bishops, and other Eminent Divines, not only with Impunity, but even with the Approbation of both Houses of Parliament? That Doctrine which is enjoin'd by our Church, ratify'd, confirm'd and establish'd by the Legislature, and which is the Doctrine of all the Protestant Churches in the World, which was the Doctrine of our Saviour himself, and which hath been the Doctrine ever since Adam, and will continue so as long as there is a Bible upon Earth?

Can a Man be a Criminal for Preaching the Doctrine of Passive-Obedience and Non-Resistance, tho' without Restriction and Limitation, while we are so happy as to have her Majesty to Reign over us, upon whose Life the Welfare and Happiness of these Nations depend, as much (I hope I may be excus'd if I say more) than the Welfare of any Nation ever did upon the Life of any Prince whatsoever since the Foundation of the World? And therefore we are sure your Lordships will not lessen Her Security; and the rather, because it is impossible, during her Majesty's Life, any Invasion or the least Attempt should be made upon that Religion, that Liberty and Property, for the Preservation of which she run so great a Hazard.

This is what I humbly offer to your Lordships, on behalf of my Client, on this Head. And tho' I have mention'd these Instances, to show in what general Sense the Doctrine of Passive-Obedience has been Preach'd, and that if the Doctor had asserted it in such general Terms, he could be no more a Criminal than others; yet it must be always understood that he does not assert it in such general Terms, but only asserts the utter Illegality of Resistance to the Supreme Power in all Things lawful.

Before I quit this Article, I would take notice, it has been objected, that it is highly improper and unseasonable for Divines in their Pulpits to meddle with Matters of this Nature: In answer to which, I would (besides the Injunction that the Apostles have laid on their Successors, to put People in Mind of being subject to Principalities and Powers) humbly offer to your Lordships Consideration, a Bold and Seditious Paragraph in a Pamphlet Printed in 1705, call'd, *The Review*; which hath this Paragraph, *If the next Parliament should pursue the Steps of the last, the Nation, in my Opinion, will be so much nearer that Crisis of Time, when English Liberty being brought to the last Extremity, must open the Magazine of Original Power.* The same Author, speaking of the Family of the *Stuarts*, calls it *the Line of all the World, fam'd for Blood, and that had Ravaged the best Families of the Kingdom.* And in another Paragraph he says, *In short, if Jure Divino comes upon the Stage, the Queen has no more Title to the Crown than my Lord Mayor's Horse: All the People are bound by the Laws of God to depose Her as an Usurper, and restore their Rightful and Lawful King, James the Third.* If therefore to defame the whole Line of Her Majesty; to assert that the Pretender has an Hereditary Right to the Crown; if telling the People, if they do not like the Parliament, they must have Recourse to the Magazine of Original Power, be not founding a Trumpet to Rebellion, and does not make this Doctrine seasonable and necessary to be preach'd at this Time, we submit it to your Lordships. And therefore, I humbly hope, that instead of laying a Brand of indelible Infamy on this Doctrine, your Lordships, for the Preservation of Her Majesty, and Her Successors, and for the securing the Peace of the Kingdom, will convey this Doctrine as entire, and in as full Force, down to Posterity, as it was transmitted to your Lordships by your Noble Progenitors.

And as to what one of the Honourable Gentlemen concluded with, *viz.* That your Lordships would direct what Doctrine the Ministers should Preach:

If there be any Doctrine in the Bible not proper to be preach'd; if there be any Doctrine, except that of the Deity, of greater Antiquity than this, which commences from *Adam*, or is more useful, or necessary for the Preservation of the Government, then we submit this Doctrine should be let alone. Upon the whole Matter, I am in your Lordships Judgment, if upon Consideration of what hath been said, your Lordships can be of Opinion, that the Doctor is guilty of the High Crimes and Misdemeanors contain'd in the First Article.

Mr. Dec. **M**AY it please your Lordships, After so much has been said, and so well pressed by the Gentlemen that have gone before me, of the Doctrine of Non-Resistance (which is so well establish'd by the Opinion of the Fathers of the Church, and founded on the Laws of the Land) I

should think my self very unmannerly to spend your Lordships Time, in repeating it in worse Words. I beg Leave only to make a few Remarks: First on some Generals, and then to add a few Words, and draw an Inference or two from one Law that has not yet been taken Notice of.

My Lords, We readily join with the Gentlemen who managed on behalf of the House of Commons, in desiring your Lordships to assert Fundamentals; and desire your Lordships to consider the Ancient Legal Constitution of the Kingdom. This we readily comply with them in, and doubt not but your Lordships will do it.

My Lords, There was some Notice taken of the Time and Place where this Sermon preach'd; and it was said by one of the Gentlemen, that it was an improper Time, because it was a Doctrine fit only to be preach'd in the Reign of a bad Prince, but not of a good one. My Lords, indeed I am at a Loss to understand that: I think, if at any Time, it is seasonable when we have so gracious a Princess upon the Throne, much rather than in the Reign of a Tyrant or Usurper.

My Lords, This Doctrine has been made appear to your Lordships to be consonant to the Laws of God, and the Laws of the Land; and when we have laid before your Lordships our Proofs that have been opened, I hope your Lordships will allow we have proved our Case.

The Gentlemen of the other Side said they had proved their Articles: But how? In no other way than by reading the Sermon, which we hope shall be permitted to speak for it self.

My Lords, It was said, that the Municipal Laws of the Land signify nothing only in Times of Peace. What the Meaning of that is, I know not, unless that the Laws must be silent in the Time of War; but the way to maintain Peace, and to prevent Blood and Wars at Home, is to preserve our Laws.

My Lords, It has been likewise urg'd as a Maxim, *Thre there can be no Right, but there must be a Remedy to preserve it.* And thereupon it was hinted, as if there were some secret Right vested in the People to do something they did not think fit to name. That Saying, my Lords, I take to be a Maxim in the Law, and to relate only to Legal Matters, and the Meaning of it to be, That when any Man has a Property, the same Law that gives Property, gives him a Remedy, if the same be invaded. But I never understood that Maxim to be meant of a Remedy by Force; and I am sure, in most Cases, such a Remedy is worse than the Disease.

My Lords, We would not be thought (I am sure no Gentleman of our Side would be thought) in the least to reflect on the Revolution mention'd in the Impeachment; nor does any thing, as we think, that the Doctor has said in his Sermon, in the least look that way. The general Position of the utter Illegality of Resisting the Supreme Power, does (as it has been observ'd already) imply in it a Condition, (which perhaps may extend to some other Cases); and, as we say, extends to that of the Revolution.

One of the Managers instanced in the Fourth Command, which in general forbids any Work to be done on the Lord's Day; and yet, says he, Works of Necessity and Mercy are allowed to be done on that Day, and are an implied Exception. The like we say of the implied Exception to the

general

general Doctrine laid down by the Doctor of the Illegality of Resistance.

My Lords, Certainly there is no room to suppose any Reflection to be made on his late Majesty; for surely his Majesty wanted no Excuse for his coming hither; nor could he be guilty of any thing that we properly call Resistance. He was a Sovereign Prince, and might do what he thought fit. He owed no Allegiance to any one, so could not be said to resist, in the Sense Resistance bears in the Doctor's Sermon, which is the Resistance by Subjects to the Supreme Power.

My Lords, I now beg Leave to mention the Act of the Second Year of King William and Queen Mary, entituled, *An Act for a general Pardon*; by the last Clause whereof it is provided, *That nothing in that Act shall extend to Pardon, or discharge any one for counselling or procuring the raising War against their Majesties, after the 12th Day of February, 1688, unless such Person shall before the 26th of July take the following Oath.* Then follows the Oath of Allegiance. From hence I beg Leave to make an Inference or two: First, That it was the Sense of the Legislature at that Time, that those Persons that contrived or abetted the raising War against their Majesties after they came to the Crown, were guilty of a High Crime, and stood in need of a Pardon. So that if any thing had shaken the Doctrine of the Illegality of Resistance, here Resistance is made as Criminal as it was before. Secondly, It appears by that Clause to be the Opinion of the Legislature, that by the Oath of Allegiance, as it is now framed, this Doctrine of the utter Illegality of Resistance is firmly establish'd. For, my Lords, To what Purpose should that Oath be made the Condition of a Pardon for having resisted, unless they thought that Oath laid an Obligation on the Persons taking it not to do so again?

My Lords, That Construction which some of the Managers for the Commons put on the Doctor's Sermon, that this Notion of Non-Resistance could only be applied to somebody beyond Sea, we think to be very hard and strained: I am sure it don't appear from any thing the Doctor has said in his Sermon; but the contrary plainly appears; for the Doctor doth assert Her Majesty's Hereditary Right, and yet doth not reflect on the Revolution; for though he speaks of Her Majesty's Hereditary Right, he does not any where say, that she has no other than an Hereditary Right in Her. And it was owned by one of the Gentlemen that managed for the House of Commons, that his late Majesty had a single Right by the Act of Settlement; but that Her Majesty has a twofold Right, a Right according to the Act of Settlement, and an Hereditary Right too.

My Lords, There has been a great deal of Time spent, therefore I shall only make this one Remark further, that is, That the Learned Managers for the House of Commons have drawn very many Inferences, by their Skill and Ingenuity, from Passages in the Doctor's Sermon, which I believe none of your Lordships can think the Doctor ever thought of, when he was composing his Sermon, or delivering it in the Pulpit.

Doctor Henchman. MY Lords, I am likewise assign'd Council for Doctor Sacheverell; but if he has been represented by the learned Managers in his proper Colours, if he has been set before your Lordships in a true Light, and with his Mask off, I must beg leave to say, that nothing less than the Commands of this Ho-

Honourable House could prevail with any one to appear in his Defence. If he is a Mover of Sedition, and an Underminer of the Protestant Succession and present Establishment; if he has fomented destructive Divisions, and excited his Fellow-Subjects to Arms and Violence, and has taken all Advantages to vent his seditious Notions in the most publick manner, I must humbly think that no Body would dare to open his Mouth in his Behalf in the Face of the Government, and before the united Legislature of the whole Kingdom. I protest for my self I would not do it, and I believe I may say the same for all the Gentlemen that have spoke before me.

My Lords, the general Part of these Articles has been already largely spoken to, and I shall therefore apply my self directly to the First Article, and the first Branch of that Article, which has been made the Ground of this whole Accusation, *viz. That he does suggest and maintain that the necessary Means used to bring about the late happy Revolution were Odious and Unjustifiable.* I must own this is a Charge of a very high Nature, and has been aggravated to the utmost by the great Pains that the Gentlemen of the Honourable House of Commons have taken, and the elaborate Speeches that have been made on this Head.

My Lords, The Justice of the Revolution is too plain to need any Vindication, every one of us is sensible of the happy Effects of it; and therefore for any one to cast black and odious Colours on it, would be, as has been truly said by the Honourable Managers, *a Reflection on his late Majesty, and must bring a foul Imputation on Her present Majesty and Government*; which, if the Revolution be Unjustifiable, must be an Usurpation, and all Her Subjects Rebels.

My Lords, The Clause made use of to prove this Part of the Article, is in the 11th Page of the Sermon at St. Paul's, and has been often read; *The grand Security of our Government, and the very Pillar on which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power in all things Lawful, and the utter Illegality of Resistance upon any Pretence whatsoever.* This, my Lords, is the Ground of the Commons Impeachment, because here they say the Doctor condemns all Resistance, and in that the Resistance which was necessary to be made use of at the Revolution.

Whether what is here laid down be agreeable to the Doctrine of the Church of England is not my Province to determine, neither shall I now mispend your Lordships time in establishing this Doctrine; that has been already sufficiently done, and the Doctor himself abundantly vindicated, from the Doctrine of St. Paul himself, from the express Doctrine of the Church of England set forth in her Homilies, from the Writings of Bishops and Divines dead and living, from the known and unrepeal'd Laws of the Land, and from the Reasonableness of laying down a general Rule without any Exception. What farther Vindication can be necessary? Or how can a good Subject of the Realm, and a true Son of the Church, better make his Defence, than from the Laws of the one, and the Doctrines of the other? But because the great Objection has been, That this Doctrine is here laid down without any Limitation or Exception at all; and being my self of a different Profession from the Gentlemen that have spoken before me, I shall take a different Way in Vindication of this Passage, and beg leave

leave to follow the Method prescrib'd by one of the Learned Managers of the House of Commons. It was said by one of them, *Ex ore suo judicabitur*. My Lords, let him speak for himself, and then it will be seen if this Passage may not be justified by the very same Methods that have been made use of to accuse him. If nothing will satisfy the Gentlemen of the House of Commons but an Exception, an Exception they shall have, and that out of his own Mouth. It is in the 10th Page, and the beginning of that very Paragraph, where the whole Foundation of this Accusation is laid. But I don't well know whether I may venture to mention it, lest it should subject him to a Prosecution in the Spiritual Court, or the Censure of his Diocesan; but if it may help to acquit him from this Impeachment, I will advise him to run the Risque of any Prosecution elsewhere.

The Clause is this, *But, Secondly, Men may be denominated False Brethren, with relation to the State, Government, or Society of which they are Members. The Constitutions of most Governments differing according to their several Frames and Laws upon which they are Built and Founded, it is impossible to lay down any one universal Rule, as the Scheme and Measure of Obedience, that may square to every one of them.*

My Lords, This is an observable Instance of this Gentleman's good Temper and Moderation; nothing can be said more like a good Christian, and a good Subject, and a Man of Temper: He is not here for bringing all Things to his own Rule, but every Government must stand upon its own Foundation, and be govern'd according to its own Rules. But he goes on; *Only this Maxim in general, I presume, may be Establish'd, for the Safety, Tranquility, and Support of all Governments, That no Innovation whatsoever should be allow'd in the Fundamental Constitution of any State, without a very pressing, nay unavoidable Necessity for it.*

My Lords, In these Words there is a plain Exception made, whenever the Case of an unavoidable Necessity shall happen. No Body will deny but that the Revolution was such an unavoidable Case, and of Necessity, and what can't be reflected on, but with great Satisfaction, and Thanks to God for bringing it about. But it seems very strange that this Exception should stand so very full and plain in the very Front of that Paragraph from which the Learned Managers have chiefly drawn this Accusation, and yet never be so much as once taken notice of by them. Passages at a much greater Distance have been Connected in order to Accuse him; and there can be no Reason given why the subsequent Passage in the same Paragraph should not be explain'd by this; why what in the beginning is said of all Governments in general, should not be extended to that Part where he speaks particularly of our own Constitution. This, no doubt of it, he had in his Thoughts, and will, I hope, sufficiently Vindicate him from this Charge.

I shall trouble your Lordships no longer on this Head, but only observe, that the Doctor in his Answer has put himself upon his Defence, That this Doctrine is agreeable to the Doctrine of the Church of England and the Laws of the Land, and we are ready to produce his Vouchers, and make it Evident to your Lordships.

Sir Simon Harcourt. My Lords, If we have not already tired your Lordships, there is this wide Difference between the Managers for the House of

Commons and us; they desire your Lordships to trust them, and to take their Words in every thing; we humbly beg your Lordships to take our Words in nothing, but that you will give us leave to lay before you the Testimonies for every thing we have open'd; but they being very long, we humbly submit it to your Lordships, whether it will be proper for us now to produce them. The first Evidence we desire to read is, Some godly and wholesome Doctrine contained in the Homilies; we have, my Lords, for your Lordships Ease, collected them by a Person that is ready to swear to them. We humbly submit it to your Lordships, whether it shall be read out of the Writing, or whether the Books themselves shall be produced; we shall observe your Lordships Commands, and proceed which way your Lordships please.

Mr. Dodd. My Lords, We are ready to observe your Lordships Directions in this Matter: We have collected the Passages out of the Homilies, the Articles, the Sermons, and Acts of Parliament; and have a Person ready to make Oath that they are truly collected. But if there be any Objection, we are ready to refer to the Books themselves, and have them all here ready to produce.

Mr. Phipps. If your Lordships please, the Witness may be sworn.

Then Mr. Trapp was sworn.

Lord Chancellor. If you offer any Thing in Evidence, you must take the same Method that the Gentlemen of the House of Commons did; it must be proved, and then deliver'd in at the Table, and there read.

Sir Joseph Jekyll. My Lords, We have given the Gentlemen that are Council for the Prisoner no Disturbance in any Thing they have said during their Defence, that so we might come to a Determination as speedily as possible in this Tryal; otherwise every body must think, we had Reason to object to some Things that have been said by the Council. That which they are now going to do, is what we think proper to deliberate upon; and, according to former Precedents, we desire to withdraw, and we will attend your Lordships again presently.

Mr. Smith. My Lords, I beg Leave to speak one Word. We have endeavour'd to behave ourselves before your Lordships, according to the Duty we owe to the House of Commons, and to your Lordships: We think there is something offer'd, that is fit for us to consider of. We don't propose more, than for the Managers to withdraw for a few Minutes; for we think we have something to offer to your Lordships.

Accordingly the Managers withdrew; and then the Lords adjourned to their House above: And in a short time their Lordships being returned, and seated as before, and the Managers being returned to the Place appointed for them at their Lordships Bar; Proclamation for Silence was made by the Serjeant at Arms.

Sir Joseph Jekyll. My Lords, The Managers withdrew for Two Reasons; the one, to consider of several Expressions that fell from the Council at the Bar, which we had Reason to take Exceptions to; the other was, to consider of the Evidence they offer to your Lordships. For the first; The Managers are so desirous that no Interruption should be given to the Doctor's Council in his Defence, that they at present take no notice of it, but reserve that

that Matter to be taken notice of at such other Time as they shall think proper. As to the Second, The Managers being unwilling the Doctor should be deprived of any Thing that his Council can fancy is Material for his Defence, they are contented to let them go on in the Way they proposed; but, to save your Lordships Time, we admit the Books, Sermons and Pamphlets, to be as they have open'd them.

Sir *Simon Harcourt*. My Lords, We humbly pray they may be read, because we have not open'd the Tenth Part of them.

Mr. *Dodd*. We have collected them, to save your Lordships Time; but we have not open'd them, because we reserved them to be read.

Mr. *Phipps*. My Lords, The Witness is sworn. Is that a True Copy of what it refers to?

Mr. *Trapp*. I did compare them with the Originals: It is a Transcript from the Original.

Mr. *Phipps*. Are they entire Paragraphs?

Mr. *Trapp*. They are most of them entire Pages.

Lord *Chancellor*. Gentlemen of the House of Commons, do you object to the Evidence?

Sir *Joseph Jekyll*. No, my Lords.

Then the LORDS Adjourned to their House Above.

Saturday, March 4. The Sixth Day.

THE Lords being seated as usual; and the Commons in a Committee of the whole House, and the Managers at their Lordships Bar; the usual Proclamations being also made;

And Dr. *Sacheverell* appearing at the Bar:

Lord *Chancellor*. Gentlemen, You who are Council for Doctor *Sacheverell* were proceeding to your Evidence, and had offered some Papers which you desired to be read in Evidence; and the Gentlemen of the House of Commons did agree to let them be read, as you desired.

Mr. *Dodd*. My Lords, We pray those Papers may be read.

Mr. *Phipps*. My Lords, The Defendant does in his Answer assert, "That the Doctrine of the Illegality of Resistance to the Supreme Power, is contained in the Homilies, and approved by many of the Divines of the Church of England: We desire now to have those Homilies, and the Sermons of those Divines, read."

Sir *Joseph Jekyll*. My Lords, The Gentlemen that open'd for the Doctor, were pleased to mention some Homilies, and other Books; one entitled, *A Necessary Doctrine and Erudition for any Christian Man*; which they desired might be read; and said, They had collected the Passages out of them, in a Paper which they offer'd to your Lordships. We have look'd into that Paper, and find Extracts out of *Gazettes*, and other Papers. We are willing to let them read the Homilies, and that other Book called, *The Erudition for any Christian Man*; but when they come to the others, we pray they may produce the Books or Papers themselves.

Mr. *Dodd*. My Lords, We shall observe it accordingly.

Mr. *Phipps*. We pray we may begin with the Book entitled, *The Erudition for any Christian Man*. Vol. IV.

Clerk reads the Paper-Abstract.

'A Necessary Doctrine and Erudition for any Christian Man; set furthe by the King's Majesty of England, &c. Anno 34 H. VIII.

In the Exposition of the Fyfte Commandment.

'And by this Commandment also, Subjects be bounde not to withdrawe *Fol. 113.* their said Fealtie, Trough, Love, and Obedience towards their Prince, for any Cause whatsoever it be; ne for any Cause they may conspire against his Person, ne do any Thing towards the Hindrance or Hurt thereof, nor of his Estate.

In the Exposition of the Syxte Commandment.

'Moreover, no Subjects may draw their Swords against their Prince, for any Cause, whatsoever it be. *Fol. 187. 9.*

Mr. *Dodd*. If your Lordships please, that we may now read several Passages in the Homilies.

Clerk reads.] The Second Part of the Sermon of Obedience, Pag. 110.

'Whereby Christ taught us plainly, that even the wicked Rulers have their Power and Authority from God; and therefore it is not lawful for their Subjects to withstand them, altho' they abuse their Power.

Ibid. p. 113. 'But nevertheless, in that Case we may not in any wise withstand violently, or rebel against Rulers, or make any Insurrection, Sedition or Tumults, either by Force of Arms, or otherwise, against the Anointed of the Lord, or any of his Officers; but we must in such Case patiently suffer all Wrongs and Injuries, referring the Judgment of our Cause only to God.

The Third Part of the Sermon of Obedience, Pag. 114.

'Yee have heard before, in this Sermon of good Order and Obedience, manifestly proved, both by the Scriptures and Examples, that all Subjects are bounden to obey their Magistrates, and for no Cause to resist, or withstand, or rebel, or make any Sedition against them, yea altho' they be wicked Men.

First Part of the Sermon against wilful Rebellion, Pag. 589.

'What shall Subjects do then? Shall they obey valiant, stout, wise and good Princes; and contemn, disobey, and rebel against Children being their Princes; or against undiscreeit and evil Governors? God forbid! For, first, What a perilous Thing were it to commit unto the Subjects the Judgment which Prince is wise and godly, and his Government good, and which is otherwise? As tho' the Foot must judge of the Head! An Enterprize very heinous, and must needs breed Rebellion.

Ibid. p. 590. 'And whereas indeed a Rebel is worse than the worst Prince, and Rebellion worse than the worst Government of the worst Prince that hitherto hath been.

Second Part of the Sermon against wilful Rebellion, Pag. 600.

'Now let *David* answer to such Demands, as Men desirous of Rebellion do use to make: Shall not we, especially being so good Men as we are, rise and rebel against a Prince hated of God, and God's Enemy; and therefore like not to prosper either in War or Peace, but to be hurtful and pernicious to the Commonwealth? No, saith good and godly *David*.

§§§§§ *Ibid.*

Ibid. p. 601. 'But, say they, shall we not rise and rebel against so unkind a Prince, nothing considering or regarding our true, faithful and painful Service, or the Safeguard of our Posterity? No, faith good *David*.

Ibid. 'Shall we not rise and rebel against our known, mortal, and deadly Enemy, that seeketh our Lives? No, faith godly *David*.

Ibid. 'Shall we not assemble an Army of such good Fellows as we are, and by hazarding of our Lives, and the Lives of such as shall withstand us, and withal hazarding the whole Estate of our Country, remove so naughty a Prince? No, faith godly *David*.

Ibid. 'What shall we then do to an evil, to an unkind Prince, an Enemy to us, hated of God, hurtful to the Commonwealth, &c.? Lay no violent Hand upon him, faith good *David*; but let him live, until God appoint and work his End, either by natural Death, or in War, by lawful Enemies, not by traitorous Subjects.

Ibid. p. 602. 'If King *David* would make these Answers, as by his Deeds and Words recorded in the Holy Scriptures indeed he doth make, unto all such Demands concerning Rebelling against evil Princes, unkind Princes, cruel Princes, Princes that be to their good Subjects mortal Enemies, Princes that are out of God's Favour, and so hurtful, or like to be hurtful to the Commonwealth.

Mr. *Dodd*. If your Lordships please now, that we may read the Thirty Fifth Article of the Church of *England*, which approves these Homilies.

Mr. *Phipps*. We open'd, that these Homilies were approv'd of by the Articles of the Church of *England*, as containing sound and wholsome Doctrine: We pray the Thirty Fifth Article may be read.

Clerk reads.] *Article the Thirty Fifth. Of Homilies.*

'The Second Book of Homilies, the several Titles whereof we have joined under this Article, doth contain a godly and wholsome Doctrine, and necessary for these Times; as doth the former Book of Homilies, which were set forth in the Time of *Edward* the Sixth. And therefore we judge them to be read in Churches by the Ministers, diligently and distinctly, that they may be understood of the People. The Names of the Homilies. 1. Of the Right Use of the Church. 2. Against Peril of Idolatry. 3. Of repairing and keeping clean of Churches. 4. Of good Works; First, of Fasting. 5. Against Gluttony and Drunkenness. 6. Against Excess of Apparel. 7. Of Prayer. 8. Of the Place and Time of Prayer. 9. That Common Prayers and Sacraments ought to be ministred in a known Tongue. 10. Of the Reverend Estimation of God's Word. 11. Of Alms-doing. 12. Of the Nativity of Christ. 13. Of the Passion of Christ. 14. Of the Resurrection of Christ. 15. Of the worthy Receiving of the Sacrament of the Body and Blood of Christ. 16. Of the Gifts of the Holy Ghost. 17. For the Rogation-Days. 18. Of the State of Matrimony. 19. Of Repentance. 20. Against Idleness. 21. Against Rebellion.

Mr. *Phipps*. By the Statute of 13 *Eliz.* these Articles are confirmed: I believe the Gentlemen of the House of Commons will allow of it.

Mr. *Dodd*. They are confirmed by the Act of Uniformity; and we think we need not spend your Lordships Time in reading it.

Sir *Jos. Jekyll*. My Lords, We told them, that we were willing to admit all they open'd; and then we admit this.

Mr. *Dodd*. If your Lordships please, we will go on with the Abstract.

Mr. *Phipps*. The Gentlemen say, that they admit us to read what we open'd. Now what we are going to read next, we did not open; and therefore we submit it to your Lordships, whether we shall read out of the Abstract, or produce the Book it self?

Sir *Jos. Jekyll*. My Lords, We desire to know what it is they would read?

Mr. *Phipps*. It is Bishop *Overall's* Convocation-Book.

Mr. *Dee*. If your Lordships please, we shall produce the Book; because there are some broken Passages collected, and there may be some Objection, if the Book be not produced.

Mr. *Phipps*. My Lords, We hope the whole Canon which is mention'd in this Book, tho' it is recited by Parcels, shall be read.

Clerk reads.] 'And therefore - - -

Sir *Jos. Jekyll*. My Lords, They are reading a Passage out of this Book. We might object, That a Printed Book is no Proof of a Canon; and that they ought to make a Legal Proof of it. But that which we object, is, That they begin in the Middle of a Sentence: Your Lordships observe, the Clerk begins with the Words, *And therefore*. I pray, he may read at the Beginning of a Sentence.

Mr. *Phipps*. My Lords, Where the Clerk began, was the Beginning of that Canon; but it being at the End of another Canon, is the Reason that it begins *And therefore*.

Clerk reads.] 'And therefore, if any Man shall affirm, under Colour of any thing that is in the Scriptures, either that the Doctrine of Grace in the *New Testament* doth more abolish the Rules of Nature, or Moral Law of God, than it did in the *Old*; or, that thro' Faith the said Law was not rather establish'd, than in any sort impeach'd; or, that because as many as believe are redeemed, and made free from the Curse of the Law, they are therefore exempted, and free from the Obedience of the Law; or, that by the Incarnation of our Saviour Christ, Obedience to the Fifth Commandment, touching Honours due to Parents and Princes, was in any sort impeach'd, the rest of the Law being establish'd; or, that our Saviour Christ having undertaken the Fulfilling of the whole Law, (as far forth, at the least, as ever Mankind was bound to have fulfilled it) came short in this one Law, by exempting himself from any Obedience due to the Civil Magistrate; or, that he, having tied himself according to the said Commandment, as well to the Obedience of the Civil Magistrate, as the Obedience which was due to his Parents, did not, whilst he liv'd in the World, fulfil the Law wholly concerning them both; or, that he did any way, or at any Time, encourage the *Jews*, or any other, directly or indirectly, to Rebel, for any Cause whatsoever, against the *Roman* Emperor, or any of his Subordinate Magistrates; or, that he did not very willingly, both himself pay Tribute to *Cæsar*, and also advise the *Jews* so to do; or, that when he willed the *Jews* to pay Tribute to *Cæsar*, including therein their Duty of Obedience unto him, he did not therein deal plainly and sincerely,

cerely, but meant secretly that they should be bound no longer to be obedient unto him, but until by Force they should be able to resist him; or, that he did not utterly and truly condemn all Devices, Conferences, and Resolutions whatsoever, either in his own Apostles, or in any other Persons, for the using of Force against Civil Authority; or, that it is, or can be more lawful for any private Persons, either of St. Peter's Calling, or of any other Profession, to draw their Swords against Authority, tho' in their rash Zeal they should hold it lawful so to do, for the Preservation of Religion, than it was for St. Peter for the Preservation of his Master's Life; or, that by Christ's Words above mention'd, all Subjects (of what Sort soever) without Exception, ought not, by the Law of God, to perish with the Sword, that take and use the Sword, for any Cause, against Kings and Sovereign Princes, under whom they were born, or under whose Jurisdiction they do inhabit; or, that seeing our Saviour Christ would not have the Samaritans to be destroyed with Fire from Heaven, altho' they were at that Time divided in Religion from the Jews, and refused to receive him in Person, it is not to be ascribed to the Spirit of Satan for any private Men to attempt by Gunpowder, and Fire from Hell, to blow up and destroy their Sovereigns, and the whole State of the Country where they were born and bred, because in their Conceits they refused some part of Christ's Doctrine and Government; or, that Christ did not well; and as the said Fifth Commandment did require, in submitting himself as he did to Authority, altho' he was first sent for with

Matt. 26. 55. Swords and Staves, as if he had been a Thief, and then afterward carried to Pilate, and by him (albeit he found no Evil in him) condemn'd to Death; or, that by any Doctrine or Example which Christ ever taught, or hath left upon good Record, it can be proved Lawful to any Subjects, for any Cause of what Nature soever, to decline either the Authority and Jurisdiction of their Sovereign Princes, or of any their lawful Deputies and inferior Magistrates ruling under them: He doth greatly Err.

Mr. Phipps. My Lords, We opened, that from the Time of the Reformation this had been the Doctrine of the Church. We desire to begin, and shew it was Archbishop Cranmer's Opinion: In Strype's Memorial of Archbishop Cranmer.

Clerk Reads.] The second Exhortation is, That next unto God you obey your King and Queen willingly and gladly, without Murmur or Grudging, and not for Fear of them only, but much more for the Fear of God. Knowing that they be God's Ministers, appointed by God to Rule and Govern you; and therefore whoso resisteth them, resisteth God's Ordinance.

Mr. Phipps. My Lords, We now offer a Declaration of Bishop Ferrar, Bishop Hooper, Bishop Coverdale, and about Nine other Bishops, which is in Fox's History.

Clerk reads.] Humbly requiring, and in the Bowels of our Saviour Jesus Christ, beseeching all that fear God, to behave themselves as obedient Subjects to the Queen's Highness, and the Superior Powers

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which are ordained of God, under her; rather, after our Example, to give their Heads to the Block, than in any Point to Rebel, or once to Mutter against the Lord's Anointed.

Mr. Dodd. If your Lordships please, he may read the Names of those Persons that have subscribed it at the End of it.

Clerk reads]

The 8th Day of May,
Anno Dom. 1554.

The Names of the prison'd Preachers subscribing to this Declaration, Robert Menaven, alias Robert Ferrar, Rowland Taylor, John Philpott, John Bradford, John Wigorne, and Glouc. Episcopus, alias John Hooper, Edward Crome, John Rogers, Laurence Saunders, Edmund Lawrence, J. P. T. M. --- To these things above said do I Miles Coverdale, late of Exon, consent and agree with these mine afflicted Brethren, being Prisoners, mine own Hand.

Mr. Phipps. My Lords, The next we offer is the Opinion of Bishop Jewell, in his Defence of the Apology for the Church of England, in Answer to Mr. Harding.

Clerk Reads.] We teach the People as St. Paul doth, to be subject to the higher Powers, not only for Fear, but also for Conscience. We teach them, that whoso striketh with the Swerde by private Authority, shall perish with the Swerde. If the Prince happen to be Wicked, or Cruel, or Burthenous, We teach them to say with St. Ambrose, *Arma nostra sunt Preces & Lachryme, Tears and Prayers be our Weapons.*

Mr. Dodd. My Lords, The next is Mr. Hooker, in his Ecclesiastical Polity.

Clerk Reads.] That Subjection which we owe to lawful Powers, doth not only import, that we should be under them by Order of our State, but that we shew all Submission towards them, both by Honour and Obedience. He that resisteth them resisteth God. And resisted they be, if either the Authority itself, which they exercise, be denied; as by Anabaptists all Secular Jurisdictions; or if Resistance be made but only so far forth as doth touch their Persons, which are invested with Power; (for they which said *Nolumus hunc regnare*, did not utterly exclude Regiment; nor did they wish all kind of Government clearly removed, which would not at the first have David to Govern;) or if that which they do by virtue of their Power, namely, their Laws, Edicts, Services, or other Acts of Jurisdiction, contrary to the blessed Apostles most Holy Rule, *Obey them who have the Oversight of you*, Heb. 13. 17. be not suffered to take Effect; or if they do take Effect, yet is not the Will of God thereby satisfy'd neither, as long as that which we do is contemptuously or repiningly done, because we can do no otherwise. In such sort the Israelites in the Desert obey'd Moses; and were, notwithstanding, deservedly plagued for Disobedience. The Apostle's Precept therefore is, *Be subject even for God's sake; be subject not for Fear, but of mere Conscience, knowing, that he which resisteth them, purchaseth to himself Condemnation.*

M. Gen. Stanhope. My Lords, Since Hooker's Ecclesiastical Polity is before your Lordships, and they have read that Part, I pray that from

to the latter End of pag. 446, may likewise be read.

Mr. Dodd. We submit it to your Lordships, Whether it is proper to break into our Defence? Or whether the Gentlemen of the House of Commons will read what they think proper when they come to Reply? Your Lordships know the Course in other Courts is to give our Evidence entire.

Sir J. Fekyll. My Lords, The Indulgence of the Managers, to let the Doctor's Council go into this Evidence, is very great; (for I believe such sort of Evidence was never known before in any Court of Justice whatsoever); but surely, as they have called this Witeess, for so I may term the Book they were reading, we may be at Liberty to cross-examine that Witness; perhaps the Place we desire to have read may explain the Passages read by them.

Mr. Phipps. My Lords, We submit to it.

M. Gen. Stanhope. Pray what Edition is that Book?

Clerk. It is Printed in 1705.

M. Gen. Stanhope. My Lords, If we should be mistaken in the Edition, I hope we shall not be hindred in our Reply from reading those Passages in the Edition which I have consulted.

[Clerk Reads.] Again, on whom the Fel. 444. same is bestowed at Mens Discretions, they likewise do hold it by Divine Right. If God in his revealed Word hath appointed such Power to be, altho' himself extraordinarily bestow it not, but leave the Appointment of Persons to Men; yea, albeit God do neither appoint nor assign the Person; nevertheless, when Men have assigned and established both, who doth doubt but that sundry Duties and Affairs depending thereupon, are prescribed by the Word of God, and consequently by that very Right to be exerted? For Example sake, the Power which Roman Emperors had over Foreign Provinces, was not a thing which the Law of God did ever institute; neither was Tiberius Cesar by especial Commission from Heaven therewith invested; and yet Payment of Tribute unto Cesar, being now made Emperor, is the plain Law of Jesus Christ unto Kings by Human Right; Honour by very Divine Right is due. Man's Ordinances are many times proposed as Grounds in the Statutes of God. And therefore, of what kind soever the Means be whereby Governors are lawfully advanced to their States, as we by the Laws of God stand bound meekly to acknowledge them for God's Lieutenants, and do confess their Power His; so by the same Law they are both authoriz'd and requir'd to use that Power, as far as it may be in any State available to his Honour. The Law appointeth no Man to be a Husband; but if a Man hath betaken himself unto that Condition, it giveth him Power and Authority over his own Wife. That the Christian World should be ordered by the Kingly Regiment, the Law of God doth not any where Command; and yet the Law of God doth give them, which once are exalted unto that Place of Estate, Right to exact at the Hands of their Subjects general Obedience in whatsoever Affairs their Power may serve to Command; and God doth ratify Works of that Sovereign Authority, which Kings have received by Men. This is therefore the Right whereby Kings do hold their Power; but yet in what sort the same doth rest and abide in them, it somewhat behoveth farther to Search; where, that we be not enforced to make over large Discourses about the different Conditions of

Sovereign or Supreme Power, that which we speak of Kings shall be in respect of the State, and according to the Nature of this Kingdom, where the People are in no Subjection, but such as willingly themselves have condescended unto for their own most Behoof and Security. In Kingdoms therefore of this Quality, the highest Governor hath indeed universal Dominion, but with Dependency upon that whole entire Body, over the several Parts whereof he hath Dominion; so that it standeth for an Axiom in this Case, The King is *Major singulus, universis Minor*. The King's Dependency we do not construe as some have done, who are of Opinion, that no Man's Birth can make him a King; but every particular Person advanced to such Authority hath, at his Entrance into his Reign, the same bestowed on him as an Estate, in Condition, by the voluntary Deed of the People in whom it doth lye, to put by any one, and to prefer some other before him better liked of, or judged fitter for the Place; and that the Party so rejected hath no Injury done unto him; no, altho' the same be done in a Place where the Crown doth go *ad hoc*, by Succession, and to a Person which is Capital, and hath apparently, if Blood be respected, the nearest Right. They plainly affirm, in all well appointed Kingdoms, the Custom evermore hath been, and is, that Children succeed not their Parents till the People, after a sort, have created them anew; neither that they grow to their Fathers as natural and proper Heirs, but are then to be reckon'd for Kings, when at the Hands of such as represent the King's Majesty, they have by Sceptre and a Diadem received as it were the Investiture of a Kingly Power: Their very Words are, "That where such Power is settled into a Family or Kindred, the Stock it self is thereby chosen, but not the Twig that springeth of it. The next of the Stock unto him that reigneth, are not through Nearness of Blood made Kings; but rather set forth to stand for the Kingdom: Where Regal Dominion is Hereditary, it is notwithstanding (if we look to the Persons which have it) altogether Elective." To this Purpose are selected Heaps of Scriptures concerning the solemn Coronation or Inauguration of *Saul*, *David*, of *Solomon*, and others, by the Nobles, Ancients, and People of the Commonweal of *Israel*: As if these Solemnities were a kind of Deed, whereby the Right of Dominion is given; which strange, untrue, and unnatural Conceits, set abroad by Seedsmen of Rebellion, only to animate unquiet Spirits, and to feed them with Possibility of aspiring to Thrones, if they can win the Hearts of the People, what Hereditary Title soever any other before them may have; I say, unjust and insolent Positions, I would not mention, were it not thereby to make the Countenance of Truth more Orient; for unless we will openly proclaim Defiance unto all Law, Equity and Reason, we must (there is no Remedy) acknowledge, that in Kingdoms, Hereditary Birth gives Right unto Sovereign Dominion; and the Death of the Predecessor puts the Successor by Blood in Seisin. Those publick Solemnities before specified, do but serve for an open Testification of the Inheritor's Right, or belonging unto the Form of inducting him into Possession of that Thing he hath Right unto. Therefore, in case it doth happen, that without Right of Blood, a Man in such wise be possessed, all these new Elections and Investings are utterly void; they make

' make him no indefeasible Estate, the Inheritor by Blood may dispossess him as an Usurper. The Case thus standing, albeit we judge it a thing most true, that Kings, even Inheritors, do hold their Right in the Power of Dominion, with Dependency upon the whole Body Politick, over which they have Rule as Kings; yet so it may not be understood, as if such Dependency did grow; for that every Supreme Governor doth Personally take from thence his Power, by way of Gift, bestowed of their own free Accord upon him at the Time of his Entrance into the said Place of his Sovereign Government. But the Case of Dependency is that first Original Conveyance when Power was derived from the whole into one; to pass from him unto them, whom out of him, Nature, by Lawful Births, should produce, and no Natural or Legal Inability make incapable. "Neither can any Man with Reason think, but that the first Institution of Kings a sufficient Consideration; wherefore their Power should always depend on that from which it always flows: By Original Influence of Power from the Body unto the King, is the Cause of Kings Dependency in Power upon the Body." By Dependency we mean Subordination and Subjection; a manifest Token of which Dependency may be this: As there is no more certain Argument that Lands are held under any as Lords, than if we see that such Lands, in Defect of Heirs, fall unto them by Escheat: In like manner, it doth follow rightly, that seeing Dominion, when there is none to inherit it, it returneth into the Body; therefore they which before were Inheritors thereof, did hold it with Dependency upon the Body: So that by comparing the Body with the Head, as touching Power, it seemeth always to reside in both; fundamentally and radically in the one, in the other derivatively; in one the Habit, in the other the Art of Power. May a Body Politick then at all Times, withdraw in whole or in part, the Influence of Dominion, which passeth from it, if Inconveniencies do grow thereby? It must be presumed, that Supreme Governors will not in such Case oppose themselves, and be stiff in detaining that, the Use whereof is with publick Detriment. But surely without their Consent, I see not how the Body by any just Means should be able to help it self, saving when Dominion doth Escheat; such Things therefore must be thought upon beforehand, that Power may be limited e'er it be granted; which is the next Thing we are to consider.

Mr Dodd. We now produce Bishop Andrews's Sermons.

Clerk reads.] 'To deprive or depose them? Sure where the worst is reckoned that can be of them, *Clamant ad Dominum* is all I find, 1 Sam. 8. 18. No *Per* to do it but he. By him, and by none but by him, they be; by him, and by none but by him, they cease to be.

Mr. Phipps. We desire to read another Passage out of Mr. Hooker, in a Treatise of Church Government.

Clerk Reads.] 'A Treatise of Church Government: To which is added a Treatise of the Regal Power, and of the Novelty of the Doctrine of Resistance, Published by Dr. Bernard in his *Calvi Traibales*.

Lord Chancellor. This is a Collection of the Works of several Persons; so that it don't appear whose Works these are that you are reading.

Mr. Phipps. That which we offer to be read is Mr. Hooker's, and is left out of the Book which was printed before.

Clerk reads.] 'There is a Supreme Head of Justice whereunto All are Subject, but it self in Subjection to None; which kind of Pre-eminence, if some ought to have in a Kingdom, who but the King shall have it? Kings therefore no Man can have Lawful Power and Authority to judge; if private Men offend, there is the Magistrate over them, which Judgeth; if Magistrates, They have Their Prince; if Princes, there is Heaven, a Tribunal before which they shall appear; On Earth they are not accountable to any.

Mr. Phipps. My Lords, We offer Doctor Jackson's, and Bishop Usher's Opinion in this Matter. And first Doctor Jackson.

Clerk Reads.] 'He that is a King or Supreme Magistrate, by just and lawful Title, may not be thus resisted, albeit he exercise his Power Tyrannically.

Mr. Phipps. The next is Archbishop Usher, in a Treatise called, *The Power communicated by God to the Prince, and the Obedience required of the Subject*, &c.

Clerk Reads.] 'But if Mens Hands be thus tied (will some say) no Man's State can be secure: Nay, the whole Frame of the Commonwealth would be in Danger to be subverted and utterly ruined by the unbridled Lust of a distemper'd Governor.

'I answer, God's Word is clear in the Point; *Whosoever resisteth the Power, resisteth the Ordinance of God, and they that resist, shall receive to themselves Damnation*; and thereby a Necessity is imposed upon us, of being subject even for Conscience sake, which may not be avoided by the Pretext of any ensuing Mischief whatsoever.

Mr. Phipps. My Lords, We offer next the Authority of Mr. Chillingworth, and we need say no more of him than to mention that it is Mr Chillingworth; and his Character is so established by the Lord Clarendon, that we need say no more of it.

Clerk Reads.] 'They that make no Scruple at all of fighting with his Sacred Majesty, and Shooting Muskets and Ordnance at him (which sure have not the Skill to chuse a Subject from a King) to the extreme Hazard of his Sacred Person, whom by all possible Obligations they are bound to defend, do they know, think you, the General Rule without Exception or Limitation left by the Holy Ghost for our Direction in all such Cases, *Who can lift up his Hand against the Lord's Anointed, and be innocent?* 1 Sam. 26. 9. Or do they consider his Command in the Proverbs of Solomon, *My Son, fear God and the King, and meddle not with them that desire Change?* Prov. 24. 21. Of his Counsel in the Book of Ecclesiastes, *I counsel thee to keep the King's Commandment, and that in Regard of the Oath of God?* Eccles. 8. 2. Or because they possibly may pretend that they are exempted from, or unconcerned in the Commands of Obedience delivered in the Old Testament; Do they know and remember the Precept given to all Christians by St.

‘ St. Peter, Submit your selves to every Ordinance of Man for the Lord’s sake, whether it be to the King as Supreme, or unto Governors, as unto them that are sent by him? Or that terrible Sanction of the same Command, *They that resist shall receive to themselves Damnation*, left us by St. Paul in his Epistle to the Romans, who then were the miserable Subjects of the worst King, the worst Man, nay, I think, I may add truly, the worst Beast in the World; that so all Rebels’ Mouths might be stop’d for ever, and left without all Colour or Pretence whatsoever to justify the Resistance of Sovereign Power?

Mr Phipps. My Lords, The next we offer is Archbishop Bramhall, sometime Bishop of Armagh.

Clerk reads.] ‘ The same Oath Pag. 531. binds us to defend him against all Dubl. 1678. Conspiracies and Attempts whatsoever. Folio. ever, which shall be made against his Person or Crown; to defend him, much more therefore not to offend him, against all Conspiracies and Attempts whatsoever. That Oath which binds us to defend him against all Attempts whatsoever, presupposeth that no Attempt against him can be justified by Law, whether these Attempts be against his Person or his Crown.

Clerk reads.] ‘ If a Sovereign shall Ibid. fol. persecute his Subjects for not doing 542. his unjust Commands, yet it is not lawful to resist by raising Arms against him; *They that resist shall receive to themselves Damnation*. But they ask, Is there no Limitation? I answer, *ubi Lex non distinguit, nec nos distinguere debemus*. How shall we limit where God had not limited, or distinguish where he hath not distinguish’d?

Mr. Dodd. My Lords, The next is Bishop Sanderfon.

Clerk reads.] ‘ No Conjunction of Fol. 522. Circumstances whatsoever, can make that Expedient to be done at any time, that is, of it self and in the kind unlawful. For a Man to blaspheme the holy Name of God, to sacrifice to Idols, to give wrong Sentence in Judgment, by his Power to oppress those that are not able to withstand him, by Subtilty to overreach others in bargaining, to take up Arms (offensive or defensive) against a lawful Sovereign: None of these, and sundry other things of the like Nature, being all of them simply, and *de toto genere* unlawful, may be done by any Man, at any Time, in any Case, upon any Colour or Pretension whatsoever; the Express Command of God himself only excepted, as in the Case of Abraham for sacrificing his Son. Not for the avoiding of Scandal, not at the Instance of any Friend, or Command of any Power upon Earth; not for the Maintenance of the Lives or Liberties either of our selves or others; nor for the Defence of Religion; not for the Preservation of a Church or State; no nor yet, if that could be imagin’d possible, for the Salvation of a Soul; no, not for the Redemption of the whole World.

Mr. Phipps. My Lords, Doctor Sacheverell being educated in the University of Oxford, we offer the Decrees of that University touching this Matter. They were published in the Gazette the 26th of July, 1683, by Authority.

Clerk reads.] Numb. 1845.

The London Gazette. Published by Authority. From Monday July 23. to Thursday July 26. 1683.

‘ Whitehall, July 24. This Day was presented to his Majesty the following Judgment and Decree of the University of Oxford, pass’d in their Convocation, on Saturday the 21st Instant.

‘ The Judgment and Decree of the University of Oxford, pass’d in their Convocation, July 21. 1683. against certain pernicious Books, and damnable Doctrines, destructive to the Sacred Persons of Princes, their State and Government, and of all Human Society.

‘ ALTHO’ the barbarous Assassination lately enterprized against the Person of his Sacred Majesty, and his Royal Brother, engage all our Thoughts to reflect with utmost Detestation and Abhorrence on that execrable Villany, hateful to God and Man; and pay our due Acknowledgments to the Divine Providence, which by extraordinary Methods brought it to pass, That the Breath of our Nostrils, the Anointed of the Lord, is not taken in the Pit which was prepared for him; and that under his Shadow we continue to live, and enjoy the Blessings of his Government; yet notwithstanding we find it to be a necessary Duty at this Time, to search into, and lay open those impious Doctrines, which having of late been studiously disseminated, gave Rise and Growth to these nefarious Attempts, and pass upon them our solemn publick Censure and Decree of Condemnation.

‘ Therefore, to the Honour of the Holy and undivided Trinity, the Preservation of Catholick Truth, in the Church, and that the King’s Majesty may be secured both from the Attempts of open bloody Enemies, and Machinations of Treacherous Hereticks and Schismaticks; We the Vice-Chancellor, Doctors, Proctors, and Masters, Regent and not Regent, met in Convocation, in the accustomed Manner, Time and Place, on Saturday the one and twentieth Day of July, in the Year One thousand six hundred and eighty three, concerning certain Propositions contain’d in divers Books and Writings, publish’d in the English and also the Latin Tongue, repugnant to the Holy Scriptures, Decrees of Councils, Writings of the Fathers, the Faith and Profession of the Primitive Church; and also destructive of the Kingly Government, the Safety of his Majesty’s Person, the publick Peace, the Laws of Nature, and Bonds of Human Society, by our unanimous Assent and Consent, have decreed and determined in Manner and Form following:

The First Proposition.

‘ All Civil Authority is derived Originally from the People.

The Second.

‘ There is a mutual Compact, Tacit or Express, between a Prince and his Subjects; and that if he perform not his Duty, they are discharged from theirs.

The Third.

‘ Thrt if lawful Governors become Tyrants, or govern otherwise than by the Laws of God and Man they ought to do, they forfeit the Right they had unto their Government. *Lex Rex. Buchanan de Jure Regni. Vindicia contra Tyrannos Bellarmine de Conciliis. De Pontificie Milton. Goodwin. Baxter. H. C.*

The Fourth.

‘ The Sovereignty of England is in the three Estates

' Estates, viz. King, Lords and Commons. The King has but a Co-ordinate Power, and may be over-rul'd by the other Two. *Lex Rex. Hunton* of a Limited and Mixed Monarchy. *Baxter H. C. Polit. Catechis.*

The Fifth.

' Birth-right and Proximity of Blood give no Title to Rule or Government; and it is lawful to preclude the next Heir from his Right and Succession to the Crown. *Lex Rex. Hunt's Postscript. Doleman's History of Succession. Julian the Apostate. Mene Tekel.*

The Sixth.

' It is Lawful for Subjects, without the Consent, and against the Command of the Supreme Magistrate, to enter into Leagues, Covenants and Associations, for Defence of themselves and their Religion. *Solemn League and Covenant. Late Associations.*

The Seventh.

' Self-Preservation is the Fundamental Law of Nature, and supercedes the Obligation of all others, whensoever they stand in Competition with it. *Hobbs de Cive Leviathan.*

The Eighth.

' The Doctrine of the Gospel concerning patient Suffering of Injuries, is not inconsistent with violent Resisting of the Higher Powers, in case of Persecution for Religion. *Lex Rex. Julian Apostate. Apolog. Relat.*

The Ninth.

' There lies no Obligation upon Christians to Passive Obedience, when the Prince commands any Thing against the Laws of our Country; and the Primitive Christians chose rather to die than resist, because Christianity was not settled by the Laws of the Empire. *Julian Apostate.*

The Tenth.

' Possession and Strength give a Right to Govern; and Success in a Cause or Enterprize, proclaims it to be Lawful and Just. To pursue it, is to comply with the Will of God; because it is to follow the Conduct of his Providence. *Hobbs. Owen's Sermon before the Regicides, Jan. 31. 1648. Baxter. Jenkins's Petition, Octob. 1651.*

The Eleventh.

' In the State of Nature there is no Difference between Good and Evil, Right and Wrong. The State of Nature is a State of War, in which every Man hath a Right to all Things.

The Twelfth.

' The Foundation of Civil Authority is this Natural Right, which is not given, but left to the Supreme Magistrate upon Mens entering into Societies; and not only a Foreign Invader, but a Domestick Rebel, puts himself again into a State of Nature, to be proceeded against, not as a Subject, but an Enemy; and consequently, acquires by his Rebellion the same Right over the Life of his Prince, as the Prince (for the most heinous Crimes) has over the Life of his own Subjects.

The Thirteenth.

' Every Man, after his entering into a Society, retains a Right of defending himself against Force, and cannot transfer that Right to the Commonwealth, when he consents to that Union whereby a Commonwealth is made: And in case a great many Men together have already resisted the Commonwealth, for which every one of them expect-

' eth Death, they have Liberty then to join together, to assist and defend one another. Their bearing of Arms, subsequent to the first Breach of their Duty, tho' it be to maintain what they have done, is no new unjust Act; and if it be only to defend their Persons, is not unjust at all.

The Fourteenth.

' An Oath superadds no Obligation to Pact, and a Pact obliges no farther than it is credited; and consequently, if a Prince gives any Indication that he does not believe the Promises of Fealty and Allegiance made by any of his Subjects, they are thereby freed from their Subjection; and notwithstanding their Pacts and Oaths, may lawfully rebel against, and destroy their Sovereign. *Hobbs de Cive Leviathan.*

The Fifteenth.

' If a People, that by Oath and Duty are obliged to a Sovereign, shall sinfully dispossess him, and (contrary to their Covenants) chuse and covenant with another; they may be obliged by their later Covenants, notwithstanding their former. *Baxter H. C.*

The Sixteenth.

' All Oaths are unlawful, and contrary to the Word of God. *Quakers.*

The Seventeenth.

' An Oath obligeth not in the Sense of the Imperfect, but the Takers. *Sheriff's Case.*

The Eighteenth.

' Dominion is founded in Grace.

The Nineteenth.

' The Powers of this World are Usurpations upon the Prerogative of Jesus Christ; and it is the Duty of God's People to destroy them, in order to the setting Christ upon his Throne. *Fifth-Monarchy-Men.*

The Twentieth.

' The Presbyterian Government is the Sceptre of Christ's Kingdom, to which Kings as well as others are bound to submit; and the King's Supremacy in Ecclesiastical Affairs, asserted by the Church of England, is injurious to Christ, the sole King and Head of his Church. *Altare Damascenum. Apolog. Relat. Hist. Indulg. Cartwright. Travers.*

The Twenty first.

' It is not Lawful for Superiors to impose any Thing in the Worship of God, that is not antecedently necessary.

The Twenty second.

' The Duty of not offending a weak Brother, is inconsistent with all Human Authority of making Laws concerning indifferent Things. *Protestant Reconciler.*

The Twenty third.

' Wicked Kings and Tyrants ought to be put to Death; and if the Judges and Inferior Magistrates will not do their Office, the Power of the Sword devolves to the People: If the major Part of the People refuse to exercise this Power, then the Ministers may Excommunicate such a King; after which it is Lawful for any of the Subjects to kill him, as the People did *Ahabiah*, and *Jehu*. *Jezebel. Buchanan. Knox. Goodman. Gilby. Jesuits.*

The Twenty fourth.

' After the Sealing of the Scripture Canon, the People of God in all Ages are to expect New Revelations for a Rule of their Actions; and it is Law-

‘ Lawful for a Private Man, having an inward Motion from God, to kill a Tyrant. *Quakers, and other Enthusiasts. Goodman.*

The Twenty fifth.

‘ The Example of *Phineas* is to us instead of a Command; for what God hath commanded or approved in one Age, must needs oblige in all. *Goodman. Knox. Napibali.*

The Twenty sixth.

‘ King *Charles* the First was lawfully put to Death, and his Murderers were the blessed Instruments of God’s Glory in their Generation. *Milton. Goodwin. Owen.*

The Twenty seventh.

‘ King *Charles* the First made War upon his Parliament; and in such a Case the King may not only be resisted, but he ceaseth to be King. *Baxter.*

‘ We Decree, Judge, and Declare all and every of these Propositions to be False, Seditious, and Impious, and most of them to be also Heretical and Blasphemous, Infamous to Christian Religion, and Destructive of all Government in Church and State.

‘ We farther Decree, That the Books which contain the aforesaid Propositions and impious Doctrines, are fitted to deprave good Manners, corrupt the Minds of unwary Men, stir up Seditions and Tumults, overthrow States and Kingdoms, and lead to Rebellion, Murther of Princes, and Atheism it self: And therefore We interdict all Members of the University from the Reading of the said Books, under the Penalties in the Statutes express’d. We also order the said recited Books to be publicly burnt by the Hand of our Marshal, in the Court of our Schools.

‘ Likewise we Order, That in perpetual Memory hereof, these our Decrees shall be entred in the Registry of our Convocation; and that Copies of them being communicated to the several Colleges and Halls within this University, they be there publicly affix’d in the Libraries, Refectories, or other fit Places, where they may be seen and read of all.

‘ Lastly, We command and strictly enjoin all and singular the Readers, Tutors, Catechists, and others to whom the Care and Trust of Institution of Youth is committed, that they diligently instruct and ground their Scholars in that most necessary Doctrine, which in a manner is the Badge and Character of the Church of *England*; Of Submitting to every Ordinance of Man for the Lord’s Sake; whether it be to the King as Supreme; or unto Governors as unto them that are sent by him, for the Punishment of evil Doers, and for the Praise of them that do well. Teaching that this Submission and Obedience is to be clear, absolute, and without Exception of any State or Order of Men. Also that they, according to the Apostle’s Precept, exhort, That first of all, *Supplications, Prayers, Intercessions, and giving of Thanks be made for all Men, for the King, and all that are in Authority; that we may lead a quiet and peaceable Life, in all Godliness and Honesty; for this is good and acceptable in the sight of God our Saviour.* And in especial manner, that they press and oblige them humbly to offer their most ardent and daily Prayers at the Throne of Grace, for the Preservation of our So-

vereign Lord King *Charles*, from the Attempts of open Violence, and secret Machinations of perfidious Traytors; that the Defender of the Faith, being safe under the Defence of the Most High, may continue his Reign on Earth, till he exchange it for that of a late and happy Immortality.

Mr. Phipps. My Lords, To shew that this was likewise at the same time Archbishop *Tilloison*’s Opinion, we desire to read his Letter which he wrote to my Lord *Russel*, when he was under his Condemnation in *Newgate*, July 20. 1683.

Clerk reads.] ‘ My Lord, I was heartily glad to see your Lordship this Morning in that calm and devout Temper at Receiving of the Blessed Sacrament; but Peace of Mind, unless it be well grounded, will avail little: And because transient Discourse many times hath little Effect, for want of Time to weigh and consider it; therefore, in tender Compassion of your Lordship’s Case, and from all the good Will that one Man can bear to another, I do humbly offer to your Lordship’s deliberate Thoughts these following Considerations concerning the Points of Resistance, if our Religion and Rights should be invaded, as your Lordship puts the Case; concerning which, I understand by Dr. *B.* that your Lordship had once receiv’d Satisfaction, and am sorry to find a Change.

‘ *First*, That the Christian Religion doth plainly forbid the Resistance of Authority.

‘ *Secondly*, That tho’ our Religion be establish’d by Law, (which your Lordship urges as a Difference between our Case and that of the Primitive Christians) yet in the same Law which establishes our Religion, it is declar’d; That it is not lawful upon any Pretence whatsoever to take up Arms, &c. Besides, that there is a particular Law, declaring the Power of the Militia to be solely in the King; and that ties the Hands of Subjects, tho’ the Law of Nature, and the general Rules of Scripture had left us at Liberty, which I believe they do not, because the Government and Peace of Human Society could not well subsist upon these Terms.

‘ *Thirdly*, Your Lordship’s Opinion is contrary to the declar’d Doctrine of all Protestant Churches; and tho’ some particular Persons have taught otherwise, yet they have been contradicted herein, and condemn’d for it, by the Generality of Protestants. I beg your Lordship to consider, how it will agree with an avow’d asserting of the Protestant Religion, to go contrary to the General Doctrine of Protestants. My End in this is, to convince your Lordship that you are in a very great and dangerous Mistake; and being so convinc’d, that which was before a Sin of Ignorance, will appear of much more heinous Nature, as in truth it is, and call for a very particular and deep Repentance; which if your Lordship sincerely exercise upon the sight of your Error, by a penitent Acknowledgment of it to God and Men, you will not only obtain Forgiveness of God, but prevent a mighty Scandal to the Reform’d Religion. I am very loth to give your Lordship any Disquiet in the Distress you are in, which I commiserate from my Heart, but am much more concern’d that you do not leave the World in a Delusion and false Peace, to the Hindrance of your Eternal Happiness. I heartily pray for you; and beseech your Lordship to believe

believe that I am, with the greatest Sincerity and Compassion in the World,

My Lord,

Your Lordship's most Faithful
and Afflicted Servant,

J. TILLOTSON.

Mr. Phipps. My Lords, We next offer the Opinion of Bishop *Stillingfleet*.

Clerk reads.] 'A Vindication of the Answer to some late Papers, concerning the Unity and Authority of the Catholick Church, and the Reformation of the Church of England.

But it hath been said by some-
body, That we had our Govern-
ment and Ceremonies from his
Church, our Doctrine from Luther
and Calvin; and that we had nothing peculiar to our Church, but our Doctrine of Non-Resistance, and much good may it do us; and we hope we shall never fare the worse for it. This might give Occasion to enquire, Whether the Church, which pretends to be infallible, doth teach it so orthodoxly, or not? Or whether those who do think themselves oblig'd to believe what she teaches, are thereby oblig'd to the strictest Principles of Loyalty? But I forbear. It is sufficient to my Purpose, to shew that our Church doth not only teach them, as her own Doctrine, but (which is far more effectual) as the Doctrine of Christ and his Apostles, and of the Primitive Church.

Mr. Phipps. My Lords, The same Bishop, in a Discourse of the Unreasonableness of a new Separation, takes Notice of some Objections made by those who are Friends to the Government, as if Non-Resistance were not consistent with the Revolution.

Lord Chancellor. There is no Name of an Author to these Books which you now produce.

Mr. Dodd. The Book is generally known by all Learned Men to be Bishop *Stillingfleet*'s. Mr. *Chiswell*, who printed it, attended here three Days to prove it, but is ill now; but he has left a Certificate that he printed it, and all Learned Men know it to be his.

Clerk reads.] 'I come to the particular Examination of the Difficulties which relate to the present Oaths [to King William and Queen Mary;] and because we are charg'd with Apostacy from the Principles of the Church of England, and that is made the main Ground of the design'd Separation, I would fain know what this Charge is built upon, with respect to the Oaths, for that is all we are concern'd in. If any particular Persons have advanc'd new Hypotheses of Government, contrary to the Sense of our Church, let them answer for themselves. The Case of the Oaths is quite of another Nature; here is no Renouncing the Doctrine of Passive Obedience, or asserting the Lawfulness of Resistance.

Mr. Phipps. Your Lordships observe that since the Revolution that general Doctrine of Obedience is asserted by him.

Mr. Dodd. My Lords, The next we offer is Dr. *Sherlock* in his *Case of Allegiance stated*.

Vol. IV.

Clerk reads.] 'And Bishop *Overall*'s Convocation-Book, which is lately publish'd, the principal Design of which is to assert the irresistible Authority of Sovereign Princes, does as plainly assert this too, That all settled Governments, whatever their Beginnings were, have God's Authority, and must be obey'd; of which more above: For those wise Men who sat in that Convocation, plainly saw the necessary Connexion between Non-Resistance, and Obedience to the present Powers; both which were equally resolv'd into the Authority of God, in removing Kings and setting up Kings: So that Obedience and Allegiance to the present Powers, when they are once well settled among us, is so far from being a renouncing of the Doctrine of Non-Resistance and Passive Obedience, that those who refuse to comply, must renounce the only Principle whereon that Doctrine is reasonably founded, and consequently renounce the Doctrine it self.

Mr. Phipps. My Lords, We now offer a Book publish'd by the late Bishop *Beveridge*, which was publish'd by Her Majesty's License, countersign'd by the Earl of *Sunderland*.

Clerk reads.]

ANNE R.

Whereas our Trusty and Well-beloved *Richard Smith*, of our City of London, Bookseller, hath humbly represented unto us, that he has with great Labour and Expence, prepar'd for the Press, a new Edition of the Sermons and other Works, written in English by the Right Reverend Father in God, Dr. *William Beveridge*, Bishop of St. *Asaph*, deceas'd: And has therefore humbly besought us to grant him our Royal Privilege and License for the sole Printing and Publishing thereof, for the Term of Fourteen Years. We being willing to give all due Encouragement to Works of this Nature, tending to the Advancement of Piety and Learning, are graciously pleas'd to condescend to his Request; and do therefore, by these Presents, grant to him the said *Richard Smith*, his Executors, Administrators, and Assigns, Our Royal Licence for the sole Printing and Publishing the English Works of the said late Bishop of St. *Asaph* for the Term of Fourteen Years, from the Date hereof; strictly forbidding all our Subjects, within our Kingdoms and Dominions, to Reprint the same, either in whole or in part, or to import, buy, vend, utter or distribute any Copies thereof Reprinted beyond Seas, during the aforesaid Term of Fourteen Years, without the Consent and Approbation of the said *Richard Smith*, his Heirs, Executors and Assigns; under his, or their Hands and Seals, first had and obtained, as they will answer the contrary at their Peril; whereof the Master, Wardens and Company of Stationers are to take Notice, that the same may be enter'd in their Register, and that due Obedience be render'd thereunto. Given at our Court at *Kensington*, the Fifth Day of June 1708. in the Seventh Year of Our Reign.

By Her Majesty's Command, SUNDERLAND.

Private Thoughts upon Religion, digested into Twelve Articles, with Practical Resolutions form'd thereupon. By the Right Reverend Father in God, William Beveridge, D. D. late Lord Bishop of St. Asaph.

Ttttt

RESOLU-

RESOLUTION I.

Pag. 251, 252, ' I am resolv'd, by the Grace
253, 254. Lond. ' of God, to Honour and Obey
1709. 8vo. ' the King, or Prince, whom God
' is pleas'd to set over me; as

' well as to expect he should safe-
' guard and protect me, whom God is pleas'd to
' set under him.

' The King of Kings, and Lord of Lords, the
' great and glorious Monarch of all the World, ha-
' ving enacted many gracious Laws, is pleas'd to
' set over every Kingdom and Nation, such Persons
' as may put them in Execution: So that I cannot
' but look upon a lawful King as truly a Representa-
' tive of the most high God, as a Parliament is of
' the People. And am therefore persuaded that
' whosoever rebels against him, rebels against God
' himself; not only in that he rebels against the Or-
' dinance of God, and so against the God of that
' Ordinance; but because he rebels against him
' whom God hath set up as his Vicegerent, to
' represent his Person and execute his Laws, in such
' a Part of his Dominions.

' Hence it is, that these two Precepts, *Fear God,*
' *and Honour the King,* are so often join'd together
' in Holy Writ; for he that fears God's Power, can-
' not but honour his Authority; and he that hon-
' ours not the King that represents God, cannot be
' said to fear God, who is represented by him. And
' hence likewise it is, that God hath been as strict
' and express in enjoining us Obedience to our Go-
' vernors, as to himself: For, thus saith the Lord
' of Hosts, *Rom. 13. 1. Let every Soul be subject*
' *to the Higher Powers.* Why? Because *there is*
' *no Power but of God; the Powers that be, are or-*
' *dain'd of God.*

' And he hath denounc'd as great a Judgment
' against such as rebel against the Magistrate he
' hath ordain'd, as against those that rebel against
' himself: For, *Whoever resisteth the Power, re-*
' *sisteth the Ordinance of God; and they that resist*
' *shall receive to themselves Damnation,* ver. 2. So
' that the Wrath of God shall as certainly fall upon
' those that rise up against the King, as upon those
' that fight against God. And no wonder, that the
' Punishment should be the same, when the Fault
' is the same. For he that fights against his King,
' fights against God himself, who hath invested him
' with that Power and Authority to govern his
' People, representing his own glorious Majesty be-
' fore them.

' Upon this Ground it is, that I believe the
' Wickedness of a Prince cannot be a sufficient Plea
' for the Disobedience of his Subjects; for it is not
' the Holiness, but the Authority of God that he re-
' presents, which the most Wicked, as well as the
' most Holy Person may be endow'd with. And
' therefore, when the Gospel first began to spread it
' self over the Earth, tho' there was no Christian
' King, or Supreme Magistrate, of what Title
' soever, to cherish and protect it; nay, tho' the
' Civil Powers were then the greatest Enemies to it,
' yet, even then, were the Disciples of Christ en-
' join'd to *submit themselves to every Ordinance of*
' *Man, for the Lord's sake.*

' Inasmuch, that did I live among the *Turks,* I
' should look upon it as my Duty to obey the
' *Grand Signior,* in all his Lawful Edicts, as well
' as the most Christian and Pious King in the World.
' For, suppose a Prince be never so wicked, and ne-
' ver so negligent in his Duty of Protecting me,
' it doth not follow, that I must neglect mine of

' Obeying him. In such a Case, I have another
' Duty added to this, and that is, to pray for him,
' and to intercede with God for his Conversion:
' For, thus hath the King of Kings commanded,
' that *Prayers, Supplications, Intercessions, and giving*
' *of Thanks be made,* as for all Men, so more espe-
' cially for Kings, and those that are in Authority,
' that we may live a quiet and peaceable Life, in all
' *Godliness and Honesty,* 1 Tim. 2. 1, 2. So that
' whensoever I address to the Court of Heaven, I
' must be sure to remember my Sovereign on
' Earth, as himself doth in Heaven, in Righteous-
' ness and Mercy. But especially, in case of any
' seeming or real Default or Defect; tho' I do not
' think it a Subject's Duty to judge or censure his
' Sovereign's Actions: I am to be the more earnest
' in my Prayers and Intercessions for him; but up-
' on no Account to fight and rebel against him.

Mr. Dodd, My Lord, the next Book we offer is
his Grace the Archbishop of Canterbury's Treatise,
intituled, *The Creed of Mr. Hobbs Examined.*

Clerk reads.] ' There is no Tye so
' strong as that of Religion, which Pag. 158.
' eternally bindeth a Conscientious Lond. 1670.
' Subject in Allegiance to his Sove-
' reign.

' Wo to all the Princes upon Ibid. p. 160,
' Earth, if this Doctrine be true, 161.
' and becometh popular. If the
' Multitude believe this, the Prince not arm'd with
' the Scales of the *Leviathan*, that is, with irre-
' sistible Power, can never be safe from the Spears,
' and barbed Irons, which their Ambition and pre-
' sumed Interest will provide, and their Malice will
' sharpen, and their passionate Violence throw a-
' gainst him. If the Beast we spoke of come but
' to know its own Strength, it will never be manag'd.
' Wherefore such as own these pernicious Doctrines,
' destructive to all Societies of Men, may be said
' to have Wolves Heads, as the Laws of old were
' wont to speak concerning Excommunicated Per-
' sons; and are like those Ravenous Beasts, so far
' from deserving our Love and Care, that they
' ought to be destroy'd at the common Charge.

Mr. Phipps. My Lords, There is a further Ac-
count of the Opinion of the same Archbishop of
Canterbury, in a Printed Paper, entituled, *An Ac-*
count of what passed at the Execution of the late Duke
of Monmouth, on Wednesday the 15th of July, 1685.
on Tower-Hill.

Clerk reads.] ' The late Duke of Monmouth
' came from the Tower to the Scaffold, attended
' by the Bishop of Ely, the Bishop of Bath and
' Wells, Doctor Tenison, and Doctor Hooper; which
' four the King was graciously pleas'd to send him,
' as his Assistants to prepare him for Death; and
' the late Duke himself intreated all four of them
' to accompany him to the Place of Execution, and
' to continue with him to the last. The two Bishops
' going in the Lieutenant's Coach with him to the
' Bars, made seasonable and devout Applications to
' him all the way; and one of them desir'd him
' not to be surpriz'd, if they to the very last upon
' the Scaffold renew'd those Exhortations to a par-
' ticular Repentance, which they had so often re-
' peated before.

' At his first coming upon the Scaffold, he look'd
' for the Executioner; and seeing him, said, *Is this*
' *the Man to do the Business? Do your Work*
' *well.*

'Then the late Duke of Monmouth began to speak, some one or other of the Assistants, during the whole time, applying themselves to him.

Mon. 'I shall say but very little; I come to die; I die a Protestant of the Church of England.

Assist. My Lord, if you be of the Church of England, you must acknowledge the Doctrine of Non-Resistance to be true.

Mon. If I acknowledge the Doctrine of the Church of England in general, that includes all.

Assist. Sir, it is fit to own that Doctrine particularly, with respect to your Case. Here he was much urg'd about that Doctrine of Non-Resistance; but he repeated in effect his first Answer.

Assist. My Lord, it is fit to be particular; and considering the publick Evil you have done, you ought to do as much Good now as possibly you can, by a publick Acknowledgment.

Mon. What I have thought fit to say of publick Affairs, is in a Paper which I have sign'd; I refer to my Paper.

Assist. My Lord, there is nothing in that Paper about Resistance, and you ought to be particular in your Repentance, and to have it well-grounded. God give you true Repentance.

Mon. I die very penitent, and die with great Chearfulness, for I know I shall go to God.

Assist. My Lord, you must go to God in his own way: Sir, be sure you be truly penitent, and ask Forgiveness of God for the many you have wronged.

Mon. I am sorry for every one I have wronged; I forgive every body; I have had many Enemies, I forgive them all.

Assist. Sir, your Acknowledgment ought be publick and particular.

Mon. I am to die; pray, my Lord--- I refer to my Paper.

Assist. They are but a few Words that we desire: We only desire an Answer to this Point.

Mon. I can blefs God that he hath given me so much Grace, that for these two Years last past I have led a Life unlike to my former Course, and in which I have been happy.

Assist. Sir, Was there no Ill in these two Years? In these Years these great Evils have happen'd; and the giving publick Satisfaction is a necessary Part of Repentance; be pleas'd to own a Detestation of your Rebellion.

Mon. I beg your Lordships that you will stick to my Paper.

Assist. My Lord, as I said before, there is nothing in your Paper about the Doctrine of Non-Resistance.

Mon. I repent of all things that a true Christian ought to repent of. I am to die; pray, my Lord----

Assist. Then, my Lord, we can only recommend you to the Mercy of God; but we cannot pray with that Chearfulness and Encouragement as we should, if you had made a particular Acknowledgment.

This is a true Account, Witness our Hands,

Francis Ely,	Thomas Tenison,
Thomas Bath and Wells.	George Hooper.
William Gostlin,	} Sheriffs.
Peter Vandeput,	

Mr. Phipps. My Lords, We pray we may read the Sermon of his Grace the present Archbishop of York, preached before your Lordships on the 30th of January, 1700.

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Clerk reads.] And in case it ever happen that we cannot with a safe Conscience obey, there we are patiently to suffer the Penalties of our Disobedience; but by no means either to affront their Persons, or to disturb their Government, by raising or partaking in any Tumult, or Insurrection, or Rebellion.

'That there is such a Submission due from all Subjects to the Supreme Authority of the Place where they live, as shall tie up their Hands from opposing or resisting it by Force, is evident from the very Nature and Ends of Political Society. And I dare say, there is not that Country upon Earth, let the Form of their Government be what it will (Absolute Monarchy, Legal Monarchy, Aristocracy, or Commonwealth) where this is not a Part of the Constitution. Subjects must obey Passively, where they cannot obey Actively: Otherwise the Government would be precarious; and the Publick Peace at the Mercy of every Malecontent, and a Door would be set open to all the Insurrections, Rebellions and Treasons in the World. Nor is this only a State-Doctrine, but the Doctrine also of Jesus Christ, and that a necessary, indispensable one too; as sufficiently appears from those famous Words of St. Paul, Rom. 13. 1, 2. which are so plain, that they need no Comment: Let every Soul (saith he) be subject to the higher Powers, for there is no Power but of God, and the Powers that be are ordained of God: whosoever therefore resisteth the Power, resisteth the Ordinance of God; and they that resist shall receive to themselves Damnation. So that so long as this Text stands in our Bibles, the Doctrine of Non-Resistance and Passive-Obedience must be of Obligation to all Christians.

Mr. Dodd. Pray see whether there is any thing purporting the Thanks of the House to be given to the Archbishop for his Sermon.

Clerk Reads.] Die Jovis, 1 Februarii, 1699. It is ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Thanks of this House be and are hereby given to his Grace the Lord Archbishop of York, for his Sermon preached before this House the Thirtieth of January last; and he is hereby desired to Print and Publish the same. *Matth. Johnson, Cl^r Parliamentor^s.*

Mr. Walpole. My Lords, I presume the Council have offered all they think proper to offer out of this Sermon: But that your Lordships may have a Specimen of the Candor of the Doctor's Quotations, I pray the Clerk may read the two next Paragraphs of that Sermon, and that he may read them as distinctly as he did the others.

Clerk Reads.] But then, after I have said this, Care must be taken, that this general Doctrine be not misapplied in particular Countries. Tho' Non-Resistance, or Passive-Obedience, be a Duty to all Subjects, and under all Governments; yet it is not expressed the same way in all Places, but both the Objects and the Instances of it do vary in different Nations, according to the different Models of their Government.

'To speak this as plainly as I can: As the Laws of the Land are the Measures of our active Obedience, so are also the same Laws the Measures of our Submission; and as we are not bound to obey, but where the Laws and Constitution require our

'Obedience, so neither are we bound to submit, but as the Laws and Constitution do require our Submission.

Mr. Walpole. Before we part with that Sermon, I desire one Paragraph more may be read; it begins with these Words, *If indeed a Preacher.*

Clerk reads.] 'If indeed a Preacher should in the Pulpit presume to give his Judgment about the Management of publick Affairs, or to lay down Doctrines as from Christ about the Forms and Models of Kingdoms or Commonwealths, or to adjust the Limits of the Prerogative of the Prince, or of the Liberties of the Subject in our present Government; I say, if a Divine should meddle with such matters as these in his Sermons, I do not know how he can be excused from the just Censure of meddling with things that nothing concern him: This is indeed a *practising in State Matters*, and is usurping an Office that belongs to another Profession, and to Men of another Character; and I should account it every whit as undecent in a Clergyman to take upon him to deal in these Points, as it would be for him to determine *Titles of Land in the Pulpit*, which are in dispute in *Westminster-Hall*.

Mr. Phipps. My Lords, If your Lordships please, as to the two Paragraphs read next after what we read, we entirely concur in what is laid down in them; and if we shew that this Doctrine is agreeable to the Laws of the Land, then it is agreeable to what is there laid down: As to the other part, if he has taken upon him to treat of the Model of Government, he will be under the Censure of the Archbishop; but we desire to read a little before the beginning of that Paragraph.

Clerk reads.] 'Titus 3. 1. *Put them in mind to be subject to Principalities and Powers, to obey Magistrates.*

'You all know what kind of Argument this Day calls for: For by the design of keeping it, the business that the Preacher hath to do, is to press *Obedience and Subjection* to the Government we live under; and to preach against *Faction*, and *Rebellion*; and accordingly it is prescribed, in the Rubrick of this Day's Service, that if there be a Sermon at all, and not a Homily, it shall be upon this Argument.

'It is very well that Authority hath taken care that at some solemn Times we should preach upon this Subject in a more solemn manner; because, tho' it be as needful as any, yet there are some among us think it a very improper Theme for the Pulpit. I must confess I had an Eye to this Suggestion when I pitch'd upon these Words which I have now read to you: Because I think there is something to be observed in them which will effectually confute it.

'St. Paul here lays his Charge upon Titus, that he should put the People that were under his Care in mind, to be subject to Principalities and Powers, and to obey Magistrates.

'Two things I would here consider, First, the Person that is order'd thus to put the People in mind: And Secondly, the Thing that he is to put them in mind of, which is *Subjection and Obedience to Principalities, and Powers, and Magistrates.*

'I begin with the first thing, the Person to whom St. Paul writes this Epistle, and to whom he gives it in charge, that he should put the People in mind to be subject.

'Who was this Person? Why, it was Titus, an Ecclesiastick, Bishop, a Preacher of the Gospel, not a Layman, not a Magistrate, but a pure Churchman: What can be more plainly gather'd from hence than this, That it is not Foreign to a Clergyman's Office to preach *Obedience and Subjection* to the Government; but on the contrary, a part of his Function, a necessary Duty incumbent upon him to do it? If any Man affirm otherwise, he must either say that St. Paul did not rightly instruct Titus in his Office, but enjoind him to do that which he had nothing to do with; or he must shew that the Case of Titus was different from that of the Ministers of the Gospel at this Day: Neither of which things can, I believe, be easily made out.

'And yet into such Times are we fallen, that it is taken ill by many, that Ministers should in their Pulpit-Discourses meddle with these Matters: I must confess, I think, that of all Men it most concerns a Minister of Religion not to be a Busy-body, or a Meddler in other Men's matters; for, in Truth, he hath Work enough to do of his own, and such kind of Work too, as, let him behave himself as inoffensively as he can, will create him Difficulties and Enemies enough. And therefore it would be very imprudent in him to usurp other Mens Provinces, and to turn his Finger where he needs not, especially considering that the Success of his Labours and Endeavours among the People doth in a great Measure depend upon the good liking they have of him.

'But what is it that gives Offence? Or what is it that renders this Argument we are speaking of so improper a Subjects for a Clergyman to treat of? Why, several things are pretended, and I shall name some of them.

First, It is said, That the Work of a Clergyman is to instruct Men in Christ's Religion, to preach against Vice and Sin, and to preach up Holiness and Good Life, and mutual Love and Charity; but what hath he to do with State Affairs, as Matters of Government are?

I answer, He hath nothing indeed to do with them: But his only Work is to make Men good Christians, by endeavouring to possess them with a hearty Belief of our Saviour's Doctrines and Promises, and persuading them to a Conformity in their Lives to his Precepts. This is our proper Work, and this is that we ought to attend to all the days of our Life; and with Government and State Affairs we ought not to meddle, in our Sermons especially.

But then, after all this, it doth not follow but that we are all bound, as we have Occasion, to preach up Loyalty, and Obedience to our Governors; for this is no State-Affair, but an Affair of the Gospel. We cannot instruct Men in Christ's Religion, without instructing them in this.

If, indeed, it was an indifferent thing to a Man's Christianity, or to his Salvation, whether he was a good or a bad Subject, then indeed it would be as indifferent to a Preacher, whether he insisted on these things to the People; but it is not so.

'One great Branch of Christian Holiness, as it is declar'd in the New Testament, is, That every Man demean himself quietly, and peaceably, and obediently to the Government he lives under; and that not only for Wrath, or Fear of Punishment, but also for Conscience-sake: And this is made as necessary

' necessary a Condition of going to Heaven, as any other particular Virtue is. And therefore, if we will instruct Men in Christ's Religion, and in the indispensable Points of Holiness requir'd thereby, we must instruct them in this also.

' One great *Vice* and *damnable Sin* that the Religion of our Lord has caution'd against, is the Sin of *Factions* and *Rebellion*; and therefore if it be our Duty to declare against the Sins and Vices that are contrary to Christianity, it is our Duty to declare and caution against this also.

' Lastly, We do readily grant that a great Part of our Office consists in most affectionately recommending and pressing the Necessity of *mutual Love and Charity*; but if this be necessary, is it not more so to recommend and press *Obedience* to *Authority*, without which, *mutual Love and Charity* cannot possibly subsist? That being the common Ligament of them; and take away that, we should be no better than *Bears* and *Tygers* one to another.

' But it is said in the *Second* place, That Preachers ought not to meddle with these Points, because they are not competent Judges of them: They do not know the Measures and Limits of *Loyalty* and *Disloyalty*, of being a *good* and a *bad Subject*; these depending altogether upon the Constitution of the Government we live under, and the determining of them belongs to the Civil Courts, and not to their Profession.

' To this I answer, That in all those Instances wherein this Argument falls under the Cognizance and Determination of *Parliaments*, or *Judges*, or *Lawyers*, we do not pretend to meddle with it; and if any Man do, let him answer for himself: All that we pretend to, is to press the plain, general, indispensable Duties of *Obedience* to *Laws*, and of *Peaceableness* and *Subjection* to the *Higher Powers*, which Christ and his Apostles have every where taught in the Bible.

Mr. Phipps. My Lords, We don't desire to read any more; we think we have justified our Quotations, and shew'd that it is the Opinion of that Great and Learned Archbishop, That the Doctrine of Passive Obedience and Non-Resistance is the Doctrine of our Church; and that it is a Duty incumbent upon the Clergy to preach it to the People.

Mr. Dodd. The next we offer to your Lordships, is the Opinion of the present Bishop of Worcester, in a Sermon preach'd before the late Queen the 29th of May 1692. when he was Bishop of St. Asaph.

Clerk reads.] ' They had brought Pag. 18, 19. ' Things to that pass, that our Laws signify'd nothing but what they pleas'd; our Religion was held at the Courtesy of them that were the bloody Enemies of it. Our Obedience was made use of as a perfect Snare to us; we must not resist; that our Religion would not allow. — It was God that infatuated our Oppressors, to join the Injuries of a People that could not lawfully Resist, with those of a Prince that could not lawfully pass them by without Resistance.

Mr. Phipps. We shall now offer to your Lordships a Sermon preach'd by the Bishop of Rochester before the Artillery-Company, upon the 29th of May, 1692.

Clerk Reads.] ' Put up thy Sword, Pag. 5. ' says he; O Peter, submit with Patience. Oppose not Authority. Do

' not then break the Laws of thy Country, tho' for Kindness and Love of me. Put up thy Sword. He that uses the Sword unlawfully, tho' on a Pretence never so pious, shall perish by the Sword; shall either be destroy'd by it here, or punish'd hereafter by God himself for having so us'd it.

' Wherefore we are not to conclude, that our Blessed Lord by this Check given to St. Peter did absolutely prohibit all manner of using the Sword among Christians, but only that he taught us the great Duty of Christian Submission. For if St. Peter was, then certainly all other Christian Subjects are forbidden to unsheath the Sword against their Lawful Sovereign, or his Ministers, as they are commission'd by him, tho' they do it on a Pretext so Spiritual, as the Cause of Christ himself.

' Tho' they could not be induc'd by Fear or Favour to rank their Principles equal with their God, yet

they preserved them in the next Place: Tho' they would never worship them as Gods upon Earth, yet they religiously obey'd them as God's Deputies and Representatives. They judg'd those who rebell'd against them worthy of Death, as if they had actually rebell'd against God himself. What else means St. Paul, when in so many Words he declares, *That whosoever resisteth the Power, resisteth the Ordinance of God; and they that resist shall receive to themselves Damnation?* Rom. 13. 2. Out of all doubt he there speaks of the Temporal Power, and of Eternal Damnation to ensue upon resisting it; than which, what more grievous Punishment could have been inflicted, had they immediately resisted God himself?

' And recollect, I intreat you, the Time when this was so positively pronounc'd by St. Paul. It must have been writ under the Reign of *Claudius* or *Nero*. So that 'tis evident, all that resisted them were, without Repentance, in a damnable State. Can there be then any Colour so specious, any Cause so just, in which, instead of Damnation, a Christian Subject may justly expect to receive to himself Salvation, on the Account of Resisting?

Mr. Phipps. We shall next offer to your Lordships Consideration the Authority of the Lord Bishop of Sarum; where he shews, that this is not only the Doctrine of the Church of England, but of the Church of Scotland, and of all Christian Churches.

Clerk Reads.] *A Vindication of the Authority, Constitution, and Laws of the Church and State of Scotland, &c.* By Gilbert Burnet.

' But these Words of St. Paul, being as at first address'd to the Romans, so also design'd by the Holy Ghost to be a part of the Rule of all Christians, do prove, that whoever hath the Supreme Power, is to be submitted to, and never resisted. Printed at Glasgow, 1673. Pag. 41, 42.

' Ifot. If you were not in too great a haste, you would not be so forward; consider therefore the Reason St. Paul gives for Submission to Superior Rulers, is, *because they are the Ministers of God for good*. If then they swerve from this, they forsake the End for which they are rais'd up, and so fall from their Power and Right to our Obedience.

' Basil. Truly what you have said makes me not repent of any haste I seem'd to make; for what you have alledged proves indeed that the 'So-

‘Sovereign is a Minister of God for good, so that he corrupts his Power grossly when he pursues not that Design : But in that he is only accountable to God, whose Minister he is. And this must hold good, except you give us good ground to believe, that God hath given Authority to the Subjects to call him to account for his Trust ; but if that be not made appear, then he must be left to God, who did empower him, and therefore can only coerce him. As one having his Power from a King, is countable to none for the Administration of it, but to the King, or to those on whom the King shall devolve it. So except it be proved, that God hath warranted Subjects to call their Sovereigns to account, they being his Ministers, must only be answerable to him. And according to these Principles of yours, the Magistrates Authority shall be so enervated, that he shall no more be able to serve these Designs, for which God hath vested him with Power : Every one being thus taught to shake off his Yoke when they think he acts in Prejudice of Religion. And here I shall add one thing, which all *Casuits* hold a safe Rule in matters that are doubtful, That we ought to follow that side of the Doubt which is freest of hazard. Here then Damnation is at least the seeming hazard of Resistance ; therefore except upon as clear Evidence you prove the danger of absolute Submission to be of the same Nature that it may balance the other, then absolute Submission, as being the securest, is to be followed.

Mr. Phipps. There is another Sermon, Preach’d by the Bishop of *Salisbury*, entitled, *Subjection for Conscience Sake asserted, in a Sermon preach’d at Guildhall, 1689.*

Clerk reads. ‘Blessed be God, our Church hates and condemns this Doctrine from what Hand soever it comes, and hath establish’d the Rights and Authority of Princes, on sure and unalterable Foundations ; enjoining an entire Obedience to all the lawful Commands of Authority, and an absolute Submission to that Supreme Power God hath put into our Sovereign’s Hands. This Doctrine we justly glory in ; and if any that had their Baptism, and Education in our Church, have turn’d Renegades from this, they prov’d no less Enemies to the Church her self, than to the Civil Authority : So that their Apostacy leaves no Blame on our Church, which glories in nothing more than in a well-temper’d Reformation, from the later Corruption which the dark Ages brought into the Pure and Primitive Doctrines which our Saviour and his Apostles taught, and the first Christians retain’d, and practis’d for many Ages.

Mr. Phipps. My Lords, I only observe, That the absolute Submission to the Supreme Power, are the Words in the Doctor’s Sermon.

Sir Peter King. My Lords, Before your Lordships go on to any other, I pray the 17th Page of the Book which they read, entitled, *The Vindication of the Authority, Constitution and Laws of the Church and State of Scotland*, may be read.

‘The Case varies very much when the Abuse is such that it tends to a total Subversion, which may be called justly a *Phrensy*, since no Man is capable of it till he be under some Lesion of his Mind ; in which case, the Power is to be administred by

others, for the Prince and his People’s Safety : But this will never prove that a Magistrate governing by Law, though there be great Errors in his Government, ought to be coerced : Otherwise you must open a Door to perpetual Broils, since every one by these Maxims becomes Judge ; and where he is both Judge and Party, is not like to be cast in his Pretensions ; And even few Malefactors die, but they think hard measure is given them. If then forcible Self-defence be to be followed, none of these should yield up their Lives without using all Attempts for rescuing them.

Mr. Dee. My Lords, The next we offer is a Sermon preach’d by the Bishop of *Ely* before the Lord-Mayor and Aldermen at *Guildhall*, the 26th of January 1684.

Clerk reads. ‘The patient Christian cannot but condemn those, who under the Pretence of defending their Rights or Religion, resist lawful Authority. It being a Blasphemy against the Divine Wisdom and Power, to suppose God can ever stand in need of our Sins to bring to pass his most glorious Designs. He then in whom this Virtue of Patience dwells, keeps a due Regard to the Commands laid upon him, to submit himself to the Supreme Powers ; and he dares not lift up his Hand against the Lord’s Anointed, or levy War upon the most plausible Account whatsoever ; nay, to him it cannot but seem a Wonder that the Doctrine of Resistance should have gone down so glibly with any who have read the New Testament, and are baptiz’d into the Christian Faith.

‘There is an universal absolute Command in the Holy Scripture. *Ib. P. 20, 21.* laid upon all Christians, to be subject to the Supreme Powers in all Cases. Now nothing is plainer, than that if we be required to be subject in all Cases, Resistance in any will be sinful. *Let every Soul be subject to the Higher Power ;* to which Christian Precept there is no Exception to be found for any Person, in any Instance, from one End of the Christian Institution to the other. — Subjection is a Duty, than which there is hardly any oftner repeated in the Christian Law ; so as we cannot plead Ignorance of it ; it is press’d with such Evidence of Reason, that it cuts off all Pretences of evading it ; it is set down in such plain, easy, and full Expressions, as that there can be no Colour to doubt about the right Understanding of it. The Holy Scripture gives Permission no more to the People collected into one Body to rebel, than it does to each of them, by himself singly considered. Every Christian, in all Circumstances, is requir’d to conform to the Laws of the Supreme Authority, if they have no Repugnancy to God’s Laws, and to suffer patiently where Obedience would be a Sin.

Mr. Dee. My Lords, The next we beg leave to offer, is a Sermon of the Bishop of *Bath and Wells*, preach’d before the King at *Whitehall* the 5th of November 1681.

Clerk reads. ‘Is he not the Vicegerent of God ? Wherever therefore his Sovereign the Almighty has not prevented him by any precedent Commands, there he has a Right and Liberty to put forth his ; in these Cases to expect an active chearful Obedience, and that we should in no Case, and for no Reason resist.

‘The

Ib. Pag. 19. 'The Church, of which we have the Blessing to be Members, where she can't obey, is ready to endure, expecting her Reward in Heaven. Not ignorant how much she suffers now from the Contradiction of disloyal Men, for the Truth of this Doctrine, and how much (for its Meekness) she stands exposed to future Persecution.

Mr. Dec. The next we offer to your Lordships, is a Sermon preach'd by the Bishop of *Lincoln* before your Lordships, on the 30th of *January*, 1708. which was publish'd by your Lordships Commands.

Clerk reads.] 'Die Sabbati, 31 Janurii, 1708.

'Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Thanks of this House be, and are hereby given to the Lord Bishop of *Lincoln*, for his Sermon preach'd before this House yesterday, in the Abby-Church in *Westminster*; and that he be desired to Print and Publish the same.

Matth. Johnson, Cler' Parliamentor'.

Pag. 15, 16, 17, 18. 'And if neither the Malice of the Jews, nor the Innocence of our Lord; if neither the Truth of our Religion persecuted in its Founder, nor the apparent Marks of Malice and Envy, of Violence and Oppression, which appeared in the whole Course of their Prosecution of Him; were sufficient to warrant St. Peter to draw the Sword in his Defence, against that Legal Authority by which they acted; We must conclude, that neither will any of these Pretences suffice to justify any other Christians, in the like Circumstances, now. But if it shall please God at any time to permit the Lawful Powers to be against Us, and make them that hate us, to rule over us; We must follow the Example of our Blessed Master, and submit patiently to their Authority; and not, with this warm Apostle, take the Sword against those, to whom God has committed the Power of the Sword.

'Let this then suffice to shew, what the true Christian Doctrine, of Submission to the Civil Magistrate, is. I shall not here enquire, whether some may not possibly have misapplied these Principles, or have stretched them further than they ought to have done, and by that means have led both themselves and others into great Mistakes, and no less Inconveniencies. What that Authority in every State or Country is, to which such a Subjection (as I have now been speaking of) is due, and against which no Resistance (no not to defend the Best Cause, or the most Innocent Person in the World) may be used by any of the Community, is a Point which the Municipal Laws and Constitution of every State and Country must determine: But that wherever that Supreme Power and Authority is lodged, or in whomsoever it resides, to which God has commanded us to be subject, not only for Wrath, but also for Conscience sake; concerning which St. Paul has laid down this Rule, Let every Soul be subject to the Higher Powers; and St. Peter himself declar'd, that we must submit to it for the Lord's Sake: We are bound to pay either an Active, or Passive Obedience to it; must either do what it requires, or suffer what it inflicts: This is without Controversy the standing Doctrine of Christianity, and has been confirm'd by the Practice of the best Christians in all Ages of the Church.

'Which being so, let us go on finally (upon these Principles) to consider,

'III. What we are to judge of Those, who, notwithstanding so plain an Admonition, not only took the Sword, (tho' that had been too much) but cut off with it that Royal Person, who alone had the Rightful Power of it.

'And here I cannot follow either a plainer or surer Guide, than our Laws themselves, which speak not only with Authority, but Approbation too; and tell us, in effect, what the Sense of the whole Nation is, or at least ought to be, both of Them and their Proceedings. The Fact it self they call a Horrid, Execrable, Detestable Murder; an impious Fact, an unparallel'd Treason: The Court, which decreed it, a Traiterous Assembly, a prodigious and unheard-of Tribunal. The Persons who thus unwarrantably drew the Sword against their own Sovereign, they brand as a Parcel of wretched Men, desperately wicked, hardned in their Impiety. And lastly, As to the Principles upon which they proceeded, the same Laws declare, "That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, Collectively or Representatively, nor any other Persons whatsoever, ever had, have, hath, or ought to have, any Coercive Power over the Persons of the Kings of this Realm.

Clerk reads on by Direction of the Managers.

'Such is the Censure which our Laws have pass'd upon the Murder of our Royal Sovereign, and the Persons who committed it: And the same is the Sense which both the Word of God, and the Laws of all other Nations, teach us to have of both.

'For to allow that some Things had been done under the Authority of that Unfortunate Prince less regularly than were to have been wished; That the Prerogative had been strained to an Exorbitant Height, and the Subject too much provoked to complain, if not of the King himself, yet of those who were about him, and should have advised, and acted more moderately than they did: To grant that when the Parliament met, with which our Troubles began, it was excusable, or even fitting for it to have redressed those Grievances, and reduced the Prerogative within its just Bounds; and that those therefore who entered upon the proper Methods of doing this in a Parliamentary way, without any ill Designs, either against the Person or Government of the King, were not to be blamed. Yet certainly, when this was done, and thereupon such Acts were pass'd, as not only abundantly repaired whatever the Subject had suffered before, but sufficiently secured him against any more Invasions, either of his Liberty or Property, for the Time to come; for Men to proceed farther still, and without any lawful Authority, or evident Necessity, enter into a War against their Sovereign, who had so far condescended to all their just Desires, must needs have been as illegal as it was unreasonable, and bespeak those who did it, to have taken the Sword in that Sense which our Saviour here forbade, and all good Men have ever condemned.

'Had that Excellent Prince indeed never called his last Parliament at all, nor given any Opportunity to his People to redress their Grievances by the

the proper Methods of it; had he not only continued to insist upon those Pretensions which some had set up under the Shelter of his Authority, but so far improved them as utterly to set aside the Laws of the Realm, and to act arbitrarily, not only without Law, but against it; and when nothing else would do, had he chosen rather to desert the Government, than to rule according to his own Oath, and the Fundamental Laws and Limitations of it; this might have warranted an oppressed People to take the Sword for the necessary Defence of their Laws and Constitution, and their Religion and Liberties founded thereupon. But to take up Arms against a King, whose Excesses had been moderate, and whose Necessities pressed him, contrary to his own Inclinations, to run into the most of them; but especially, who had already, without Force, not only freely redressed the Grievances of his People, but abundantly repaired them, and secured them against the like Attempts for the future: This must needs have been an unwarrantable Enterprize; a War as unjustifiable in its Rise, as it proved fatal in its Consequences.

Mr. Dodd. The next we shall offer to your Lordships, is the Bishop of Exeter's Sermon preach'd before Her Majesty, on Her Majesty's Accession to the Throne.

Clerk reads.] Pag. 13, 14. 'Nay, tho' the Laws of our Earthly Governors should in some Instances be contrary to the Divine Laws, (upon which Supposition the Magistrate does certainly exceed the Bounds of his Commission); yet this does not void their Authority, they are the Ministers of God for all this; or else there were none that were so, there were none that could be call'd so, when the Apostle wrote this Epistle: And there is a Duty lying on Subjects even in this Case, viz. not to oppose, nor resist the Power, but quietly and patiently to suffer the Penalty of those Laws, which they can't, without sinning against God, yield an active Obedience to.

Mr. Dodd. The next we shall offer to your Lordships, is the Bishop of St. Asaph's Sermon, preach'd before the Lord-Mayor, on the Thirtieth of January, 1699.

Clerk reads.]

CHILD MAYOR.

Jovis nono Die Februarii, 1698. Annoque Reg. Regis Willielmi Tertii, Angliæ, &c. decimo.

'This Court doth desire Mr. Fleetwood to Print his Sermon, preach'd at the Cathedral Church of St. Paul, the Thirtieth of January last, before the Lord-Mayor, Aldermen, and Citizens of this City.

Goodfellow.

Pag. 18. 'It is plain, that a Government can't possibly subsist for any Time, where any kind of Violence is allowed against the Magistrate. We see what wicked Work is made in some unhappy States, where private Executions of Revenge betwixt Particulars are indulg'd, or frequently conniv'd at. But Government is at an end, where Rulers are expos'd to Popular Assaults.

Mr. Phipps. My Lords, We shall now produce a Sermon, preach'd by the Bishop of Carlisle before your Lordships, upon the Thirtieth of January, 1702.

Clerk reads.] 'Die Lune, 1 Februarii, 1702.

'It is ordered by the Lords Spiritual and Temporal, in Parliament assembled, That the Thanks of this House shall be (and are hereby) given to the Lord Bishop of Carlisle, for his Sermon preach'd before this House on the Thirtieth of January last, in the Abbey Church at Westminster: And he is hereby desired to Print and Publish the same.

Matth. Johnson, Cler' Parliamentor'.

Pag. 31. 'Our Foundations, 'tis to be hoped, are not shaken by the Weight of those many great and extraordinary Revolutions that have pass'd upon us. The All-wise Providence of God has frequently of late (and as some of us always thought, very graciously) exchanged our Governors: But if we ungratefully alter our Notions of the Divine Right of Government, and throw off our Ancient and Primitive Rules of Obedience, we shall make an unworthy Return for the Mercies we have received.

Mr. Phipps. We beg Leave to offer to your Lordships Three Sermons, preach'd before the House of Commons; one preach'd before them by Doctor Eyre, upon January 30. 1707.

Clerk reads.] 'Sabbat. 31 Die Jan. 1707. Or-

'dered, That the Thanks of this House be given to Dr. Eyre, for the Excellent Sermon by him preach'd before this House, at St. Margaret's Westminster, Yesterday, being the Day appointed for a Solemn Fast and Humiliation, for the Murder of King Charles the First: And that he be desired to Print the same; and that Mr. Bridges, Mr. Chandler, the Lord William Powlett, and Mr. Eyre, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

'Let no Seditious and Antimonarchical Principles be so much as once named among us, as becometh good Subjects, and good Christians: Let no sly Insinuations of Male-Administration be suggested, no new Doctrines advanced, nor any old ones revived, whereby to lessen the Security of the Crown, under the specious Pretence of maintaining the Rights and Liberties of the People.

Mr. Dea. The next is Dr. Kenner's Sermon, preach'd before the Commons the 30th of January, 1705.

Clerk reads.] 'Jovis 31 Die Januarii, 1705.

'Ordered, That the Thanks of this House be given to Dr. Kenner, Archdeacon of Huntingdon, for the Sermon by him preached before this House yesterday, at St. Margaret's Westminster: And that he be desired to Print the same. And that Sir Thomas Littleton, Mr. Worsley, and Mr. King, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

'This is the true Foundation of that common Axiom, *The King can do no wrong*; because there is no Right nor Remedy against his Royal Person.

'It was declarative of our Original Constitution, that our Legislature, upon Occasion of this Day, would have it express'd, "That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons,"

"nor

"nor both together, in Parliament, or out of Parliament, nor the People Collectively, or Representatively, nor any other Persons whatsoever, ever had, have, or ought to have, any Coercive Power over the Persons of the Kings of this Realm.

Mr. Dee. My Lords, The next is Dr. Delaune's Sermon, preach'd before the House of Commons, upon the 30th of January, 1702.

Clerk reads.] *Lune 1 die Feb. 1702. Ordered, That the Thanks of this House be given to Dr. Delaune, Vice-Chancellor of the University of Oxford, for the Sermon by him preach'd before this House on Saturday last, at St. Margaret's Westminster: And that he be desired to Print the same. And that Mr. Bridges, Mr. Bromley, and Mr. Rowney, do acquaint him therewith.*

Paul Jodrell, Cl. Dom. Com.

Pag. 10. 'The Civil Laws of a Country are in the Nature of Articles of Agreement between the Rulers and their Subjects; Duty and Obedience are secur'd on one Hand, and on the other, Protection in Civil Rights. If the Subject breaks his Part of the Covenant, (as I may call it) his Punishment is at Hand, and if the Supreme Power breaks his, his Punishment is no less certain, tho' more remote; for he is guilty before God, who is his Ruler, tho' it is impossible he should be accountable for it in his own Dominions, for that would infer a Power Superior to the Supreme, which is a flat Contradiction.

Mr. Dodd. Your Lordships observe by all these Sermons, how generally this Point is laid down, without making any Exception; and yet I don't doubt, but that there is an Exception included in every one of these; yet it is always laid down in general Terms: And we desire that the same Exception may be allowed to the Doctor, as is to all these: And if he has erred, he can only be said, *Errare cum Patribus.*

Mr. Phipps. My Lords, We have thus far made good our Defence, That this is the Doctrine of the Church of England; That the Fathers of the Church have always avow'd it; That it has been preach'd in the same Terms in which the Doctor has preach'd it, ever since Her Majesty's Accession to the Throne, and no Objection has been made to it till now; and that it has been approv'd by both Houses of Parliament, and by Her Majesty. We will now proceed to shew, that it is confirm'd by several Acts of Parliament: The first is in the 12th of Charles II. C. 30.

Clerk reads.] 'And be it hereby declared, That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People Collectively or Representatively, nor any other Persons whatsoever, ever had, have, hath, or ought to have, any Coercive Power over the Persons of the Kings of this Realm.

Mr. Dodd. The next Act of Parliament we shall read to your Lordships, is the Corporation-Act, 13 Car. II. Stat. 2. §. 5.

Clerk reads.] 'I A. B. do declare and believe, That it is not Lawful, upon any Pretence whatsoever, to take up Arms against the King; and that I do abhor that Traiterous Position, of taking Arms

'by his Authority against his Person, or against those that are commissioned by him. So help me God.

Mr. Dodd. This is a General Oath, to be taken by all the Officers of Corporations.

Sir Jos. Jekyll. I can't but observe, my Lords, that it is a little extraordinary, the Doctor's Council should open this Act of Parliament, and offer it to be read, and not inform your Lordships that it is repeal'd.

Mr. Dodd. My Lords, We did open it that it is repeal'd; but we did insist, That as this Oath had been taken by all Officers of Corporations so many Years, so it was then a true Proposition, and still remains so, altho' it be repeal'd: That Repeal don't make the Proposition false.

Mr. Phipps. We admit, my Lords, that in the Act for abrogating the Oaths, and appointing others, this Paragraph is omitted. But what we offer it for, is, to shew that this Doctrine has been sworn to by most of the Great Men, and all the Great Officers of England, for so many Years together.

Mr. Dodd. My Lords, The next is the Militia Act, 13 & 14 Car. II. Cap. 3. We desire to read the Preamble of that Act; and then the Oath appointed to be taken.

Clerk reads.] 'Forasmuch as within all His Majesty's Realms and Dominions, the Sole and Supreme Power, Government, Command and Disposition of the Militia, and of all Forces by Sea and Land, and of all Forts and Places of Strength, is, and (by the Laws of England) ever was the undoubted Right of His Majesty, and his Royal Predecessors, Kings and Queens of England; And that both, or either of the Houses of Parliament, cannot, nor ought to pretend to the same; nor can, nor lawfully may, raise or levy any War, Offensive or Defensive, against His Majesty, his Heirs, or Lawful Successors: And yet the contrary thereof hath of late Years been practised, almost to the Ruin and Destruction of this Kingdom: And during the late Usurped Governments, many evil and rebellious Principles have been instilled into the Minds of the People of this Kingdom, which may break forth, unless prevented, to the Disturbance of the Peace and Quiet thereof.

'§. 18. I A. B. do declare and believe, That it is not lawful, upon any Pretence whatsoever, to take up Arms against the King: And that I do abhor that Traiterous Position, That Arms may be taken by his Authority against his Person, or against those that are commissioned by him, in Pursuance of such Military Commissions. So help me God.

Mr. Dee. My Lords, The next is the Act of Uniformity, 13 & 14 Car. II. Cap. 4.

Clerk reads.] 'And be it further enacted by the Authority aforesaid, That every Dean, Canon, and Prebendary of every Cathedral or Collegiate Church, and all Masters and other Heads, Fellows, Chaplains, and Tutors of or in any College, Hall, House of Learning, Hospital, and every Publick Professor and Reader in either of the Universities, and in every College elsewhere; and every Parson, Vicar, Curate, Lecturer, and every other Person in Holy Orders, and every Schoolmaster keeping any publick or private School, and every Person instructing or teaching any Youth in any House or private Family as a Schoolmaster, who upon the first Day of May, which shall be in the Year of our Lord God, 1662. or at any

Time thereafter, shall be incumbent, or have Possession of any Deanery, Canonry, Prebend, Masterhip, Headship, Fellowship, Professor's Place, or Reader's Place, Parsonage, Vicarage, or any other Ecclesiastical Dignity or Promotion, or any Curate's Place, Lecture or School, or shall instruct or teach any Youth as Tutor or Schoolmaster, shall before the Feast-Day of St. Bartholomew, which shall be in the Year of our Lord, 1662. or at or before his or their respective Admission to be Incumbent, or have Possession aforesaid, subscribe the Declaration or Acknowledgment following; (*scilicet*.)

' I A. B. do declare, That it is not lawful, upon any Pretence whatsoever, to take Arms against the King; and that I do abhor that Traiterous Position, of taking Arms by his Authority against his Person, or against those that are commissioned by him: And that I will Conform to the Liturgy of the Church of England, as it is now by Law Established. And I do declare, That I hold there lies no Obligation upon me, or any other Person, from the Oath commonly call'd The Solemn League and Covenant, to endeavour any Change or Alteration of Government either in Church or State; and that the same was in it self an unlawful Oath, and imposed upon the Subjects of this Realm, against the known Laws and Liberties of this Kingdom.

Mr. Phipps. The Reason of our Reading this, is to let your Lordships see, what Obligations were on all Clergymen to Subscribe this Declaration; and then we submit it to your Lordships Judgment, whether the Doctor is Criminal for Preaching that which all Parsons were (before that Act was repealed) obliged to Subscribe, in order to qualify themselves for Preaching. And I beg Leave just to observe to your Lordships, That by 16 Car. II. the Act for Select Vestries, all Vestrymen were obliged to Subscribe the same Declaration.

Mr. Dodd. My Lords, There are Two other Acts, but I think we need not read them, because they were so lately made: The one is for the Association, the other for the Abjuration, which is taken almost every Day in *Westminster-Hall*.

Mr. Phipps. If your Lordships please, we shall offer nothing more on this Article, but only some Part of his late Majesty's Declaration, to shew that there was some Reason for what the Doctor said of his late Majesty's disclaiming all manner of Resistance.

Sir Joseph Jekyll. My Lords, I perceive they are going to read some Part of his late Majesty's Declaration: We should have offer'd some Part of that Declaration, as a Material Proof against the Doctor; but we would not produce any Papers as Evidence, which are not so; tho' we allow that to the Doctor. But since it is produced as Evidence for the Doctor, I desire it may be read quite through.

Clerk reads.] ' The Declaration of his Highness, William Henry, by the Grace of God, Prince of Orange, &c. of the Reasons inducing him to appear in Arms in the Kingdom of England, for preserving of the Protestant Religion, and for restoring the Laws and Liberties of England, Scotland, and Ireland.

1. IT is both certain and evident to all Men, That the Publick Peace and Happiness of any State or Kingdom cannot be preserved, where the Laws,

Liberties, and Customs Establish'd by the Lawful Authority in it, are openly transgressed and annulled: More especially, where the Alteration of Religion is endeavoured, and that a Religion which is contrary to Law, is endeavoured to be introduced: Upon which those who are most immediately concerned in it, are indispensibly bound to endeavour to preserve and maintain the Established Laws, Liberties and Customs, and above all, the Religion and Worship of God that is established among them; and to take such an effectual Care, that the Inhabitants of the said State or Kingdom, may neither be deprived of their Religion, nor of their Civil Rights. Which is so much the more necessary, because the Greatness and Security, both of Kings, Royal Families, and of all such as are in Authority, as well as the Happiness of their Subjects and People, depend in a most especial manner upon the exact Observation and Maintenance of these their Laws, Liberties and Customs.

2. Upon these Grounds it is, that we cannot any longer forbear to declare, That to our great Regret, we see that those Counsellors, who have now the Chief Credit with the King, have overturned the Religion, Laws and Liberties of those Realms, and subjected them in all Things relating to their Consciences, Liberties and Properties, to Arbitrary Government; and that not only by secret and indirect Ways, but in an open and undisguized Manner.

3. Those Evil Counsellors, for the advancing and colouring this with some plausible Pretexts, did invent and set on foot the King's *Dispensing Power*; by virtue of which, they pretend, that, according to Law, he can *suspend* and *dispense* with the Execution of the Laws that have been enacted by the Authority of the King and Parliament, for the Security and Happiness of the Subject, and so have render'd those Laws of no Effect: Tho' there is nothing more certain, than that as no Laws can be made, but by the joint Concurrence of King and Parliament; so likewise Laws so enacted, which secure the Publick Peace and Safety of the Nation, and the Lives and Liberties of every Subject in it, cannot be repealed or suspended but by the same Authority.

4. For tho' the King may pardon the Punishment that a Transgressor has incurred, and to which he is condemned, (as in the Cases of *Treason* or *Felony*) yet it cannot be with any Colour of Reason inferred from thence, that the King can entirely suspend the Execution of those Laws relating to *Treason* or *Felony*; unless it is pretended, that he is clothed with a Despotick and Arbitrary Power; and that the Lives, Liberties, Honours and Estates of the Subjects, depend wholly on his good Will and Pleasure, and are entirely subject to him; which must infallibly follow, on the King's having a Power to *suspend* the Execution of the Laws, and to *dispense* with them.

5. Those Evil Counsellors, in order to the giving some Credit to this strange and execrable Maxim, have so conducted the Matter, that they have obtained a Sentence from the Judges, declaring, That this *Dispensing Power* is a Right belonging to the Crown: As if it were in the Power of the Twelve Judges to offer up the Laws, Rights, and Liberties of the whole Nation to the King, to be disposed of by him arbitrarily, and at his Pleasure; and expressly contrary to Laws enacted for

for the Security of the Subjects. In order to the obtaining this Judgment, those evil Counsellors did before-hand examine secretly the Opinion of the Judges, and procured such of them as could not in Conscience concur in so pernicious a Sentence, to be turned out, and others to be substituted in their rooms, 'till by the Changes which were made in the Courts of Judicature, they at last obtained that Judgment. And they have raised some to those Trusts, who make open Profession of the Popish Religion, tho' those are by Law rendred incapable of all such Employments.

6. It is also manifest and notorious, That as his Majesty was, upon his coming to the Crown, receiv'd and acknowledg'd by all the Subjects of England, Scotland, and Ireland, as their King, without the least Opposition, tho' he made then open Profession of the *Popish Religion*; so he did then promise, and solemnly swear at his Coronation, That he would maintain his Subjects in the free Enjoyment of their Laws and Liberties; and in particular, that he would maintain the *Church of England as it was established by Law*. It is likewise certain, that there have been at divers and sundry times several Laws enacted for the Preservation of those Rights and Liberties, and of the Protestant Religion; and among other Securities, it has been enacted, That all Persons whatsoever, that are advanced to any Ecclesiastical Dignity, or to bear Office in either University, as likewise all other that should be put in any Employment, Civil or Military, should declare that they were not Papists, but were of the Protestant Religion, and that by their taking of the Oaths of *Allegiance* and *Supremacy*, and the *Test*; yet these Evil Counsellors have in effect annulled and abolished all those Laws, both with relation to Ecclesiastical and Civil Employments.

7. In order to Ecclesiastical Dignities and Offices, they have not only without any Colour of Law, but against most express Laws to the contrary, set up a Commission, of a certain Number of Persons, to whom they have committed the Cognizance and Direction of all Ecclesiastical Matters; in the which Commission there has been, and still is one of his Majesty's Ministers of State, who makes now publick Profession of the Popish Religion, and who at the time of his first professing it, declared that for a great while before he had believed that to be the only true Religion. By all this, the deplorable State to which the Protestant Religion is reduced, is apparent, since the Affairs of the Church of *England* are now put into the Hands of Persons who have accepted of a Commission that is manifestly illegal, and who have executed it contrary to all Law; and that now one of their chief Members has abjured the *Protestant Religion*, and declared himself a *Papist*; by which he is become incapable of holding any publick Employment. The said Commissioners have hitherto given such Proof of their Submission to the Directions given them, that there is no Reason to doubt, but they will still continue to promote all such Designs as will be most agreeable to them. And those Evil Counsellors take Care to raise none to any Ecclesiastical Dignities, but Persons that have no Zeal for the *Protestant Religion*, and that now hide their Unconcernedness for it, under the specious Pretence of *Moderation*. The said Commissioners have suspended the Bishop of *London*, only because he refused to obey an Order that was sent him to suspend a worthy Divine, without so

much as citing him before him to make his own Defence, or observing the common Forms of Process. They have turned out a President chosen by the Fellows of *Magdalen College*, and afterwards all the Fellows of that College, without so much as citing them before any Court that could take legal Cognizance of that Affair, or obtaining any Sentence against them by a competent Judge. And the only Reason that was given for turning them out, was their refusing to chuse for their President, a Person that was recommended to them by the Instigation of those Evil Counsellors; tho' the Right of a Free Election belonged undoubtedly to them. But they were turned out of their Freeholds contrary to Law, and to that express Provision in the *Magna Charta*, That no Man shall lose Life or Goods, but by the Law of the Land. And now these Evil Counsellors have put the said College wholly into the Hands of Papists tho' as is above said, they are incapable of all such Employments, both by the Law of the Land, and the Statutes of the College. These Commissioners have also cited before them all the Chancellors and Archdeacons of *England*, requiring them to certify to them the Names of all such Clergymen as have read the King's Declaration for *Liberty of Conscience*, and of such as have not read it; without considering that the reading of it was not enjoined the Clergy by the Bishops, who are their Ordinaries. The Illegality and Incompetency of the said Court of the Ecclesiastical Commissioners was so notoriously known, and it did so evidently appear that it tended to the Subversion of the *Protestant Religion*, that the most Reverend Father in God, *William Archbishop of Canterbury*, Primate and Metropolitan of all *England*, seeing that it was raised for no other End but to oppress such Persons as were of eminent Virtue, Learning and Piety, refused to sit, or to concur in it.

8. And tho' there are many express Laws against all Churches or Chapels for the Exercise of the Popish Religion, and also against all Monasteries and Convents, and more particularly against the Order of the *Jesuits*; yet those Evil Counsellors have procured Orders for the building of several Churches and Chapels for the Exercise of that Religion. They have also procured divers Monasteries to be erected; and in Contempt of the Law, they have not only set up several Colleges of *Jesuits* in divers Places for the corrupting of the Youth, but have raised up one of the Order to be a Privy-Counsellor, and a Minister of State. By all which they do evidently shew, that they are restrained by no Rules of Law whatsoever; but that they have subjected the Honours and Estates of the Subjects, and the establish'd Religion to a Despotick Power, and to Arbitrary Government. In all which they are served and seconded by those Ecclesiastical Commissioners.

9. They have also followed the same Methods with relation to Civil Affairs; for they have procured Orders to examine all Lords-Lieutenants, Deputy-Lieutenants, Sheriffs, Justices of Peace, and all others that were in any Publick Employment, if they would concur with the King in the Repeal of the *Test* and *Penal Laws*; and all such whose Consciences did not suffer them to comply with their Designs, were turned out, and others were put in their Places, who they believed would be more compliant to them in their Designs of defeating the Intent and Execution of those Laws which had been made with so much Care and

Caution for the Security of the *Protestant Religion*. And in many of these Places they have put professed Papists, tho' the Law has disabled them, and warranted the Subjects not to have any Regard to their Orders.

10. They have also invaded the Privileges, and seized on the Charters of most of those Towns that have a Right to be represented by their Burgesses in Parliament, and have procured Surrenders to be made of them, by which the Magistrates in them have delivered up all their Rights and Privileges, to be disposed of at the Pleasure of those Evil Counsellors, who have thereupon placed new Magistrates in those Towns, such as they can most entirely confide in; and in many of them they have put Popish Magistrates, notwithstanding the Incapacities under which the Law has put them.

11. And whereas no Nation whatsoever can subsist without the Administration of good and impartial Justice, upon which Mens Lives, Liberties, Honours and Estates do depend, those Evil Counsellors have subjected these to an Arbitrary and Despotick Power. In the most important Affairs, they have studied to discover, beforehand, the Opinion of the Judges, and have turned out such as they found would not conform themselves to their Intentions, and have put others in their Places, of whom they were more assured, without having any Regard to their Abilities. And they have not stuck to raise even professed Papists to the Courts of Judicature, notwithstanding their Incapacity by Law, and that no Regard is due to any Sentences flowing from them. They have carried this so far, as to deprive such Judges, who in the common Administration of Justice, shewed that they were governed by their Consciences, and not by the Directions which the others gave them. By which it is apparent, that they design to render themselves the absolute Masters of the Lives, Honours and Estates of the Subjects, of what Rank or Dignity soever they may be; and that without having any Regard either to the Equity of the Cause, or to the Consciences of the Judges, whom they will have to submit in all things to their own Will and Pleasure; hoping by such Ways to intimidate those who are yet in Employment, as also such others, as they shall think fit to put in the rooms of those whom they have turned out; and to make them see what they must look for, if they should at any time act in the least contrary to their good-liking; and that no Failings of that kind are pardoned in any Persons whatsoever. A great deal of Blood has been shed in many Places of the Kingdom, by Judges governed by those Evil Counsellors, against all the Rules and Forms of Law, without so much as suffering the Persons that were accused to Plead in their own Defence.

12. They have also, by putting the Administration of Justice in the Hands of Papists, brought all the Matters of Civil Justice into great Uncertainties; with how much Exactness and Justice soever that these Sentences may have been given. For since the Laws of the Land do not only exclude Papists from all Places of Judicature, but have put them under an Incapacity, none are bound to acknowledge or to obey their Judgments, and all Sentences given them are null and void of themselves: So that all Persons who have been cast in Trials before such Popish Judges, may justly look on their pretended Sentences, as having no more Force than the Sentences of any private

or unauthoriz'd Person whatsoever. So deplorable is the Case of the Subjects who are obliged to answer to such Judges, that must in all things stick to the Rules which are set them by those Evil Counsellors, who, as they raised them up to those Employments, so can turn them out of them at Pleasure, and who can never be esteemed Lawful Judges; so that all their Sentences are in the Construction of the Law of no Force and Efficacy. They have likewise disposed of all Military Employments in the same manner; for tho' the Laws have not only excluded Papists from all such Employments, but have in particular provided, that they should be disarm'd; yet they, in Contempt of these Laws, have not only armed the Papists, but have likewise raised them up to the greatest Military Trust both by Sea and Land; and that Strangers as well as Natives, and *Irish* as well as *English*; that so by those Means, having rendred themselves Masters both of the Affairs of the Church, of the Government, of the Nation, and of the Courts of Justice, and subjected them all to a Despotick and Arbitrary Power, they might be in a Capacity to maintain and execute their wicked Designs, by the Assistance of the Army, and thereby to enslave the Nation.

13. The dismal Effects of this Subversion of the Established Religion, Laws, and Liberties in *England*, appear more evidently to us, by what we see done in *Ireland*; where the whole Government is put in the Hands of Papists, and where all the Protestant Inhabitants are under the daily Fears of what may be justly apprehended from the Arbitrary Power which is set up there; which has made great Numbers of them leave that Kingdom, and abandon their Estates in it, remembering well that Cruel and Bloody Massacre which fell out in that Island in the Year 1641.

14. Those Evil Counsellors have also prevailed with the King to declare in *Scotland*, That he is clothed with *Absolute Power*, and that all the Subjects are bound to obey him without Reserve: Upon which he has assumed an Arbitrary Power both over the Religion and Laws of that Kingdom; from all which it is apparent, what is to be looked for in *England*, as soon as Matters are duly prepared for it.

15. Those great and insufferable Oppressions, and the open Contempt of all Law, together with the Apprehensions of the sad Consequences that must certainly follow upon it, have put the Subjects under great and just Fears; and have made them look after such lawful Remedies as are allowed of in all Nations; yet all has been without effect. And those Evil Counsellors have endeavoured to make all Men apprehend the Loss of their Lives, Liberties, Honours, and Estates, if they should go about to preserve themselves from this Oppression by Petition, Representations, or other Means authoriz'd by Law. Thus did they proceed with the Archbishop of *Canterbury*, and the other Bishops, who having offered a most humble Petition to the King, in Terms full of Respect, and not exceeding the Number limited by Law; in which they set forth in short, the Reasons for which they could not obey that Order, which, by the Instigation of those Evil Counsellors, was sent them, requiring them to appoint their Clergy to read in their Churches the Declaration for *Liberty of Conscience*; were sent to Prison, and afterwards brought to a Trial, as if they had been guilty of some enormous Crime. They were

not only obliged to defend themselves in that Pursuit, but to appear before profess'd Papists, who had not taken the *Test*, and by consequence were Men whose Interest led them to condemn them; and the Judges that gave their Opinions in their Favours, were thereupon turned out.

16. And yet it cannot be pretended, that any Kings, how great soever their Power has been, and how Arbitrary and Despotick soever they have been in the Exercise of it, have ever reckon'd it a Crime for their Subjects to come in all Submission and Respect, and in a due Number, not exceeding the Limits of the Law, and represent to them the Reasons that made it impossible for them to obey their Orders. Those Evil Counsellors have also treated a Peer of the Realm as a Criminal, only because he said, That the Subjects were not bound to obey the Orders of a Popish Justice of Peace; tho' it is evident, that they being by Law rendred incapable of all such Trusts, no Regard is due to their Orders. This being the Security which the People have by the Law for their Lives, Liberties, Honours, and Estates, that they are not to be subjected to the Arbitrary Proceedings of Papists, that are contrary to Law put into any Employments Civil or Military.

17. Both We our selves, and our Dearest and most Entirely Beloved Consort the Princess, have endeavoured to signify, in Terms full of Respect to the King, the just and deep Regret which all these Proceedings have given us; and in Compliance with his Majesty's Desires signified to us, We declared both by Word of Mouth, to his Envoy, and in Writing, what our Thoughts were, touching the Repealing of the *Test and Penal Laws*; which We did in such a manner, that We hoped We had proposed an Expedient, by which the Peace of those Kingdoms, and a happy Agreement among the Subjects of all Persuasions, might have been settled: But those Evil Counsellors have put such ill Constructions on these our good Intentions, that they have endeavoured to alienate the King more and more from us; as if We had designed to disturb the Quiet and Happiness of the Kingdom.

18. The last and great Remedy for all those Evils, is the *Calling of a Parliament*, for securing the Nation against the evil Practices of those wicked Counsellors: But this could not be yet compassed, nor can it be easily brought about: For those Men apprehending, that a Lawful Parliament being once assembled, they would be brought to an Account for all their open Violations of Law, and for their Plots and Conspiracies against the *Protestant Religion*, and the Lives and Liberties of their Subjects; they have endeavoured, under the specious Pretence of *Liberty of Conscience*, first to sow Divisions among Protestants, between those of the *Church of England* and the *Dissenters*: The Design being laid to engage Protestants, that are all equally concerned to preserve themselves from Popish Oppression, into mutual Quarrellings, that so by these, some Advantages might be given to them to bring about their Designs; and that both in the Election of the Members of Parliament, and afterwards in the Parliament it self. For they see well, that if all Protestants could enter into a mutual good Understanding one with another, and concur together in the preserving of their Religion, it would not be possible for them to compass their wicked Ends. They have also required all Persons, in the se-

veral Counties of *England*, that either were in any Employment, or were in any considerable Esteem, to declare before-hand, that they would concur in the Repeal of the *Test and Penal Laws*; and that they would give their Voices in the Elections to Parliament, only for such as would concur in it. Such as would not thus pre-engage themselves, were turned out of all Employments; and others who enter'd into those Engagements, were put in their Places, many of them being Papists. And contrary to the Charters and Privileges of those Boroughs that have a Right to send Burgesses to Parliament, they have ordered such Regulations to be made, as they thought fit and necessary; for assuring themselves of all the Members that are to be chosen by those Corporations: And by this means they hope to avoid that Punishment which they have deserved; tho' it is apparent, that all Acts made by Popish Magistrates, are null and void of themselves, So that no Parliament can be Lawful, for which the Elections and Returns are made by Popish Sheriffs and Mayors of Towns; and therefore as long as the Authority and Magistracy is in such Hands, it is not possible to have any Lawful Parliament. And tho' according to the Constitution of the *English Government*, and immemorial Custom, all Elections of Parliament-Men ought to be made with an entire Liberty, without any Sort of Force, or the requiring the Electors to chuse such Persons as shall be named to them; and the Persons thus freely elected, ought to give their Opinions freely, upon all Matters that are brought before them; having the Good of the Nation ever before their Eyes, and following in all Things the Dictates of their Conscience; yet now the People of *England* cannot expect a Remedy from a *Free Parliament*, legally called and chosen. But they may, perhaps, see one called, in which all Elections will be carried by Fraud or Force; and which will be composed of such Persons, of whom those Evil Counsellors hold themselves well assured; in which all Things will be carried on according to their Direction and Interest, without any Regard to the Good or Happiness of the Nation. Which may appear evidently from this; That the same Persons tried the Members of the last Parliament, to gain them to consent to the Repeal of the *Test and Penal Laws*; and procured that Parliament to be dissolved, when they found that they could not, neither by Promises nor Threatnings, prevail with the Members to comply with their wicked Designs.

19. But to crown all, There are great and violent Presumptions, inducing us to believe, that those Evil Counsellors, in order to the carrying on of their ill Designs, and to the gaining to themselves the more Time for the effecting of them, (for the encouraging of their Complices, and for the discouraging of all good Subjects) have published, That the *Queen* hath brought forth a Son; tho' there have appeared, both during the *Queen's* pretended Bigness, and in the Manner in which the Birth was managed, so many just and visible Grounds of Suspicion, that not only we our selves, but all the good Subjects of those Kingdoms, do vehemently suspect, that the Pretended Prince of *Wales* was not born by the *Queen*. And it is notoriously known to all the World, that many both doubted of the *Queen's* Bigness, and of the Birth of the Child; and yet there

‘ there was not any one Thing done to satisfy them, or to put an end to their Doubts.

‘ 20. And since our Dearest and most entirely-Beloved Consort the Princess, and likewise We Our Selves have so great an Interest in this Matter, and such a Right (as all the World knows) to the Succession to the Crown : Since also the *English* did in the Year 1672. when the *States-General* of the *United Provinces* were invaded in a most unjust War, use their utmost Endeavours to put an End to that War, and that in Opposition to those who were then in the Government ; and by their so doing, they run the Hazard of losing both the Favour of the Court, and their Employments : And since the *English* Nation has ever testified a most particular Affection and Esteem, both to Our Dearest Consort the Princess, and to Our Selves, We cannot excuse Our Selves from espousing their Interests, in a Matter of such high Consequence ; and from contributing all that lies in us, for the maintaining both of the *Protestant Religion*, and of the Laws and Liberties of those Kingdoms, and for the securing to them the continual Enjoyment of all their just Rights. To the doing of which, We are most earnestly solicited by a great many Lords, both Spiritual and Temporal, and by many Gentlemen, and other Subjects of all Ranks.

‘ 21. Therefore it is, that We have thought fit to go over to *England*, and to carry over with us a Force, sufficient by the Blessing of God, to defend us from the Violence of those Evil Counsellors. And We being desirous that our Intentions in this may be rightly understood, have, for this End, prepared this *Declaration*, in which, as we have hitherto given a True Account of the Reasons inducing us to it ; so, We now think fit to declare, That this our Expedition is intended for no other Design, but to have a Free and Lawful Parliament Assembled, as soon as is possible : and that in order to this, all the late Charters by which the Election of Burgesses are limited contrary to the Ancient Custom, shall be considered as Null and of no Force : And likewise all Magistrates who have been unjustly turned out, shall forthwith resume their former Employments, as well as all the Boroughs of *England* shall return again to their Ancient Prescriptions and Charters : And more particularly that the Ancient Charter of the Great and Famous City of *London*, shall again be in force : And that the Writs for the Members of Parliament shall be addressed to the proper Officers, according to Law and Custom. That also none be suffered to chuse, or to be chosen Members of Parliament, but such as are qualified by Law : And that the Members of Parliament being thus lawfully Chosen, they shall meet and sit in full Freedom ; that so the two Houses may concur in the preparing of such Laws, as they upon full and free Debate shall judge necessary and convenient, both for the confirming and executing the Law concerning the *Test*, and such other Laws as are necessary for the Security and Maintenance of the *Protestant Religion* ; as likewise for making such Laws as may establish a good Agreement between the *Church of England* and all *Protestant Dissenters* ; as also for the covering and securing of all such who will live peaceably under the Government, as becomes good Subjects, from all Persecution upon the Account of their Religion, even *Papists* themselves not ex-

‘ cepted ; and for the doing of all other Things, which the Two Houses of Parliament shall find necessary for the Peace, Honour and Safety of the Nation, so that there may be no more danger of the Nations falling at any Time hereafter under *Arbitrary Government*. To this Parliament we will also refer the Enquiry into the Birth of the Pretended Prince of *Wales*, and of all Things relating to it, and to the Right of Succession.

‘ 22. And We, for our part, will concur in every thing that may procure the Peace and Happiness of the Nation, which a Free and Lawful Parliament shall determine ; since we have nothing before our Eyes in this our Undertaking, but the Preservation of the *Protestant Religion*, the Covering of all Men from Persecution for their Consciences, and the securing to the whole Nation the free Enjoyment of all their Laws, Rights and Liberties under a Just and Legal Government.

‘ 24. This is the Design that we have proposed to our selves, in appearing upon this Occasion in Arms : In the Conduct of which, We will keep the Forces under our Command, under all the Strictness of Martial Discipline ; and take a special Care, that the People of the Countries through which we must March, shall not suffer by their Means ; and as soon as the State of the Nation will admit of it, We promise that we will send back all those Foreign Forces that we have brought along with us.

‘ 24. We do therefore hope that all People will judge rightly of us, and approve of these our Proceedings : But we chiefly rely on the Blessing of God for the Success of this our Undertaking, in which We place our whole and only Confidence.

‘ 25. We do in the last Place invite and require all Persons whatsoever, all the Peers of the Realm both Spiritual and Temporal, all Lords-Lieutenants, Deputy-Lieutenants, and all Gentlemen, Citizens, and other Commons of all Ranks, to come and assist us, in order to the executing of this our Design, against all such as shall endeavour to oppose us ; that so we may prevent all those Miseries which must needs follow upon the Nations being kept under Arbitrary Government and Slavery : And that all the Violences and Disorders which have overturned the whole Constitution of the *English* Government, may be fully redressed in a Free and Legal Parliament.

‘ 26. And we do likewise resolve, that as soon the Nations are brought to a state of Quiet, We will take Care that a Parliament shall be called in *Scotland*, for the restoring the Ancient Constitution of that Kingdom, and for bringing the Matters of Religion to such a Settlement, that the People may live easy and happy, and for putting an End to all the unjust Violences, that have been in a Course of so many Years committed there.

‘ We will also study to bring the Kingdom of *Ireland* to such a state, that the Settlement there may be religiously observed ; and that the *Protestant* and *British* Interest there, may be secured. And we will endeavour by all possible Means to procure such an Establishment in all the Three Kingdoms, that they may all live in a happy Union and Correspondence together ; and that the *Protestant Religion*, and the Peace, Honour and Happiness of these Nations, may be establish'd upon lasting Foundations.

Given under our Hand and Seal, at our Court
in

*in the Hague, the Tenth Day of October, in
the Year of our Lord 1688.*

WILLIAM HENRY, PRINCE of ORANGE.

By his Highness's Special Command,
C. HUYGENS.

His Highness's Additional Declaration.

AFTER we had prepared and printed this our Declaration, we have understood, that the Subverters of the Religion and Laws of those Kingdoms, hearing of our Preparations to assist the People against them, have begun to retract some of the Arbitrary and Despotick Powers that they had assumed, and to vacate some of their Unjust Judgments and Decrees. The Sense of their Guilt, and the Distrust of their Force, have induced them to offer to the City of London some seeming Relief from their great Oppressions; hoping thereby to quiet the People, and to divert them from demanding a Re-establishment of their Religion and Laws under the shelter of our Arms: They do also give out, That we do intend to Conquer and Enslave the Nation; and therefore it is that we have thought fit to add a few Words to our Declaration.

We are confident, that no Persons can have such hard Thoughts of us, as to imagine that we have any other Design in this Undertaking, than to procure a Settlement of the Religion, and of the Liberties and Properties of the Subjects, upon so sure a Foundation, that there may be no danger of the Nations relapsing into the like Miseries at any Time hereafter. And as the Forces that we have brought along with us, are utterly disproportioned to that wicked Design of Conquering the Nation, if we were capable of Intending it; so the great Numbers of the principal Nobility and Gentry, that are Men of Eminent Quality and Estates, and Persons of known Integrity and Zeal both for the Religion and Government of England, many of them also being distinguished by their constant Fidelity to the Crown, who do both accompany us in this Expedition, and have earnestly solicited us to it, will cover us from all such malicious Insinuations: For it is not to be imagined, that either those who have Invited us, or those that are already come to Assist us, can join in a wicked Attempt of Conquest, to make void their own lawful Titles to their Honours, Estates and Interests. We are also confident, that all Men see how little Weight there is to be laid on all Promises and Engagements, that can be now made; since there has been so little Regard had in the Time past, to the most solemn Promises. And as that imperfect Redress that is now offered, is a plain Confession of those Violations of the Government that we have set forth; so the Defectiveness of it is no less apparent: For they lay down nothing which they may not take up at Pleasure; and they reserve entire, and not so much as mentioned, their Claim and Pretences to an Arbitrary and Despotick Power; which has been the Root of all their Oppression, and of the total Subversion of the Government. And it is plain, that there can be no Redress, no Remedy offered but in Parliament; by a Declaration of the Rights of the Subjects that have been invaded, and not by any pretended Acts of Grace, to which the Extremity of their Affairs has driven them. Therefore it is that we have thought fit to declare, That we

will refer all to a Free Assembly of the Nation, in a Lawful Parliament.

*Given under our Hand and Seal, at our Court
in the Hague, the Twenty fourth Day of
October, in the Year of our Lord 1688.*

WILLIAM HENRY, PRINCE of ORANGE.

By his Highness's Special Command,
C. HUYGENS.

Mr. Phipps. My Lords, The Reason why we humbly offer this Declaration, is with relation to that Passage in the Sermon, which says, that the Prince of Orange disclaimed all Manner of Resistance. All we observe is, That it don't appear that he came over with an Army with any other Intent than to defend himself against evil Counsellors: And if the Doctor has made a wrong Inference, we submit it to your Lordships, whether such a Misapprehension of his Highness's Meaning shall subject him to a Charge of High Crimes and Misdemeanors.

Mr. Dodd. My Lords, We have finished what we have to offer on this Article, and submit it to your Lordships whether we have not made good our Defence. We are ready to go on to the Second Article, if it be your Lordship's Pleasure.

*Then the LORDS Adjourned to their House
Above.*

Monday, March 6. The Seventh Day.

THE Lords coming down into Westminster Hall, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Council for the Prisoner may proceed in his Defence.

Mr. Dodd. **M**Y Lords, We who are Council for Doctor Sacheverell, beg the Favour that we may enter on the Doctor's Defence as to the Second Article: This Article is divided into three Heads. 1. That the Toleration is unreasonable, and the Allowance of it unwarrantable. 2. That he is a false Brother, who defends Toleration and Liberty of Conscience. 3. That it is the Duty of the chief Pastors to thunder out Anathemas, &c.

The first Head I shall speak to is, as to the Toleration. My Lords, We say there is no such Thing as a Toleration granted by Law; the Word is not to be found in the Act of Parliament; there is an Act (which we suppose is intended) to exempt Protestant Dissenters from the Penalties of certain Laws therein mentioned: However in this Debate, we shall take Notice of it as a Toleration; altho' we think, when there is a Legal Proceeding, the Act should have been called by its own proper Name:

Now, my Lords, this Act of Parliament hath several Restrictions and Limitations in it, and (amongst others) not to exempt any Persons from the Penalties, that do not frequent some Religious Assembly thereby allowed. The Doctor no where finds Fault with a Legal Toleration, or a Toleration granted by Law, within the Description and Meaning of this Act of Parliament. My Lords, we think the Doctor has taken such Care, lest any Expression should undergo a wrong Construction, as if he were uneasy at the Toleration, that he Explains himself very particularly about it. We shall read the Words out of the Sermon, which I think will clear the Doctor as to this Objection; the Doctor says, *Pray do not misunderstand me, as if I reflected upon that Indulgence the Government has given the Dissenters, which I am sure all Well-wishers to our Church are ready to grant; nor do I intend to cast the least Reflection on that Indulgence, which the Law has given to Consciences truly Scrupulous; let them enjoy it in the full Limits the Law has prescribed.*

Now after such a Declaration, so plain a Confession, so full in the Case, in Words as significant as can be to shew his Meaning, we hope there is no room to tax him with this Part of the Article by any incoherent Words, or Inferences, when it is directly contrary to what he has in Words at length express'd.

My Lords, This being considered, we think it is too hard to draw Inferences, and Consequences, that the Doctor is against the Toleration allowed by Law; it is not to be done with Candor, by any one that reads the Sermon without Prejudice, and considers the Care he takes to avoid giving any Offence in this Case.

As to the Second Part of this Article, we think it may receive the same Answer; *That he is a False Brother who Defends Toleration and Liberty of Conscience.* The Doctor does not say they are False Brethren that Defend a Legal Toleration; no Body complains of that; but the Persons intended, are those that Defend an unlawful Toleration, and not a Legal Exemption; which Legal Exemption the Doctor admits to be good and just, in the Passage I have before repeated. We apprehend, the Doctor means those are False Brethren, and blameable, that Excuse the Separation from the Church, not on account of the Toleration, but *by laying the Faults on the true Sons of the Church, for carrying Matters too high*; these are the People, the False Brethren, that cry out against the Church upon all Occasions.

As to the Doctor's Expressions about Archbishop Grindall, the Doctor thought he had good Grounds for them; but at least they were but unwary Expressions, and we hope not Criminal. The Toleration he mentions Archbishop Grindall to be blamed for, was quite another Thing from the present Indulgence now granted; the first was by Queen Elizabeth alone, or by the Archbishop's Authority under her, and without the Parliament; the Dissenters were then few, and it had been no great Difficulty to have prevented that Schism at the beginning. But now the Dissenters are a considerable Part of the Nation, have great Riches, and Properties amongst us, and it became the Wisdom of the Legislature, to give them an Indulgence according to the Restrictions in the Act of Parliament: But this is a different Case, and by a different Authority, from what was in Archbishop Grindall's time. The Story of that Archbishop, as

related by one of the Gentlemen Managers, does indeed acquit the Archbishop, but how far it clears Queen Elizabeth, we must leave to your Lordships; for should a great Favourite attempt to procure a Grant of the Archbishop's Palace, or a chief Revenue of that See or Church, and that the Archbishop's opposing the Favourite herein (as was by the Gentleman suggested) should be the Reason of his Disgrace; or if the Archbishop did Prosecute or Punish a Man in the Spiritual Court, for having two Wives at the same time; (which Prosecution or Punishment was highly commendable in the Archbishop, and was his Duty to do) it would be hard to think, that Queen Elizabeth should Suspend him from the Archbishoprick for such a Proceeding, for thus discharging his Duty; therefore we can't give Credit to that History as it is related; but we shall shew your Lordships, from the Archbishop's Letter to the Council, and Letters from Beza and Calvin at that Time, that it was his Indulgence to the Dissenters of that Time, that drew the Anger of Queen Elizabeth on him; and that this was the Reason of it, we shall make out by undeniable Proof. Now, my Lords, we apprehend the Fault the Doctor finds in his Sermon is against an Universal general Toleration that tends to a Dissolution of all Things; and such a Toleration, would make Religion like that of the Samaritans, a mixture of all sorts, that was odious to the World, and an Abomination to the Jews; and indeed, my Lords, we apprehend such a Toleration the Doctor had great Reason to find Fault with. Surely such a Toleration is not to be defended, nor would be of any Service to either Church or State: This is the Toleration which we think the Doctor intended, and not against a Legal or particular Exemption, which the Wisdom of the Nation hath thought fit to give. Indeed he thinks, that Occasional Conformists do attempt to hoist the Toleration into an Establishment, and come into the Communion of the Church to serve a particular Purpose; and this at most can only be said to be the Doctor's Opinion of that Matter, and whether true or false, cannot be Criminal. To speak against a Law, or to break a Law, is not to be justified: Nor has he spoke against this Law; but if he had, surely he had been Punishable in the ordinary Methods of Justice, and not in a Proceeding of this Nature.

As to the next Head, that is, as to that Part of the Charge about thundering out *Anathemas*; the Discourse is general, and not determin'd to any Persons, not pointed at the Dissenters, but properly intended against Irreligion; and the Sentence that he dares any Power on Earth to reverse, is such, and such only, as is ratified in Heaven. He believes some Sentences of the Church to be ratified in Heaven; and if that Sentence which is pronounced here on Earth, be ratified in Heaven, it is, beyond all Dispute, out of the Power of Man to reverse it. He supposes some Persons exempt from Punishment by particular Laws, may yet, by the Law of Christ, be liable to such a Sentence: But from hence, or his Answer to the Articles, to draw a Conclusion, That he Asserts the State had not Power to reverse the Sentence of the Spiritual Court, (of which there can be no doubt, but that the Legislature has such a Power) or that the Legislature is guilty of Blasphemy, (as has been objected by one of the Gentlemen Managers) is neither true Reason nor Logick.

That

That Schism is a Sin punishable by the Laws of the Church, will not be disputed; if it be a Separation without a just Cause; and how far this is such a Separation, or that the Act of Parliament hath taken away this Schism, this Sin, we submit to your Lordships.

Mr. Phipps. **M**Y Lords, We are come now to the Second Article, and we humbly apprehend, shall give your Lordships as full Satisfaction of the Doctor's Innocence; as to the Crimes charged in this Article, as we hope we did as to those contained in the first Article.

As to that Part of the Second Article which says, *That the Doctor does Suggest and Maintain, that the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable*: He conceives there is nothing in his Sermon can warrant that Charge. The Toleration Act is not what the Doctor finds Fault with, but the Persons that Abuse it; and I beg leave to say, that the ill Use which is made of it, is unreasonable and unwarrantable. But, that the Doctor asserts the Toleration it self to be unreasonable, or the Allowance of it unwarrantable, will appear to be a great Mistake, when the Paragraphs in the Doctor's Sermon, upon which this Article is founded, are considered.

My Lords, The first Passage is in Page the 8th, where the Doctor says thus: *If upon all Occasions to comply with the Dissenters, both in publick and private Affairs, as Persons of tender Consciences and Piety, to promote their Interests in Elections, to sneak to them for Places and Preferment, to defend Toleration and Liberty of Conscience, and under the Pretence of Moderation, to excuse their Separation, and lay the Fault upon the true Sons of the Church for carrying Matters too high, &c.* These are some of the Characters which the Doctor gives of False Brethren: But, is there any Thing in this Passage that avers Toleration to be unreasonable, or the Allowance of it unwarrantable?

Page the 10th, the Doctor hath these Words, which were urged to Prove this Article: *Our Constitution, both in Church and State, has been so admirably contriv'd, with that Wisdom, Weight and Sagacity, and the Temper and Genius of each, so exactly Suited and Modell'd, to the mutual Support and Assistance of one another, that 'tis hard to say, whether the Doctrines of the Church of England contribute more to Authorize and Enforce our Civil Laws, or our Laws to Maintain and Defend the Doctrines of our Church. The Natures of both are so nicely Correspondent, and so happily intermixt, that 'tis almost impossible to offer a Violation to the one, without breaking in upon the Body of the other. So that in all those Cases before mentioned, whosoever presumes to innovate, alter, or misrepresent any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traytor to the State; Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other; and consequently a Crime that concerns the Civil Magistrate as much to punish and restrain, as the Ecclesiastical.* Can this be meant of the Toleration? Is the Toleration so much as mentioned here? Does he not here speak against such as innovate, alter, or misrepresent the Articles of our Faith? Is there any Innovation, Alteration, or Misrepresentation of any Article of our Faith by the Protestant Dissenters? The Dissenters do not differ from us in Matters of Faith, but in Matters of Form and Ceremony; if they differ'd from us

in Matters of Faith, they would be Hereticks, and Heresy was never intended to be Tolerrated by the Act of Indulgence: And therefore what the Doctor says in this Paragraph, can never be taken to be a Reflection on the Toleration.

I shall next humbly offer to your Lordships Consideration another Clause, which was cited by the Gentlemen of the House of Commons to support this Article, which is Page 14. where 'tis said, *These false Brethren in our Government, do not singly, and in private, spread their Poison, but (what is lamentable to be spoken) are suffer'd to combine into Bodies, and Seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the Hellish Principles of Fanaticism, Regicide and Anarchy, are openly Profess'd, and Taught, to Corrupt and Debauch the Youth of the Nation, in all Parts of it, down to Posterity, to the present Reproach, and future Extirpation of our Laws, and Religion. Certainly the Toleration was never intended to Indulge, and Cherish such Monsters and Vipers in our Bosom, that scatter their Pestilence at Noon-day, and will Rend, Distract, and Confound, the firmest and best settled Constitution in the World.* Is there any thing in this Clause that can maintain this Article?

The Doctor says, Certainly the Toleration was never intended to Indulge and Cherish such Monsters, and Vipers in our Bosom, as Atheists, Tritheists, Socinians, &c. And the Doctor is well warranted in saying that, because those enormous Crimes are particularly excepted in the Act of Toleration, and for this we refer to the Act it self.

The next Clause that was urg'd to maintain this Article is in the 16th Page, where the Doctor expresseth himself in these Words: *But since this Model of an Universal Liberty and Coalition fail'd, and these false Brethren could not carry the Conventicle into the Church, they are now resolv'd to bring the Church into the Conventicle, which will more plausibly and slyly Effect her Ruin: What could not be gain'd by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pull'd down, it may be blown up; and no matter with these Men how 'tis Destroy'd, so that it is Destroy'd. Does this suggest the Toleration to be unreasonable, or the Allowance of it Unwarrantable? It rather excuses it from having hurt the Church: For he says, What could not be gain'd by Toleration, must be brought about by Moderation and Occasional Conformity; so that the Injury which is done to the Church is ascribed by him to some other Cause. Thus your Lordships observe there is not any Passage in the Doctor's Sermon, whereby he Suggests that the Toleration granted by Law is Unreasonable, or the Allowance of it Unwarrantable, and consequently no Foundation for this Article, unless it is to be supported by Inferences contrary to the Doctor's express Words: For the Doctor in his Sermon, pag. 20. says, *I would not here be understood, as if I intended to cast the least invidious Reflection upon that Indulgence the Government has condescended to give them, which I am sure all those that wish well to our Church are very ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law has prescrib'd.* By which 'tis evident, he allows the Indulgence given by the Act to Dissenters, and is very far from suggesting, that it is unreasonable, or the Allowance of it unwarrantable. He wishes with all his Heart they may enjoy it in the*

full Limits of the Law. And therefore if there be any other Expressions concerning Toleration, which may seem to carry a dubious Sense, 'tis humbly conceiv'd they ought not to be apply'd to the Exemption granted by Law, but will be so interpreted as may consist with his avowed Approbation of that Law. For in all Writings, such Exposition is to be made, that one Part may not contradict or be inconsistent with the other. But to strain the Sense of any ambiguous Clause, and to put such a Construction upon it, as to make it contradict a plain and positive Assertion in the same Writing, was never allow'd, and I am sure will not be permitted by your Lordships, who have shew'd such a just Abhorrence of strain'd and foreign Insinuations and *Innuendo's*. And therefore where he seems to blame those who defend Toleration, he cannot be thought to condemn the Indulgence granted by Law, because he hath in such positive and express Terms allowed and approved of it.

But it must have some other Meaning, and I think his Meaning is very plain. For by condemning such as defend Toleration, 'tis evident, he means such as maintain, that the Act of Indulgence is a Justification of their Separation, and excuseth them from the Sin of Schism. For the Defence of Toleration, and Excuse of Separation, are mentioned in one and the same Clause of the Sentence, and in one and the same Branch of their Character of false Brethren. So that the True and Genuine Sense of what he hath said in his Sermon concerning Toleration is,

1. That he entirely approves of the Exemption by the Act of Indulgence of Protestant Dissenters from the several Penalties inflicted by the several Statutes for their Non-Conformity.

2. That tho' they are exempt from the Penalties, yet that does not excuse their Separation from the Sin of Schism in *foro Conscientiæ*. And is the Doctor alone in this Notion? Is he not justified in it by the Opinion of many Learned Men, who have writ on that Subject? Nay, I appeal to your Lordships, whether it be not the concurrent Opinion of the greatest Part, if not all the Learned Men of our Church at this Day.

And since the Act of Uniformity is in Force, and is not repeal'd or enervated by the Act of Indulgence, since the Doctrine and Worship of the Church of England is the Establish'd Religion of this Kingdom, whether a Separation from the Church, since the Act of Indulgence, is not as much a Schism in *foro Conscientiæ*, as it was before, is humbly submitted.

But suppose that Separation from the Church by Dissenters, since the Act of Indulgence, should not be thought a Schism, yet he having the Opinion of so many Learned Men of his Side, his Assertion cannot be said to be Wicked, Malicious, and Seditious, nor to be so high a Crime and Misdemeanor, as to be the subject Matter of an Impeachment.

But the Passages in the Doctor's Sermon, which are supposed to condemn the Toleration, or to reflect on the Dissenters, are open to another plain and natural Construction. For since he positively, and in express Terms, allows Liberty of Conscience to Consciences truly scrupulous, and which are entitled to the Benefit of the Act: Where he condemns or speaks against Toleration, it must be intended as to such Dissenters who are not entitled to the Benefit of the Act, but are excepted out of it: And those are such as by Printing or Writing deny the Trinity, such as do not come to some Assembly of

Religious Worship allowed by that Act; and no Assembly of Religious Worship is allow'd by that Act till the Place of meeting be certified to the Bishop, Archdeacon, or Justices at the Quarter-Sessions, and Recorded, and a Certificate thereof given: And, what Multitudes frequent Religious Assemblies which are not allowed by that Act? Nay how few Religious Assemblies are qualified according to the Act? What vast Numbers go to no Religious Worship at all? And how many there are who deny the Second Person of the Trinity, is too too evident: And against every one of these, all the Laws for frequenting Divine Service on the Lord's-Day are still in Force, by the express Words of that Act. Therefore all those who defend a general Toleration, who maintain that the Act extends to all such Dissenters, are justly Censur'd by the Doctor; and all the Expressions in the Doctor's Sermon against Toleration must be intended against those excepted in the Act, since he so expressly approves the Indulgence allow'd to those that conform to the Terms prescribed by the Act.

My Lords, As to that Branch of this Second Article, which charges the Doctor with asserting, *That Queen Elizabeth was deluded by Archbishop Grindall, to the Toleration of the Genevian Discipline*; whether he be not warranted in this Assertion, is humbly submitted to your Lordships, when 'tis consider'd, That Archbishop was once in the highest Esteem with the Queen, She made him Bishop of London, then Archbishop of York, and afterwards promoted him to the See of Canterbury; and that after this he was in Disgrace, and died in Her Majesty's Displeasure, cannot be deny'd. The Reason assign'd for his Disgrace was, That he was a great Encourager of unlawful Conventicles, or Prophesyings, as they were then called. Whether that Charge against him was true, or whether it was only a false Suggestion of the Earl of Leicester, to remove him from the Queen's Favour, I will not presume to determine. The Learned Manager who spoke first to this Article, was pleas'd to acquit the Archbishop, and lay the Fault upon the Queen; though, whoever reads Calvin's and Beza's Letters to him, when Bishop of London, whoever reads Queen Elizabeth's Letter to the Bishops, dated the 3d of May, 1577, and the Archbishop's own Letter to the Lords of the Council the 25th of November, 1577, will be fully satisfied, that he was not Innocent; for he confesses he was commanded by the Queen and Council to suppress the Prophesyings, and that he refused, and could not comply with that Command; and acknowledged it to be an Act of great Clemency in Her Majesty, that She carried Her Resentment no higher. So, I think, that pious good Queen is entirely acquitted by the Archbishop himself.

All Historians admit, that in his Time the Puritans were very numerous, and their Party very strong; and it is evident they grew so dangerous, that the Statute of the 35th of Elizabeth was made to suppress their Conventicles, and compel them to come to Church. And at his Death the Affairs of the Church were in so great Confusion, that his Successor, Archbishop Whitgift, was put to great Trouble to check that growing Faction, and reduce Things into good Order again. If therefore the Doctor was of Opinion the Puritans receiv'd too great Encouragement by the Countenance of that great Man, and if it was his Zeal for the Church, and the Resentment he had that it should receive any Prejudice by the Connivance of one at the Head of

it, that provoked him to use a harsh Expression of that Archbishop, 'tis humbly to be hop'd that is not a sufficient Ground for an Impeachment of High Crimes and Misdemeanors.

The Gentleman that spoke first to this Article, was pleas'd to admit, that what the Doctor said in relation to that Archbishop, was not an Offence, as it was a Reflection on the Archbishop; but that using such Expressions of the Archbishop for his Moderation to the Puritans, was a Reflection on the late Act of Toleration granted to Protestant Dissenters; and that calling the Prosecutions against the Prophesying in Queen Elizabeth's Time *Wholesome Severities*, is an Encouragement to use such Severities against the Protestant Dissenters now.

Can what was done in Queen Elizabeth's Time reflect on the Toleration? Can calling the Prosecutions by Queen Elizabeth against such as frequented Conventicles against the Law, and for which there was no Toleration; I say, can the calling such Prosecutions *Wholesome Severities*, reflect on this Toleration granted by Law? Or can it encourage a Prosecution against the Dissenters, who are entituled to the Benefit of the Toleration, and are Exempt from the Penalties of the Laws?

The only Thing that can be infer'd from what the Doctor says, in relation to the *Wholesome Severities* is, That he intended to excite the Magistrates to put the Laws in Execution against such Dissenters as were excepted out of the Act of Toleration; and I am at a Loss to find how that can make him an Offender. For surely the Parliament never intended that any Person should have the Benefit of the Act of Toleration, that did not comply with the Terms and Conditions of it: And therefore when the Doctor presseth the Execution of the Laws against such as are not entituled to the Benefit of the Act, he seems to me rather to Vindicate than Reflect upon the Toleration. Great Offence hath been taken at the Words *Wholesome Severities* in the Doctor's Sermon; yet, my Lords, I cannot think the Word *Wholesome* an improper Epithet for the Severities used by Queen Elizabeth against the Puritans; for Faction was then in its Infancy, Schism did but just begin to disturb the Church; and by the Severities of the Laws that were put in Execution, and the Courage, Learning, and Prudence of Archbishop Whigist, a Stop was put to them. And, I presume, such Severities as suppress'd these bold and daring Crimes in their Infancy, may be called *Wholesome* without a *Catachresis*; and can never be construed to be a Suggestion, that the Toleration now granted by Law is unreasonable, or the Allowance of it unwarrantable.

As to that Part of the Second Article, which chargeth the Doctor with maintaining, *That it is the Duty of Superior Pastors to thunder out their Ecclesiastical Anathema's against Persons entituled to the Benefit of the Toleration*: The Doctor humbly apprehends there is nothing in his Sermon can be a just Foundation for that Charge.

The Sermon hath this Sentence, Page 25. *Let our Superior Pastors do their Duty, in thundering out their Ecclesiastical Anathema's; and let any Power on Earth dare reverse a Sentence ratified in Heaven.* This is an entire and independent Sentence, that doth not relate to any particular Person, or any particular Crimes, and does not mention the Persons entituled to the Benefit of the Toleration.

Nor can it be imagin'd that he should desire *Anathema's* to be thunder'd out against such Persons who he wisheth may enjoy the Toleration in the Vol. IV.

full Limits the Law hath prescrib'd. But the *Anathema's* must be intended to be against the Works of Darknes, Atheism, Prophaneness, Faction, and other enormous Crimes which are mention'd in the preceeding Part of his Sermon, since it is not apply'd by him to any particular Sins or Offences.

The thundering *Anathema's*, is declaring those Judgments which are denounced in Scripture against Sin. And he desires the Superior Pastors of the Church to thunder out these *Anathema's*, because the greater the Authority is of the Person that declares these Judgments, the greater Influence they are like to have upon the Persons guilty of such Sins.

But if he had desir'd *Anathema's*, or *Excommunications*, (as they would infer) should be thunder'd out against Dissenters, yet it must be intended only against such as are not entituled to the Benefit of the Toleration; and since the Act of Indulgence leaves such Persons open to the Laws, it cannot be a Crime in the Doctor to press the Execution of the Laws against them.

For not to accept of the Toleration on the Terms offer'd by the Act, is what the Doctor calls *hoisting the Toleration into an Establishment*, in despite of the Act, and setting up a Toleration of their own in Defiance of it.

As to the last Part of the Second Article, which charges, that the Doctor *Insolently dares and defies any Power on Earth to reverse such Sentences*, which Sentences are there insinuated to be the Sentences, or *Anathema's*, given and thundered out by Superior Pastors; there are no such Words in the Doctor's Sermon: For, the Doctor's Words are, *Let any Power on Earth dare reverse a Sentence Ratified in Heaven.* So that the bare Recital of the Doctor's Expression, is a sufficient Confutation of that Part of the Article.

For, if the Judgments or *Anathema's* denounc'd by Superior Pastors against Sin, are such as are denounc'd against such Sins in Scripture, such Sentences may truly be said to be ratified in Heaven: And if so, then no one can dare to think, that such Sentences, so ratified in Heaven, can be revers'd by all the Powers on Earth united together. And therefore, the Doctor hopes it will not be thought Insolence, or a High Crime or Misdemeanor in him, to assert what he conceiv'd would be Blasphemy in any one to deny. This is what I humbly offer to your Lordships Consideration on this Article.

Mr. Dee. **M**Y Lords, I humbly beg the Favour of a few Words on this Article. It is divided into Three Parts. The first is concerning Toleration; the Charge against the Doctor is, That he has reflected on the Toleration as it is Established by Law. I crave leave to take Notice, that on considering the whole Sermon, there are two distinct Tolerations mentioned in it; a Toleration that is Legal, (for so I call the Act of Indulgence) and a Toleration that is general; and we think that Distinction, well observed, will clear the Doctor of any Crime in this Particular. Where he reflects on Toleration, it is not the Legal Toleration, but the general; and if it will bear this Construction, you will not put the other upon it; for where he has taken Notice of a Legal Toleration, (which he hath done only in one Place of his Sermon) he is for extending it to the utmost Bounds; his Words are these, *I would not be here misunderstood, as if I intended to cast the least invidious Reflection upon that*

Indulgence the Government hath condescended to give them; which I am sure all those that wish well to our Church, are very ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law hath prescribed. But, where he speaks against Toleration, it's a Toleration of such enormous Crimes, as are not fit to be tolerated in any Christian Nation.

As to the Second Part of the Article, for reflecting on Archbishop Grindal, and thereby reflecting on the Toleration, it was given up on the other Side; and admitted, that, whether True or False, it was not Material, and then surely that will hardly amount to a Crime. But, we shall be so far from giving up that Point, that we shall shew he was False to the Church at that Time; and it was a Crime in him, to give up the Discipline of the Church. No Laws were then made to indulge any Separation: And for the Head of the Church, under the Queen, to give up the Discipline of the Church, was a high Crime in him; and though it may be thought harsh, will bear the true Term of a False Brother.

As to the Third Part of the Article, the thundering out *Anathema's*, I would beg leave to read that Part of the Doctor's Sermon, which, I hope, shall not be applied to those that are within the Legal Toleration. *Schism and Faction are Things of impudent and encroaching Natures, they thrive upon Concessions, take Permission for Power, and advance a Toleration immediately into an Establishment: (I hope the Dissenters will not take these Characters on themselves:) And are therefore to be treated like growing Mischiefs, or infectious Plagues, &c.* Presently after follows, *Let our Superior Pastors do their Duty, in thundering out their Ecclesiastical Anathema's; and let any Power on Earth dare reverse a Sentence ratified in Heaven.* Now, my Lords, I would beg leave to say, that this is only Advice; and although the Doctor may be accounted pretty Pert, to give Advice to his Superior Pastors, that they ought to thunder out *Anathema's*; yet this cannot be construed to extend to them that are described in the Act of Toleration, those that could not conform to some Ceremonials by reason of scrupulous Consciences, these could not be called Faction, but is meant of other People described in the Sermon. But if the Doctor had advised to thunder out *Anathema's* against Dissenters; (supposing, but not granting it,) the Question would come to this Point, Whether he was deceived in Point of Judgment or no: For, if they were Schismatics before, the Schism remains the same, notwithstanding the Toleration; and if it was Sin before the Act of Toleration, it is so still, notwithstanding the Act; and then his Advice to the Superior Pastors, is, to do that which is, (with Submission) their Duty to do, 'till prohibited by the Temporal Courts. My Lords, I shall mention one Case, that will shew you, that it is still Schism to separate from the Church, and that it is the Duty of Dissenters to Communicate with the Church. That was the Case of one Mr. Larwood: In *Hillary Term, sexto* of King William. An Information was exhibited against him, for refusing to take upon him the Office of Sheriff of the City of *Norwich*; he pleads he had not taken the Sacrament in Twelve Months; the Attorney replied, that he ought to have done it. He rejoins, that he was a Protestant Dissenter, and was excused by the Act for Toleration. There were two Points in the Case; the first was, whether it appeared by the Information that the Defendant was

duly Elected; the other, whether the Plea in Bar was good, (for the whole Court held, that the Rejoinder was a Departure from the Bar, and that the Replication was insufficient;) so that Judgment was to be given upon the Information, and the Plea in Bar. *Samuel Eyre*, Justice, was of Opinion with the Defendant as to both Points; my Lord Chief Justice *Holt*, and Mr. Justice *Giles Eyre*, were of Opinion against him as to both Points, and held the Bar to be insufficient, because it was only excusing of one Fault by another, which no Man shall be admitted to do; and they held, that the Duty of Communicating with the Church remained notwithstanding the Act of Toleration: And I submit it to your Lordships Consideration, whether if it be a Duty to Communicate with the Church of *England*, it be not Schism to Separate from it. My Lords, I shall say no more to this Article, but submit it to your Lordships.

Dr. Henchman. **M**Y Lords, We are now endeavouring to defend Doctor *Sacheverell* against the Charge contain'd in the Second Article of Impeachment, in the two first Clauses of which he is said to suggest and maintain, *That the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable: And to assert, That he is a False Brother with Relation to God, Religion and the Church, who defends Toleration and Liberty of Conscience.* But it has not been said by any of the Learned Managers on this Head, that either of those two Branches of this Article are expressly delivered in any Part of the Sermon preach'd at St. Paul's; but what is nowhere affirm'd, is said to be suggested, and this Charge is maintain'd by Inferences only, because there is no plain positive Proposition that it can be supported by.

My Lords, It is humbly hop'd, That if an Inference may be allow'd as Proof to accuse him, an open Declaration will be heard in his Defence: If what another Man makes him say be thought Ground enough for an Accusation, then certainly what he himself openly declares will be esteem'd something more than a dry Caution, and have its due Weight with your Lordships in his Vindication. I would therefore beg Leave to read a Passage where he explains himself, and plainly declares what his Thoughts are concerning the Indulgence granted by Law: This Passage is in the twentieth Page, where speaking of some wholesome Severities us'd in former Reigns, he adds, *I would not here be misunderstood, as if I intended to cast the least invidious Reflection upon that Indulgence the Government has condescended to give them, which I am sure all those that wish well to our Church are very ready to grant to Consciences truly scrupulous; let 'em enjoy it in the full Limits the Law has prescrib'd.*

My Lords, these Words are plain and express, and not capable of being misconstrued or misunderstood: Whether those Learned Gentlemen, who have applied some Parts of this Sermon to Purposes directly opposite to this plain Declaration, have misunderstood or misconstrued those Passages, must be submitted to your Lordships Judgment; but it seems hardly reconcileable, that the same Person in the same Discourse should declare, That all who wish well to the Church are ready to grant Indulgence to Consciences truly scrupulous; and at the same time maintain, That such Toleration is unreasonable, and the Allowance of it unwarrantable; that he should desire it may be enjoy'd in its full

Latitude, and yet assert that he is a False Brother that defends it.

My Lords, This seeming Difficulty will be easily reconcil'd, by considering who those Persons are who are design'd to be eas'd by the Act of Exemption, and who the False Brethren are, describ'd by Doctor Sacheverell in this Sermon.

That Act, in the Preamble, is said to be intended for the Ease of scrupulous Consciences; one Sett of the False Brethren, mention'd in the Sermon, are Men of no Conscience at all; whether Dissenters, or such as profess themselves with Zeal to be of the establish'd Church, but yet break her Communion by not obeying her Precepts.

That Act was intended for such only, as qualify themselves according to the Directions laid down in that Act; the False Brethren which the Doctor every where speaks of are such, and such only, as neither qualify themselves according to that Act, nor think themselves subject to the Penalties of former Acts.

This Act was intended in favour of such as either subscribe the Articles of Religion, excepting only the thirty fourth, thirty fifth and thirty sixth, some Part of the twentieth, and that Part of the twenty seventh which relates to Infant-Baptism; or else for such as subscribe a Profession of their Christian Belief in these Words; *I profess Faith in God the Father, and in Jesus Christ his Eternal Son the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledg the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.* These are the Qualifications requir'd of such as will entitle themselves to the Benefit of this Act.

On the other hand, the False Brethren describ'd by Doctor Sacheverell, are Atheists, Deists, Trintheists, Socinians, Revilers of the Holy Scripture, and such like. Are not Men of these Opinions False Brethren, with Relation to God and Religion? Or shall such Men be suffer'd to cover themselves under the Protection of an Act of Parliament, design'd only for the Ease of scrupulous Consciences. That there are Men among us of these Principles, will be but too visible, from a Passage or two, which I beg leave to lay before your Lordships from Books lately Published.

The first which I shall mention, is entituled, *A brief but clear Confutation of the Trinity*: If the Title it self has not given too much Offence to your Lordships, I shall proceed to look into the Book it self; and in the Ninth Page there is this Proposition laid down, *The Divinity attributed to the Son and Holy Ghost is unscriptural and idolatrous*; and in Page the Tenth he goes on in these Words, *This one Fundamental False Principle, as well with Jews and Turks, as Heathens, has done more Mischief to Christianity than all other Errors besides.* These are such bare-fac'd Blasphemies as must make every Man's Ears tingle that hears them; and the Respect which is due to your Lordships, and this Assembly, makes me forbear instancing any Thing more from this Author: But he does not stand alone; out of many more of the like sort I shall mention but one only, and

This is a Book, entituled, *The Rights of the Christian Church*; and the Author, in p. 108, lays down this Doctrine.

Among Christians one no more than another can be reckon'd a Priest. And a little after, *The Clerk has as good a Title to the Priesthood as the Parson.*

Thus, my Lords, these two Men strike off our whole Religion at once; the Fundamental Doctrine of our Faith is destroy'd by the first of 'em; and the Ministers, who are to support and defend that Doctrine, are set aside by the other.

If these and such like Opinions have any where prevail'd, is it not high time that some wholesome Severities were us'd to stop the growing Contagion? Or, if the Superior Pastors of the Church should thunder out their Ecclesiastical *Anathemas* against the Authors and Abettors of such horrible Blasphemies, by what Construction can this be said to be done against Persons entitled to the Benefit of the Toleration?

But, my Lords, there is one Passage in this Sermon, which has been urg'd by the Learned Managers on this Head with more than ordinary Force, and as a direct Breach and Insult upon the Toleration; with your Lordships Patience, I shall endeavour to set that Passage in a true Light. It is in the Eighth Page: *Should any one, out of Ignorance or Prejudice to the ancient Rights and essential Constitution of the Catholick Church, affirm, that the Divine Apostolical Institution of Episcopacy is a novel Doctrine, not sufficiently warranted by Scripture, and that it is indifferent, whether the Church be govern'd by Bishops or Presbyters; is not such an one an Apostate from his own Orders?*

It was said, my Lords, that all those Dissenters who do not acknowledge the Divine Right of Episcopacy, and are therefore specially exempted by the Act of Indulgence from Subscribing some of the Articles of Religion, and who are immediately under the Protection of that Act, are yet, in the End of this Paragraph, charg'd with being False Brethren, where he prays, *That God would deliver us from all such False Brethren.*

But, my Lords, it is plain, that these Words are not meant, nor can be construed, generally of Dissenters, who deny the Divine Institution of Episcopacy; but are intended peculiarly of such Persons as have themselves been Episcopally ordain'd; the first of these cannot be said to be Apostates from that Doctrine which they never own'd, nor Subscrib'd to; the latter, who could not be admitted to their Orders 'till they had subscrib'd the receiv'd Doctrine of our Church, are the only Persons who can be said to be Apostates from their own Orders, if they deny that Divine Institution, by which they themselves have been Ordain'd, and consequently, the only Persons that are intended in this Passage, and term'd *False Brethren*.

My Lords, I shall not presume to say, what the Duty of the Superior Pastors of the Church is, when our Religion and Discipline is invaded by Atheists and Schismatics, much less to determine what Sentences justly pass'd by them on Earth, may be ratify'd in Heaven. Thus much I hope I may say without Offence, That the Spiritual Power of Church-Pastors is not deriv'd from the Civil Magistrate, but from God; that one Branch of that Power is the censuring of Notorious Offenders, and excluding them from the Communion of the Church; and that this has in all Ages, in Fact, and of Right too, been exercis'd by the Pastors of the Church, by Permission of the Civil Magistrate. The Reverend and Learned Bench of Bishops well know, That before the Civil Magistrate did embrace the Christian Religion, the Pastors of the Church did inflict Spiritual Censures on Offenders, for doing such Things as the Imperial Edicts did not only permit, but command; and this Power of inflicting Cen-

Censures on Persons exempted from Punishment by the Laws of the Land, has been always challeng'd, and is now exercis'd by the Reform'd Churches abroad; and by the Rubrick of our own Liturgy, open and notorious Evil Livers are to be repell'd from the Lord's Table, until they have openly declar'd their Repentance and Amendment.

We are told by the Learned Managers, That in case any Ecclesiastical Judge should inflict an illegal Censure of Excommunication, the Temporal Courts may, and would soon give Relief, by sending forth a Prohibition. But, your Lordships will consider, that there is a wide and manifest Difference betwixt an Excommunication founded upon a Prosecution in the Ecclesiastical Courts, and the pronouncing Censures purely Spiritual. The external coercive Jurisdiction of Ecclesiastical Courts being deriv'd from the Laws of the Land, may, and is frequently by those Laws restrain'd; but such Restraint does not hinder the Pastors of the Church from exercising the Spiritual Power of the Keys, which they derive not from the Laws of the Land, but from the Institution of Christ; and therefore tho' it be provided in the Act of Exemption, that Persons taking the Oaths, and making the Declaration in that Act mention'd, shall not be prosecuted in any Ecclesiastical Court for not conforming to the Church of *England*, yet it is not by that Act express'd or intended that Nonconformity to the Establish'd Church should no longer be look'd upon as Schism; or that Separatists may not, by the Pastors of the Church, be pronounc'd Schismatical. If Separatists from the Church of *England* were guilty of Schism before the Act of Exemption, they are as much guilty of it since; the Laws of the Land which require Conformity, being not by that Act repeal'd, tho' the Transgressors of those Laws are releas'd from those Pains and Penalties to which they were before obnoxious: But were the Laws of the Land which require Conformity to the Church of *England* expressly or virtually repeal'd; yet whilst the Laws of God requiring Church-Unity, and forbidding Schism, are uncancell'd, and remain in their full Force, those who make causeless and unnecessary Divisions are still guilty of Schism, and may by the Pastors of the Church be censur'd as such.

My Lords, I shall add but one Word in relation to Archbishop *Grindal*, not to disturb his Ashes, or blacken his Character, but to vindicate the Memory of that Glorious Queen, under whose Displeasure he died.

It was said, my Lords, that the true Ground of that Archbishop's Suspension, was partly because he would not give up his Manor of *Lambeth* to the Earl of *Leicester*; and partly because he had censur'd one *Julio* an *Italian* for an illegal Marriage. Had these been the known Reasons of his Suspension, he would have had just Cause to complain loudly of that Censure; but without entering into the Secret History of that Reign, I shall put the whole Matter upon that Archbishop's own Sentiments, both as to the Cause of his Suspension, and the Justice of it.

By the Account which is yet extant under his own Hand it appears, that there were in those Days Men of a Fanatical Spirit that call'd themselves *Prophesiers*; that that Archbishop had been order'd by the Queen and Council to suppress such Exercises within his Province, as contrary to the Laws of the Land, and the Establish'd Discipline of the Church; but this Archbishop thought fit not only to delay, but absolutely to refuse to join in suppressing those Exer-

cises; and for this Disobedience to the lawful Commands of his Sovereign he was suspended.

My Lords, His own Words which he uses upon this Occasion are very remarkable, when he applies to the Council to intercede with Her Majesty to be restor'd to Her gracious Favour, viz.

And whereas I have sustain'd the Restraint of my Liberty, and the Sequestration of my Jurisdiction, now by the Space of Six Months; I am so far from repining thereat, or thinking my self injuriously or hardly dealt withal therein at Her Majesty's Hands, that I do thankfully embrace, and frankly with all Humility acknowledge, Her Princely and Gracious Care and Clemency towards me, who having Authority and Power to have us'd greater and sharper Severity against me, and for good Policy and Example thinking it so expedient, hath notwithstanding dealt so mercifully, mildly and gently with me.

My Lords, In this Letter that Archbishop frankly acknowledges that he had given Offence, and was, for good Policy and Example, justly punish'd by Her Majesty; but had it been known that he was suspended for not tamely parting with the Revenues of his See, or for pronouncing Sentence in a Court of Justice against an unlawful Marriage, there could have been no Reason for him to have acknowledg'd the Justice of his Suspension; neither could it be for good Policy and Example expedient, that he should be punish'd for not alienating the Revenues of his Church, or for not pronouncing *Julio's* Marriage with another Man's Wife lawful.

Mr. *Dodd*. We shall spend little of your Lordships Time in reading to this Head; we shall only read the Toleration-Act, to show the Exception in it; and offer the Archbishop's Letter to the Council, and the Queen's Letter to the Bishops. We have the Letters of *Calvin* and *Beza*; but I believe we shall not have occasion to read them, but only the other Three. The first is the Act of Toleration.

Clerk reads.] Anno Primo Gulielmi & Mariæ. - *An Act for Exempting their Majesties Protestant Subjects, Dissenting from the Church of England, from the Penalties of certain Laws.*

‘ **F**Orasmuch as some Ease to scrupulous Consciences in the Exercise of Religion may be an effectual Means to unite their Majesties Protestant Subjects in Interest and Affection,

‘ Be it Enacted by the King and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by the Authority of the same, That neither the Statute made in the Three and twentieth Year of the Reign of the late Queen *Elizabeth*, intituled, *An Act to retain the Queen's Majesty's Subjects in their due Obedience*: Nor the Statute made in the Twenty ninth Year of the said Queen, intituled, *An Act for the more speedy and due Execution of certain Branches of the Statute made in the Three and twentieth Year of the Queen's Majesty's Reign*, viz. The aforesaid Act; nor that Branch or Clause of a Statute made in the First Year of the Reign of the said Queen, intituled, *An Act for the Uniformity of Common-Prayer and Service in the Church, and Administration of the Sacraments*; whereby all Persons, having no lawful or reasonable Excuse to be absent, are required to resort to their Parish-Church

* Church or Chapel, or some usual Place where the Common-Prayer shall be used, upon Pain of Punishment by the Censures of the Church, and also upon Pain that every Person so offending shall forfeit for every such Offence Twelve-pence: Nor the Statute made in the Third Year of the Reign of the late King *James* the First, intituled, *An Act for the better Discovering and Repressing Popish Recusants*: Nor that other Statute made in the same Year, intituled, *An Act to prevent and avoid Dangers which may grow by Popish Recusants*: Nor any other Law or Statute of this Realm made against Papists or Popish Recusants, except the Statute made in the Five and twentieth Year of King *Charles* the Second, intituled, *An Act for preventing Dangers which may happen from Popish Recusants*; and except also the Statute made in the Thirtieth Year of the said King *Charles* the Second, intituled, *An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament*; shall be construed to extend to any Person or Persons Dissenting from the Church of *England*, that shall take the Oaths mention'd in a Statute made in this present Parliament, intituled, *An Act for removing and preventing all Questions and Disputes concerning the Assembling and Sitting of this present Parliament*: And shall make and subscribe the Declaration mentioned in a Statute made in the Thirtieth Year of the Reign of King *Charles* the Second, intituled, *An Act to prevent Papists from sitting in either House of Parliament*. Which Oaths and Declaration, the Justices of Peace at the General Sessions of the Peace to be held for the County or Place where such Person shall live, are hereby required to tender and administer to such Persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a Register. And likewise none of the Persons aforesaid, shall give or pay as any Fee, or Reward to any Officer, or Officers belonging to the Court aforesaid, above the Sum of Six-pence, nor that more than once, for his or their Entry of his taking the said Oaths, and making and subscribing the said Declaration. Nor above the further Sum of Six-pence for any Certificate of the same to be made out, and signed by the Officer or Officers of the said Court.

* And be it further enacted by the Authority aforesaid, That all and every Person and Persons already convicted, or prosecuted in order to Conviction of Recusancy, by Indictment, Information, Action of Debt, or otherwise, grounded upon the aforesaid Statutes, or any of them, that shall take the said Oaths mention'd in the said Statute made this present Parliament, and make and subscribe the Declaration aforesaid, in the Court of *Exchequer*, or *Affizes*, or General or Quarter Sessions to be held for the County where such Person lives, and to be thence respectively certified into the *Exchequer*, shall be thenceforth exempted and discharged from all the Penalties, Seizures, Forfeitures, Judgments and Executions, incurred by Force of any the aforesaid Statutes, without any Composition, Fee, or further Charge whatsoever.

* And be it further Enacted by the Authority aforesaid, That all and every Person and Persons that shall as aforesaid, take the said Oaths, and make and subscribe the Declaration aforesaid, shall not be liable to any Pains, Penalties, or Forfeitures, mention'd in an Act made in the Five and thirtieth Year of the Reign of the late Queen *Elizabeth*,

* intituled, *An Act to retain the Queen's Majesty's Subjects in their due Obedience*: Nor in an Act made in the Two and twentieth Year of the Reign of the late King *Charles* the Second, intituled, *An Act to prevent and suppress Seditious Conventicles*. Nor shall any of the said Persons be prosecuted in any Ecclesiastical Court, for or by reason of their Nonconforming to the Church of *England*.

* Provided always, and be it Enacted by the Authority aforesaid, That if any Assembly of Persons Dissenting from the Church of *England* shall be had in any Place for Religious Worship, with the Doors Locked, Barred or Bolted during any time of such meeting together; all and every Person or Persons that shall come to and be at such Meeting, shall not receive any Benefit from this Law, but be liable to all the Pains and Penalties of all the aforesaid Laws recited in this Act for such their Meeting, notwithstanding his taking the Oaths, and his making and subscribing the Declaration aforesaid.

* Provided always, that nothing herein contained shall be construed to exempt any of the Persons aforesaid from paying of Tythes or other Parochial Duties, or any other Duties to the Church or Minister; nor from any Prosecution in any Ecclesiastical Court or elsewhere for the same.

* And be it further Enacted by the Authority aforesaid, That if any Person Dissenting from the Church of *England*, as aforesaid, shall hereafter be chosen or otherwise appointed to bear the Office of High Constable, or Petit Constable, Church-Warden, Overseer of the Poor, or any other Parochial or Ward-Office, and such Person shall scruple to take upon him any of the said Offices in regard of the Oaths, or any other Matter or Thing required by the Law to be taken or done in respect of such Office, every such Person shall and may execute such Office or Employment by a sufficient Deputy, by him to be provided; that shall comply with the Laws on this behalf.

* Provided always the said Deputy be allowed and approved by such Person or Persons, in such manner as such Officer or Officers respectively should by Law have been allowed and approved.

* And be it further enacted by the Authority aforesaid, That no Person Dissenting from the Church of *England*, in Holy Orders, or pretended Holy Orders, or pretending to Holy Orders, nor any Preacher or Teacher of any Congregation of Dissenting Protestants, that shall make and subscribe the Declaration aforesaid, and take the said Oaths at the General or Quarter Sessions of the Peace, to be held for the County, Town, Parts or Division where such Person lives; which Court is hereby impower'd to administer the same; and shall also declare his Approbation of, and subscribe the Articles of Religion, mention'd in the Statute made in the Thirteenth Year of the Reign of the late Queen *Elizabeth*, except the Thirty fourth, Thirty fifth, and Thirty sixth, and these Words of the Twentieth Article, *viz.* [The Church hath Power to decree Rites or Ceremonies, and Authority in Controversies of Faith] and yet shall be liable to any of the Pains or Penalties mentioned in an Act made in the Seventeenth Year of the Reign of King *Charles* II. entitled, *An Act for Restraining Nonconformists from Inhabiting in Corporations*; nor the Penalties mentioned in the aforesaid Act made in the Two and twentieth Year of his said late Majesty's Reign, for or by

by reason of such Persons Preaching at any Meeting for the Exercise of Religion; nor to the Penalty of One Hundred Pounds, mention'd in an Act made in the Thirteenth and Fourteenth of King Charles II. entitled, *An Act for the Uniformity of Publick Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for Establishing the Form of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons in the Church of England*, for Officiating in any Congregation for the Exercise of Religion, permitted and allowed by this Act.

Provided always, That the making and subscribing the said Declaration, and the taking the said Oaths, and making the Declaration of Approbation and Subscription to the said Articles, in manner as aforesaid, by every respective Person or Persons herein before-mentioned, at such General or Quarter Sessions of the Peace as aforesaid, shall be then and there entred of Record in the said Court, for which Six-pence shall be paid to the Clerk of the Peace, and no more.

Provided, That such Person shall not at any time Preach in any Place, but with the Doors not Locked, Barred or Bolted, as aforesaid.

And whereas some Dissenting Protestants scruple the Baptizing of Infants; Be it enacted by the Authority aforesaid, That every Person in pretended Holy Orders, or pretending to Holy Orders, or Preacher, or Teacher, that shall subscribe the aforesaid Articles of Religion, (except before excepted, and also except Part of the Seven and twentieth Article, touching *Infant-Baptism*) and shall take the said Oaths, and make and subscribe the Declaration aforesaid, in manner aforesaid, every such Person shall enjoy all the Privileges, Benefits and Advantages, which any other Dissenting Minister, as aforesaid, might have or enjoy by virtue of this Act.

And be it further enacted by the Authority aforesaid, That every Teacher or Preacher in Holy Orders, or pretended Holy Orders, that is a Minister, Preacher or Teacher of a Congregation, that shall take the Oaths herein required, and make and subscribe the Declaration aforesaid, and also subscribe such of the aforesaid Articles of the Church of England, as are required by this Act in manner aforesaid, shall be thenceforth exempted from serving upon any Jury, or from being chosen or appointed to bear the Office of Church-Warden, Overseer of the Poor, or any other Parochial or Ward-Office, or other Office in any Hundred, of any Shire, City, Town, Parish, Division or Wapentake.

And be it further enacted by the Authority aforesaid, That every Justice of the Peace may at any Time hereafter require any Person, that goes to any Meeting for Exercise of Religion, to make and subscribe the Declaration aforesaid, and also to take the said Oaths, or Declaration of Fidelity herein after mentioned, in case such Person scruples the taking of an Oath; and upon Refusal thereof, such Justice of the Peace is hereby required to commit such Person to Prison without Bail or Mainprize; and to certify the Name of such Person to the next General or Quarter Sessions of the Peace to be held for that County, City, Town, Part or Division where such Person then resides: And if such Person so committed, shall, upon a Second Tender at the General or Quarter Sessions, refuse to make and subscribe the Declaration aforesaid, such Person refusing shall be then

and there recorded; and he shall be taken thenceforth, to all Intents and Purposes, for a Popish Recusant Convict, and suffer accordingly, and incur all the Penalties and Forfeitures of all the aforesaid Laws.

And whereas there are certain other Persons, Dissenters from the Church of England, who scruple the taking of any Oath; Be it enacted by the Authority aforesaid, That every such Person shall make and subscribe the aforesaid Declaration, and also this Declaration of Fidelity following; Viz.

I A. B. do Sincerely Promise, and Solemnly Declare before God and the World, that I will be True and Faithful to King William and Queen Mary; and I do solemnly profess and declare, that I do from my Heart abhor, detest and renounce, as impious and heretical, that damnable Doctrine and Position, That Princes Excommunicated, or Deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever. And I do declare, That no Foreign Prince, Person, Prelate, State or Potentate, hath, or ought to have, any Power, Jurisdiction, Superiority, Preeminence or Authority, Ecclesiastical or Spiritual, within this Realm.

And shall subscribe a Profession of their Christian Belief, in these Words;

I A. B. profess Faith in God the Father, and in Jesus Christ his Eternal Son, the True God, and in the Holy Spirit, One God blessed for evermore; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.

Which Declarations and Subscription shall be made, and entred of Record, at the General or Quarter Sessions of the Peace for the County, City, or Place where every such Person shall then reside. And every such Person that shall make and subscribe the Two Declarations and Profession aforesaid, being thereunto required, shall be exempted from all the Pains and Penalties of all and every the aforementioned Statutes made against Popish Recusants, or Protestant Nonconformists; and also from the Penalties of an Act made in the Fifth Year of the Reign of the late Queen Elizabeth, entitled, *An Act for the Assurance of the Queen's Royal Power, over all Estates and Subjects within Her Dominions*; for or by reason of such Persons not taking, or refusing to take the Oath mentioned in the said Act; and also from the Penalties of an Act made in the Thirteenth and Fourteenth Years of the Reign of King Charles II. entitled, *An Act for preventing Mischiefs that may arise by certain Persons (called Quakers) refusing to take Lawful Oaths*; and enjoy all other the Benefits, Privileges and Advantages, under the like Limitations, Proviso's and Conditions, which any other Dissenters shall, or ought to enjoy by virtue of this Act.

Provided always, and be it enacted by the Authority aforesaid, That in case any Person shall refuse to take the said Oaths, when tender'd to them, which every Justice of the Peace is hereby empowered to do, such Person shall not be admitted to make and subscribe the Two Declarations aforesaid, tho' required thereunto either before any Justice of the

the Peace, or at the General or Quarter Sessions, before or after any Conviction of Popish Recusancy, as aforesaid, unless such Person can within Thirty one Days after such Tender of the Declaration to him, produce Two sufficient Protestant Witnesses, to testify upon Oath, that they believe him to be a Protestant Dissenter, or a Certificate under the Hands of Four Protestants who are conformable to the Church of England, or have taken the Oaths, and subscribed the Declaration above-mentioned; and shall also produce a Certificate under the Hands and Seals of Six, or more, sufficient Men of the Congregation to which he belongs, owning him for one of them.

Provided also, And be it enacted by the Authority aforesaid, That until such Certificate under the Hands of Six of his Congregation (as aforesaid) be produced, and Two Protestant Witnesses come to attest his being a Protestant Dissenter, or a Certificate under the Hands of Four Protestants (as aforesaid) be produced, the Justice of the Peace shall, and hereby is required to take a Recognizance with Two Sureties, in the Penal Sum of Fifty Pounds, to be levied of his Goods and Chartels, Lands and Tenements, to the Use of the King and Queen's Majesties, their Heirs and Successors, for his producing the same; and if he cannot give such Security, to commit him to Prison, there to remain until he has produced such Certificates, or Two Witnesses, as aforesaid.

Provided always, And it is the true Intent and Meaning of this Act, That all the Laws made and provided for the frequenting of Divine Service on the Lord's Day, commonly called Sunday, shall be still in Force, and executed against all Persons that offend against the said Laws; except such Persons come to some Congregation, or Assembly of Religious Worship, allowed or permitted by this Act.

Provided always, And be it further enacted by the Authority aforesaid, That neither this Act, nor any Clause, Article, or Thing herein contained, shall extend, or be construed to extend, to give any Ease, Benefit or Advantage, to any Papist, or Popish Recusant whatsoever; or any Person that shall deny, in his Preaching or Writing, the Doctrine of the Blessed Trinity, as it is declared in the aforesaid Articles of Religion.

Provided always, And be it enacted by the Authority aforesaid, That if any Person or Persons, at any Time or Times after the Tenth Day of June, do and shall, willingly and of purpose, maliciously or contemptuously, come into any Cathedral or Parish Church, Chapel, or other Congregation permitted by this Act, and disquiet or disturb the same, or misuse any Preacher or Teacher; such Person or Persons, upon Proof thereof before any Justice of Peace, by Two or more sufficient Witnesses, shall find Two Sureties to be bound by Recognizance in the Penal Sum of Fifty Pounds; and in Default of such Sureties, shall be committed to Prison, there to remain till the next General or Quarter Sessions; and upon Conviction of the said Offence at the said General or Quarter Sessions, shall suffer the Pain and Penalty of Twenty Pounds, to the Use of the King and Queen's Majesties, their Heirs and Successors.

Provided always, That no Congregation or Assembly for Religious Worship, shall be permitted or allowed by this Act, until the Place of such Meeting shall be certified to the Bishop of the Diocese, or to the Archdeacon of that Archdeaconry.

conry, or to the Justices of the Peace, at the General or Quarter Sessions of the Peace, for the County, City, or Place in which such Meeting shall be held, and registred in the said Bishop's or Archdeacon's Court respectively, or recorded at the said General or Quarter Sessions; the Register or Clerk of the Peace whereof respectively, is hereby required to register the same, and to give Certificate thereof to such Person as shall demand the same; for which there shall be none greater Fee nor Reward taken, than the Sum of Six Pence.

Mr. Dodd. The next is the Queen's Letter to the Bishops; We have it from the Cotton Library, and a Person here, that has the Custody of it, and proves it a True Copy.

Then Mr. Rawlinson was Sworn.

Mr. Dodd. Pray give my Lords an Account, whether you examin'd that Paper; and where; and whether it be a True Copy.

Rawlinson. I examin'd it in the Cotton Library, and (Errors excepted) I believe it a True Copy.

Mr. Dodd. Do you believe it to be a True Copy?

Rawlinson. Yes, I do believe it.

Clerk reads.] *A Letter from the Queenes Majesty, sent to the Bishoppes through England, for the supplinge of the Exercise called Prophecyeing.*

RIGHT Reverend Father in God, We greete you well. We hear to our great Griefe, that in sundry Parts of our Realme there are no small Numbers of Persons, presuming to be Teachers and Preachers of the Church, tho' neither lawfull thereunto called, no yet for the same, which contrary to our Laws established for the publique Devine Service of Almighty God, and the Administration of his holie Sacreement within this Church of England, doe dailie demise, imagine, propound and put in execution sundrie new Rites and Forms in the Church, as well by their preaching, readings, and ministring the Sacraments, as well by procureing unlawful Assemblies of a great Number of our People out of either their ordinary Parishes, and from Place far distant; and that also of some of good-will, calling (though therein not well advised) to be Hearers of their Disputations, and new devised Opinions upon points of Devinities, farre and unmeet of unlarge People; which manner of Invasions they in some places call Propheciings, and in some other places Exercises. By which manner of Assemblies great Numbers of our People, especially the vulgar sort, meete to be otherwise occupied with honest Labour for there Labour for there Livinge, are brought to Idleness, and seduced, and in a manner schismatically divided amongst themselves into varietie of dangrous Opinions, not only in Towns and Parishes, but even in some Families; and manifestly thereby incoragaged to the Violation of our Laws, and to the Breach of common Order, and finallie to the Offence of all our quiett Subjects that desire to serve God according to the uniforme Orders off established in the Church, whereof the Sequele cannot be but over-dangerous to be suffered. Wherefore, considering it should be the

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‘Duty of the Bishoppes, being the principal ordinary Officers in the Church of God, as you are once, to see this Dishonour against the Honor of God, and the Quietness of the Church reformed: And that we see that by the Increase of these, through Sufferance, great dannger may ensue even to the decay of the Cristianne Faith, whereof we are by God appointed the Defendor; besides the other Inconveniences, to the disturbance of our peaceable Government. We therefore, according to Authoritie we have, do Charge and Command you, as the Bishopp of that Dyocesie, with all manner of Diligence, to take Order through your Dyocesie, as well in Places exempt as otherwise; that no manner of Publique and Devine Service, nor other Form of th’ Administration of the Holy Sacraments, nor any other Rightes or Ceremonies be in any sort used in the Church, but directlie according to the Orders established by our Laws. Nether that any maner of Person be suffered within your Dyocesie to preach, teach, read, or anie exercise any Function in the Church, but such as shall be lawfully Approved and Licensed, as Persons able for their Knowledge, and conformable to the Ministrie in the Rites and Ceremonies of the Church of *England*. And where there shall not be sufficient able Persons for Learning in any Cures, to preach or instruct their Cures as were requiset, there shall you lymitte the Curates to read the publique Homlines, according to the Injunctions heretofore by us given for like Causes: And furthermore considering, for the great Abuse that have byn in sundrie Places of our Realme, by reason of our forsaide Assemblies called Exercises, and for that the same are not, nor have not been Appointed nor Warranted by us or by our Laws, we Will and straightlie Charge you, that you do charge the same forthwith to cease, and not to be used: But if any shall attempt, or continew or renew the same, We will you not onlie to committe thereunto Prison, as Maynteyners of Disorders, but also to advertise Us or our Counsaile of the Names and Qualities of them, and of their Mayntainers and Abbettors, that theupon for better Example their Punishment may be more sharp for their Reformation. And in these things we charge you to be so careful and villiant, as by your Negligence if we should hear of any Person attempting to fend in the Premisses without your Correccion or Information to us, we be not forced to make some Example or Reformation of you, according to your Deserts.

Given under our Signet, at our Mannor of Greenwich, the 7th of May, 1577.

Mr. Phipps. Your Lordships observe, this is a Letter from Queen *Elizabeth* to the Bishops, taking Notice of the Danger that might arise from the Prophesying, and directs them to take care to suppress those unlawful Assemblies; and now we will read to your Lordships the Letter from the Archbishop to the Council, wherein he tells them, that he could not comply with Her Majesty’s Command.

Clerk Reads.]

To the Lords of the Privy-Council.

‘RIGHT Honorable and my singuler good Lords; I cannot deny but that I have been commanded both by the Quenes Majestie her

self, and also by divers of your Honorable Lordships in Her Name, to suppress all those Exercises within my Province, that are commonly called Prophesies; but I do protest before God, the Judge of all Hartes, that I did not of any Stubbornness or Wilfulness refuse to Accomplish the same, but onely upon Conscience; for that I found such kind of Exercise set down in the Holie Scriptures, and the use of the same to have contynued in the Primitive Church, and was perswaded that (the Abuses being reformed which I always offered my self ready to Labour in) the said Exercise might yet serve to the great Proffit of the Church, and feared that the utter suppressing of them would breed Offence, and therefore was a most humble Suter unto Her Majestie, that I might not be made the chiefe Instrument in suppressing the same: Yet not prejudicing or condemning any that in respect of Pollicie or otherwise should be of contrary Judgment; or being of Authority, should suppress them: For I know right well, that there be some things of that Nature, wherein diverse Men may be of diverse Opinions, and abownd in their owne Sense, (being not repugnant to the Analogie of Faith) without any Prejudice to their Salvation, or any Prejudice of ether to other, Notwithstanding howsoever others being otherwise perswaded, might safely do yt; yet I thought it not safe for me (being so perswaded in Minde) to be the Doer of that whereof my own Heart and Conscience would condemn me. And whereas I have susteyned the Restraint of my Libertie, and Sequestration of my Jurisdiction nowe by the space of six Monethes, I am so farre from Repininge thereat, or thinkinge my self injuriously or hardlie dealt withal therein at Her Majesties Hands, that I do thankfully Embrace, and franklie, with all Humilitie, acknowledge her Princely, Gracious, and Rare Clemencie towards me, who having Authoritie and Power to have used greater and sharper Severitie againste me, and for good Pollicie and Example thinking it so expedient, hath notwithstanding dealt so mercifullie, myldelye, and gentlie with me. But the greatest Griefe that ever I have had or have, is the Loss of Her Majesties Favour, and the susteyninge of the Displeasure of so gracious a Sovereigne, by whom the Church and Realm of *Englande* hath been so longe and so happilie Governed; and by whom my self privatelie and speciallie above other Subjects have received so many and so great Benefits above all my Deservings, for the recovery of whose gracious Favour, I most humbly beseech your Lordships to be a meanes to Her Majestie for me: The which obteyned, I shall esteeme far above all worldly Benefits whatsoever. And I protest here before God and your Honours, that not onely my dewtifull and humble Obedience to Her Majestie shall be suche, as She shall have no Cause to Repente Her of Her graciouse Goodness and Clemencie shewed unto me; but also that by moste fervente, heartie, and dailie Prayer (as I have done hitherto) so I will contynew, accordinge to my bownden Dewtie, to make moste earnestte Sute unto Almighty God for the longe Preservation of Her Majesties most happie Raigne, to the unspeakable Benefit of the Church and Realm of *England*, &c.

29 Novemb.
1577.

EDM. CANTUAR.

Mr.

Mr. Dodd. We hope these Two Letters have set that Matter in a true Light, that the Reason of the Archbishop's Disgrace was, for not complying with the Commands of the Queen. We will add no more upon this Article, but proceed to the Third.

Mr. Phipps. My Lords, The Dates of these Letters are material; for your Lordships take notice, they were written in the Year 1577; and Her Majesty's Commands for suppressing the Prophesyings not being obey'd, the Puritans in few Years became so dangerous, that the Parliament was necessitated to make the Act of the 35th Year of Her Reign, (with those severe Penalties, which have been so much censured by one of the Learned Managers) to give a Check to them.

Mr. Dodd. **M**Y Lords, The Third Article that the Doctor is charged with, is, *That he does suggest and assert, That the Church of England is in a Condition of great Peril and Adversity under Her Majesty's Administration; And that, in order to arraign and blacken the Vote or Resolution of both Houses of Parliament, approv'd by Her Majesty, he, in Opposition thereto, does suggest the Church to be in Danger.* And, my Lords, this we take the Liberty totally to deny: The Doctor asserts no such Thing in his Sermon, nor hath it (as we apprehend) been proved upon him.

But true it is, that he asserts, That when National Sins are ripened to Maturity, with other Immoralities and Irreligious Practices therein mention'd, then such a People and Church are in very great Danger, as we apprehend, from the Sins and Vices of wicked Men. My Lords, This we conceive no ways to be opposite to the Votes of the Two Houses of Parliament, nor to Her Majesty's Declaration: We think we have followed the Act of Parliament of the 9th and 10th of King William, for suppressing Blasphemy and Prophaneness, and other Acts of Parliament, in asserting this Matter. It must be agreed, that the Church, as a Church Militant, is always in Danger, till it is a Church Triumphant: It is always taken notice so to be; she has many Enemies; she ought to be always on her Guard and Watch, and all good People ought to pray for her Support. The Prayers directed by Her Majesty to be used, and that are used in all Churches, are, *That no Sedition may disturb the State, nor Schism distract this Church*; and that we all ought to lay it to Heart, how great Dangers we are in by our unhappy Divisions: These are the Prayers that are put up every Day in the Churches. Now to object from this, that we look on the Church to be in Danger under Her Majesty's Administration, is so directly contrary to what the Doctor has asserted in his Sermon, wherein he does, as a good and loyal Subject, pray, and pray heartily for the Best of Queens, *that she may long live for the Comfort and Support of this Church and Nation*; after this, one would think, when he has so positively laid it down in plain Words, there could be no Ground to quarrel with him on this Head. And as to that which was urged by one of the Gentlemen Managers for the House of Commons, observing that the Doctor's Expressions were taken out of the Lamentations, and that when the Lamentations were written, the King was a Prisoner, and the People in Captivity; and therefore the Doctor intended the Parallel to answer the present Times: Surely no such Inference can be drawn from these Passages: I hope the People are in no Captivity whatsoever; nor is our Queen (blessed be God) a Prisoner. And if it

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was intended by the Gentleman Manager, (as I suppose it was) that the Doctor herein meant the Pretender; the Doctor utterly denies it, and has all along disclaimed his Right, and asserted Her Majesty's Right in very express Terms. But in this Place cited by the Doctor, is represented the Prophet's Lamentation for the Sins of the People, and the Judgments that had overtaken the Jews for their Sins and Rebellion. The like Prayers may be observed to have been made by King David, and yet the Church of the Jews was in the greatest Prosperity in his Time: However, there is scarce a Psalm but he laments the Sins of the People, for fear lest they should bring down Judgments on the Jewish Church and State. This is pathetically express'd almost throughout all the Psalms.

As to the Allegation, That the Members of both Houses were Conspiring the Ruin of the Church, he totally denies it; nor has the Doctor, in all his Sermon, mentioned the Votes of the Two Houses: Therefore for the Article to charge the Doctor with asserting, *That the Members of both Houses, who pass'd the Vote relating to the Danger of the Church, were Conspiring her Ruin, when they Voted her out of Danger*, is a mistaken Fact. That Vote was almost Four Years ago. There could be no Reason to think he reflected on that Vote; nor is there any Thing that can induce your Lordships (as we humbly apprehend) in the Doctor's Sermon, to believe such a Charge. The Passage in the Doctor's Sermon relates to the Wars in the late Times: And as in those Days there were many ill Men, and God permitted them to bring their ill Designs about; so it is plain, that there were many good Men innocent, as my Lord Clarendon expresses it, that had no such ill Designs. Now, when your Lordships and the Commons pass'd that Vote, no doubt it was a just Vote, and gave a great Satisfaction: But no body could expect that Passage to be turned on the Doctor, as a Reflection on your Lordships, the Commons, and Her Majesty, in relation to that Vote. But what he reflects upon is quite another Thing: He takes notice, that the Church is in Danger from evil Men, from evil Practices, and evil Books that are daily publish'd. We hope your Lordships will not take it, that when we urge this, we intend to reflect either on the Pastors of the Church, or the Ministry of the Queen; for it would be hard, that they should be answerable for all those Pamphlets. But when such are publish'd to poison the Notions of the People, and a Minister in the Pulpit takes notice of them, to prevent the ill Consequences of them; whether this can have such a Construction as has been contended for, we may safely submit to your Lordships. The now asserting the Christian Faith to be in Danger by Vice and Irreligion, cannot be contrary to the Votes in the Articles alledged, nor affect him, who makes the Assertion, with any Crime, or (as we think) subject him to any Punishment.

My Lords, We shall be the shorter in opening this Article, because we fear we shall be very long in our Evidence upon this Head; we shall produce and give in Evidence several Books that daily come out, which contain the highest Blasphemy, Irreligion and Herefy that can be publish'd. I will not take upon me to open them, they are so horrid, I leave the Passages to be read, that your Lordships may see what Grounds there are for a Preacher in the Pulpit to take Notice of these Matters. When the Church is run down, the Clergy vilify'd; when they tell us a grey Coat has as much Authority to

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administer the Sacrament as a black Coat; and that a Country-Man may make as good a Priest as the Parson of the Parish; these Things may excuse the Zeal of the Doctor in so warmly Reprehending them.

We shall read abundantly of this sort of Learning, and we shall do it only to shew that there was Reason for the Doctor in the Pulpit to forewarn the People, to caution them that they may not have ill Impressions made upon them, by such wicked and scurrilous Writings. We shall humbly offer our Evidence to your Lordships, and then submit this Article.

Mr. Phipps. **M**Y Lords, I am now to speak to the Third Article exhibited by the Commons of Great Britain against Doctor Sacheverell: And I humbly beg your Lordships Patience, while I take Notice of the several Branches of this Article, and shew your Lordships, that the Doctor is not guilty of any Offence therein charged.

As to such Part of this Article as charges the Doctor, *That he doth falsely and seditiously suggest and assert, that the Church of England is in a Condition of great Peril and Adversity under Her Majesty's Administration; and that to arraign and blacken the Vote and Resolution of both Houses of Parliament, approv'd by Her Majesty, he, in Opposition thereto, doth suggest the Church to be in Danger:*

I beg Leave to take Notice, that the First Part of the Fourth Article explains this Branch of the Third Article, and shews what the Commons meant by the Church being in Danger under Her Majesty's Administration: For, the First Part of the Fourth Article says, *That the Doctor suggests, that her Majesty's Administration, in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution.* So that by charging that the Doctor asserts the Church is in Danger under Her Majesty's Administration, it must be intended that he asserts the Church to be in Danger by Reason of Her Majesty's Administration. And therefore if there be any Expression in the Doctor's Sermon which suggests the Church to be in Danger; yet if it be not also therein asserted that the Danger proceeds from Her Majesty's Administration, the Doctor cannot be an Offender within the Meaning and Intention of this Article: And the Doctor denies, that he hath asserted any thing in his Sermon, from whence any such Suggestion can be inferred.

To give your Lordships full Satisfaction in this Point, I shall first take Notice of the several Clauses in the Doctor's Sermon at St. Paul's, which have been cited to make good this Article.

The first Passage quoted for this Purpose, is in Page the 5th, where the Doctor thus expresseth himself: *I shall take the Expression in its full Latitude, without confining it to the express Design of the Place, tho' it were very obvious to draw a Parallel here betwixt the sad Circumstances of the Church of Corinth formerly, and of the Church of England at present; wherein her Holy Communion has been rent and divided by factious and schismatical Impostors; her pure Doctrine has been corrupted and defil'd; her Primitive Worship and Discipline prophand and abus'd; her sacred Orders deny'd and vilify'd; her Priests and Professors (like St. Paul) calumniated, misrepresented and ridicul'd; her Altars and Sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say, without Discouragement, I am sure with Impunity,*

not only by our profess'd Enemies; but, which is worse, by our pretended Friends and False Brethren.

This is the Passage which is chiefly insisted on to make good this Branch of the Article. My Lords, Is there not too much Truth in this Clause? Hath not the Communion of the Church been rent and divided by some Factious and Schismatical Teachers in Separate Congregations, who have no Orders at all; and by others who refuse to take the Oaths, and will not comply with the Act of Toleration; by Popish Priests, who have drawn away Persons from our Communion to their Church? Have not her Sacred Orders been deny'd and vilify'd by the Papists, who pretend Archbishop Parker was consecrated at the Nags-Head? Are not her Altars and Sacraments prostituted to Atheists, Deists and Socinians, who communicate to qualify themselves for Offices and Places of Trust; and yet, Is there any thing in this Clause can support this Article? Are these Evils charg'd upon Her Majesty; or is it asserted, that these Mischiefs are owing to, or proceed from Her Majesty's Administration?

The next Paragraph cited to maintain this Article, is in the 14th Page, where the Doctor says, *In short, as the English Government can never be secure on any other Principles, but strictly those of the Church of England; so I will be bold to say, where any Part of it is trusted in Persons of any other Notions, they must be false to themselves, if they are true to their Trusts; or if they are true to their Opinions and Interest, must betray that Government they are Enemies to upon Principle. Indeed, we must do them that Justice, to confess, That since the Sectarists have found a way (which their Fore-fathers, God knows, as wicked as they were, would have abhorr'd) to swallow not only Oaths, but Sacraments, to qualify themselves to get into Places and Preferments; these sanctify'd Hypocrites can put on a shew of Loyalty, and seem tolerably easy in the Government, if they can ingross the Honours and Profits of it: But, let Her Majesty reach out Her little Finger to touch their Loins, and these Sworn Adversaries to Passive Obedience, and the Royal Family, shall fret themselves, and Curse their Queen and their God, and shall look upwards.*

Here is not one Word of the Church being in Danger by Her Majesty's Administration: He only shews the Danger the English Government may be in by Occasional Conformists put into Offices and Places of Trust. For Occasional Conformists, who are Dissenters, Republicans, Atheists and Deists, that communicate only to qualify themselves for Places, if they are true to their Opinions, cannot be true to the Church of England in which they communicate, cannot be true to the Government by which they are entrusted in such Offices; for they will be always promoting their own Principles in Religion, and their own Forms of Government in the State.

Both Lords and Commons were of Opinion, it was not safe to trust Occasional Conformists with the Guardianship of our Church or Crown, when they agreed to the Bill for preventing Occasional Conformity, which Enacts, *That if any Person, who had any Office Civil or Military, or any Command or Place of Trust under Her Majesty; or if any Person bearing any Office of Magistracy, or Place of Trust in Corporations, who by the Laws are obliged to receive the Sacrament of the Lord's Supper, according to the Rites and Usage of the Church of England, should after their Admission into their respective*

pective Offices, and during their Continuance in such Offices, resort unto any Conventicle, Assembly or Meeting, under Colour or Pretence of any Exercise of Religion, in any other Manner than according to the Liturgy and Practice of the Church of England, they should, being convicted thereof, be disabled from henceforth to hold such Office or Offices. Tho' this was never Enacted into a Law, yet as it was the Opinion of both Houses of Parliament, I beg Leave to offer it as a Reason, to confirm what the Doctor hath asserted.

My Lords, I shall trouble your Lordships only with one Passage more, which was urg'd to prove this Article, which is in Page the 15th, where the Doctor hath these Words, *To lay before you the great Peril and Mischiefs of these False Brethren in Church and State; which I shall endeavour to do, by proving that they weaken, undermine, and betray in themselves, and encourage, and put it into the Power of our profess'd Enemies, to overturn and destroy the Constitution and Establishment of both.* These False Brethren are the Occasional Conformists mention'd in the Page preceding.

I heartily wish, that all who communicate in the Church, were true Sons of the Church; but if, as the Doctor suggests, there are any that communicate at her Altars, who disown her Mission, who refuse to comply with her Liturgy, and are Enemies to her Constitution; if *Arians, Socinians, Deists*, and almost all Dissenters, and other Enemies to the Church, communicate with her to get Places and Preferments in Church and State, what Prejudice the Church may receive from such False Brethren, I submit to your Lordships Judgment; begging Leave only to offer to your Lordships, what was said by the Commons at a Conference with your Lordships, upon the Bill for preventing Occasional Conformity; and which, I hope, in an Impeachment by the Commons, will have some Weight with your Lordships.

The Commons upon that Conference were pleas'd to take Notice, "That when the Corporation-Act was made, the Parliament had fresh in their Minds the Confusions and Calamities that had been brought upon the Nation, by such as pretended to be at the same time in the true Interest of Religion and their Country. That the Parliament by that Act, and afterwards by the Test-Act, thought they had secured our Establishment both in Church and State; and that they had provided a sufficient Barrier to defeat and disappoint any Attempts upon them, by Enacting, *That all in Office should receive the Sacrament of the Lord's Supper, according the Rights and Usages of the Church of England; and never imagin'd a Set of Men would rise up, whose Consciences were too tender to obey the Laws, but harden'd enough to break through any.*

Thus, my Lords, having shewn that the Passages cited by the Managers do not maintain this Article, and that the Doctor hath not asserted the Church to be in Danger by Her Majesty's Administration: I will next shew, from what Causes the Doctor doth suggest the Danger of the Church to arise: And of these Schism is one.

That Schism may distract the Church, a Prayer lately added to our Liturgy tells us? That Separation from the Establish'd Church, which imposeth no Sinful Terms of Communion, is Schism, all the Learned Men of our Church agree; and that there are many People in this Nation that are guilty of Schism, I think no Body will deny. And altho' it

cannot be imagined, nor is it asserted by the Doctor, that such Schism should grow to such a Head as to endanger the Church, during Her Majesty's happy Administration; yet, what ill Consequence it may be to the Church in another Age, no Body can pretend to know, tho' every Body may have too much Reason to fear.

So, my Lords, when Men attack the Articles of our Religion and our Homilies, and represent them as Spurious; when they call the Doctrine of Non-Resistance and Passive Obedience a Blasphemous Doctrine, what Influence that may have hereafter upon our Government both in Church and State, your Lordships are the best Judges.

I submit to your Lordships, if the Queen can be safe, when it shall be averr'd in Print, that there is one on the other Side of the Water that is a *Jure Divino* King, and hath an Hereditary Right. Can the Queen or Church be safe, when all the whole Administration is vilify'd and abus'd as it is in the *Observer*, in this Manner? *Countryman* asks the Question, *Have you any more Knaves to talk of? Obf. Honest Countryman, What would you have me to do? If I must run through all the Lists of Knaves, I must bring in all the Courts, all the Employments, all the Classes of Publick Affairs in the Nation.*

Can the Queen be safe, when the Murther of King Charles the First is justify'd in Print, by the *Review and Observer*? When the *Wet Martyrdom* of King Charles the First, and *Dry Martyrdom* of King James the Second are said to be all one, and no Difference between them? I say, How can Her Majesty be safe, when such Rebellious Principles are so publicly avow'd? And if Her Majesty be in Danger, Can the Church be safe?

All Learned Men that understand our Constitution, have always agreed, that there is such a near Relation between the Church and Monarchy, such a Dependence of one upon the other, that where one falls, the other cannot stand.

Can either Church or Queen be safe, when so great and necessary a Part of our Constitution, our Parliament, is struck at? When it shall be said *that the Members sit in the House to do nothing, making long Speeches without Meaning, and Voting Bills without Design to have them pass?* And when such Rebellious Principles are broached, as I mentioned to your Lordships upon Friday last out of the *Review*, to shew the Necessity of Preaching the Doctrine of Passive Obedience, *viz. If the next Parliament should prove like this, the Nation will be so much nearer that Crisis of Time, when English Liberty being brought to the last Extremity, must open the Magazine of Original Power?* These are some of the Things alledged by the Doctor to be dangerous to the Church and State.

But the chief Causes from whence the Doctor suggests the Danger of our Church and State to proceed, are Atheism, Prophaneness, and Immorality; for he thus expresseth himself, *Pag. 20. What Reason have we to think but that the National Sins are ripen'd up to a full Maturity to call down Vengeance from Providence on a Church and Kingdom thus debauch'd in its Principles; and corrupted in its Manners; and instead of the True Faith, Discipline and Worship, given over to all Licentiousness both in Opinion and Practice; to all Sensuality, Hypocrisy, Lewdness and Atheism?*

From these Sins it is he apprehends the Church and Nation to be in Danger; and what Judgments have been brought down upon Kingdoms and Nations for these Sins, we have Multitudes of Instances, both in Sacred and other Histories; sometimes they have

have been depriv'd of the true Worship of God, and overwhelm'd with Idolatry and Mahometanism. Is not the Name of Christ forgot in the Place of his miraculous Birth? And is not the Light of the Gospel totally extinguish'd where it at first so gloriously shin'd? And by what Means? By Infidelity, Prophaneness and Immorality. And may not the same Causes produce the same Effects?

Can England be always secure from such Judgments, when some amongst us scarce own the first Person of the Trinity, by whom they were created? But many have the Boldness to deny the Divinity of the second Person, by whom they were redeemed, and many other such Blasphemies and Atheistical Notions are daily propagated and spread abroad among us; of which I shall beg your Lordships Permission to cite some few Instances, of those many we shall offer to your Consideration in the Course of our Evidence; and they are such as I hardly dare Name, and as your Lordships will scarce bear to hear.

There is a Treatise call'd, *A brief but clear Confutation of the Doctrine of the Trinity*, Page the 9th it says, *The Divinity attributed to the Son and Holy Ghost is unscriptural and idolatrous*. Page the 14th, *To be short, Trinitarianism is Polytheism and Idolatry, if there be any such Thing in Nature*.

And a Book called *Brief Notes on the Creed of Athanasius*, speaking of the Trinity and Incarnation, says, *A Belief in these Points is in no Degree necessary, much less necessary before all Things*.

The *Account of the Growth of Deism*, Page 17. says, *Many Doctrines are made necessary to Salvation, which it is impossible to believe, because they are in their Nature Absurdities*. Idem, p. 22. *One of my Old Acquaintance always thought the moral Part of the Bible very good; but he also thought that by the Strength of his own Reason, he could have writ as good a Moral himself*.

These are Sins of a very deep Dye, and may justly draw down very heavy Judgments; and altho' we are very well assured, that the Piety of her Majesty alone is sufficient to avert those Judgments that are due to such Crimes during her own Life; and altho' we are sure, that, by her Majesty's Care, and the Vigilance of Her Ministers, those Sins will not grow to such a Head during her Majesty's Life, as to endanger the Church and State; yet (if not prevented) they may take such Root now, as may hereafter endanger the State, the Church, and even Christianity it self: For as among Men, *Nemo repente fuit turpissimus*, so Heresies and Schisms in the Church, Factionous and Seditious Principles in the State, are not invented and arrive to the Height at once, but steal by Degrees into the Church and State: And therefore, as in the Body Natural, so in the Body Politick, we must meet the Disease, and prevent the spreading of its Contagion: And one of the best Methods to do it, is by our Ministers shewing the Heinousness of these Crimes, and the dangerous Consequences that attend them. And we submit it to your Lordships, whether the Doctor hath any otherwise asserted the Church to be in Danger, than what may happen to her as the Consequences of such Sins; and whether he any where avers the Church to be in Danger by or under her Majesty's Administration.

As to the Votes of both Houses, we dare not presume to say how far they were design'd to extend: But I humbly submit to your Lordships Consideration, whether the Vote of both Houses in 1705, did relate only to such Suggestions and Insinuations

of the Church's Danger, as should be made about that Time, or some short Time after; or whether it was intended to have a Prospect, and relate to what should be suggested four Years after; whereas it was impossible for the Wit of Man to foresee what should happen in so long a Time.

We were then, as we are now, engaged in a War with a powerful Enemy; a Pretender, supported by that Enemy, and who, since that Vote, attempted to invade these Kingdoms, if that Army of the French had been successful in Flanders, and the Advantage of the War had turn'd on their Side; and if the Pretender had landed with such a successful and powerful Army of French Papists in Great Britain, I believe it would have been impossible to have made the Generality of the People avoid thinking both Church and State too in Danger under those Circumstances.

To conclude this Branch, If there be any Thing in his Sermon, from whence it can be infer'd that he suggests the Church to be in Danger, yet if it be not suggested to be by Reason of her Majesty's Administration; and if it was not done with a wicked, malicious, and seditious Intent to defame Her Majesty's Administration, and to contradict and arraign the Resolutions of both Houses of Parliament; and unless such Intention plainly appears, without *Inuendo's*, he cannot be guilty within the Intent of this Article.

And as to so much of the third Article, which chargeth that the Doctor, as a Parallel, mentions a Vote that the Person of King Charles the First was voted to be out of Danger, at the same time that his Murderers were conspiring his Death, thereby wickedly and maliciously insinuating, that the Members of both Houses who pass'd the said Vote were then conspiring the Ruin of the Church; I cannot give a better Answer than the Doctor himself hath given to it, viz.

1. That he doth not draw any Parallel between the Vote concerning the King's Person, and the Vote of the Two Houses.

2. That he does not in his Sermon mention the Vote of the Two Houses.

3. That if he had mentioned it, he would not thereby wickedly and maliciously have insinuated that the Members of both Houses, who pass'd that Vote, were then conspiring the Ruin of the Church; but would have insinuated, that as some Persons were conspiring the Murder of the King, whilst others, no way privy to their wicked Intentions, voted his Person to be out of Danger; so when the Two Houses voted the Church to be in no Danger under her Majesty's Administration, there might be some others who were conspiring the Ruin of the Church, and many others, who by their Vice and Infidelity were drawing down God's Vengeance both on Church and State.

Mr. Dee. **M**AY it please your Lordships to indulge me a little upon this Article, and I beg leave to make a Distinction, as on the last Article, that is, that these Words, *Danger of the Church*, seem in the Articles to bear one Sense, and in the Doctor's Sermon another. The Danger suggested in the Article, is a Danger under Her Majesty's Administration. I must beg leave to say, these Words were put in, to insinuate, that the Doctor does in his Sermon urge the Danger of the Church to arise from her Majesty's Administration; which, I think, is not to be found there; and if they were omitted, then it will stand only thus, That the Do-
ctor

For doth affirm that the Church of *England* is under great Peril and Adversity; and if so, I hope, the Assertion is not Criminal. I can't, by all the Observation I have made on the Doctor's Sermon, find that the Doctor suggests that there is any form'd Body of Men conspiring to overthrow the Church; but the Doctor says that there are such Men that are false Brethren that endanger the Doctrines and Discipline of the Church. That there is some sort of Danger, appears by the Form of Prayer that is daily offer'd up for her Safety, and therefore a general Suggestion of Danger would not have answer'd the End of the Commons to make the Doctor Criminal, without adding the Words *under her Majesty's Administration*; and if they can shew that the Doctor in any Part of his Sermon has charg'd the Queen with such Administration as endangers the Church, I am sure I should be very much to blame to appear for him at this Bar; but the contrary, I think, appears, when he prays for her Life, with these Words added, *for the Comfort and Support of this Church and Nation*.

My Lords, I shall say no more to that Part of the Article, it having been fully spoken to already, but beg leave to take Notice, that the Managers for the House of Commons have been pleased to say, That the Doctor has reflected upon the Resolutions of both Houses of Parliament, by drawing a Parallel between the Vote relating to the Murder of King *Charles*, and the Vote of the Two Houses that the Church was not in Danger. My Lords, To make a Parallel there must be Two Lines, a Line first given to draw the Parallel Line to; and I beg leave to say, that in the Doctor's Sermon there is no such first Line given; for he has not in all his Sermon taken Notice of any Vote of both Houses. If he has not taken Notice of this Resolution of both Houses in his Sermon, the Law will not imply that he had any Notice of it. For Votes are private Resolutions of the Houses, and always were so 'till of late they have been publish'd in Print, and the Printing of them will not infer that he had Notice of them. The Doctor's Distinction in his Answer is very true and plain, that he doth not charge the Persons concern'd in passing that Vote with being concern'd in that odious and execrable Design of carrying on the Murder of that Royal Prince; (and I hope Charity will carry us so far as to think that very many Persons that join'd in that Vote were not concern'd in it) but that yet at the same Time they pass'd that Vote, that bloody Design was carry'd on by a private Junctio of Blood-thirsty Men.

My Lords, I do not admit, but supposing I should admit the Doctor hath contradicted the Resolutions of both Houses, I submit it to your Lordships what Crime the contradicting a Vote of the House of Commons, or the Resolution of both Houses, is. The contradicting a known establish'd Law may be Seditious; but I submit it whether a Vote is so publick an Act, that contradicting it, at least without taking Notice of it, be any Crime, or at least be so high a Crime as to deserve a Censure. It is very certain he may be thought Saucy and Unmannerly to do it, or it may be a Breach of Privilege; but whether your Lordships will interpret it to be a Crime, and such a Crime as will bear an Impeachment for High Crimes and Misdemeanors, I submit to your Lordships.

My Lords, We humbly hope, that notwithstanding any thing yet offer'd against the Doctor, that your Lordships will be of Opinion, that the ac-

quitting the Doctor of this Impeachment will be a noble and convincing Proof of the undoubted Truth of that Vote, That the Church of *England*, (of which the Doctor is a true, though an unfortunate Son, whilst under a Charge by the Commons of *Great Britain* for High Crimes) under her Majesty's Administration, is in a safe and flourishing Condition.

Dr. Henchman. **M**Y Lords, We are now upon the Third Article of Impeachment, in which Doctor *Sacheverell* is charg'd with [*falsly and seditiously suggesting and asserting, That the Church of England is in a Condition of great Peril and Adversity under Her Majesty's Administration.*] If by these Words, *under her Majesty's Administration*, your Lordships are to understand By the Course and Tendency of her Majesty's Administration, that Charge we positively deny, and humbly assure our selves that the Learned Managers have not been able to maintain it, either from the general Scope and Design of the whole Sermon, or from any particular Passages contain'd in it.

If by those Words, *under her Majesty's Administration*, is to be understood only during the Time of her Majesty's Administration, then we apprehend that there may be Perils under her Majesty's Administration, which do no ways proceed from such her Administration, and which may be mention'd without any seditious Thought or Intention of Reflecting upon her Majesty's happy Administration.

If your Lordships look thro' the whole Sermon, it will appear, that he who now stands accused for casting this foul Aspersions upon her Majesty, never once mentions her throughout this whole Discourse, but in Terms full of the profoundest Respect and Reverence: In the very beginning of this Sermon, in the second Page, this is reckon'd as one chief Part of that Day's Deliverance, which he was then solemnizing, *That this good and pious Relick of the Royal Family sits now happily upon the Throne of her great Ancestors*. In the 19th Page we find him with an honest and hearty Zeal asserting Her Majesty's Right to the Throne, and praying God to bless her in it; and within a few Lines he again repeats that Prayer, *That God would long preserve her on that Throne*, for this very remarkable Reason, *because She is the Comfort and Support of the Establish'd Church*.

Is this, my Lords, the Language of one that would suggest and assert, that very Church to be in a Condition of great Peril and Adversity from her Majesty's Administration? Or can your Lordships presume, that any one can so far prevaricate with God and Man, as openly to thank God for the peculiar Happiness that we now enjoy by her Majesty's sitting on the Throne of her Ancestors, and to beseech him long to preserve her there for the Support and Comfort of the Establish'd Church, and yet assert, that that Church is in great Adversity under, that is from, her Majesty's Administration.

In this Case your Lordships will suffer me to shew what those Perils are which the Church is said to be in, in this Discourse, and how they do not proceed from her Majesty's Administration.

The Dangers spoken of in this Sermon are either such as arise from the Infidelity and Prophaneness, the Vice and Immorality of the Age, or else such as always have attended the Christian Church from her first Foundation, and always will attend her whilst she continues Militant upon Earth.

That

That there are Dangers arising to the Church from Infidelity and Prophaneness, is already, I doubt, too evident from those Authors I mention'd under the second Article, and from what the Gentlemen who have spoke before me, have observ'd upon this: If it yet wants a Confirmation, we shall beg leave to lay before your Lordships a black Catalogue of Prophaneness and Blasphemy, not fit to be heard more than once.

As to the Dangers proceeding from Vice and Immorality, the Laws of the Land, and the many Proclamations issued out by Royal Authority upon that Occasion, are an undeniable Evidence of the growing Danger to the Church on that Head, and of her Majesty's special Care to suppress and prevent that Danger. In the Close of those Proclamations Her Majesty declares Her Royal Resolution to punish all manner of Vice, Immorality and Prophaneness in Persons of all Degrees whatsoever, and particularly in such as are near her Royal Person; and these Proclamations are ordered to be read by all Ministers in their respective Congregations at least Four Times in every Year; and they are directed to incite and stir up their Congregations to the Practice of Piety and Virtue, and the avoiding all Immorality and Prophaneness. My Lords, hard is the Fate of Ministers, if they must reprove Prophaneness in Men of all Degrees under Her Majesty's Displeasure; and yet if they once happen to mention Men of Characters and Stations in their publick Discourses, that too must be made one Part of an Impeachment against him.

My Lords, It was said indeed by a Learned Manager, that the Pulpit was not a proper Place for Complaints of this Nature; that these things ought not to be spoken of in Publick, unless they could be prov'd; and if they could be prov'd, those that are known to be guilty should be prosecuted in a due Course of Law. But, my Lords, I humbly apprehend it to be the Duty of a Minister of the Gospel to be instant in season, and out of season; to exhort and rebuke with all Authority, and without Distinction. This their Holy Function obliges them to do, and the Dignity of that Function does and ought to protect them in the Performance of that Duty; but that Ministers should be obliged to prosecute every Offender in a Court of Justice, is not yet known to be any Part of their Office; and he that at any time should take that Part upon him, would hardly avoid that Imputation which many People are ready to lay upon the whole Profession.

In the next Place, your Lordships will consider whether the Dangers mention'd in this Sermon are not such as have in all Ages, and under the best Princes, infested the Church.

I appeal to the Reverend Bench of Bishops, whether even in the Apostles Time there were not Men of unstable Minds crept in among them; some carried about with every wind of Doctrine, deceiving, and being deceived; others teaching for Doctrines the Traditions of Men; and whether in the immediate succeeding Ages the Church was not miserably rent and divided by factions and schismatical Impostors. Their Lordships well know that the pious Care of Christian Emperors was not able to prevent the spreading of old Errors, and the continual springing up of new ones; neither has Her Majesty's peculiar Piety and Zeal prevented many Instances of Prophaneness and Irreligion under Her happy Administration; but certainly no Inference ought to be made from an Historical Account, or bare Mention of such like Perils of the Church, as if that was intended to ar-

raign the Administration of those Princes in whose Times they happen'd.

My Lords, That there are such Dangers attending the Church, even under her Majesty's happy Administration, needs no other Evidence than that Form of Prayer which is by her Majesty's Authority directed to be used in all Churches; in which we beseech God, *That no Sedition may disturb this State, nor Schism distract this Church; and that he would give us all Grace seriously to lay to Heart the great Danger we are in by our unhappy Divisions.* My Lords, this Prayer is enjoin'd to be used by publick Authority; and particularly mentions the great Danger of the Church, in being at this Time distracted with Schism; and I must submit it to your Lordships Consideration, how hard it is that a Minister may not from his Pulpit mention those Dangers without Offence, which he is specially commanded to pray against in his Desk.

Mr. Dodd. We shall beg Leave to produce several Books, wherein there are the strangest Opinions that perhaps your Lordships ever heard of: And we shall first confine ourselves unto them which relate to Blasphemy, Irreligion and Heresy, which we confess are not pleasant to be heard, or fit to be publish'd, if it were not absolutely necessary for the Doctor's Defence.

Mr. Phipps. My Lords, We begin with some Miscellaneous Tracts, publish'd by Mr. Edmund Hickerlingill. And we offer them first to your Lordships Consideration, because he was a false Brother; and we think his Tracts will justify the Doctor in what he hath said in relation to the Church being in Danger, from the Blasphemy and other enormous Crimes mention'd in his Sermon.

Mr. Dee. It's in Page 12.

Clerk reads.] The second Pre-
tender to Infallibility is the Bible; Part I. p. 12.
and that I admit too, so soon as 'tis
agreed which Chapter and Verse is God's Word, and
which not, and why. For as for some Verses and
Clauses in the Holy Bible, the very Penmen there-
of did not sometimes know very well whether the
same were the Dictates of the Spirit of God, or
no. Sometimes they write --- *Thus saith the*
Lord --- and not I, but the Lord Commands, so
and so: And then again in a Qualm or Quandary,
modestly pretend to guessing: *I think also*, says
St. Paul, *that I have the Spirit of God.*

Mr. Thompson. My Lords, Upon what is offer'd to be given in Evidence, the Managers apprehend there is something that will require their Consideration, and they desire to withdraw.

Accordingly the Managers withdrew, and then the Lords adjourned to their House above; and in a short time their Lordships being returned, and seated as before, and the Managers being returned to the Place appointed for them at their Lordships Bar, Proclamation for Silence was made by the Serjeant at Arms.

Mr. Thompson. My Lords, The Managers have consider'd the Nature of the Evidence open'd by the Council; and without troubling your Lordships to observe how material it is for the Prisoner's Defence, submit it to your Lordships, whether such impious and blasphemous Passages, as the Council were aham'd to repeat, shall be republish'd in so solemn a Man-

a Manner, by reading them in Evidence before your Lordships.

Lord Chancellor. Gentlemen, You that are of Council for the Doctor may proceed in your Evidence as you shall think proper.

Mr. Dodd. My Lords, We must own there are a Multitude of Sentences never to be repeated, if it were not necessary for our Defence; but we think it so material for the Doctor's Defence, that we dare not depart from it without your Lordships Order.

Mr. Phipps. My Lords, The Reason that Learned Gentleman gave against reading them, is the very Reason we offer for reading them; for the Doctor ascribes the Danger of the Church to those Blasphemies and impious Doctrines and Tenets, that are so frequently published and which call for God's Judgments on the Nation.

Mr. Dee. My Lords, We desire he may read in the same Book he was reading before.

Clerk reads.] For Sabbathising. The *Ibid. p. 17.* Sabbath, Oh the Sabbath---called by the cunning Priestcraft, not by the Holy Scripture, the Lord's Day, to recommend it the better to the unthinking Mob---Of all the other Seven Days the Priest's best Market-Day to put off his Wares, and turn them into Money.

Ibid. p. 21. Family Duties are the next plausible Piece of Priestcraft Divinity, I mean Praying with the Family, (not that I condemn it) tho' our Blessed Saviour seems to condemn it by his Practice and Preaching.

Ibid. p. 23. Saying Grace, an universally cry'd up Piece of Divinity, Superstition, or Priestcraft; for we never read that Christ or his Apostles said Grace, either before Meat, or after Meat.

Ibid. p. 50. King Saul found to his Cost, that he had better have displeased all Israel, than Samuel the good High-Priest; and had better have rent the Cloaths off from his own Back, than have rent Samuel's Calf-sock---It fretted the good old Gentleman; and in a Passion he said, *God hath rent from thee the Kingdom also, and hath given it to thy Neighbour that is better than thou.*

Ibid. p. 51. Then the Lord answered, *Take an Heifer with thee, and say I am come to do Sacrifice to the Lord.* The Policy of Heaven, we see, jumps with our late Priestcraft in this, to make Religion the common Covert to hide a Plot.

Ibid. p. 52. His Kingdom, which was given to David, because he was a Man after God's own Heart, (not in Holiness, that is not meant; for besides his

Adultery and Murder, his many other Sins, and cursing his Enemies to the Pit of Hell, is unaccountable;) but after God's own Heart is a *Hebraism*, and in *English* signifies as much as a Man for my Turn, he will kill and slay as the Priest directs, by Orders receiv'd from Heaven; he will fulfil all my Will, faith the High-Priest.

Ibid. Part 2. p. 4. I can by no means perceive that this Commission to Teach, Baptize, Excommunicate, or Absolve, does properly or more appertain to a Grey Friar, or any Black Coat, more than to a Grey Coat or Layman.

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'To say, the Use (being for God's Service) sanctifies it: So may a Meeting-House, a Tabernacle, or my Dining-Room be consecrated, when we pray and preach there, or say Grace there, *pro bac vice*; and *vice versa*, it is unconsecrated when Dinner-time comes, or the Punch-Bowl.

Mr. Dee. The Rights of the Christian Church is the next Book we shall offer to your Lordships.

Clerk reads.] At the Close of the Supper, the great Meal with them, Page 105. the Master of the Feast distributed among his Guests small Pieces of Bread; and having first drank of the Grace-Cup, deliver'd it to be handed about: To which Christ, who instituted no new Rites, superadded the Remembrance of his Sufferings; and directs his Disciples, as often as they did this, that is, Celebrate such Festivals, and close them with the *Post-cenium*, to commemorate him after this manner.

Does not every one, as well as the Minister, equally apply the *Ibid. p. 108.* Bread and Wine to the same Holy and Spiritual Use, in commemorating the Benefits received by our Saviour, and in offering up the same Prayers, and desiring the same Blessings? And whoever does this with a due Application of Mind, rightly consecrates the Elements for himself, since this is the only Consecration they are capable of: Any thing further than this may rather be called Conjuraton than Consecration.

Mr. Dee. The next Book we offer to your Lordships is *Blount's Oracles of Reason*.

Clerk reads.] Reason is able to furnish us with enough to make us *Preface, p. 3.* happy, and that is as much as we need care for.

When he made his Cavalcade *Ibid. p. 165.* upon *Asinego*, they extoll'd him as the Descendant of King *David*, but his untimely Apprehension and Death, together with his Neglect to improve the Inclination of the People to make him King, did allay the Affections of the *Jews* towards him.

It seems a very cruel and very *Ibid. p. 49.* hard thing in this respect, that God should be said to have tormented, nay, and ruin'd Mankind, for so small a Fault; and that too committed thro' the Levity of a Woman's Mind.

Mr. Phipps. The next is Dr. Burnet's *Archæologia Sacra*.

Clerk reads.] *Id utiq; videtur gravissimæ, & asperissimæ in hac Narratione, quod Gentem humanam plexisse, imo perdidisse dicatur Deus ob rem exiguam, & feminilis Ingenii levitate perpetratam.*

Mr. Phipps. The next is, *An Account of the Growth of Deism*.

But since the Gospel Simplicity has been worn off, the Priests of all *P. 191, 192,* Churches have agreed, first, That *193.* it is necessary for all Christian People to communicate at the Lord's Table. Secondly, That this Sacrament cannot be rightly celebrated without the Assistance of a Priest, who must consecrate the Elements to the Use for which they are design'd; whereby the Priest is made absolutely *Z z z z z* necess-

‘ necessary to the very Being of the Sacrament.
 ‘ The Priest also making himself Judge of every
 ‘ one’s Preparation for this Sacrament, has it in his
 ‘ Power to admit to a Participation whom he thinks
 ‘ fit; as likewise to exclude whom he pleases from
 ‘ this necessary Means of Salvation: And hereby
 ‘ he is enabled to make his Terms with his People,
 ‘ who must be contented to save their Souls upon
 ‘ what Conditions he will admit. No wonder,
 ‘ then, that so great a Noise has been made concern-
 ‘ ing this Sacred Commemorative Repast.
 ‘ That Christian Communion which you read of as
 ‘ practised in the Apostles Days, was nothing else
 ‘ but a Religious Conversation of Christians one
 ‘ amongst another. ’Twas for Society-sake that
 ‘ they went from House to House, that they eat
 ‘ and drank together frequently. --- Now it’s plain,
 ‘ that this sort of Religious Conversation may be
 ‘ kept up among Christians without either Priest
 ‘ or Altar, or any set Form of Prayer, or Praise.
 ‘ It was long after the Apostles were dead, and
 ‘ buried, before the Temples were built, or Altars
 ‘ erected, or set Orations were made to the People in
 ‘ Churches. And what if you should further con-
 ‘ sider, if there be any Part of this Primitive Church-
 ‘ Communion that might not have been performed
 ‘ by a Woman as well as a Man? --- When the Pri-
 ‘ mitive Christians met together to break Bread,
 ‘ from House to House, had any of these Women
 ‘ craved a Blessing on that Bread, we have no Rea-
 ‘ son to doubt but that God would have heard her
 ‘ Prayer.

Mr. Phipps. The next is, *A Letter concerning Enthusiasm.*

‘ Clerk reads.] Is the doing Good
 Page 59. ‘ for Glory’s sake so Divine a thing?
 ‘ Or is it not diviner to do Good even
 ‘ where it may be thought inglorious, even to the
 ‘ ungrateful, and to those who are insensible of the
 ‘ Good they receive? How comes it then, that
 ‘ what is so divine in us should lose its Character in
 ‘ the Divine Being? And that, according as the
 ‘ Deity is represented to us, he should more resem-
 ‘ ble the Weak, Womanish, and Impotent Part of
 ‘ our Nature, than the Generous, Manly and Di-
 ‘ vine?

‘ One would think it were easy to
 Ibid. p. 60. ‘ understand, that Provocation and Of-
 ‘ fence, Anger, Revenge, Jealousy in
 ‘ Point of Honour, or Power, Love of Fame, Glory,
 ‘ and the like, belong only to limited Beings, and
 ‘ are necessarily excluded a Being which is perfect
 ‘ and universal.

‘ It is Malice only, and not Good-
 Ibid. p. 61. ‘ ness, that can make us afraid.

‘ So that we have only to consider,
 Ibid. p. 62. ‘ whether there be such a Thing as a
 ‘ Mind that has relation to the whole,
 ‘ or not: For if there be no Mind, we may com-
 ‘ fort our selves however, that Nature has no
 ‘ Malice.

‘ For no Body trembles to think
 Ibid. p. 63. ‘ that there should be no God, but
 ‘ that there should be one.

‘ I am not a Divine good enough
 Ibid. p. 69. ‘ to resolve what Spirit that was which
 ‘ proved so catching among the ancient Prophets,
 ‘ that even the Prophane Saul was taken by it.

Mr. Phipps. The next is, *A Brief, but Clear Confutation of the Doctrine of the Trinity.*

‘ Clerk reads.] The Divinity attri-
 ‘ buted to the Son and Holy Ghost, is Page 9.
 ‘ unscriptural and Idolatrous.

‘ This one Fundamental false Prin- Ibid. p. 10.
 ‘ ciple, as well with Jews and Turks,
 ‘ as Heathens, has done more Mischief to Chri-
 ‘ stianity than all our other Errors besides.

‘ For my part, I declare I shall ne-
 ‘ ver more admire at the Absurdity of Ibid. p. 11.
 ‘ either Papists, Turks, or Heathens;

‘ be they as gross as they will, I am sure they will
 ‘ never be able to exceed this Doctrine.

‘ To be short, Trinitarianism is Po-
 ‘ lytheism, and Idolatry; if there be Ibid. p. 14.
 ‘ any such thing in Nature.

‘ Revelat. 17. 5. And upon her Forehead was a
 ‘ Name written, Mystery, Babylon the Great, the
 ‘ Mother of Harlots, and the Abominations of the
 ‘ Earth. And to what I pray, in Popery can that
 ‘ Word Mystery there so properly relate, as to the
 ‘ Trinity?

Mr. Phipps. The next is, *Brief Notes on the Creed of Athanasius.*

‘ Clerk reads.] A Belief in these
 ‘ Points, that have been always con- Page 7.
 ‘ troverted in the Churches of God, is
 ‘ in no degree necessary, much less before all
 ‘ things.

‘ And now I appeal to all Men that have any
 ‘ Freedom of Judgment remaining, whether this
 ‘ Creed is fit to be retain’d in any Christian, much
 ‘ less Protestant and Reform’d Church? Since it
 ‘ subverts the Foundations not only of Christianity,
 ‘ but of all Religion, that is to say, Reason and
 ‘ Revelation.

Mr. Dee. There is a Book mark’d with the Let-
 ‘ ter L, call’d, *An Account of the Growth of Deism.*

‘ Clerk reads.] Many Doctrines are
 ‘ made necessary to Salvation, which Page 17.
 ‘ it’s impossible to believe; because
 ‘ they are in their Nature Absurdities. I reply’d,
 ‘ that these things were Mysteries, and so above
 ‘ our Understanding. But he ask’d me, To what
 ‘ End could an unintelligible Doctrine be revealed?
 ‘ Not to instruct, but to puzzle and amuse.

‘ One of my old Acquaintance al-
 ‘ ways thought the moral Part of the Ibid. p. 22.
 ‘ Bible very good; but then he also
 ‘ thought that by the Strength of his own Reason
 ‘ he could have written as good a Moral himself.

‘ If you look over the State of Re-
 ‘ ligion, as it standeth in *Christendom*, Ibid. p. 24.
 ‘ there is no Church whatsoever which

‘ will accept you as a Member of its Communion,
 ‘ but upon some particular Terms of Belief, or
 ‘ Practice, which Christ never appointed, and it
 ‘ may be such as an honest and wise Christian can-
 ‘ not consent to. --- It looks like a Trick in all
 ‘ Churches to take away away the Use of Mens
 ‘ Reason, that they may render us Vassals and Slaves
 ‘ to all their Dictates and Commands. But what
 ‘ greater Slavery than to force on Men a Belief of
 ‘ such Things as necessary to Salvation, of which
 ‘ it’s not possible to form an Idea? Though I am sa-
 ‘ tisfied there is no such Thing as a Change of
 ‘ Bread into the Flesh of Christ, yet I can form an
 ‘ Idea that such a Thing may be, that the same
 ‘ Power that changed Earth into a Man, may change
 ‘ Bread into Flesh; but I can frame to my self no
 ‘ Idea of what your Church teacheth in the Sacra-
 ‘ ment,

ment, That the Body and Blood of Christ are verily and indeed taken and received of the Faithful: And when I ask, how can this be understood by a Protestant who believeth that there is no other Body but that of Bread? I am told that the Church means it in a Spiritual Sense: Now I have try'd, and find it impossible for me to form to myself an Idea of a Body verily and indeed in a Spiritual Sense.

Your Church will require me to believe other Absurdities as bad as these; as that Kings and Bishops have Divine Right to that Power which they exercise over us; whereas with my own Eyes, I saw our great and gracious King accept the Crown of England as the Gift of the People. And I see as plainly that Bishops are an Order of Men of their own (not of Christ's) making.

I can find no Footsteps of any Jurisdiction given to the Twelve over the Seventy, or indeed over any Body else.

Mr. Dee. The next is, *The History of Religion*.
[Clerk Reads.] Strange and puzzling Methods of religious Ceremonies and Mysteries, and of various Rights of sacrificing, good for nothing but to confound and distract the Minds of Men.

In very deed, Creeds were the Spiritual Revenges of Dissenting Parties upon one another.

Mr. Dodd. The next is *Asgyl's Argument*.
[Clerk Reads.] God told Adam, that if he did eat he should die; the Devil told Eve, that they might eat and not die; and these were the first Words spoken to Man by God, or the Devil; upon the Truth or Falshood whereof, the very Beings of them both were to depend for ever: For which ever of them could maintain the Truth of his Word against the other, he must have been God, and the other the Devil. And therefore God, having turn'd the Lie upon the Devil, he is from thence call'd a Liar from the Beginning, and the Father of it, and will never be believed again for ever. God could not have dispensed with his Word, without complimenting the Devil with his Godhead.

What is it that you do, or would believe of Christ, or in Christ?
[Answ.] Why, we believe him for our Saviour. Save you! from what? Why, from our Sins. Why, what Hurt will Sin do you? Why, it will kill us. How do you know? Why, the Law of God saith so: *In the Day thou eatest thereof, thou shalt die*. Why, but then will not this Saviour save you from this Law, and from this Death? No, he'll save us from Sin. Why, then it seems you have got a Pardon for Horse-Stealing, with a *Non-Obstante* to be hanged. Do but see now what a Jest you have made of your Faith. And yet I defy the Order of Priesthood to form a better Creed than this, without admitting the Truth of my Argument, or [to make Sense of their own Faith without adding mine to it. It's much easier to make a Creed, than to believe it after it's made: Nor can any Man really believe any Part of the Gospel that doth not believe it at all. For it is a Doctrine so dependant upon it self, that unless we know the whole of it from the Be-

ginning to the End, we can't know the Use and Reason of any Part of it. Wherefore (notwithstanding this Inundation of Death in the World, and the Infection of Fear contracted upon Man from hence) I am not affrighted from re-assuming my Assertion at the Beginning, That this long Possession of Death over Man, is a Possession against Right.

Behold, ye Despisers, and wonder! Wonder at what? Wonder to see Paradise Lost, with the Tree of Life in the midst of it! Wonder and curse at Adam for an Original Fault, who in the Length of one Day, never so much as thought to put forth his Hand for him, and us, and pull, and eat, and live for ever. Wonder at, and damn your selves for Fools of the last Impression, that in the Space of 1700 Years, never so much as thought to put forth our Hands every one for himself, and seal and execute the Covenant of Eternal Life, and live for ever.

To be even with the World at once, he that wonders at my Faith, I wonder at his Unbelief. And stare at me as long as you will, I am sure that neither my Physiognomy, Sins, nor Misfortunes, can make me look so unlikely to be translated, as my Redeemer was to be hanged.

Mr. Dee. The next is a Book call'd, *Christianity not Mysteious*.

[Clerk Reads.] God himself, nor any of his Attributes are Mysteries to us for want of an adequate Idea: No, not Eternity. As far as any Church allows of Mysteries, so far it is Antichristian, and may with a great deal of Justice, though little Honour, claim Kindred with the Scarlet Whore.

For to speak freely, Contradiction and Mystery are but two Emphatick Ways of saying nothing.

Contradiction expresses nothing by a Couple of Idea's that destroy one another; and Mystery expresses nothing, by Words that have no Idea's at all.

It will not be amiss to lay down a short Parallel of the ancient Heathen, and new-coin'd Christian Mysteries. And I shall endeavour so to do it, as to make it evident they were one in Nature, however different in their Subjects.

Mr. Dee. The next is *Sermons and Essays of Mr. Whiston's*.

[Clerk Reads.] When the Scriptures speak of the one God, or of one God, they plainly and distinctly mean, one Original Fountain and Author of all Beings whatsoever; or mean thereby one Supreme God, the Father only.

The Moderns call'd these three Divine Persons but one God, and so introduced at least a new, and unscriptural, and inaccurate, if not a false Way of speaking in the Church.

Mr. Dee. He makes it an *Errata*, that he has nam'd the Trinity, and put it out of the Book.

Clerk Reads.] Errata, Pag. 123.
Ibid. p. 415. 'lin. 23, 24. To whom with the
 'Father, and the Holy Ghost, read,
 'in the Holy Ghost; and *dele* Three Persons and one
 'God.

Mr. Dec. The next is, *The Unreasonableness of making and imposing Creeds.*

Clerk reads.] But what Creeds
 Page 14, 15. 'and Articles of Faith can be pro-
 'duced that are not doubtful and
 'disputable? That which goes under the Name of
 'the Apostles not excepted. It being neither of un-
 'doubted Authority, nor indisputable, or unambi-
 'guous Sense in some Articles thereof; though it
 'be generally received by Christians and as venera-
 'ble for its Antiquity, and professed, or rather
 'said, by all, even those who understand not what
 'they say when they recite it.

Mr. Dec. The next is, *An Account of the Growth of Deism.*

Clerk Reads.] If those Wri-
 Page 25. 'tings which they call Holy Scrip-
 'tures are of their Side, as they
 'all say they are, I make no doubt, but they are of
 'their own-Inventing. And if Jesus Christ their
 'Patron laid their Foundation of those Powers,
 'which both Papist and Protestant Clergy claim to
 'themselves, from under him, I think the old Ro-
 'mans did him Right in punishing him with the
 'Death of a Slave.

Mr. Phipps. We shall next shew some Papers that reflect on the Church and Clergy; and shall first offer to your Lordships Consideration the *Rights of the Christian Church.*

Clerk Reads.] Not only an in-
 Page 47. 'dependent Power of Excommu-
 'nication, but of Ordination in the
 'Clergy, is inconsistent with the Magistrates
 'Right to protect the Commonwealth.

The Scriptures no where make
Ibid. pag. 104. 'the receiving the Lord's Supper
 'from a Priest necessary; nay, not
 'one Instance of the Laity's receiving it so can be
 'produced from thence.

It can belong only to the Peo-
Ibid. pag. 237. 'ple to appoint their own Ecclesi-
 'astical Officers. — It's an in-
 'herent fundamental Right of all Communities.

None pretend to impose a Con-
Ibid. pag. 240. 'ductor or Director on another in
 'Temporal Affairs, but every one
 'is left to manage them, as he thinks best for his
 'own Interest, as being presumed to understand it
 'better than another; and therefore is to chuse his
 'own Lawyer, Physician, Brewer, Baker, &c. and
 'by the same Reason he ought to chuse his own Spi-
 'ritual Conductor.

It's absurd to imagine every
Ibid. pag. 137. 'Christian is not capable of such
 'Circumstances, as praying aloud,
 'distributing the Bread and Wine, or (according to
 'the present Mode) of sprinkling an Infant, and re-
 'peating a set Form of Words.

Have they not inserted this
Ibid. pag. 402. 'Power of theirs in an Article of
 'the Creed, commonly called the
 'Apostles, viz. *I believe the Catholick Church?*

Mr. Dec. We shall next offer the *Review.*

Clerk reads.] Whether our Fa-
 'thers had a Necessity to make *Vol. 2. N. 112.*
 'those exclusive Laws, and impose as *p. 447, 448.*
 'necessary their indifferent Things,
 'acknowledg'd to be so, as Terms of Communion:
 'Nor is this all, but supposing they had, which ne-
 'vertheless I do not grant; then this Address is fur-
 'ther press'd to your Lordships, to examine whe-
 'ther that Necessity does yet continue, or no? Ei-
 'ther of which will be the same Thing. For if
 'there either was not a Necessity at the Time of
 'their Enacting, or that Necessity does not yet re-
 'main, let which will happen to fall out, the Act of
 'Uniformity, imposing such and such indifferent
 'Things, as Terms of Communion, will appear
 'Scandalous to the Church, Injurious to the publick
 'Peace, and a Grievance to the whole Nation.

Let it become a new, proverbial Jest, *Ibid. Vol. 3.*
To be as wicked as an English Priest. *Numb. 27.*
p. 106.

'I cannot but tell him, should
 'I publish the Matters of Fact *Ibid. Numb.*
 'which I am Master of, with Re- *27. p. 107.*
 'spect to the High-flying Gentle-
 'men of the Clergy; should I give a faithful Ac-
 'count of the most infamous and scandalous Beha-
 'viour, the Notorious Lives, the Beastly Excesses,
 'and the furious Treatment of their Brethren the
 'Dissenters, which on a small Search I have been ac-
 'quainted with; the Inferior Clergy of his Party
 'would appear the most wretched, provoking, abo-
 'minable Crew, that ever God suffered to live un-
 'punish'd, since he destroyed Sodom and Gomorrha
 'by Fire from Heaven.

If Words could be made Treason, *Ibid. Vol. 2.*
 'son, one third at least of the Infe- *Numb. 105.*
 'rior Clergy in England would be *p. 418.*
 'hang'd.

'I again appeal to you, Gentle- *Ibid. Vol. 2.*
 'men, Whether, generally speaking, *Numb. 36.*
 'all over this unhappy Nation, the *p. 142.*
 'Clergy are not, Three Parts in
 'Five, in a close Conjunction with the Enemies
 'of the Church's Peace, and the profess'd Enemies
 'of the Government?

'Others, not so directly, but alto-
 'gether as fatally, and tending to the *Ibid. Vol. 6.*
 'same End, with subtle Designs to *Numb. 118.*
 'divide and amuse the People, by *p. 471.*
 'Preaching, Writing, and Printing,
 'endeavour to revive the said exploded Doctrines
 'of Non-Resistance, and absolute uncondition'd
 'Obedience, as things the People of England ought
 'to think themselves oblig'd by; which tho' in
 'themselves of no force, yet manifestly tend to un-
 'ravel the Constitution, to invalidate the Queen's
 'Title to the Crown, and destroy the legal Autho-
 'rity of Parliaments in the Nation. An eminent
 'Proof of which is now depending before the
 'House.

'Drunkenness, Oaths, and abomi-
 'nable Lewdness; Ignorance, Negli- *Ibid. Numb.*
 'gence, and scandalous Insufficiency; *93. p. 371.*
 'abhorr'd Error, Deism and Socinia-
 'nism, have over-run the Clergy.

'You know the Church he means
 'is High-Church, which is a Ficti- *Observer,*
 'on, a Church of the Brain, sup- *Vol. 4. Numb.*
 'ported by a little, insignificant, tri- *89.*
 'fling Number of Brainless People;
 'and the People of England are no more concern'd
 'about

'about that Church, than about the Institutions of Government laid down in *Moor's Utopia*, *Harrington's Oceana*, or *Bacon's New Atlantis*; and all the Canons, Rites, and Ceremonies of that Church are no more to be consider'd by you, or me, than so many Ballads, or *Duck-Lane Penny Histories*.

Ibid. Numb. 67. 'The Universities have large Endowments, which I fancy may be better employ'd for the publick Good than at present. Let you and I Vote them useless.

'Country-M. With all my Heart, Master.

Mr Dodd. My Lords, The next Thing we should go upon, is to shew several Passages which reflect upon the Queen, the State, and Ministry; there are Five or Six Instances which we shall read, and then we shall have done.

Clerk reads.] 'In short, if *Jure* Review, 'Divino comes upon the Stage, the Vol. 2. Numb. 'Queen has no more Title to the 80. p. 519. 'Crown than my Lord-Mayor's

'Horse: All the People are bound by the Laws of God to depose Her as an Usurper, and restore their Rightful and Lawful King James the Third.

Ibid. Vol. 3. 'The Line of all the World fam'd for Blood, and that had Numb. 122. 'ravag'd the best Families of the p. 486. 'Kingdom.

Ibid. Vol. 2. 'Ever since the coming of King Numb. 43. 'James the First to the Crown, p. 170. 'this Nation has been perplex'd with Divisions, Uneasinesses, Oppressions and Murmurings, both in Sovereign and Subject.

Ibid. Numb. 'Either the Dissenters had Reason for former Discontents, and 44. p. 174. 'Reason to complain of Oppression, Persecution, and Infringment of Privileges, or they had not. If they had, the Church was cruel, and the State unjust before, in laying those Loads upon them. If they had not; both Church and State were insatuated and delirious, in granting them the Toleration, and Liberties since conceded.

Ibid. Numb. 'If the next Parliament should pursue the Steps of the last, the 46. p. 181. 'Nation, in my Opinion, will be so much nearer that Crisis of Time, when *English* Liberty being brought to the last Extremity, must open the Magazine of Original Power.

Ibid. Numb. 'What can be said for Members fitting in the House to do nothing; making long Speeches 27. p. 106. 'without Meaning, and Voting Bills without Design to have 'em pass?

Ibid. Numb. 'The Balance between 41 and 88 will appear to run against 123. p. 489. 'him; and the Difference between the dry Martyrdom of King James, by his Passive Obedience Church-Subjects, and the wet Martyrdom of King Charles the First, by People that never made any such Pretence, will appear so small, that it's not worth Dr. D---'s while to meddle with it.

Observator, 'Country-M. Pray, Sir, are there a great many of those Vol. 2. Numb. 'People alive, that cut off the 89. 'Head of King Charles the First?

'Obf. No, no; they are dead and gone a long Time ago. However, the Story serves some Men as Raw-head and Bloody-bones, to affrighten some, and caluminate others. Now, for my part, I know nothing of the Business of King Charles I. I was born since the Restoration; and I have so high a Value for the Prudence and Justice of our Forefathers, as not to condemn any of their Actions for the common Good. We are unkind to ourselves in censuring the Justice of our Forefathers Actions, and thereby do give a Handle to our Successors to censure ours. Did our Forefathers detruncate the Father? Did not we depose the Son, and put one more Righteous in his stead? Did we not divest him of all his Regalities, and make him a Fugitive on the Earth? And may not future Ages examine the Difference between the Decollation and the Abdication?

'I recite this, to let you know the Encouragement the Papists *Ib.* Vol. 4. have had in this Reign; when Numb. 97. by their Interest they can get such as write against them prosecuted, &c.

'Should I tell you, honest Countryman, the Accounts I have had *Ibid.* of the Numbers of Popish Priests and Emissaries come into England the first Two Years of Her Majesty's Reign, it would make your Hair stand on End.

'They would have but a sorry Foot Soldier of the *Observer.* *Ibid.* Vol. 3. - - - And yet I have been where Numb. 15. those People that would send me durst not come, and where perhaps I have commanded better Men than themselves. It has been my Fortune to be in a fighting Army, under a General that we now dearly want; who did not use to return from the War, *sine Clade Victor*, and then ride in Triumph over his Queen on a Medal.

'I am sorry that the Folly of some, and the Bribery of others, *Ibid.* Vol. 3. have brought us into such amazing and dismal Circumstances, Numb. 99. that either our Liberties must be lost, or be maintain'd by a Body that is neither of us, nor from us.

'I shall produce my self as an Example of the Arbitrary Power *Ibid.* of this Parliament; and the Man that does not acknowledge their Proceeding against me to be Arbitrary, must assert, that an Arbitrary Power was never executed.

'Now if this be't Arbitrary, I don't know what to call so. *Ibid.* The *Spanish* Inquisitors have so much Regard to Justice, or the Shew of it at least, that they'll suffer a Man to speak in his own Behalf, &c. - - - Now, Countryman, do but consider my Case; I was sentenc'd to the Loss of my Liberty, without being heard.

'Which plainly shews, that what the Commons condemn'd *Ibid.* me for, would not bear an Action at Law.

'My Intent is to inform such as you, honest Roger, how much *Ibid.* you have been abus'd by your Representatives.

Ibid.

' This Parliament is the very Reverse of former Parliaments ; as they were merciful, this was cruel ; as they made good and wholesome Laws to preserve the Liberties of their Electors, these took away the Freedom of their Electors without any Law ; as they us'd all Means to keep their Electors out of Jail, these used all Means to put 'em into Jail.

Ibid. Vol. 2. Numb. 99. ' *Obs.* Honest Countryman, what woud'st thou have me do ? If I must run thro' all the List of Knaves, I must bring in all the Courts, all the Employments, all the Classes of Publick Affairs in the Nation.

Review, ' I really find the State of England in general to be thus. Its Vol. 2. Numb. ' Trade under a sensible, miserable 2. p. 5. ' Decay in all its Branches : - - - Its Navy great and flourishing ; but all her well-laid Designs either defeated in their Preparations, by the miserable Methods, and ill Government, with relation to Seamen, or disappointed by the ill Conduct or Cowardice of her Commanders. In Civil Concerns, in the utmost Confusions of Parties - - - blending together the most absurd Contradictions, such as propagating Religion by a scandalous Ministry - - - reforming Manners by debauched Magistrates, and chusing Men to make Laws, by Bribery and Corruption.

Mr. Phipps. My Lords, We shall offer but one Passage more, and that is out of *The Divine Rights of the British Nation vindicated*.

Clerk reads.] ' And if he will Pag. 105. ' but stay till the End of this present Session of Parliament, he'll find several new Powers annex'd to the Regal Office, and perhaps some made void and repeal'd for the Publick Good.

Mr. Dodd. My Lords, We have now done with our Proofs ; we have gone over the Heads of Blasphemy, Irreligion and Heresy ; the Church reflected on ; the Queen, Ministry, and all Orders of Men reflected upon and abused. We have cited these Books and Passages, not to reflect on the Government, but as those which put the Doctor in some Heat and Concern both for the Church and State ; and we hope your Lordships will make the best Construction of the Doctor's Intentions in this Matter.

Mr. Phipps. If Blasphemy and Irreligion can endanger the Church ; if Treason and Rebellion can endanger the Nation, I think, with great Submission, the Doctor has made good his Answer ; and therefore I hope he is not guilty of any Part of this Article.

Mr. Dee. My Lords, I beg Leave that we may apply some Part of the Proofs we have read to Day to the Fourth Article.

Mr. Phipps. My Lords, The other Article, I fear, will be longer than will be fit to trouble your Lordships with now ; we shall be ready to proceed when it is your Lordships Pleasure.

Then the LORDS Adjourned to their House Above.

Tuesday, March 7. The Eighth Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner before-men-

tioned, Proclamation was made by the Serjeant at Arms as follows :

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made : *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before :

Lord Chancellor. Gentlemen, you that are Council for the Prisoner may proceed in his Defence.

Mr. Dodd. IF your Lordships please, we will proceed to the Fourth Article. That Article contains several Heads : 1. *That the Doctor suggests Her Majesty's Administration tends to the Destruction of the Constitution.* 2. *That there are Men of Characters and Stations in Church and State, who are False Brethren, who undermine and betray, and put it in the Power of others to overturn and destroy the Constitution.* 3. *That the Doctor charges her Majesty, and those in Authority under Her, with a general Male-Administration.* 4. *That he persuades the Subjects to keep up a Distinction of Faction and Parties, instills jealousies, foment Divisions, and stirs up the Subjects to Arms, and perverts several Texts of Scripture.*

My Lords, As to the First, the Doctor is so far from suggesting that Her Majesty's Administration tends to the Destruction of the Constitution, that he has not, as we apprehend, said any thing that can bear such a Construction. The Doctor denies, that he has made any Mention of Her Majesty's Administration in Church or State in his Sermon : Therefore, How can he argue that it tends to the Destruction of the Constitution ? It has not been proved. But he takes all Opportunities to speak of the Blessings we enjoy under her Majesty's Government ; prays for Her Preservation ; and that She may long Reign for the Comfort and Support of the Church ; professes what he spoke proceeded from a tender Concern for Her Majesty and Her Government : So that we humbly apprehend there was little Occasion for such a Charge against him.

The Second Part of the Article is, *That there are False Brethren, that are Men of Character and Station in Church and State, who undermine and betray, and put it in the Power of others to overturn and destroy the Constitution.* Now the False Brethren by him described, are Persons who propagate false Doctrines, who give up the Discipline and Worship of the Church, who are for Neutrality in Religion, or who wish well to the Church, but do not shew their Zeal in obeying her Precepts, and defending her Rights. These are the False Brethren intended ; and this is very different from the Allegation in the Impeachment. As to that Part of the Charge, of *putting it in the Power of others to destroy the Constitution*, he does not mention Men of Characters and Stations in this Place ; but, as I take it, in Pag. 15. where this Passage is supposed to be contained ; and yet it is Twelve Pages after, before those Words are mention'd. They are not joined together, as is supposed by the Article ; and speak nothing of that Matter. It is a Conjunction of Passages widely different from, and not relating to one another. The Betrayers of the Constitution, to whom the Doctor does refer, are such as by Writing endeavour to subvert the Foundation of our Church and State ; such as are of a Latitudinarian

rian Principle, who neither believe her Faith, own her Mission, submit to her Discipline, or comply with her Liturgy. My Lords, These are the Heads, and Persons, that the Doctor refers to; and not such Persons or Things, as are pretended by the Article.

As to a General Male-Administration under Her Majesty, he abhors the Charge; has no where said it: Always, as a good Subject, mentioned Her Majesty with the profoundest Duty and Respect; nor does he tax any in Authority with a Male-Administration. And surely it is not sufficient to charge the Doctor, as if he had fallen foul on the Ministry, when there is no Proof of it, and when there is no Passage in his Sermon, as we apprehend, that tends to it. The Doctor has on all Occasions, as a good Subject, justified Her Majesty's Title; and particularly at the Beginning of this War, he preach'd a Sermon at Oxford, before the University, therein justifying Her Majesty's Title to the Crown, and Her entering into the War against France and Spain; wherein he has very clearly demonstrated these Two Points. And as to the Charge of endeavouring to keep up Distinction of Parties, he is so far from it, that he complains of those that have divided us with a Distinction of High and Low Churchmen; *They have villanously divided us with knavish Distinctions*: And what could he mean by all this, but a Service to the Government; and that they which raise such false Insinuations, such Fears and Jealousies, are the People he intended, and complains of? And as he has done that, so he takes all Opportunities to pray, *that we may be one Fold under one Shepherd*, and that all invidious Distinctions might be laid aside.

My Lords, The next Thing is, The raising these groundless Fears and Jealousies, that are suggested. As to that, the Passage we read before is quite opposite: The Doctor rebukes them, that do it as ill Christians, and ill Subjects; and earnestly sets forth the Mischief of them. He is so far from encouraging it, that he has upon several Occasions severely censured it. And as to stirring up Her Majesty's Subjects to Arms and Violence, he abhors it, and throughout his Sermon asserts the Doctrine of Non-Resistance; which is quite contrary to this Part of the Charge, altho' he conceives it to be the Ground of the Impeachment. Sure there is not any one Passage, that tends to excite the Subjects to Arms, in his Sermons.

My Lords, There was Notice taken of a Passage (that has little in it) exciting Christians to *put on the whole Armour of God*: But sure that is distinguish'd from the Arms of Flesh and Blood: It cannot be so misinterpreted, as to be understood of any Earthly Power whatsoever; for as it is in the Scripture, so it is in the Doctor's Sermon, *the whole Armour of God; Patience, Submission, &c.* This is the Armour he excites Christians to put on; nothing of fleshly Arms.

As to the Charge of perverting several Texts of Scripture, to make ill Impressions on the People; he denies it, and had no ill Impression to make on any Person whatsoever: His Work was to do good, and make good and religious Impressions on his Hearers. But he thinks it hard, when he cites Texts of Scripture against Vice and Immorality, by a Construction in Prejudice of the Preacher, those Texts should be said to be applied to particular Persons. The Story of the Prophet, in the Second Book of Kings, Chap. vi. as printed in the Doctor's Sermon, is mistaken; but the Two Reflecti-

ons made upon it, are very unnatural, and not credible. The first Inference was, That he had it by Hearsay, and that he had not read it. Sure your Lordships cannot think, but that he, that is a Doctor of Divinity, has read every Chapter in the Bible: He, that has been a Student in the University of Twenty Years standing, and more, and constantly keeping to the Church, certainly none can think but he has read the Bible. But then it is turn'd the other way upon him; That, taking it to be so, then he represents himself to be the Prophet that could see the Danger, and makes the Lords and Commons the People that were blind.

My Lords, This, I suppose, was intended to be wittily said; but if it be seriously (and without Raillery) consider'd, there is no Wit or Sense in it. He mentions not the Lords and Commons at all: But true it is, he, as a Preacher, warns the People to have their Eyes open, to see the Dangers of Sin and Vice; so that we apprehend, there is no Ground, from that Passage, to charge the Doctor with corrupting the Scripture.

My Lords, The next Text that is quoted against the Doctor upon this Head, is, *Blow the Trumpet in Sion; sound an Alarm*. Now it is urged by the Gentlemen Managers, That this can be for nothing but for War; and this (it's pretended) was only to be done in Time of War, when the Priests with the Silver Trumpets were to sound to Battel. But, my Lords, this cannot have that Construction; for whoever looks into the Scripture, particularly into the Prophet Joel, and other Places, (where that Expression is used) will find it is to proclaim a Fast: They were to blow the Trumpet, to signify the Generality, and that all should take notice of it. The Allusion is carried by an Elegancy to the Trumper, to shew the Generality of it, and that all the People should humble themselves before the Lord. Now, to make this Sedition, to infer it to be to excite the People to War and Rebellion, is not right Reasoning, nor is there the least Colour for it.

Another Quotation he makes is much pressed upon the Doctor, where speaking of the Church, he cites that Passage out of the Lamentations: *Her Adversaries are chief, and her Enemies at present prosper*. This is press'd upon us, as if the Doctor had an Eye in it on the Ministry. But this, we think, is straining the Words beyond their Sense or Meaning: For, first, he does not say her Adversaries are the chiefest, but in the lowest Degree of Comparison, her Adversaries are chief; that is, that amongst her Adversaries there are some considerable Persons, some Men of Estates and Figure. And this, I think, appeared Yesterday in the Pamphlets that were read, some whereof are supposed to be wrote by no mean Persons; the Doctor cites the Words of Scripture, and we think it can have no ill Construction. As to the second Part of the Expression, *Her Enemies at present prosper*, they are the Words of the Prophet; and how true in the present Case, we must submit to your Lordships, upon what has been already offered, whether any ill Construction can, or ought to be made of them. Neither the first nor second Part of these Words are determined to any particular Persons; we cite the Words themselves; they are not determined to any Person whatsoever; and so we hope no Offence can be taken at them, nor any such Inference drawn from them, as hath been endeavoured to be represented to your Lordships. The Doctor declares in his Sermon, as we formerly mentioned, and read to your Lordships, that he hoped what he had

spoken would be without any Offence, as it proceeded from an honest and good Intention, and a tender Concern for Her Majesty's Person and Government, and an hearty Zeal for the Honour and Safety of our excellent Church and Constitution: And so we hope your Lordships will construe and intend it. And so we submit this Article, and the Doctor's Defence, with all Humility, to your Lordships. We shall read no more than two or three Proclamations: The first is against Vice and Immorality, and to stir up Magistrates to take care to execute the Laws. A second takes Notice that Her Majesty's Commands had not been obeyed nor the Laws executed to suppress Vice, and commands the Magistrates to be careful to do their Duty herein: And, thirdly, a Direction that this Proclamation shall be read to the People out of the Desk. And sure the reading them there, and preaching them, or the Subject-Matter of them in the Pulpit, are consistent together.

Mr. Phipps. **M**Y Lords, We are now humbly to offer to your Lordships Consideration, our Answer to the fourth and last Article of the Impeachment, to which we think there is no Necessity of giving any Answer, because we humbly apprehend there is not any Offence charg'd upon the Doctor in that Article; for the Article saith, that *the Doctor doth falsely and maliciously suggest, &c.* Now to suggest can amount to no more than to insinuate, and is far short of an Averment or Assertion; and whether a bare Suggestion or Insinuation can be a sufficient Foundation to ground an Impeachment, is humbly submitted to your Lordships. But since 'tis made an Article against the Doctor, we humbly hope we shall give as full an Answer to the Suggestions and Insinuations contain'd in that Article, as we have to the Offences charged in either of the other Articles.

The first Part of the Article saith, *That the Doctor doth falsely and maliciously suggest that Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution.* In answer to which 'tis humbly offered, That the Doctor doth not any where mention Her Majesty's Administration, either in Ecclesiastical or Civil Affairs. He esteems it one of the greatest Blessings and Deliverances, *That her Majesty now happily sits on the Throne of Her Ancestors*; he prays, *that God would long preserve Her, for the Comfort and Support of the Church*; he professeth, *That what he speaks proceeded from a tender Concern for Her Majesty and Her Government, and an hearty Zeal for the Honour and Safety of our excellent Church and Constitution*; he solemnly declares, *That his only Aim and Intention was earnestly to contend for the Safety, Rights and Establishment of Her Majesty, together with those of the Church.* And how after all this it can be inferred, he suggests that Her Majesty's Administration, in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution, I cannot imagine. I humbly submit whether such a Charge can be inferr'd from his Sermons, without carrying Innuendo's farther than ever hath been attempted.

As for that Part of the Fourth Article, which chargeth, that *the Doctor doth suggest that there are Men of Characters and Stations in the Church and State, which do themselves weaken, undermine and betray, and do encourage and put it into the Power of others, who are profess'd Enemies, to overturn and destroy the Constitution and Establishment:* The

Doctor denies he suggesteth any such things concerning Men of Characters and Stations.

I can't but observe what Art hath been used to make up this Article, and I do not doubt but your Lordships will be of that Opinion; for the Doctor in Page 22, mentions Men of Character and Stations, but does not mention Men of Character and Station in Church or State; but says, *there are Men of Character and Stations that shift and prevaricate with their Principles, and start from their Religion upon any Occasion of Difficulty.* Which is a Charge upon them in their private Capacity, and does not charge them with any Misbehaviour in their Stations, or in any thing relating to the Publick Administration; nor does he mention in that Place their weakning, undermining and betraying, or the encouraging or putting it in the Power of our profess'd Enemies to overturn and destroy the Constitution and Establishment.

And in Page 15, where he mentions *the weakning, undermining and betraying in themselves, and the encouraging and putting it in the Power of our profess'd Enemies to overturn and destroy the Constitution and Establishment of both:* There he does not mention Men of Character and Station, but chargeth the weakning, &c. on the False Brethren in Church and State; so that he thinks it very hard that a Part of one Sentence in Page 22, should be brought back seven Page, and coupled with Part of another Sentence, Page 15, and put together as one Sentence, to make an Article of High Crimes and Misdemeanors; whereas one of the Sentences hath no manner of Relation to, or Dependance upon the other, and neither of the Sentences alone can amount to or be charged as a High Crime and Misdemeanor.

By this Method they might have charged him with High Treason, or any other Crime. Nay, my Lords, by this transposing and altering of Sentences, by taking a Part of one Sentence and coupling it with Part of another, they may make the Scripture it self speak Blasphemy.

But suppose it had been one entire Sentence, had this been a Ground for an Impeachment? By Men of Characters and Stations, must Men of the highest Characters and Stations be necessarily understood? No, my Lords: Are not inferior Officers, even Constables, Mayors, Justices of the Peace, Officers of the Militia, Deputy-Lieutenants, Officers of the Army, Officers of the Customs, and other Branches of the Revenues, all Men of Station? And are not some of the Stations very good ones? And are not many of the Persons that enjoy them Men of Characters too? And if among all these there may be found some whose Consciences are so tender, that they think it a Sin to communicate with the Church upon any other Account than to qualify themselves for their Offices and Stations; and such who vilify her Orders, calumniate, misrepresent and ridicule her Priests and Professors: Is it a High Crime and Misdemeanor in the Doctor to call such Persons False Brethren, and to suggest that they are Enemies to our Constitution, and that they endeavour to weaken and undermine it? And yet this is all that can be inferr'd from these two Pieces of Sentences put together, to form this Article. And does this bring the least Blemish or Reflection on the Ministry, or those of the Highest Character and Stations in the Church? By no Means: For the Ministry presumes that Men in those inferior Stations are well-affected to our Constitution, when they qualify themselves according to Law, by taking the Sacra-

it not and Oaths; and if any of them are not so, cannot be presumed to fall under the Notice of the Ministry: And in many Cases, if they did know it, yet it would not be in their Power to redress it. I remember one Instance, in an eminent Borough in this Kingdom. It was proved, at the Hearing of an Election for that Borough, that the Mayor declared that no Person should be admitted into the Corporation, and qualified to Vote for Members of Parliament, but such as were Dissenters from the *Test*; so that there may be Mayor, Aldermen, and the whole Corporation who may take the Sacrament in the Church of *England*, and the Oaths, and yet every one Dissenters: And they may elect Persons into much higher Stations, if they please, which are equally disaffected to our Church, and it is not in the Power of her Majesty or the Ministry to help it. And when there are such found among us, whether the Doctor, when he chargeth them for being False Brethren, can be said to reflect on the Ministry, can be said to be guilty of High Crimes and Misdemeanors, I submit to your Lordships.

The Learned Gentleman who spoke first to this Article, seemed to allow that Men of the highest Characters and Stations were not intended; but he objected, that to charge the inferior Magistrates with a Neglect of their Duty, is charging the Government with Male-Administration; in which I cannot concur with him. But as this Case is, I take it to be plain, that to charge inferior Officers or Magistrates with a Neglect of their Duty, cannot reflect on Her Majesty's Administration; for there are Magistrates which Her Majesty cannot remove; there are Neglects which Her Majesty or Her Ministry cannot be presumed to know, as I before mention'd. And to set this in a true Light, and to give a full Answer to this Objection, we have Her Majesty's Authority to vindicate the Doctor in this Point; for Her Majesty chargeth the Magistrates with a Neglect of their Duty, and carrieth the Charge higher than can be inferr'd from the Doctor's Sermon, I mean the several Proclamations that have been issued by Her Majesty, by the Advice of Her Privy-Council (which are Her Ministry) for suppressing Prophaneness and Immorality. Those Proclamations take Notice of the several Acts of Parliament against Prophaneness and Immorality, and charge the inferior Magistrates with a Neglect of their Duty, in not putting those Laws in Execution. And is it an Offence for the Doctor to mention that in his Pulpit, which hath been so often repeated by Her Majesty under Her Great Seal?

It has been objected, That the Doctor, speaking of the Church, says, that *Her Adversaries are Chief*. This is a Quotation out of Scripture, which signifies that they are Mighty; but that this reflects on the Ministry, or Her Majesty's Administration, I cannot apprehend.

But it is also objected, that the Doctor, Page 5, saith, *That the Communion of the Church hath been rent and divided by Faction and Schismatical Impostors, &c.* Is the saying this done with Impunity, a Reflection on the Administration? That Blasphemy, Atheism and Prophaneness have been justify'd in Print; that the Worship and Discipline of the Church hath been prophaned and abused, her Orders denied and vilified, her Priests and Professors calumniated, misrepresented and ridicul'd; that Trumpets have been sounded to Rebellion; that Her Majesty and Her whole Administration have been reflected on, I think was sufficiently proved to your Lordships Yesterday; and that it hath been

done with Impunity hitherto, I believe will not be denied, for I have not heard that any of these bold Offenders have yet been punish'd; and that the inferior Magistrates have neglected their Duty in that respect, we have Her Majesty's Authority for it. But that this is a Reflection on Her Majesty, or Her Ministry, is totally denied; for the Execution of the Laws against such Offenders is within the Province of inferior Magistrates; and God forbid that the Faults of inferior Magistrates should be charged upon Her Majesty. The several Proclamations issued out by Her Majesty, by the Advice of Her Privy-Council, shew, Her Majesty and Her Ministry have done all that in them lies to suppress Blasphemy, Prophaneness, and other Vices; and that the Fault and Neglect lies entirely at the Door of the inferior Magistrates: And this sufficiently Answers the Objection, that what is charged upon inferior Magistrates cannot reflect on her Majesty, or Her Ministry. And this is also a full Answer to that Part of the Fourth Article, which accuseth the Doctor with charging her Majesty, and those in Authority, both in Church and State, with a general Male-Administration; to which I would only add what the Doctor hath said in his Answer to this Article, *viz.* "That he abhors the Thoughts of bringing any Charge against Her Sacred Majesty, whom he never mentions but in Terms of the profoundest Duty and Respect; that he doth not charge those in Authority with any Male-Administration; that he doth not so much as mention the Word *Male-Administration*, nor any other Word Synonymous with it, or from whence it can be inferr'd, or in which it is or can be imply'd.

As to such Part of the Fourth Article, which chargeth, that *the Doctor, as a publick Incendiary, persuades Her Majesty's Subjects to keep up a Distinction of Factions and Parties*; he invites the Dissenters to leave their Schism, and come sincerely into the Church: He complains of those who have villanously divided us with the knavish Distinctions of High and Low Church. He wisheth we were all one Fold under one Shepherd; and that all those invidious Distinctions, that distract and confound us, were lost.

If wishing that People would leave their Schism, and come sincerely into the Church; that we were all one Fold under one Shepherd, makes a Man a publick Incendiary; if blackning those that divide us with knavish Distinctions with the Character of Villanous; and wishing that all those invidious Distinctions which distract and confound us were lost, be to keep up Distinctions of Factions and Parties, the Doctor is Guilty; but if not, then he conceives there is nothing in his Sermons which can be a Foundation for the Charge in this Branch of the Fourth Article.

But it hath been objected, That tho' the Doctor invites the Dissenters to come into the Church, yet he invites them upon his own Terms: And I hope, my Lords, they shall never come in upon any other Terms than their conforming to the Doctrine and Discipline of our Church. I hope I shall never see the Constitution of our Church weakned, and her Pales and Fences broken down, to let her Enemies into it.

As to the other Part of the Article, which chargeth the Doctor with instilling groundless Jealousies, and fomenting destructive Divisions among her Majesty's Subjects, there is no Foundation for it; for, on the contrary, he rebukes and condemns those who by false Insinuations, and raising groundless Jealousies and Fears, embroil and bring it into Confusion.

As to that Part of the Fourth Article, which chargeth, That *the Doctor excites and stirs up Her Majesty's Subjects to Arms and Violence*; if Preaching up Passive Obedience be to stir up People to Rebellion; if Preaching up the Illegality of Resistance be to excite her Majesty's Subjects to take up Arms against Her, I own there is a sufficient Ground in his Sermon for this Charge; but otherwise, there is not one Passage in the Sermon to warrant this Accusation.

I do admit, the Doctor, in the last Page of his Sermon, hath this Exhortation of St. Paul's: *Put on the whole Armour of God, that ye may be able to stand against the Wiles of the Devil; for we wrestle not only against Flesh and Blood, but against Principalities, against Powers, against the Rulers of the Darkness of this World, against Spiritual Wickednesses in high Places.* I pray, my Lords, What is it that the Doctor in the Words of St. Paul advises his Auditors to resist? Is it not *the Wiles of the Devil*? With what Armour are they to resist? 'Tis with *the Armour of God*. What is the Armour of God? Are Guns, or Swords of Iron or Steel, the Armour of God?

The Learned Manager that spoke to this Point said, the Doctor could not mean the spiritual Armour, because he departed from the Apostle's Spiritual Meaning. And to make good this Charge, he useth the same Method that was taken to make up the first Part of this Article; for the Words cited by the Doctor are in the Eleventh and Twelfth Verses of the Sixth Chapter of St. Paul to the *Ephe- sians*; and to find out the Doctor's Meaning, he goes back to the Thirty first Verse of the Fourth Chapter, where St. Paul saith, *Let all Bitterness, and Wrath, and Anger, and Clamour, and Evil-speaking be put away from you, with all Malice.* And why this should be alledged to shew what the Doctor means, when in the Words of St. Paul he adviseth his Auditors to put on the Armour of God, I cannot imagine. If he had read but two Verses after those Words cited by the Doctor, he would have found the Armour of God to be *The Sword of the Spirit, the Shield of Faith, the Breast-plate of Righteousness, and the Helmet of Salvation*; and the Doctor could mean no other Armour: And how her Majesty, or those in Authority under Her, can be resisted by this Armour, or what Violence Her Majesty's Subjects can use with these Arms, I submit to your Lordships. 'Tis plain, that the Principalities, Powers and Rulers, here meant, are not Earthly Principalities, Powers and Rulers; but the *Principalities, Powers, and Rulers of Darkness*, against which Guns and Swords are but a very weak and feeble Defence. These Things being consider'd, I think there is nothing to be collected from this Paragraph, that can excite Her Majesty's Subjects to Arms and Violence; unless it be, to *take the Armour of God, to resist the Devil and all his Works*; which, I hope, is not a High Crime and Misdemeanor.

As a further Evidence that the Doctor excites Her Majesty's Subjects to Arms and Rebellion, it is objected, That the Doctor, in his Sermon, Pag. 26. says, *Let us therefore, being well assured how much our Cause deserves, and how much at present it requires our bravest Resolutions, hold fast our Integrity and Religion without wavering, and earnestly contend for the Faith which was once delivered to the Saints.* And is not this wholsome and religious Advice? The more strongly and openly the Cause is oppugned, the braver Resolution it requires to de-

fend it. The Cause of Religion is attack'd by Atheists and Deists; the Cause of Monarchy, by Assertors of Republican and Seditious Principles; the Cause of the Church, by Papists and Sectaries of all sorts; and therefore it requires our bravest Resolutions to defend the Church, the Queen, and the Constitution, with the same Zeal they are attack'd, as the Doctor explains himself; *Not doubting, if we shew the same Courage, and indefatigable Zeal and Labour to defend, as our Adversaries to reproach, divide, and ruin our Church; neither their united Malice nor Power, nor all the Plots and Machinations of Rome, nor the very Gates of Hell it self, shall ever be able to prevail against Her.* And shall this be construed to excite Her Majesty's Subjects to Arms and Violence?

As to the last Part of the Article, which chargeth, That *the Doctor doth wickedly wrest and pervert divers Texts of Holy Scripture*: It seems, the Printer of the Second Edition mistook one Text. If the Doctor had perverted, or wickedly wrested the Text, he must have been subject to a Prosecution in another Place; but it would not have been a Ground for an Impeachment of High Crimes and Misdemeanors.

To conclude --- My Lords, If condemning the Dethroning and Murdering the Royal Martyr King Charles the First, be to cast black and odious Colours on his late Majesty and the Revolution; if the averring the utter Illegality of Resistance to the Supreme Power in all Things lawful; if Preaching the Doctrine of Passive Obedience and Non-Resistance, which hath been enjoined by our Church, and confirmed by the Legislature, and is the Doctrine of all Christian Churches, shall be construed to be a Reflection on the Revolution, and a greater Reflection on it now, than the Preaching of the same Doctrine was in the Reign of his late Majesty, who was the Happy Instrument of that Revolution: If the Doctor be a Criminal for Preaching that Doctrine which the Right Reverend Fathers of our Church, and other Eminent Divines, have preach'd, with the Approbation and Applause of the Crown, and both Houses of Parliament; then the Doctor is guilty of the High Crimes and Misdemeanors in the First Article.

And if to wish that Dissenters, who qualify themselves according to the Act, may enjoy the full Benefit of it; if to desire the Laws to be put in Execution against such who will not comply with the Terms prescribed by the Act, and against Atheists, Deists, and such who frequent no Religious Worship at all, and are particularly excepted out of the Act of Toleration; and if to assert, that a Sentence ratified in Heaven cannot be reversed on Earth, be to affirm the Toleration unreasonable, and the Allowance of it unwarrantable; then the Doctor is also guilty of the High Crimes in the Second Article.

And if to assert the Prejudice the Church receives by Schism and Occasional Conformity; if the shewing the heavy Judgments which may be brought down upon a Church and Nation, by Blasphemy, Atheism, Prophaneness and Immorality; if to shew the Danger the Queen and Church are in, by the rebellious Principles that are daily broach'd and publish'd, be to assert the Church is in Danger under Her Majesty's Administration; the Doctor is likewise guilty of the Crimes in the Third Article.

And lastly, If to pray for Her Majesty's long Continuance on the Throne, for the Comfort and Support of the Church and Nation; if to shew that the Laws against Atheism, Blasphemy, Prophaneness and Irreligion, be not put in due Execution by inferior Magistrates; that is, if to assert in his Pulpit what Her Majesty, by Advice of her Ministry, hath asserted in Four Proclamations, be to reflect on Her Majesty and Her Ministry, and to charge Her Majesty with Male-Administration in Church and State; and if exhorting the People to *put on the Sword of the Spirit, the Shield of Faith, the Breast-plate of Righteousness, and the Helmet of Salvation, to resist the Devil, and all the Powers of Darkness*, be to excite Her Majesty's Subjects to Arms and Violence against Her Majesty; and if Preaching up Passive Obedience and Non-Resistance, is to stir up People to Rebellion; then the Doctor is guilty of the High Crimes and Misdemeanors in the Fourth Article; especially, if strain'd, foreign and unnatural Inferences, Insinuations and Innuendoes are to pass for Proof. But otherwise I presume to say, the Doctor is not guilty of any of the Offences charged in either of the Articles; and I humbly hope, your Lordships will be of that Opinion.

Mr. Dev. **M**Y Lords, This Article is short of the former Articles, in the manner of the Charge. The first Part of it is a Charge upon the Doctor, That he suggests only, *That Her Majesty's Administration tends to the Destruction of the Constitution*. As to this Part of the Article, (as has been observed) there is no Passage in the Sermon mentioning Her Majesty, but with the greatest Respect, and with hearty Prayers for Her. The Words *Ministers*, or *Ministry*, are not found in the whole Sermon: Therefore, to find any Charge on them by the Doctor, we must look to the Second Part of the Article, which charges the Doctor with suggesting, *That there are Men of Character and Stations, who are False Brethren, and do undermine the Constitution, and endeavour to betray the Church; and consequently charges Her Majesty with a General Male-Administration*.

My Lords, As to this Part of the Charge, viz. That the Doctor doth suggest, that Men of Character and Stations are Underminers of our Constitution, it is not to be found in any Part of the Sermon: But if he doth suggest, that Men of Characters and Stations (not saying of what Characters, or what Stations.) are False Brethren, (if your Lordships take notice what those Men are, whom the Doctor calls False Brethren) it will not be a sufficient Ground for a Charge of High Crimes and Misdemeanors. There are Four Sorts of Persons, that the Doctor charges as False Brethren: Those that propagate False Doctrines; Those that give up the Discipline of the Church; Those that are for a Neutrality in Religion; and Those that own themselves to be of the Church, but live not according to her Rules. Now to say, that there are some Men of Character and Stations in the Nation that are False Brethren, within some one or other of these Descriptions, I wish I could say it was not true. But when the Doctor comes to charge some Persons as Underminers of the Church and Constitution, they are described to be either those Persons that subvert the Fundamentals of Religion, as Atheists, Deists, Socinians, and such like; or Occasional Conformists, Persons that creep into the Church, only with a Design to do it a Mischief.

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And I think these Persons may be justly said to be Underminers of the Church.

My Lords, There is a General Charge against the Doctor, *That he excites the People to Rebellion*. If this could be naturally infer'd from his Words, he must be guilty of Self-Contradiction, and ought rather to be pitied as a weak, foolish Man, than punished as a cunning Incendiary. For when he hath so positively affirmed the utter Illegality of Resistance to the Supreme Power, if any Thing had dropp'd from him in the same Assembly tending to Rebellion, he would have exposed himself to the utmost Ridicule.

My Lords, Some Things have been observed out of the Preface to his Sermon at St. Paul's: One Expression is that of sounding a Trumpet. I should not have thought this worth taking notice of, but that some of the Gentlemen did lay some Stress on it, as if this were sounding an Alarm, exciting People to Arms: But I conceive, that the Words out of the Mouth of the Doctor, bear the same Sense as out of the Mouth of the Prophet. But for fear that he should be misconstrued, the Doctor explains himself by the Words immediately following, and shews, that such Prohibition or Restraint laid on the Clergy, as are there suggested, are expressly contrary to the Command of God. His Words are these: *We are told by these Men, who would shut both our Eyes and our Mouths, in order the more effectually to undermine and destroy us, that the Pulpit is not a Place for Politicks; and that it is the Business of a Clergyman to preach Peace, and not sound a Trumpet in Sion; so expressly contrary to the Command of God, to cry aloud, and spare not*. So that these Words do plainly interpret what the Doctor meant by sounding a Trumpet.

My Lords, There was another Thing taken notice of from this Preface, and that was the Encouragement he gives to People to Arms and Violence, against such as would destroy the Church, &c. The Words of the Doctor are these: *If honest Men will sit still, and give up their Cause through want of Courage, or a just Sense of the dangerous Attempts of our Enemies; we may, without the Spirit of Prophecy, foretel what will become of our Constitution, when it is so vigorously attacked from without, and so lazily defended from within*. This was look'd upon as dividing the People, and exciting them to make Resistance. But if the Gentlemen had look'd a little before, in the same Paragraph, they would have found who the Assailants he mentions were; and then they would not, I conceive, have blamed the Doctor, for encouraging the People to make a vigorous Defence. The Assailants are those that make rebellious Appeals to the People, as the only Judges of Right and Wrong, and the Dernier Resort of Justice and Dominion: These, he says, are the fashionable Methods now made use of to undermine the Church and Legislature, by breaking in upon the Prerogative of the Crown, by threatening them with imaginary Legions, and a Popular Tribunal, where their Authority is to be tried and determined. To put a stop to this Thing, is what he says is the Intent of his Discourse. Now if these are the Persons that attack the Constitution, that appeal to the People as the only Judges of Right and Wrong, if these are the Assailants, surely the Doctor may encourage the People vigorously to defend themselves against them.

My Lords, There was one Thing more taken notice of by the Gentlemen Managers, That the Doctor had given great Offence to the Commons,

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by an Expression he has made use of, by way of Exclamation, in the Close of his Answer to the Articles; and that runs thus: *Hard is the Lot of the Ministers of the Gospel, if when they cite the Word of God in their General Exhortations to Piety and Virtue, or in their Reproofs of Mens Transgressions, or where they are Lamenting the Difficulties and Conflicts with which the Church of Christ, whilst Militant here on Earth, must always struggle; the several Texts and Passages by them cited, shall be said to have been by them meant of particular Persons and Things, and shall be construed in the most Criminal Sense, and be made by such Construction one Ground of an Impeachment for High Crimes and Misdemeanors.* If this Supposition, as the Doctor has put it, be turned into a Position, he hopes you will pardon him for his Exclamation. If Generals have not been tied to Particulars, to make up these Articles, then the Doctor had no Reason to make this Exclamation: But if the Doctor's Sermon hath been so treated, in order to frame the Articles against him, then he is not blameable for that Expression.

My Lords, The Doctor has never before been charged with Disloyalty to the Government: He hath always been a Man of that Probity, and of so blameless a Life and Conversation, that he hath not been so much as attack'd on that Account. And when a Man of his Character is brought before your Lordships, for a Sermon preach'd in a Publick Congregation, for a Doctrine that is the Doctrine of the Church of *England*, and for which he has the Authority of so many of the Fathers of that Church, as well as of many of her Learned Sons: For him, I say, to be brought before your Lordships (by an Impeachment) on that Account, surely he may be allowed to say this: His Lot (at least) is hard, that he should be made the first, and so solemn Example; when he only followed so many and great Examples, as have been set him from the Beginning of the Reformation down to this Time. And when your Lordships consider the Circumstances of the Doctor, I hope your Lordships will think, that the Defence of this Prosecution, must be a sufficient Punishment for any Crimes he is charged with, and of which he can be supposed guilty: And so I submit him, and his Cause, to your Lordships Justice.

Dr. Henchman. MY Lords, In the General Preamble to the Articles of Impeachment, Doctor Sacheverell is said to have preached and published Two Discourses, with an *Intention to defame Her Majesty's Administration*; and this last Article contains several particular Charges, of a very high Nature, and great Malignity, against Her Majesty's Happy Administration.

For a General Answer to this Article, I must beg your Lordships Patience, to look back again upon those Passages of this Sermon, which I humbly offer'd to your Lordships Consideration under the Third Article, which will set the Doctor's Intentions in a clear Light. In one of them, he readily acknowledges the great Blessing we at present enjoy, by Her Majesty's happily sitting on the Throne of Her Ancestors: And in the other Places, where he mentions Her Majesty, it is with great Respect, and hearty Addresses to God, long to preserve Her on that Throne; and at last concludes with this solemn Protestation; That what he had then spoken, *proceeded from a good Intention, and tender Con-*

cern for Her Majesty's Person and Government, and a hearty Zeal for the Honour and Safety of our Excellent Church and Constitution.

My Lords, Some Regard is to be had to the Declarations of every honest Man, in relation to his own Thoughts and Intentions, which are known only to God and his own Conscience: And certainly, when a Priest of the Church of *England* does, in the Presence of God, and Face of the Congregation, solemnly declare, That what he speaks is with a tender Concern, and hearty Zeal for Her Majesty's Person and Government; no loose Words, or distant and unconnected Expressions, ought to be construed to a direct contrary Sense of so express a Declaration. My Lords, The Sense of these Words is plain and obvious to every Man's Understanding: But if a Passage in the Two and twentieth Page of this Sermon, in it self, and as it stands in its proper Connection, (not Criminal,) must be construed by what is said in the Fifteenth Page, little relating to the same Purposes, and both these Passages explain'd by a Third still farther distant; by such a Method, the most inoffensive Discourse may be made blameable, and it will be very difficult to make any Defence.

My Lords, It has been objected by the Learned Managers, That the Doctor chose an unseasonable Time, and an improper Place, to vent his Notions in. But how does it appear, that either the one, or the other was of his own Choice? Does it not rather appear, that he was call'd to perform that Duty by the Publick Magistrate; and that both the Time and Place were of his Appointment? Or how can it, at this Time, be thought unseasonable, to maintain the Doctrine of our Church; when such Swarms of infamous Libels are daily publish'd in Opposition to it? Or what Place can be more proper for this Purpose, than that in which such Libels usually first appear, and most prevail? Whether the Doctor performed his Duty, by Preaching that Doctrine there, which the Rubrick of our Liturgy expressly commands him to teach on that Day, must be submitted to your Lordships: And certainly it will always be thought proper, on that Day that our Church and State were deliver'd from a most horrid Conspiracy, to preach against the Sin of Rebellion: Upon that Day that the whole Nation was deliver'd from a Popish Conspiracy, it will always be proper to shew, that Resistance of the Higher Powers is the Doctrine of Papists, and first proceeded from them. It is well known to your Lordships, what the General Duty of Ministers obliges them to; but upon State-Days, when they are commanded by Supreme Authority, and directed by the Rubrick, what Subject to treat of; it would be Contempt in them not to obey the Commands of their Superiors, or not to insist upon that Doctrine which they are peculiarly ordered to explain. And I humbly apprehend, that those Reverend Prelates, some of whose Expressions were lately read to your Lordships, would not have received the Thanks of this Honourable House, if they had not adapted their Discourses to the Solemnity of that Day, which they then celebrated.

My Lords, Upon a general View of this and the other Articles, the whole Charge will appear to be supported, not by any one plain Proposition, but by Inferences and suppos'd Constructions. It has been my Endeavour, under every Article, to lay before your Lordships one or more clear Passages of this Sermon, which sufficiently declare the Author's Intention

tention as to that Article; and I must leave it to your Lordships Consideration, how far an Insinuation or Inference will be outweigh'd by an exprest Declaration. If there are any Words in this Discourse which seem to bear a doubtful Meaning, your Lordships will in all Cases incline to the most favourable Side; and in this Particular, the Character and Function of a Minister will deserve some more than ordinary Allowance. My Lords, It is a known Rule in the Roman Law, *In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset*. Where-ever Words are capable of a double Construction, there the Intention of the Speaker is chiefly to be look'd after, and attended to. Every Man has a Right to explain his own Intentions; and the darker and more obscure Expressions of his Discourse must be construed by those Passages which are more plain and explicit. This is a Rule in all Civil and common Cases between Man and Man; but in Criminal Cases, there that Law exacts a stricter and a nicer Proof: Where-ever the Life or Liberty of a Citizen is concern'd, there the Proofs ought to be *Luce meridiana clariora*, as evident as the Sun at Noon-day, and such as will convince every one at first Sight.

My Lords, I mention these Maxims of the Roman Law only as they are agreeable to the common Sense and Understanding of Mankind, as Rules of Reason and Equity, which your Lordships have always govern'd your selves by, and always will. The last of 'em I mention with the greater Confidence, because I find it has once already received the Sanction of this Honourable House, in Sir Samuel Bernardiston's Case; in which it is declared, *That Imnuendo's or suppos'd Constructions ought not to be allowed; for all Accusations should be plain, and the Crimes ascertain'd*. This, my Lords, has once been the Resolution of this Honourable House, and we humbly hope your Lordships will not depart from a Precedent so well established. My Lords, one Part of this last Article is, That the Doctor has wrested several Texts of Scripture to seditious Purposes; but it has not yet appeared that he ever harboured one seditious Thought: Whether he has perverted any Texts of Scripture will be best explain'd by himself, when your Lordships shall be pleased to hear him.

Mr. Dodd. My Lords, We desire to read two or three Proclamations: The First is to direct the Magistrates to put the Laws in Execution against Prophaneness and Immorality; and that not being duly observed, the Second Proclamation takes notice thereof, and directs the Magistrates to put the same in Execution: And there are Two subsequent Proclamations to the same Purpose.

Clerk Reads. *By the Queen, A Proclamation, for Restraining the Spreading False News, and Printing and Publishing of Irreligious and Seditious Papers and Libels.*

L A N N E R.

W Hereas by an Act of Parliament made in the Third Year of the Reign of King Edward the First, It is Enacted, That none be so hardy to tell or publish any false News or Tales, whereby Discord, or Occasion of Discord or Slander may grow between the King and his People, or the great Men of the Realm; and that he that doth so, shall be taken and kept in Prison until he hath brought him into Court which was first

Author of the Tale. And by another Act made in the Second Year of the Reign of King Richard the Second, it is declared, That the devising, speaking and telling such false News and Tales, was likely to occasion great Peril and Mischief to, and the quick Subversion and Destruction of this Realm: For the preventing whereof, it is thereby Enacted, That none be so hardy to devise, speak or tell any false News, Lies, or other false Things, of Prelates, Noblemen, and Officers of the Crown, therein named, whereof Discord, or any Slander, might arise within this Realm, under the Pain ordained by the said Statute of King Edward the First. And by another Act made in the Twelfth Year of the Reign of the said King Richard the Second, it is Enacted, That when any such shall be taken and imprisoned, and cannot find him by whom the Speech be moved, that he shall be punished for such his Offence. And whereas the preventing of the spreading and publishing of false News and Tales, and the Writing, Printing and Publishing of Heretical, Blasphemous, Irreligious, Treasonable, Seditious and Scandalous Books, Pamphlets, Libels and Papers, is a Matter which requires our Publick Care, and is of great Concernment; especially considering, that by Reason of the general Licentiousness of the Times, since an Act for Preventing Abuses in Printing Seditious, Treasonable and Unlicensed Books and Pamphlets, and for Regulating of Printing and Printing-Presses, made in the Thirteenth Year of the Reign of Our late Royal Uncle King Charles the Second, and continued by an Act made in the Fourth Year of the Reign of the late King William and Queen Mary, expired, many Evil-disposed Persons have Written, Printed and Published divers Heretical, Blasphemous, Irreligious, Treasonable and Seditious Books, Pamphlets, Papers, and many false, infamous and scandalous Libels, and do continue such their unlawful and exorbitant Practices, endeavouring thereby to Traduce and Reproach the Ecclesiastical and Temporal Government of this Kingdom, and the publick Ministers of the same, and the Proceedings and Members of both Houses of Parliament, and other our loving Subjects, to the high Dishonour of Almighty God, and the endangering the Peace of these Kingdoms, contrary to the said Statutes, and the common Laws of our Realm: We therefore (with the Advice of our Privy-Council) do by this Our Royal Proclamation Charge and Command all our Subjects, of what State or Condition soever they be, That they do not henceforth presume, either by Writing, Printing or Speaking, to tell or publish any false News or Tales, contrary to the Statutes before-mentioned; nor Write, Print, Publish or Sell, or cause to be Written, Printed, Published or Sold, any Heretical, Blasphemous, Irreligious, Treasonable, or Seditious Books, Papers or Pamphlets, or any scandalous Libels, reflecting upon us, or upon the Ecclesiastical or Temporal Government of this Realm, or any of our publick Ministers or Officers, or on the Proceedings of either of our Houses of Parliament, or any the Members thereof, or upon any other of our loving Subjects. And we do hereby further declare, That we will proceed with the utmost Severity and Rigor of Law, against all such Persons who shall be Guilty of any the malicious and unlawful Practices aforesaid: We being resolved, as much as in us lies, to suppress the said Enormities by a more strict and exemplary Punishment of all such Offenders herein, as shall here-

‘ hereafter be discovered : To the Discoverers where-
 ‘ of we will give all due Encouragement. And we
 ‘ do hereby straightly charge and command all and
 ‘ singular our Judges, Justices of the Peace, Sher-
 ‘ riffs, Mayors, Bailiffs, and all other our Officers
 ‘ and Ministers whatsoever, to take effectual Care
 ‘ for the speedy Apprehension, Prosecution and
 ‘ Punishment of all such Persons, who shall at any
 ‘ Time hereafter be found Offenders herein.

*Given at Our Court at Whitehall, the Twenty
 Sixth Day of March, 1702. In the First Year
 of Our Reign.*

GOD save the QUEEN.

Mr. Dodd. Now read the Second. Read the
 Date first.

Clerk Reads.] *Given at our Court at St. James's,
 the Five and Twentieth Day of February, 1702.
 In the First Year of Our Reign.*

*By the Queen, a Proclamation for the Encouragement
 of Piety and Virtue, and for the Preventing and
 Punishing of Vice, Prophaneness and Immorality.*

ANNE R.

‘ **W** Hereas on our Accession to the Throne, we
 ‘ thought fit, by the Advice of our Privy-
 ‘ Council, to Issue out our Royal Proclamation for
 ‘ the Encouragement of Piety and Virtue, and for
 ‘ the Preventing and Punishing of Vice, Prophan-
 ‘ eness and Immorality. And whereas we have been
 ‘ informed, That our Laws mentioned in the said
 ‘ Proclamation have not been executed according to
 ‘ our just Expectation and Commands : We most se-
 ‘ riously and religiously considering, That it is an
 ‘ indispensable Duty on us, to be careful, above all
 ‘ other things, to preserve and advance the Honour
 ‘ and Service of Almighty God, and to discourage
 ‘ and suppress all Vice, Prophaneness, Debauchery
 ‘ and Immorality, which are so highly displeasing
 ‘ to God, so great a Reproach to our Religion and
 ‘ Government, and (by Means of the frequent ill
 ‘ Examples of the Practicers thereof), have so fatal
 ‘ a Tendency to the Corruption of many of our
 ‘ loving Subjects, otherwise religiously and virtu-
 ‘ ously disposed, and which (if not timely reme-
 ‘ died) may justly draw down the Divine Vengeance
 ‘ on us and our Kingdoms : We also humbly ac-
 ‘ knowledging, That we cannot expect the Blessing
 ‘ and Goodness of Almighty God, (by whom Kings
 ‘ and Queens reign, and on which we entirely rely)
 ‘ to make our Reign happy and prosperous to our
 ‘ self and our People, nor hope for the Divine Assis-
 ‘ tance to deliver us from the great and imminent
 ‘ Dangers which our Kingdoms, and the true Pro-
 ‘ testant Religion established among us, are in this
 ‘ present Juncture threatned with, without a religi-
 ‘ ous Observance of God's Holy Laws. To the In-
 ‘ tent therefore that Religion, Piety, and good
 ‘ Manners may (according to our most hearty De-
 ‘ sire) flourish and increase under our Administra-
 ‘ tion and Government; We have thought fit (by
 ‘ the Advice of our Privy-Council) to issue this our
 ‘ Royal Proclamation; and do hereby declare our
 ‘ Royal Purpose and Resolution to discountenance
 ‘ and punish all manner of Vice, Prophaneness and
 ‘ Immorality in all Persons, of whatsoever Degree
 ‘ or Quality, within this our Realm; and particu-
 ‘ larly in such as are employed near our Royal Per-
 ‘ son: And that for the greater Encouragement of
 ‘ Religion and Morality, we will, upon all Occasi-
 ‘ ons, distinguish Persons of Piety and Virtue by

‘ Marks of our Royal Favour. And we do expect
 ‘ and require, That all Persons of Honour, or in
 ‘ Place of Authority, will give good Example by
 ‘ their own Virtue and Piety, and to their utmost
 ‘ contribute to the discountenancing Persons of dis-
 ‘ solute and debauched Lives; that they being by
 ‘ that Means reduced to Shame and Contempt, for
 ‘ their loose and evil Actions and Behaviour, may
 ‘ be thereby also enforced the sooner to reform their
 ‘ ill Habits and Practices; and that the visible Dis-
 ‘ pleasure of good Men towards them, may (as far
 ‘ as it is possible) supply what the Laws (probably)
 ‘ cannot altogether prevent. And we do hereby
 ‘ strictly enjoin and prohibit all our loving Subjects,
 ‘ of what Degree or Quality soever, from playing
 ‘ on the Lord's Day at Dice, Cards, or any other
 ‘ Game whatsoever, either in publick or private
 ‘ Houses, or other Place or Places whatsoever; and
 ‘ do hereby require and command them, and every
 ‘ of them, decently and reverently to attend the
 ‘ Worship of God on every Lord's Day, on Pain
 ‘ of our highest Displeasure, and of being proceed-
 ‘ ed against with the utmost Rigor that may be by
 ‘ Law. And for the more effectual reforming of
 ‘ all such Persons, who by Reason of their dissolute
 ‘ Lives and Conversations are a Scandal to our King-
 ‘ dom; our further Pleasure is, and we do hereby
 ‘ strictly charge and command all our Judges,
 ‘ Mayors, Sheriffs, Justices of the Peace, and all
 ‘ other our Officers and Ministers, both Ecclesiastical
 ‘ and Civil, and all other our Subjects, whom it
 ‘ may concern, to be very vigilant and strict in the
 ‘ Discovery, and the effectual Prosecution and Pu-
 ‘ nishment of all Persons who shall be guilty of ex-
 ‘ cessive Drinking, Blasphemy, profane Swearing
 ‘ and Cursing, Lewdness, Prophanation of the
 ‘ Lord's Day, or other dissolute, immoral or disorderly
 ‘ Practices; and that they take care also effe-
 ‘ ctually to suppress all Bawdy-Houses, publick Ga-
 ‘ ming-Houses and Places, and other disorderly
 ‘ Houses; and to put in Execution the Statute made
 ‘ in the Nine and Twentieth Year of the Reign of
 ‘ our late Royal Uncle King Charles the Second, En-
 ‘ titled, *An Act for the better Observation of the
 ‘ Lord's Day, commonly called Sunday*; and also an
 ‘ Act of Parliament made in the Ninth Year of the
 ‘ Reign of our late dear Brother King William the
 ‘ Third, Entitled, *An Act for the more effectual
 ‘ suppressing of Blasphemy and Prophaneness*; and all
 ‘ other Laws now in Force for the punishing and
 ‘ suppressing any of the Vices aforesaid; and also
 ‘ to suppress and prevent all Gaming whatsoever,
 ‘ in publick or private Houses on the Lord's Day;
 ‘ and likewise that they take effectual Care to pre-
 ‘ vent all Persons keeping Taverns, Chocolate-
 ‘ Houses, Coffee-Houses, or other Publick Houses
 ‘ whatsoever, from selling Wine, Chocolate, Coffee,
 ‘ Ale, Beer, or other Liquors, or receiving or per-
 ‘ mitting Guests to be or remain in such their
 ‘ Houses on the Lord's Day, (except in Case of
 ‘ Necessity and Charity) as they will answer it to
 ‘ Almighty God, and upon Pain of our highest
 ‘ Displeasure. And for the more effectual Proceed-
 ‘ ing herein, we do hereby direct and command all
 ‘ our Judges of Assize and Justices of the Peace, to
 ‘ give strict Charges at their respective Assizes and
 ‘ Sessions, for the due Prosecution and Punishment
 ‘ of all Persons that shall presume to offend in
 ‘ any the Kinds aforesaid; and also of all Per-
 ‘ sons that, contrary to their Duty, shall be
 ‘ remiss or negligent in putting the said Laws in
 ‘ Execution; and that they do at their respective
 ‘ Assizes

‘ Affizes and Quarter-Sessions of the Peace, cause this our Proclamation to be publickly read in open Court immediately before the Charge is given. And we do hereby further charge and command every Minister in his respective Parish-Church or Chapel, to read or cause to be read this our Proclamation, at least Four Times in every Year, immediately after Divine Service, and to incite and stir up their respective Auditories to the Practice of Piety and Virtue, and avoiding of all Immorality and Prophaneness. And to the End that all Vice and Debauchery may be prevented, and Religion and Virtue practised by all Officers, private Soldiers, Mariners, and others, who are employed in our Service by Sea or Land; We do hereby strictly charge and command all our Commanders and Officers whatsoever, That they do take care to avoid all Prophaneness, Debauchery, and other Immoralities; and that by their own good and virtuous Lives and Conversations, they do set good Examples to all such as are under their Care and Authority; and likewise take care of and inspect the Behaviour of all such as are under them, and to punish all those who shall be guilty of any the Offences aforesaid, as they will be answerable for the ill Consequences of their Neglect herein.

GOD save the QUEEN.

Mr. Dodd. My Lords, There are two subsequent Proclamations pressing Magistrates to put the Laws in Execution in this Case; but they are to the same Purpose, therefore I think we need not spend your Lordships Time to read them: They are to the same Purpose with the last, taking notice that the Magistrates had not done their Duty as required.

My Lords, We have now done our Defence; only we have one Petition to make, That your Lordships would be pleased to hear the Doctor speak for himself: There are some things more proper for him to give an Account of, than for his Council. We apprehend the most proper Time will be after the Gentlemen Managers for the House of Commons have replied; but we thought it proper to mention it to your Lordships now, and humbly submit it to your Lordships.

Mr. Phipps. My Lords, The Reason why we troubled your Lordships with reading those Proclamations, was to shew your Lordships, that the inferior Magistrates being negligent of their Duty in putting the Laws in Execution against Prophaneness, her Majesty put out another Proclamation to quicken them to it; therefore when the Doctor charges the Magistrates with a Neglect of their Duty, it cannot be understood to be a Reflection on the Queen or the Ministry, because you see what great Care her Majesty has taken: So that we think this last Article is sufficiently clear'd by these Proclamations. One thing, my Lords, I think we have not troubled your Lordships with, and that is the Journal of your own House in the Case of Sir Samuel Barnardiston: If the Gentlemen of the House of Commons think it is otherwise, we are ready to read it.

Sir Joseph Fekyll. My Lords, I have the Commands of the Gentlemen employed in this Service with me, to mention to your Lordships, that they are under a great Surprize, that the Council for the Doctor should take upon them to propose to your Lordships, that the Doctor might speak after the Commons Reply: I have Instructions (since the Doctor's Council have referr'd some Part of the Defence to himself) to tell the Doctor, that if he has any thing to say for himself, now is his Time,

before the Commons reply; the Commons claiming it as their Right to speak last.

Mr. Dodd. My Lords, We submit to it. Doctor, go on.

Dr. Sacheverell. MY Lords, The Defence made by my Council has been so full and particular, and the Tryal it self drawn out into so great a Length, that I should not add to your Lordships Trouble by saying any thing for my Self, did I not think that in such a Cause as this, (wherein the Doctrine of our Church, the Dignity of that Holy Order to which I belong, and even the Common Interest of Christianity it self, are so nearly concern'd) it becomes me not to be altogether silent.

For, my Lords, it has been own'd by some of the Managers for the Honourable House of Commons, that tho' I am the Person Impeach'd, yet my Condemnation is not the Thing principally aim'd at. I am, it seems, an insignificant Tool of a Party, not worth regarding; the avow'd Design of my Impeachment is, by the means of it to procure an Eternal and Indelible Brand of Infamy to be fix'd, in a Parliamentary Way, on all those who maintain the Doctrine of Non-Resistance, and to have the Clergy directed what Doctrines they are to Preach, and what not. And therefore, as Insignificant as I am in my Self, yet the Consequences of my Tryal (if rightly represented to your Lordships by some of those Gentlemen) are of the highest Moment and Importance.

Since I am the unfortunate Occasion of bringing these Matters in Judgment before your Lordships, it will behove me, I think, after what has been pleaded in my Behalf by my Council learned in the Law, to say somewhat also for my Self, in order to clear the Innocence of my Intentions, and remove that Load of Guilt and Infamy, which may be laid upon me, should your Lordships determine, (as, I trust in God, you will not) that the Articles of Impeachment Exhibited, have been made good against me.

With your Lordships Permission then, I shall lay before you some few General Remarks, which in my humble Opinion may be added to what my Council have already observ'd, concerning the Methods taken by the Managers for the Honourable House of Commons, to Prove and Support the Articles of their Charge. And shall then, with your Lordships leave, say somewhat severally to the Articles themselves, which may serve to remind your Lordships of what my Council before offer'd more at large, and with greater Advantage.

My Lords, The Charge brought against me in these Articles is of a very High, and Heinous Nature; and had it been as clearly made out, as it has been strongly affirm'd, it would justly have expos'd me to a very severe Sentence. But the more heinous the Charge is, the more evident and undeniable, I should think, the Proof ought to be. And how, my Lords, has this Charge been supported in the several Articles of it? By plain, direct, and express Passages produc'd, and read to your Lordships out of my Sermons; or by Intendments, unnecessary Implications, and strain'd Constructions? By laying entire Sentences before your Lordships, and relying upon what was manifestly contain'd in them; or by piecing broken Sentences, and conjoining distant and independent Passages, in order to make me Speak, what I never thought of?

I am unacquainted, my Lords, with the Methods of *legal Proof*, and little thought I should have had *this Occasion* of enquiring into them. But, as far as I am able to comprehend any Thing of this Nature, I should think, that there cannot be a *clearer Indication* that I am not guilty of having asserted what I am charg'd by the several Articles to have said, than that so many *Hours Learning* and *Eloquence* have been employ'd in proving me to have said it. Had I really affirm'd those Propositions for which I am accus'd, my Sermons being before your Lordships, the Places wherein such Propositions were directly contain'd, might have been referr'd to, and read, with the same Ease as my *Council* referr'd to the Passages contain'd in the several *Writings*, and *Sermons* of the *Reverend Fathers*, and other *Eminent Divines* of our Church, wherein they Taught the *Doctrine of Non-Resistance* in the same Extent as I maintain'd it, or in Terms much stronger.

These Passages produc'd by my *Council*, were barely Read to your Lordships: No *Argument*, no *Colours* were us'd, because none were necessary, to prove what Propositions were laid down in those Passages. Whereas, to prove me guilty of having asserted what is laid to my Charge, after my *Sermons* and *Prefaces* were read to your Lordships, much Art and Industry were us'd to persuade your Lordships, that such Assertions were really contain'd in them.

My Lords, When my Words were capable of Two Senses, the *worst* and most *invidious*, though at the same Time the most *strain'd* and *unnatural Construction*, has been always made of them. Nay, when my Words were so *plain* and *express*, that it was impossible to put any *criminal Glosses* or *Colours* upon them, I have been accus'd of meaning the *direct contrary* to what I have said: And when I press'd the Duty of *Allegiance to the Queen*, your Lordships were told, that it was most *certain*, I meant the *Pretender*.

To Aggravate my Guilt, I have been accus'd not only for what I am *suppos'd* to have said, but for what I am allow'd *not* to have said: Not only for what I have taken notice of in my *Sermons*, but for what I have *pass'd* by *unobserv'd*: I have been charg'd with *Negative Crimes*; as if what I omitted to say, had been omitted with *Design*, and my Silence it self were *Criminal*.

These, my Lords, are the Methods, that have been made use of to prove me guilty of *Crimes*, which if prov'd, might affect my *Liberty* and *Fortune*; no *favourable Allowances* have been made to a *Minister of the Gospel*, discharging the Duty of his *Function*, and rebuking *Vice* and *Irreligion* with an *honest* and *well-meant Zeal*, but sometimes perhaps carrying him into Expressions too open, and unguarded. I could add, my Lords, if such a Complaint might not be thought *improper* from one in my *Circumstances*, that, in the course of my Accusation, I have been stil'd a *Criminal*, and treated as such by some of these *Honourable Gentlemen*, with a Degree of *Scorn* and *Indignity*, from which I hop'd my *Sacred Profession*, my *present unhappy Condition*, and a *Regard* to this *Solemn* and *Awful Judicature* might have screen'd me.

But, my Lords, I lay aside all *Complaints* of this Nature, and with your Lordships Leave shall proceed to make some few, short Observations upon the several *Branches* of the Charge Exhibited against me.

I am charg'd, my Lords, in the *first Article*, with having Maintain'd, *That the necessary Means*, us'd to bring about the *late Happy Revolution*, were *Odious and Unjustifiable*; in Proof of which it has been urg'd, that I have in *General Terms* asserted, *the utter Illegality of Resistance to the Supreme Power* upon any *Pretence whatsoever*. My Lords, the *Resistance* in that Passage by me condemn'd, is no where by me applied to the *Revolution*; nor is it applicable to the Case of the *Revolution*, the *Supreme Power* not being then *resisted*.

My Lords, I neither expressly apply'd my *Doctrine of Non-Resistance* to the Case of the *Revolution*, nor had I the least Thoughts of including the *Revolution* under my general Assertion. I express'd this *Doctrine* in the same general *Terms*, in which I found it deliver'd by the *Apostles of Christ*. I taught it as I had learnt it, from the *Homilies* of our Church, and as I was enjoin'd to teach it, by the *Articles* of our Religion. I us'd no other *Language*, than what had been us'd by our *first Reformers*, by a continued Series of *Right Reverend Prelates*, and other *Celebrated Divines* now with God, and by many of those *Venerable Fathers*, before whom I stand, and what is perfectly agreeable to the *Laws* and *Statutes* of this Realm. I had little Reason to apprehend that I could ever have been accus'd by the *Gentlemen of the House of Commons* to your Lordships as a *Criminal*, or as an *Asperser of the Memory of the late King*, for preaching this *Doctrine*; when others, who preach'd the same *Doctrine*, in the same *Terms*, before their late *Majesties*, before our present *Gracious Sovereign*, (whom I pray God long to Preserve!) before each *House of Parliament*, before this very *House of Commons*, have met with *publick Approbation*: But since it is my *singular Misfortune* to be *Accus'd*, for what others have receiv'd *Thanks*, in some Instances convey'd to them by several of the *Managers themselves*, I do with all humble Confidence rely upon your Lordships *Justice*; not doubting but that the *Learned Judges*, if thought necessary to be consulted, will declare, what I have in this Case asserted, to be warranted by *Law*, and the *Right Reverend the Bishops* will affirm it to be the *Doctrine of the Gospel*.

The *Doctrine* I preach'd being the *Doctrine of the Homilies* of our Church, not express'd only in a few particular Passages of those *Homilies*, but perfectly agreeable to the *whole Tenor*, the main Scope and Design of them; and those *Homilies* being established by the *Thirty Nine Articles*, as containing godly and wholesome *Doctrine*; and those Articles being confirm'd by the 13th of *Queen Elizabeth*; and that Statute being made *Perpetual* and *Fundamental* to our Constitution by the *late Act of Union*; I leave it to your Lordships to consider, how far the *Condemnation of me*, on the Account of that *Doctrine*, may affect, and shake the *present Frame* of the *British Constitution*, in Church and State, and tend to dissolve the *Union of the Two Kingdoms*.

My Lords, Upon the *second Article*, I would humbly pray your Lordships to consider, that I have no where in my Sermon shewn any the least Dislike of the *Indulgence granted by Law to Dissenters*; that, on the contrary, I have declar'd my *Approbation* of it in the most *express Terms* imaginable, which I beg leave once more to repeat to your Lordships out of my Sermon preach'd at *St. Paul's*. I would not (I there say) be *misunderstood*,

as if I intended to cast the least invidious Reflection upon that Indulgence which the Government hath condescended to give them; which I am sure, all those, who wish well to our Church, are ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law hath prescrib'd.

My Lords, This then was, and still is my sincere Opinion; nor am I conscious that I have uttered one Word inconsistent with it. I have indeed blam'd, and perhaps with some Warmth and Earnestness blam'd, the Abuses, which Men of no Conscience, have made, of the Legal Exemption, granted to Consciences truly scrupulous: Nor could I think that those Reprehensions of mine, would have drawn upon me the Displeasure of any sincere Christian, which were levell'd against Hypocrites, Socinians, Deists, and such as, under the Umbrage of that Act, which permits Protestant Dissenters, and those only, to serve God, every Man in his own Way, think themselves a Liberty to be of no Protestant Congregation, of no Religion at all. I will farther ingenuously own to your Lordships, that I had in my Eye some Abuses made of that Act by the Dissenters themselves; who, I am told, do (both Pastors and People) rarely observe the Qualifications prescrib'd by that Act; and who erect Seminaries for educating Youth in Principles opposite to the Doctrine, Discipline, and Worship of our Church: Whereas that Act, was intended for the Ease of those, whose Minds through the unhappy Prejudices of Education, were already estranged from the Church; not, as I humbly conceive, to indulge Men in taking the most effectual Methods to Propagate and Perpetuate their Schism.

My Lords, Of any Favours to Dissenters granted, or intended by the Law, I have no where complain'd. Of Toleration, a Word unknown to our Laws, and implying, as I am inform'd, much more than our Lawgivers design'd, if I have said any Thing Offensive, I may, I hope, reasonably presume, that it will not be judg'd by your Lordships in any wise to reflect on that Act of Exemption, which I have spoken of in Terms, no ways, I think, misbecoming a good Subject, or betraying any want of Christian Moderation. Nor is there, my Lords, any want of it, I conceive, in affirming that this Act, which relieves some Dissenters from legal Punishments, to which they were before obnoxious, hath not any ways alter'd the Nature of Schism, or extinguish'd the Obligations to Church Communion; which is an Evangelical Duty, incumbent on all Christians, by the Rules of the Gospel, Antecedent to all Secular Laws, and can by no human Power be Dispens'd with. If the Church of England, my Lords, imposes no unlawful Terms of Communion, as She certainly does not, then all Separatists from her Communion, will, notwithstanding the Indulgence, continue to be Guilty of Schism; The Consequence of which Guilt, may still rest upon their Souls, however it may cease to Affect their Bodies or Estates. For as no human Law can render that Lawful which God hath forbidden, so neither can it make that Void, which God hath commanded.

My Lords, I am accus'd, under this Head, of maintaining, that it is the Duty of Superior Pastors to Thunder out their Ecclesiastical Anathema's against Persons entitl'd to the Benefit of the Toleration; I hope, it hath evidently appear'd to your Lordships, that I advance no such Position. Sure I am, that my Words do not in themselves carry such a Meaning, nor does the Connexion of my Discourse require that Sense, or easily admit it. Schism

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maticks, my Lords, are not the only Persons against whom Ecclesiastical Censures may be denounced; the Works of Darkness, which I refer'd to, as fit to be reprov'd, in that Part of my Sermon, where I speak of these Censures, are of the same Kind with those mentioned by the Apostle, whose Words I produc'd, all lewd and immoral Practices, against these, my Lords, and against Heresies, and Blasphemies (a black Catalogue of which has been display'd before your Lordships) I thought the Anathema's of the Church would be well employ'd; such Anathema's, I doubt not, my Lords, would be ratified in Heaven, and would therefore, by any Power on Earth, be irreversible.

As to Archbishop Grindal, though I may seem to have us'd some undue Asperity of Expression concerning him, yet I charg'd him with nothing but what I had good Grounds for, from our Historians: It hath been made appear to your Lordships, that, on the Account of his Remissness in Church-Government, he liv'd and dy'd under the High Displeasure of Queen Elizabeth; and whether therefore he, or that glorious Queen, shall bear the Blame of his Disgrace and Sufferings, is with all Humility submitted to your Lordships.

I hope, my Lords, I stand clear in your Opinions, of the Charge advanc'd against me, in the two first Articles; and as my own Conscience acquits, so I trust your Lordships will acquit me, of whatever is laid to my Charge in the Third.

My Lord, I neither have suggested, nor do in my Conscience believe, that the Church is in the least Peril or Adversity from Her Majesty's Administration. So far am I from any such Thoughts, that I am entirely satisfi'd of Her being a most affectionate Nursing-Mother to it. But I hope I may say without Offence, that the Church may be in Peril from other Causes, without any Reflection upon Her Majesty's Government, or any Contradiction to Her Royal Proclamation, and the Resolution of both Houses of Parliament, four Years ago. If the Church be in Danger, when the Christian Religion is evidently so, I hope it will be thought no Crime to say, it has scarce ever been in greater Danger than it is now, since Christ had a Church upon Earth. For besides that Deluge of Profaneness and Immorality, which overspreads the whole Kingdom; besides the Variety, and growing Strength of those Schisms which weaken and divide us, and of those Heterodox Opinions, and damnable Heresies, which are daily publish'd and propagated among us; I verily believe, that never were the Ministers of Christ so abus'd and vilify'd, never was the divine Authority of the Holy Scriptures so arraign'd and ridicul'd, never were Infidelity and Atheism it self so Impudent and Barefac'd, never were such horrid Blasphemies printed in any Christian State, from the Foundation of Christianity to this Day.

Out of the many Instances of this Kind, which, being ready at hand, I could have produc'd to your Lordships, I have Select'd a few only; but those such, as I am persuad'd your Lordships could not hear without Horror and Astonishment. Pardon me, my Lords, if my Apprehension of the sad Consequences we may expect from such crying Abominations, have forc'd from me some Expressions, which upon a less Occasion might seem too harsh and vehement. A Man that dreads no Danger from such unparallel'd Iniquities, that do as it were call down God's severest Judgments upon that poor Church and Nation, wherein they are openly and daringly committed, must be dead in his Love for his Coun-

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try and Religion. If I have disclos'd such a frightful and detestable Scene of Impiety, which by reason of your Lordships high Stations and great Employments, might possibly lie undiscover'd to your Sight before; I shall think my self happy, whatever shall befall me, if I may by God's Grace become the mean Instrument, of putting a Stop to that overflowing of Ungodliness and Blasphemy, which as yet no Law, no Proclamations, how well soever design'd, and how often soever repeated, have been able to restrain.

Nor ought I, my Lords, to forget, tho' it was forgotten by the honourable Managers, another Ground of Danger arising to this Church from the Attempts of Popish Emissaries, by me mention'd, I hope without the least Offence, in my Sermon at St. Paul's; where I say, *It were highly to be wish'd that those excellent Laws, made for the Defence and Security of the Church, were at present put strictly in Execution; for the Roman Catholick Agents, and Missionaries, that swarm about this great City, as 'twere in Defiance and Contempt of them, were never more busy in making Proselytes to their Superstition and Idolatry, and perverting and debauching Her Majesty's Subjects in every Corner of our Streets.* I have not, my Lords, been called upon to prove the Truth of this Passage, nor has it been reckon'd among the false Insinuations I have made that the Church is in Danger. I pray God, the Church may be in no Danger, upon any of these Accounts! Her Majesty, your Lordships, and the Commons, have indeed provided against these Dangers by wholesome Laws, and I hope, I did not exceed the Limits of my Function, when, being call'd to Preach before Magistrates, I exhorted them to prevent these Dangers, by putting those Laws strictly in Execution.

Just had been the Indignation of the Honourable House of Commons, Just would be your Lordships most severe Resentments, if by any Parallel by me drawn, I had insinuated that the Members of both Houses, who pass'd the Vote concerning the safe and flourishing Condition of the Church, had been then conspiring its Ruin. I have already purg'd my self from this Imputation, by observing, that the Parallel, ascrib'd to me, implies, that they who Voted King Charles the First to be out of Danger, and those who Conspir'd his Death, were the very same Persons, whereas it is certain they were not; for, my Lords, the Vote about the King's Safety was pass'd by Lords and Commons an Year and half before his execrable Murther, which had been contriv'd by the Army, and was perpetrated by a pretended Ordinance of a small Remnant of the House of Commons (not a tenth Part of the whole) after the rest of the Members had been Imprison'd or Secluded, and without the Concurrence of the House of Peers, who totally rejected it. You have had, my Lords, a very different Representation of this Fact made by one of the Learned Managers: But this, my Lords, is the real Truth, as recited in the Act of Parliament for the Attainder of the King's Murtherers; and is an Evidence, that I could not possibly mean by any odious Parallel to insinuate, that the Members of both Houses, who pass'd the Vote concerning the Safety of the Church, were then conspiring its Ruin.

I humbly crave your Lordships Patience yet a little farther, whilst I speak to what is alledg'd in the Fourth Article, which charges me with many Crimes of a very high and flagrant Nature; none of which have been endeavour'd to be prov'd upon me, otherwise than from suppos'd Suggestions, and unde-

termined Expressions; and I must still, with your Lordships Leave, humbly insist upon it, that where the Expressions are doubtful, there the favourable Sense, is always to be preferr'd.

After all that has been said by the Learned Managers for the Commons, What Minister of State, I beseech your Lordships, have I been prov'd to Reflect upon, directly or indirectly? Where, and how do I, by any Suggestion, charge Her Majesty, or those in Authority under Her, with a general Male-Administration? How do I persuade Her Subjects to keep up a Distinction of Parties and Factions, while I reprove those who divide us by knavish Distinctions, and while I persuade my Fellow-Subjects to lose and forget them? How is it possible, I should stir up the People to Arms and Violence, when I am endeavouring to convince them of the utter Illegality of Resistance upon any Pretence whatsoever? These Things, my Lords, seem to be Inconsistent, unless a Man may be thought a Rebel for recommending Loyalty, or Seditious for preaching against Sedition.

I remember, indeed, at the Opening of this Charge against me, that one of the Managers for the House of Commons, vouchsaf'd to offer his charitable Assistance towards Reconciling this seeming Inconsistency; for he was pleas'd to suppose that, when I spake against resisting the Sovereign, I had not our gracious Queen, but some other Person in view; and that I might therefore agreeably to my Principles of Non-Resistance, stir up the People to Arms and Violence against Her sacred Majesty. Your Lordships will once more pardon my Earnestness, if I call God to witness, that I utterly detest any such traiterous Intention; and I should in my own Opinion be unworthy of the Name of a Christian, if I could give my self leave to cast such a black, and groundless Imputation upon any one in like Circumstances with mine, who had given all possible Evidences of his Duty and Affection to the present Government. My Lords, I have taken the Oaths of Allegiance to Her Majesty, and that of Abjuration against the Pretender; and when therefore I preach'd the Doctrine of Non-Resistance, it is most apparent, that the Government, which I persuaded my Fellow-Subjects not to Resist, is the present Government; and I humbly conceive, that the present Government can never be Overturn'd, if it be never Resisted.

How true a Zeal and Affection I have always born to her Majesty's Person and Government, I leave to be judg'd by your Lordships, and the whole World, from those publick Demonstrations which I have given of it, at all Times, when I had occasion to make mention of either. I hope your Lordships will pardon me, if I refer to some of my own printed Expressions, as an evident Proof of my unfeigned Duty and Allegiance. "If, to call it the "most inestimable Blessing this Nation could enjoy, that Her Majesty, the good and pious Relict "of the Royal Family, sits now happily upon the "Throne of Her Ancestors; If to Pray, that God "may long preserve Her for the Comfort and Support of the Church, as the only Security, under "God, it has to depend upon; If, earnestly to contend for the Safety, Rights, and Establishment of "Her Majesty, together with those of the Church; "If, to vindicate Her Majesty's Title to the Crown "against the Usurpations, Pretences, and Encroachments of Her Adversaries, and to assert Her "Right to the Throne to have been so clear, manifest, and undoubted, that even Her worst Enemies (could such a pious Princess be suppos'd to "have

“have any) must acknowledge it; That She was proclaimed as ’twere by the Voice of God, in the universal Joy, Satisfaction, and Unanimity of Her Subjects; that Her *personal Merit* exempted from *that*, made Her worthy of a brighter Diadem than She wears; If, to persuade Her Subjects with the most hearty Zeal, and Generosity, to enter into a necessary War, for the Defence of Her Majesty, and the common Preservation of our Church, Liberties, and Constitution, against a powerful Adversary; If, to beseech God to prosper so good an Undertaking, to give an happy Event and Issue to such a Rightful Cause, to crown our Arms with Victory, and to make them as successful, as they are just and honourable; And that, in order to this, we are all bound, both in Duty to God and our Sovereign, as well as by our own Interest, unanimously, and heartily to assist and support her under this great Undertaking, as far as our Prayers, and Estates, Lives, and Fortunes can serve Her; If, to persuade Her Subjects, that the great and threatening Dangers of our Enemies, should have that just Effect upon us, to unite us, as much in our Resolutions and Affections, as they do in our common Interests, Apprehensions, and Troubles; If, to set out the Blessings we enjoy in the wise Constitution of our Government and Laws, in the most refin’d Policies of our Parliament and Ministry, in the Strength and Number of our Armies, Fleets, and Confederates, in the Care and watchful Vigilance, the Courage, Resolution and Conduct of our General, and *above all* in the Piety and Prudence of our most gracious QUEEN; If, to affirm that She daily gives fresh Instances of Her Wisdom, in the happy Administration of Her Government, and in nothing more shews Her Policy, and distinguishing Judgment, than in making Choice of such Ministers of State, who are acceptable to their Country, and express such a Zeal and Steadiness in its Service and true Interests, and whom nothing could Bribe, or betray into a Party, wherein it might any ways seem to be endanger’d; If, with the most ardent Requests to implore God’s Providence, which through so many Dangers and Difficulties has rais’d up, and preserv’d Her Majesty, to carry on these glorious Undertakings with Success, that She may be able to Restore and Settle the Peace of Europe, in its just Rights and Limitations; and that, as God has bestow’d a Crown upon Her in this World, as the Reward of these heroick and pious Designs, so, after a long Reign here, he would advance Her to an higher Throne in Heaven, and dignify Her with a glorious and immortal Crown hereafter: If this, my Lords, I say, is *falsely and maliciously to Suggest*, that Her Majesty’s Administration both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution; If this be charging Her Majesty, and those in Authority under Her, both in Church and State, with a general Male-Administration; If this be, as an Incendiary, to persuade Her Subjects to keep up Distinctions of Factions and Parties; If this be Insilling groundless Jealousies, somenting destructive Divisions, and stirring up Her Majesty’s Subjects to Arms and Violence, against any but Her Enemies; then, my Lords, I am Guilty of this Article of Impeachment; otherwise I am innocent.

My Lords, I have always thought it my Duty, upon all publick Occasions, to Assert these Principles of Loyalty and Subjection to the Supreme Power.

er, whenever I had a proper Call so to do; of this there are *numberless Witnesses* in those several Places to which I have belong’d. One of these I beg leave of your Lordships particularly to mention, *Magdalen College* in Oxford, whereof I am at present an unworthy Member; and which by the known Sufferings of the whole Body for the Church and Constitution, contributed as much towards the late happy Revolution as any Society in the Kingdom: To which Honourable Society I humbly appeal for my Character and Behaviour. I could also appeal for the same to a Right Reverend Lord, that now sits on the Bench of Bishops.

Had it been fit to have troubled your Lordships with Evidences of my hearty Affection to the present Government, I could have produced them in great Abundance, from the Persons with whom I have Convers’d, from the Gentlemen whom I have Bred up, and from the Congregations to which I have Preach’d. If my Principles had any Tendency towards Alienating the Affections of Her Majesty’s Subjects, surely some one Instance of my Disloyalty to the QUEEN, some favourable Expressions toward the Pretender, some Indications of my Dislike to the present Settlement, and the Protestant Succession, might have been pitch’d upon, and expos’d to your Lordships, in order to justify the Charge of Sedition against me. But I cannot but with Pleasure observe to your Lordships, that from the whole Course of my Actions, no one Instance of that kind is alledg’d, or so much as pretended.

My Lords, The Charge of wickedly wresting divers Texts of Scripture lies very heavy upon me, as a Christian, and Minister of Christ. If I am Guilty of it, there is another Tribunal, another Bar at which I am to appear, and where by that Scripture, which I have wrested, I shall be Judg’d and Condemn’d. In the mean time, my Lords, I hope that those, whose particular Profession, and Studies qualify them to be the most competent Judges of such Matters, will absolve me in this Particular.

Upon the whole, therefore, my Lords, I hope it appears, that I am not guilty of any of the Crimes of which I am accus’d; that I have Transgress’d no Law of the Land, neither Statute, nor Common Law, relating either to Her Majesty, or to my Fellow Subjects, to the Church, or to the State: And that I may with all Humility apply to my own Case, the Words of that blessed Apostle, whose Doctrine I defend, and whose Example I hope I shall have the Grace to follow, *Neither against the Law, nor against the Temple, nor against Caesar, have I offended any thing at all.*

What I have hitherto humbly offered to your Lordships relates to my Words and Actions; and as to the Thoughts and Intentions of my Heart, which are known only to God, and my own Conscience, and which are affirm’d in my Impeachment to be wicked, seditious and malicious; I call the Searcher of Hearts to witness in the most solemn, and religious Manner, as I expect to be acquitted before God, and his Holy Angels, at that Dreadful Tribunal, before which not only I, but all the World, even your Lordships, who now sit in Judgment upon me, must appear, to be Acquitted or Condemn’d; that I had no such wicked, seditious, or malicious Intentions; that there is nothing upon Earth, I more detest and abhor: That my Designs were, in every respect, directly contrary. I had no Intention to asperse the Memory of His late Majesty, to traduce, or condemn the late Happy Revolution, or to arraign the Resolu-

tions of both Houses of Parliament. So far was I from designing to *undermine and subvert* Her Majesty's Government, and the Protestant Succession as by Law Establish'd, that it was my sincere Intention to exert my best Endeavours for their Security. So far was I from intending, to persuade Her Majesty's Subjects to keep up a Distinction of Parties and Factions, from instilling groundless Jealousies, fomenting destructive Divisions among them, or exciting and stirring them up to Arms and Violence, that my Aim was to persuade them to lay aside all Distinctions, to unite in one, well-compact'd Body, to be Obedient to their Governors, and to support the present Establishment. So far was I from designing to defame Her Majesty's Administration, or to infuse any undutiful Thoughts of Her, that I not only pay Her all Honour and Obedience, but am from the bottom of my Soul zealously, and affectionately Loyal to Her; being entirely persuaded, that the Church is so far from being in Danger from Her, that She is as heartily affected to its Establishment, and Prosperity, as I hope I have always shew'd my self to be to Her Sacred Person, and Government.

As to the Protestant Succession by Law Establish'd, tho' the Doctrine which I preach'd tends to the Security of it, (as I heartily desire every thing by me spoken should tend) yet having no Occasion in either of my Sermons to take Notice of it, I do no where in those Sermons mention it, nor say any thing that can be Interpreted to have any View towards it. Therefore tho' I cannot with my best Application apprehend, how it comes to be said in the Preamble to my Impeachment, that I had design'd to *undermine and subvert* it, yet I shall gladly take this Opportunity, of declaring my self before your Lordships upon that Subject. It is my sincere and hearty Prayer, that God would prolong the Life of Her Most Sacred Majesty, whose Exemplary Goodness and Piety, give us the best Hopes we have of averting that Vengeance, which is due to the Wickedness of the Age we live in; that He would bless Her Councils at Home, and Her Arms Abroad, and make Her Reign exceed that of Her Renown'd Predecessor Queen Elizabeth, in Length, as well as Glory. But when the Inheritrix of the Blessed Martyr's Crown, and Piety, when She, the Desire of our Eyes, and the Breath of our Nostrils, shall full of Years, and Honour, be Gather'd to Her Fathers, and exchange Her Temporal for an Immortal Crown; (since we are deprived of that Prince, Her Royal Offspring, whose Loss no true Lover of his Country, and of the Royal Family can reflect upon without a Bleeding Heart, and whom God in his Anger took from us, because we were unworthy of so inestimable a Blessing,) I earnestly beseech God, in defect of Future Issue from Her Majesty, to Perpetuate the Succession of the Crown, as it is Establish'd in the most illustrious House of Hanover, which I look upon as, next to his Providence, the best Guard we have against Popery and Arbitrary Power, the best Security of our Church, and of the Constitution of our Government, which is the Glory and Happiness of our own Nation, and the Envy of all others. And I cannot yet apprehend, how the Doctrine, which I have taught, tends to weaken or undermine it; nor on the other side, how the Doctrine of Resistance, which brought Her Majesty's Royal Grand-Father to the Block, (supposing it a true Doctrine) comes to be mention'd, or thought of, much less to be industriously maintain'd, as a necessary and indispensable Duty, under the most mild and gracious Administration of the best of Queens. No-

thing seems more strange than that Resistance should be so carefully taught under such a Government, unless it be that Non-Resistance should overturn it.

So far was I therefore from having any of those wicked, malicious, or seditious Designs, which are laid to my Charge, that my Intentions were, on the contrary, to instil the Principles of Loyalty and Obedience into my Fellow-Subjects, and withal to put a stop to that Torrent of Lewdness, Irreligion, and Atheism, of which I have given your Lordships so many flagrant Testimonies.

Those outrageous Insults upon God, and Goodness, are so Provoking, that they may excuse some Heat, and Severity of Expression in a Minister of Christ, who has a just Sense of Religion, a due Concern for the Discharge of his Holy Function, or for the Honour of his Maker and Redeemer. And if any Objection be made against me, for Treating with an Unbecoming Bitterness such Daring Rabsheks, who defy the Living God; I beg leave to Reply in the Words of a Reverend Father of our Church, Let them consider what Moderation, and Temper, a Man had need be of, that in this Nation, and this Age, shall speak against Faction, Rebellion (I add Deism, Trithemism, and all sorts of Heresy, Blasphemy, and Atheism) without extraordinary Severity. Nay, it is our Duty in such Cases, to express our selves with Warmth and Sharpness, according to the Example of our Blessed Saviour; who, tho' Meekness it self, could not but shew the utmost Indignation at the Profaning the House of God. This is not, my Lords, to rail, but to rebuke; and those, who ridicule, or censure us for it, either have not, I presume, or will not own they have, a right Notion of the Dignity of our Office; will not consider, that we are the Ambassadors of Christ, that we are commanded, in his Name, to exhort, and rebuke with all Authority; and that our Authority is deriv'd from those to whom it was said by our Blessed Saviour, He that despiseth you, despiseth me, and he that despiseth me, despiseth him that sent me: Whatever Expressions therefore in my Sermons may have slip'd from me, which seem so far liable to Exception, as to carry a Sense I never intended (as he must be an Happy Speaker indeed, whose Words are altogether unexceptionable) yet I humbly hope, the above-mention'd Provocations will plead my Excuse, or that, at the very worst, some hasty, or even violent Expressions, shall not be deem'd High Crimes and Misdemeanors. I desire it may be farther consider'd by your Lordships, that I could have no Temporal Interests to serve by the Doctrines I advanc'd; and therefore could have no Design in view, but to discharge my Duty to God, as a Minister of Christ, and to my Sovereign, as a Faithful, and Loyal Subject.

My Lords, These Things being humbly offer'd to the Consideration of your Lordships; I hope, that what I have already suffer'd, as a supposed Criminal, will be thought sufficient Punishment for one, who has offended against no Law yet in Being. It must be thought no little Grief, and Vexation to any ingenuous Man, to be brought to this Bar, under the least Suspicion of such Crimes as are laid to my Charge; but for a Person of my Function to have an Accusation of this Nature alledg'd against him, so heinously reflecting upon his Holy Character, is such a foul Blot, as though his Innocence should at last be clear'd by your Lordships, upon the most undeniable Evidence, must leave a Scar upon his good Name; which is to all Men dear, but much

more so to those, whose whole Capacity of doing good in the World principally depends upon it.

My Lords, As the Matter of my Charge was highly criminal, so the Form and Manner of it ran in such general, and uncertain Terms, that 'twas impossible to know the Grounds of my Accusation; or how to defend my self, when I knew not where I should be attack'd. So that after I had provided as particular an Answer as such a general Accusation would admit of, the Commons were pleas'd in their Replication to say, that there were several Things in it Foreign to the Charge. To the great Misfortune of falling under the Displeasure of that Honourable House, I might add, That of a long and close Confinement, and of an Expence no ways proportion'd to my Circumstances. These, my Lords, are Afflictions which can be conceiv'd by no Body so well as by him, who has been so unhappy as to feel the Weight of them. And among these I reckon it not the least of my Sufferings, that I have been for so long a time debarr'd, from taking heed to that Flock, over which the Holy Ghost hath made me an Overseer. For even since I have had my Liberty, by the Favour of your Lordships admitting me to Bail, I have purposely avoided doing any Part of the Duty of my Function, or even appearing in Publick, lest it should occasion any Tumult or Disturbance; as my necessary Attendance on your Lordships from time to time, has since been thought unhappily to have done, without any Fault of mine, or the least degree of Encouragement given by me, which I profess, in the Presence of God, to abhor.

All these Circumstances, my Lords, being consider'd, together, with the Publick Manner, the Length and Solemnity of my Tryal, before so August a Court of Judicature, by which Means I am made a Gazing stock, both by Reproaches, and Afflictions, and a Spectacle to the whole World; I have stood in this Place Day after Day, to hear my self Accus'd of the blackest Crimes, and openly revil'd; I have been represented as a Papist in Disguise, as a Rebel, as an Enemy to Her Majesty's Person and Government, and a Favourer of the Pretender, tho' I have abjur'd him, (but not forgot him, as a Learned Person was pleas'd to say) that is, as the worst of Perjur'd Villains: I have been call'd an insignificant Tool of a Party on the one Hand, and a most dangerous Incendiary on the other, nay, an Angel, that is a Devil, detach'd from the Infernal Regions: All these things, I say, being consider'd, (and your Lordships I am sure, in tender Compassion to me, will consider them,) it is most certain, that, whatever be your Lordships Determination concerning me, I cannot escape without being a very great Sufferer, and I shall have been abundantly punish'd, tho' I should have the Happiness to be by your Lordships at last Acquitted.

Yet I cannot Reflect without Comfort, (the greatest of Comforts next to that of a good Cause, and a good Conscience) that I Answer for my self this Day before the most Illustrious Assembly in the World, the whole Body of the Nobility of Great Britain; whose Princely Extraction, and High Quality, whose Magnificent Titles, and Splendid Fortunes, whose Hereditary Candor and Generosity, inherent in Noble Blood, inseparable from the Birth and Education of Peers; in a word, whose Solid Judgment, and exact Skill in the Laws of this Realm, so eminently Qualify them for the final Determination of Justice; who are neither to be sway'd by Hopes, over-ruled by Fears, nor misled by any False Prejudice or Pas-

sion. If it must be a Man's Misfortune to labour under such hard Circumstances as mine, it is no small Mitigation of them, that he Pleads his Cause before such Judges, who, he knows, will Decide it with the strictest Impartiality, Equity, and Honour.

And when I consider that I now stand, and am Judg'd for some of the Doctrines of that Gospel, which God deliver'd unto our Fathers, and you, my Lords the Bishops, their Successors, have receiv'd from Christ and his Apostles, as the sacred Depositum of the Church, to be Maintain'd inviolably in its Primitive Simplicity; when I consider, what is the Cause for which I am this Day call'd in Question; that it is One of those Eternal Truths, which you are so Solemnly commission'd to Teach, and earnestly Contend for; when I consider, that 'tis what our Blessed Lord and his Apostles seal'd with their precious Blood, and so many Primitive Martyrs maintain'd even in the midst of Flames, so many Learned Bishops, and Confessors recommended to Posterity in their immortal Writings, as the distinguishing Badge, and Glory of our Reformation; nay, when I consider, that 'tis what you your selves have already supported with incontestable Reason, and Authority; it is no small Satisfaction to me to think, that as your Lordships are my Judges, so, I hope in God, you must be my Advocates. What a Guilt, as well as Disgrace, would it justly devolve upon the Clergy, to recede from any Principle of our excellent Church, especially from what has been so long retain'd, and boasted of, as its peculiar Character! By abandoning which we must relapse into some of the worst Doctrines even of Popery it self, and render our selves the most contemptible, as well as inconsistent Church in the World! I think, I may therefore with Confidence use the Words of the Great Apostle to his Accusers; Having obtain'd Help from God, I continue unto this Day, witnessing both to small and great; saying none other Things than those which the Prophets and Moses (I may add, Christ and his Apostles,) did say.

For, my Lords, if I have committed any Faults or Errors in Expression, yet as I insist upon my Innocence with respect to all the High Crimes laid to my Charge, so I must still insist upon all the Doctrines which I have taught, as being agreeable to the Word of God, and to the Doctrine of our most excellent and truly Apostolical Church, and which we of the Clergy are oblig'd both by Subscription, and Oath to acknowledge, and defend. And how hard are our Circumstances, if we must be punish'd in this World for doing that, which if we do not, we shall be more heavily punish'd in the next! What a Condition are we in, if we are commanded to cry aloud and spare not; to exhort, rebuke, in Season and out of Season, on the one Hand, and prosecuted, imprison'd, ruin'd on the other! If this be our Case, who indeed is sufficient for these Things? And how truly may we of the Ministry above all Men living, apply to our selves those Words of the Apostle, If in this Life only we have hope in Christ, we are of all Men most miserable: But our Comfort is, that our Hope in Christ is not only in this Life. Justly might we be reproach'd, and deserve some of those Reflections, which in these Licentious Times are so plentifully pour'd upon us, were we not ready to Practise the Doctrines we preach, of Self-Denial, taking up our Cross, and patient Submission to Sufferings and Afflictions! For my own Part, it matters not what becomes of me, nor is my Deliverance, or Ruin, of any Moment to the World; or, if it be, I am not only ready to be bound, but to dye, could

I by that do Service to my *Queen*, my *Church*, or my *Country*; *neither count I my Life dear, so that I might finish my Course with Joy, and the Ministry which I have received of the Lord Jesus.* But may God so direct your Lordships, that through me a Wound may not be given to the Doctrines of the Scriptures, and of the Church, which Christ hath purchas'd with his own Blood.

And so, with all *Humility* and *Resignation*, I submit my self to your Lordships Judgment; be it what it will: *One Thing* I am sure it can never take from me, the Power of *Wishing* and *Praying*, and (whether in *Prosperity* or *Adversity*, whether I am *Acquitted*, or *Condemn'd*;) I shall always pray for the Queen my Sovereign, for your Lordships my *Judges*, and for the Commons my *Accusers*; most earnestly beseeching Almighty God, to deliver all Orders, and Degrees of Men amongst us, from all *false Doctrine*, *Herefy*, and *Schism*, from *Hardness of Heart*, from *Contempt of his Word*, and *Commandment*; from *Envy*, *Hatred*, and *Malice*, and all *Uncharitableness*.

Then the LORDS Adjourned to their House Above.

Thursday, March 9. The Ninth Day.

THE Lords coming down into Westminster-Hall, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Managers for the House of Commons may proceed to your Reply.

Sir Joseph Jekyll. MY Lords, Doctor Sacheverell and his Council having concluded what they had to offer to your Lordships, I shall enter upon the Province assign'd to me, in further Execution of the Commands of the House of Commons, which is, to Reply to the Defence made for the Doctor to the first Article of the Commons Charge.

My Lords, I shall take Notice, first, of the Concessions made by the Doctor's Council; secondly, of the Exposition they have put upon those Passages of the Sermon, which have been relied on by the Commons to maintain this Article; and, thirdly, of the Acts of Parliament, the Homilies, the Books, the Sermons, the Pamphlets and the Gazettes, which the Doctor's Council have call'd for to be read to your Lordships.

And if I shall satisfy your Lordships, that the Concessions made by the Doctor's Council are a Departure from the Defence made for him in his Answer, that they are extorted by Necessity, and are likely to be retracted when this Turn is serv'd; if I shall shew your Lordships, that their Exposition of the Passages in the Sermon, is contrary to the plain Meaning of those Passages; if I shall shew, that the Acts of Parliament, the Homilies, and the

other Prints that have been produc'd, are either immaterial, or condemn the Doctrine laid down in the Sermon; and if I shall shew, that this Criminal, for so I must call him, since the House of Commons have call'd him so; (whether he will be so in the Event, I agree, rests only in your Lordships Judgment); if, I say, I shall shew he is guilty of a most heinous Offence, I shall not doubt of your Lordships Justice.

My Lords, The Concessions are these, That Necessity creates an Exception to the General Rule of Submission to the Prince: That such Exception is understood or implied in the Laws that require such Submission: And That the Case of the Revolution was a Case of Necessity.

These are Concessions so ample, and do so fully answer the Drift of the Commons in this Article, and are to the utmost Extent of their Meaning in it, that I can't forbear congratulating them upon this Success of their Impeachment; That in full Parliament this erroneous Doctrine of unlimited Non-Resistance is given up and disclaim'd. And may it not, in After-Ages, be an Addition to the Glories of this bright Reign, that so many of those who are honour'd with being in Her Majesty's Service, have been, at your Lordships Bar, thus successfully contending for the National Rights of Her People, and proving they are not precarious or remediless.

But to return to these Concessions; I must appeal to your Lordships, whether they are not a total Departure from the Doctor's Answer; whether there is one Word in the Answer which looks that Way.

In his Answer he takes Notice, that the general Assertion in his Sermon, of the utter Illegality of Resistance, is a colourable Pretence for the Article; but does he add the Restriction or Limitation to it, which hath been now thought necessary, and hath been insisted upon as most material for his Defence? No, my Lords, but the quite contrary; for these are the Words of his Answer, *The said Henry Sacheverell doth with all Humility aver the Illegality of Resistance, on any Pretence whatsoever, to be the true Doctrine of the Church of England.* Now, could any thing have been more material for him in his Answer, than adding these Restrictions to his general Assertion in his Sermon, which his Council now say he intended, tho' he did not express? Or if that was his Intention, could he possibly have forgot it, when the Frame of his Answer was under Consideration?

But now he sees the Resolution of the Commons, and the Endeavours of those who have their Commands to carry on this Prosecution, to bring him to Punishment; now he sees your Lordships daily Attendance upon this Trial, and your Attention to the Charge against him; now he sees, if he had abided by his Answer, he must have been condemn'd, or the Revolution; these are the Motives which have prevail'd upon him to tolerate his Council to make these unwilling Concessions, and have extorted them from him.

And how little these Concessions ought to avail him, your Lordships will see, when you consider how likely it is he will retract them when this Turn is serv'd. May we not then expect he will use this very Argument of Necessity, the Coertion or Restraint he is under by this Prosecution, as an Excuse for these Concessions? And when your Lordships are told, that it is the Duty of Divines (whose Office it is to explain the Scripture to the People)

to inculcate this Doctrine of Non-Resistance in the most unconfined and unlimited Terms they are able, and mentally reserve the Exception to themselves; when Authorities have been produced for asserting this Doctrine in such a manner as to exclude any Exception whatsoever, and the Doctor himself did not expressly come into these Concessions, it is certain they ought not to be of any Avail to him.

Your Lordships will therefore give me Leave to consider the Exposition which hath been put on those Passages, which the Commons relied on for Proof of their First Article: And I shall shew that Exposition to be contrary to the plain Meaning of those Passages.

My Lords, I readily agree, that no strain'd Innuendo's, or suppos'd and forc'd Constructions (which are the Words us'd in the Reason given for reversing the Judgment in Sir Samuel Barnardiston's Case) ought to be admitted, to explain the Meaning of the Doctor, in order to prove him Criminal. I think the Principles laid down upon the Reversal of that Judgment are solid and just; and therefore nothing but express Words, or a necessary Implication collected from a Man's Words, can make him an Offender. But I would not have it gone away with, that there must be express Words of Scandal to make a Man Criminal; indirect or oblique Scandal has in all Times been met with and punish'd in the ordinary Courts of Justice; and if it were otherwise, that which aggravates the Crime (the Subtily or Contrivance of it) would prevent the Punishment: And therefore it is, that Ironical Scandal, nay, even dumb Scandal (Scandal by Pictures, or by Signs) as is mention'd in the Case *de Libellis Famosis*, in my Lord Chief Justice Coke's Fifth Report, is punishable by Law. The only Caution necessary in these Cases is, that the Construction or Interpretation be not strain'd or forc'd. And, my Lords, in this Case we have not only a seditious Meaning plainly collected from the Doctor's Words, but express Criminal Words, a false Suggestion, that his late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance, introduc'd for a malicious and seditious Purpose.

My Lords, The First Article has been rightly divided into Three Parts. The Doctor is charg'd with suggesting and maintaining, First, *That the necessary Means us'd to bring about the Revolution, were odious and unjustifiable.* Secondly, *That his late Majesty in his Declaration disclaim'd the least Imputation of Resistance:* And, Thirdly, *That to impute Resistance to the Revolution, is to cast black and odious Colours on his late Majesty and the Revolution.*

The two last Branches, my Lords, are Particulars. The first is the General; and if the two last are proved, such Proof makes out the first: But I shall consider the Answer given by the Doctor's Council to the Proof of the two last Branches in their Order, and proceed to consider the Answer that has been given to the proper Proofs of the first.

My Lords, The first Proof of this Branch was the general Assertion of *the utter Illegality of Resistance upon any Pretence whatsoever.* It hath been said in Answer to this, that this is spoken of the Supreme Power, which is the Legislative Power, and then there ought to be no Exception whatsoever.

But, my Lords, that the Doctor did not mean the Supreme Legislative Power, but the Supreme Executive Power, is evident.

First, From the Account he presently gives of those that oppose his Principle of Non-Resistance, which runs all along upon the Person of the Prince only, *as cancelling their Allegiance, calling their Sovereign to Account, Dethroning and Marthering him.*

Secondly and Principally, From his bringing in the Case of the Revolution, as urg'd by those who are Adversaries to his Principle of Non-Resistance. Now the Revolution is not, cannot be urg'd as an Instance of the Lawfulness of any thing, but of resisting the Supreme Executive Power acting in Opposition to the Laws; and this the Doctor himself admitted, when he told your Lordships that *the Supreme Power was not then resisted.* This is therefore the Supreme Power he affirms it is utterly unlawful to resist.

But it was said by one of the Doctor's Council, *That the Non-Resistance the Doctor preaches up, is the utter Illegality of Resisting the Supreme Power in all Things Lawful;* for those Words, *in all Things Lawful,* make part of that Sentence. My Lords, I admit they do; but those Words are relative to his Assertion concerning Active Obedience, and not Passive, as will appear by reading the whole Sentence. *The grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power in all Things Lawful, and the utter Illegality of Resistance upon any Pretence whatsoever.* The one dividing Member of the Sentence is, *the Obligation to Obedience in all Things Lawful;* the other, *the Illegality of Resistance on any Pretence whatsoever;* the one is restrain'd, the other unlimited. It must be taken therefore (notwithstanding these Objections) That the Doctor asserts the utter Illegality of Resistance to the Supreme Executive Power, though acting not in Conformity, but in Contradiction to the Laws.

My Lords, I go on to the second Proof of the first Branch of this Article, which is, the Doctor's Insinuation that the Parliament disown'd the Resistance at the Revolution, by *declaring that they set the Crown on the King's Head on no other Title than of the Vacancy of the Throne.* One of the Council thought fit to stand to this Fact, because the Vacancy of the Throne is mention'd in the Bill of Rights; and he says, there is no other Fact there stated. I beseech your Lordships, Does not the same Act take Notice of the Male-Administration of King James, and his Abdicating the Government, as the Means by which the Throne became void? And I may appeal to your Lordships Journal, and the Journal of the House of Commons, whether the Word *Abdicated* was not used rather than the Word *Deserted* (after a Conference between the Two Houses) for this Reason, insisted on by the Commons, that that Word *Abdicate* included in it Male-Administration, which the Word *Desert* did not.

The same Council said, the *Act for preventing Vexatious Suits*, urg'd by the Commons as a Parliamentary Declaration, justifying the Resistance at the Revolution, was only for Indemnifying those that acted at that Time, and was no more than was done in the Reign of Edward the Third, after Edward the Second was Dethroned. This surely is no manner

manner of Answer to the Declaratory Part of that Law, which takes Notice of the King's undertaking a glorious Enterprize, for delivering the Kingdom from Popery and Arbitrary Power; and that divers Subjects, in Aid and Pursuance of that Enterprize, did several Acts of Violence and Resistance; and this Law declares such Acts were necessary, and ought to be justify'd. And I can't but observe this by the way, that the Parliament and the Doctor are of different Opinions; the Parliament thought that Resistance ought to be justify'd; the Doctor thinks not; and if so, then Doctor Sacheverell doth suggest and maintain, that the necessary Means used to bring about the Revolution were odious and unjustifiable.

I come now, my Lords, to the second Branch of the First Article, the Doctor's Assertion, *That his late Majesty in his Declaration disclaim'd the least Imputation of Resistance*; and the Doctor's Answer to it.

My Lords, His Council admit this Assertion is in the Sermon, and that this Assertion is not true; but they say it was a Mistake only in the Doctor, that the Doctor has express'd himself somewhat obscurely, and now he has explain'd himself, that Explanation ought to be receiv'd. The Doctor meant, they say, Conquest; and so he had explain'd himself not only in the Marginal Note, but in the Sermon itself. My Lords, if this were so, I admit it would be a good Defence; but that this was not a Mistake, or rather was a wilful one in the Doctor, and that he thereby design'd to Traduce the Memory of his late Majesty and the Revolution, I shall shew from what his own Council insist on.

They say the Doctor must mean Conquest, because the Prince of *Orange*, who was no Subject, but a Sovereign Prince, could not be said to resist according to the common understanding of that Word. Now, my Lords, it is true, the Prince of *Orange* could not be said to resist, and so could not disclaim Resistance for himself; but could he not be join'd and assisted by the Subjects of the Realm, who might be said to resist, and were invited by him so to do? Doth not this appear by the whole Tenor of his Declaration, and even by the Passages quoted by the Doctor? And since his late Majesty could not be said to resist, but the Subjects, who, upon his Invitation, join'd with him, could; and the Resistance of Subjects is what the Doctor is speaking against; it is plain, that the Doctor speaks of the King's disclaiming the Resistance of those who join'd with him, and not his own Resistance. And therefore I cannot see that the Quotation of the Passage out of the Prince's Declaration, at the bottom of that Page, doth make out that he meant Conquest, by Resistance in his Sermon; or if it did, Would it excuse the Doctor's Preaching this Part of his Sermon, which was done without referring to that Passage?

But it is said, he has explain'd that he meant Conquest by Resistance in the Body of the Sermon, because he says *the Parliament burnt a Libel that would have pleaded the Title of Conquest, by which Resistance was supposed*. But that this Passage doth not make out that he meant Conquest by Resistance, is evident, from his making Resistance not to be Conquest, but only an Ingredient in it. And by representing Resistance and Conquest to be the same thing with the Doctor, he is made to say, that the Parliament burnt a Libel that would have pleaded the Title of Conquest, by which Conquest is supposed.

It is plain therefore that Doctor Sacheverell hath asserted, that his late Majesty in his Declaration disclaim'd the least Imputation of Resistance; and disclaim'd it at a Time, if you'll believe the Doctor, when he was exhorting the Subjects of King *James* to resist, and was joining with them, and encouraging them in it; than which it is impossible there can be a greater Reflection on his late Majesty, or the glorious Cause he then had in Hand.

My Lords, I come now to consider the Proof of the Third Branch of the First Article, and the Answer that has been given to it. The Third Branch is this, *That to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the Revolution*: The Proof is, that Part of the Sermon wherein the Doctor asserts, *That the Adversaries to the Doctrine of Non-Resistance, who urge the Revolution in their Defence, are the greatest Enemies to that and his late Majesty, and the most ungrateful for the Deliverance, in endeavouring to cast such black and odious Colours upon both*. How often must they be told, &c. The Answer to this is, That the Persons the Doctor describes, as casting black and odious Colours on his late Majesty and the Revolution, are not those who impute Resistance to the Revolution, of whom he affirms nothing, but those new Preachers and new Politicians, who teach Antimonarchical and wicked Doctrines, and who urge the Revolution in Defence of 'em.

My Lords, If the Doctor had meant these Persons, he would have shewn them, which he certainly might have done, that what was acted at the Revolution, did not in the least justify their Opinions; but he declining to do this, and placing the Defence of the Revolution on a false Fact, known to be so to himself and to the whole Nation; and this, taken together with his introducing these Men as defending their Principles by the Revolution, leaves the Load of these detestable Opinions on the Revolution, and not only condemns the Resistance at the Revolution, but brands it.

But it is said, my Lords, that the Clause, *Our Adversaries think they effectually stop our Mouths, &c.* relates to the Defence of these Antimonarchical Principles, and not to the general Proposition of the utter Illegality of Resistance upon any Pretence whatsoever; and if so, I agree there is no Foundation for this Branch of the Article; and whether he is guilty of this Branch or not, turns entirely on this Question.

My Lords, I little thought such a Construction would have been endeavour'd, by a wrong Recital of this Clause in the Sermon, by the Doctor in his Answer; for there it is said, as from the Words of the Sermon, *That they, that is, says the Doctor, these new Preachers and new Politicians, urge the Revolution in defence of such Principles*; when your Lordships see the Words of the Sermon are, *Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence*. This therefore brings the Case of the Revolution, urg'd by these Adversaries, to the Point or Proposition he had before laid down, which was the utter Illegality of Resistance on any Pretence whatsoever; and not to the Defence of divers Antimonarchical Principles, taught by the new Preachers and new Politicians. And this is still plainer, if your Lordships consider that the Doctor's Reply to these Adversaries, by denying there was any Resistance at the Revolution, can only relate to the Point of Non-Resistance he had before asserted; and which Resistance,

sistance, if it were not denied, must stand condemn'd by the Doctor's Proposition.

As little, my Lords, did I expect to hear from one of the Doctor's Council, that there are twenty or thirty Lines between the General Proposition and this Clause; since if there be a Connection between this Clause and that Proposition (which I have already shewn there is) it is not the Intervention of so many Lines will hinder it; and if there had been no Connection, their being close together would not have made one. And by this manifest Connection, the Doctor hath brought this general Position, of the Unlawfulness of all Resistance, to bear upon the Revolution. Which I hope may serve for an Answer to the same Gentleman, who says, It is one thing to lay down the General Rule without making the Exception, and another thing not to make the particular Exception out of that Rule; for the Doctor has mentioned the Revolution, but not in order to except it, but to include it.

Indeed, my Lords, the Learned Doctor who is of his Council pretends to have found out the Exception in the Sermon, Page the 10th, because he finds the Word *Necessity* there: The Words are these, *Only this Maxim in general I presume may be establish'd for the Safety, Tranquillity and Support of all Governments; that no Innovation whatsoever should be allowed in the Fundamental Constitution of any State, without a very pressing, nay, unavoidable Necessity for it.* But if the Doctor had but read to the End of the Sentence, he would have found Doctor Sacheverell condemns all that bore a Part in the Revolution, before a Law was made about it: The Words that follow are these, *And whosoever singly, or in a private Capacity should attempt it, is guilty of the highest Misdemeanor, and is an Enemy to that Politick Body of which he is a Member.* And if that Sentence respects the Revolution, then Doctor Sacheverell condemns all, from the highest to the lowest, who, in their private Capacity, joined with the Prince of Orange, or assisted in bringing about the Revolution. This is the Thing he is now charged with; not condemning the Revolution as a Thing settled by Law, but the Necessary Means used to bring it about. But if the Doctor instructed his Council to insinuate, that there was any Innovation in the Constitution wrought by the Revolution, it is an Addition to his Crime. The Revolution did not introduce any Innovation; it was a Restoration of the ancient Fundamental Constitution of the Kingdom, and giving it its proper Force and Energy.

Indeed, all the other Council differ'd from that Learned Civilian, and maintain'd, that Doctor Sacheverell did not, nay, ought not, to make any Exception; and one of 'em said, if Clergymen, instead of preaching up the general Rule of Obedience, were permitted to state the several excepted Cases, such Exceptions would in time devour all Allegiance. My Lords, If the Doctor had pretended to have stated the particular Bounds and Limits of Non-Resistance, and told the People in what Cases they might, or might not resist, he would have been much to blame; nor was one Word said in the Articles, or by the Managers, as if that was expected from him; but on the contrary, we have insisted, that in no Case can Resistance be lawful, but in Case of extreme Necessity, and where the Constitution can't otherwise be preserv'd, and such Necessity ought to be plain and obvious to the Sense and Judgment of the whole Nation; and this was the Case at the Revolution. And is there no Difference

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between a Divine's mooted and putting Cases of lawful Resistance, and excepting the Resistance at the Revolution out of the general Rule of the Illegality of Resistance, on a Day, when he was oblig'd not only to commemorate the Revolution, but the Resistance, the necessary Means used to bring it about, as appears by the Service appointed for that Day?

And, my Lords, Is a House of Commons, who are vindicating that Revolution only, to be represented as if we were calling upon Divines to state the Cases wherein Resistance is lawful, and wherein not? A Task unfit for any one, and more especially for them to meddle with; And are we, by such Suggestions as these, to be defam'd and insulted, and represented as promoting Anarchy and Confusion?

My Lords, There can be no Order or Regularity, if the Constitution, the beautiful Frame of a Legal Monarchy, which this Nation hath so long enjoy'd and prosper'd withal, be destroy'd or given up. What Inclination has the present Age shewn to submit to Arbitrary Power; or rather, what hath been wanting in it to shew the contrary?

But I go on, my Lords, to consider an Argument made use of by another of the Doctor's Council, That it was needless for him to except the Case of the Revolution, for that was known to every body, and had often been approv'd by the Legislature. I beseech your Lordships, Could the Doctor know this, and not only not except that Case, on a Day appointed to give solemn Thanks for it, but introduce it for no purpose but to leave it under the Condemnation of the General Rule of Non-Resistance? And by this Method the Doctor has brought his General Rule to bear upon the particular Case of the Revolution. For he takes but one way of acquitting the Revolution, which is by laying down that for Truth, which every Man knows to be false; and they that assert this Truth, he says, *cast black and odious Colours on the late King and the Revolution: Which makes out, that Dr. Sacheverell doth suggest and maintain, that to impute Resistance to the Revolution, is to cast black and odious Colours on his late Majesty and the Revolution.*

I am sensible how tedious I must have been in this nice tracing the Answers given by the Doctor's Council to our Proofs of this first Article; but because the Judgment of the Case will depend very much upon it, I am sure I shall have your Lordships Pardon.

And now, my Lords, What a Representation is here of that Glorious Transaction, the late happy Revolution! The Part the Subject had in it is represented as contradicting the express Command of God in Scripture, and destructive of all Governments: His late Majesty is represented as encouraging this pernicious Wickedness, and disowning it at the same time: Give me Leave therefore, on behalf of the Nation, and the Memory of his late Majesty, its Deliverer, to state this Affair shortly, and in another Light to your Lordships.

The Subjects resisted, the late King join'd his Army with the Arms of Resistance; and if the Nation at that time had not had Recourse to that Remedy, how abject and how miserable must they have been! If we look into the Histories of other Countries, Have not the best and happiest Nations been most tenacious of their Liberties? And while they have continu'd so, and withstood Absolute Power, they have been prosperous at home, and considerable abroad: But when they have fallen from this

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Zeal and Industry, which is the Foundation of their Prosperity at home, and Magnanimity, which makes them considerable abroad, have deserted them, and they have sunk into Sloth and Effeminacy. Can any one therefore, with any Colour, say, That Resistance, in Cases of Extreme Necessity, has worse Consequences than Unlimited Subjection?

Let us now turn our Eyes a little on the Part our late King had in the Revolution. Did he not undertake a most hazardous Enterprize, to procure us Happiness at home, and to give us that Weight abroad, which this Nation had long enjoy'd, but at that Time was depriv'd of? And with what Care and Anxiety, even to the last Moment of his Life, did he labour to secure these Blessings to us!

Let us look beyond his Time, and since, for the Sense of the Nation upon this Point. What Satisfaction did the Nation take, in the Assistance his Renowned Predecessor (Queen Elizabeth) gave to the Oppressed Provinces, our then Good Neighbours, and our now Potent Allies? How zealously did the Nation promote the Assistance King James the First gave to the injur'd Prince Palatine, against the Emperor his Superior Lord? And what Resolution and tender Concern for the persecuted *Rochellers*, did King Charles the First shew and express? And has not Her Majesty assisted the *Spaniards*, against a Prince acknowledg'd by them, and seated on the Throne? Nor did Her Goodness, which is as extensive as Her Power, overlook the poor Estate of the People in the *Cevennes*, or neglect to give them all possible Assistance, against their King exercising a cruel Dominion over them. These, and many more Instances which might be fetch'd from other Countries, are so many Authorities against this Doctrine of unlimited Non-Resistance.

And now, my Lords, I come to consider the Authority the Doctor pretends to have for it: His Council say, They have Acts of Parliament for this Doctrine; I shall not mention the particular Acts, because they are well known, but consider them under Three Heads. First, Those Acts that were before the Restoration. Secondly, Those after the Restoration, and before the Revolution. And, Thirdly, Those after the Revolution.

My Lords, As to those before the Restoration, I readily admit they condemn Resistance generally; they don't mention any Exception. The Council of the other Side have furnish'd me with an Answer to 'em: They say, These, and all other Laws, have an Exception imply'd in them. The Wisdom of the Law, in not expressing the Exception, is plain: It is neither decent, nor probably would have a good Effect, to put odious Cases, such as a Prince's Overturning the Constitution. The *Roman* Law did not provide against Parricide, nor doth the *English* Law neither; since it hath no distinct Punishment for that kind of Murder, tho' it hath some for others, which are call'd Petty Treasons. Laws are fram'd upon a View of ordinary and common Cases: *Ad ea quæ frequentius accidunt jura adaptantur*, is a known Maxim, and of great use in the Exposition of Laws. And if our Legislators had been ask'd the Question, Whether they meant by those Laws to make all other Laws, and even those Laws themselves, of no Validity? (Which, if Absolute Power can't be withstood, would be the certain Consequence;) Would not they have answer'd, Nothing was farther from their Thoughts? And if it be *Maledicta Expositio quæ corrumpit Textum*, ap-

ply'd to any particular Law; what a cursed Exposition must that be, which corrupts, or rather annuls the Text of all the Laws at once?

My Lords, The next Head of Acts, are those after the Restoration, and before the Revolution. I do admit, those Laws go farther than the former, and seem to condemn all Resistance, and in such Terms, as to exclude any Exception whatsoever. My Lords, What I have said relating to the former Laws, may be apply'd to these. But further, I desire it may be consider'd, these Legislators were guarding against the Consequences of those Pernicious and Antimonarchical Principles, which had been broach'd a little before in this Nation; and those large Declarations in Favour of *Non-Resistance*, were made to encounter, or obviate the Mischief of those Principles; as appears by the Preamble to the fullest of those Acts, which is the *Militia-Act*, in the 12th and 14th of King Charles the Second. The Words of that Act are these: *And during the late Usurped Governments, many Evil and Rebellious Principles have been instilled into the Minds of the People of this Kingdom, which may break forth, unless prevented, to the Disturbance of the Peace and Quiet thereof: Be it therefore Enacted, &c.* Here your Lordships may see the Reason that inclined those Legislators to express themselves in such a manner against Resistance: They had seen the Regal Rights swallow'd up, under the Pretence of Popular ones; and it is no Imputation on them, that they did not then foresee a quite different Case, as was that of the Revolution; where, under the Pretence of Regal Authority, a total Subversion of the Rights of the Subject was advanc'd, and in a manner effected. And this may serve to shew, that it was not the Design of those Legislators to condemn Resistance, in a Case of Absolute Necessity, for preserving the Constitution, when they were guarding against Principles which had so lately destroy'd it.

But now, my Lords, let us see how the Laws run after the Revolution. Your Lordships will find, that the Resistance at the Revolution is not only approv'd of in express Terms, by the Act for preventing Vexatious Suits; and indeed, every Act pass'd since the Revolution, is an implicit Approbation of it; but the Declaration of the Unlawfulness of taking Arms against the King on any Pretence whatsoever, (requir'd to be taken by the Corporation-Act, the Militia-Act, and the Act of Uniformity,) is now repeal'd. There was another Act mention'd by one of the Doctor's Council, the Act for Regulating Select Vestries: That Act expir'd in King Charles the Second's Time, and was never continu'd. The first Gentleman that spoke for the Doctor, said, in Answer to the Repeal of this Declaration, by a Clause in the Act of the First of King William and Queen Mary, for abrogating the old Oaths, and appointing new ones; that it is a very tender Repeal, if it be one. I did not, my Lords, well understand his Meaning; but I am sure, that is a very tender Answer, if it be any at all. My Lords, if it be thought that this Declaration, as it is enjoin'd by the Corporation-Act, is not repeal'd, because the Corporation-Act is not particularly mention'd in the Clause of the Act of the First of King William and Queen Mary, which repeals the Declaration; I answer, After the Militia-Act, and the Act of Uniformity are mentioned, there follow general Words, *Any Law or Statute to the contrary notwithstanding*: And this repeals the Declaration as to that Act, as well as to the other

Two Acts. And this Opinion has prevail'd universally ; and if it were otherwise, there is scarce a Corporation in *England*, but would be dissolv'd by the Incapacity of their Members.

But the same Council argu'd, That the Doctrine mention'd in that Declaration must be true Doctrine, or the Declaration would not have been enjoin'd and taken so long as it was ; and the Repeal don't make the Proposition false : And we might as well argue the *Solemn League and Covenant* to be a Lawful Oath. My Lords, As to the Declaration against the Covenant, that was consider'd as a Temporary Thing only, and, by the Act of Uniformity, was to cease upon the 25th of *March*, 1682. and therefore not at all to be compar'd with the other Declaration, which was intended to be perpetual. As to the Truth of the Doctrine in this Declaration which was repeal'd, I'll admit it to be as true as the Doctor's Council assert it ; that is, with an Exception of Cases of Necessity ; and it was not repeal'd because it was false, understanding it with that Restriction ; but it was repeal'd, because it might be interpreted in an unconfin'd Sense, and exclusive of that Restriction ; and being so understood, would reflect on the Justice of the Revolution : And this the Legislature had at Heart, and were very jealous of ; and by this Repeal of that Declaration, gave a Parliamentary, or Legislative Admonition, against asserting this Doctrine of Non-Resistance in an unlimited Sense.

My Lords, I must confess, I did not expect to hear the Association and the Abjuration-Oath brought in as asserting this Doctrine ; if they do, this may serve to account for their taking them who believe that Doctrine, which otherwise perhaps they would be at a Loss to find an honest Reason for. But, my Lords, Doth engaging to stand by, and assist one another against all the King's Enemies, or swearing to defend the King or Queen against all Traiterous Conspiracies, signify any more than what is implied in the old Oath of Allegiance ? There is, my Lords, indeed something more in the Association and Abjuration-Oath ; for the Person taking them in his late Majesty's Time, declar'd, That he believ'd in his Conscience King *William* was Rightful and Lawful King of this Realm. This certainly put the Conscientious Taker of 'em upon a Consideration, of the Foundation on which that Right and Title was built. And since there was no Foundation for it but the Revolution, and that Revolution was founded on Resistance ; how those could bring themselves up to take that Association, or that Abjuration-Oath, who believ'd that Resistance unlawful, I am at a Loss to know.

My Lords, Upon this Head of these several Acts of Parliament that have been mention'd, I beg Leave to observe, That as it is not to be suppos'd it was the Original Intention of any Laws to enervate the Force of all the Laws, so your Lordships see, there are since the Revolution Laws that do exclude any such Supposition, and do affirm that Indefeasible Inheritance which the People have in the Laws.

My Lords, The next Part of the Evidence offer'd by the Doctor, was the Homilies ; which are said to be confirm'd by Act of Parliament, because the Articles of the Church of *England* are so ; and the Thirty fifth Article approves the Homilies, as containing godly and wholesome Doctrine ; and the Clergy are oblig'd to read and subscribe those Articles.

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My Lords, I believe it will be admitted, that no more is intended by that Subscription, but that the Doctrine contain'd in the Homilies is right in the main, and not that every Sentence in 'em is so : For in this last Sense, I believe, never any Divine subscrib'd the Articles ; and it will be hard to name any Preacher, or Writer of Note, who has not contradicted some Passage or other in them : Nay, as to one, the general and approved Practice of the Church is against it ; I mean that Passage, which condemns the Use of Organs in Churches.

And surely, my Lords, the Sense of the Homilies can't be found out, by reading select Passages out of them, (as was done in the Doctor's Defence) but by observing the Frame and Tendency of the whole : And I may appeal to your Lordships, and especially to my Lords the Bishops, whether those who compil'd the Homilies against Rebellion, seem'd to have had at all under their Consideration the Case of a total Subversion of the Constitution. It's plain, the main Design of those Homilies was against the Risings of the Popish Faction, and the plausible and popular Pretences made use of by them for supporting their Rebellions. Did not that Great Queen, in whose Time the latter Book of Homilies was compil'd, explain Her own Opinion on this Point, by the Assistance she gave to the *Hollanders* against the *Spanish* King, their Sovereign ? Did not the Parliament explain Themselves, by the Supplies given to the Queen for that Purpose ? And did not the Clergy explain Themselves likewise, by the Supplies granted in Convocation, in Favour of that Assistance ? Can it therefore be imagin'd, the Homilies intended to condemn that Resistance, which the Queen and the whole Nation, nay, even the Clergy themselves assembled in Convocation, approv'd of ? And I dare say, if Doctor *Sacheverell* had read any of the Homilies against Rebellion, which he says he is commanded to do, if there be no Sermon on the Fifth of *November* ; I say, if he had read any one of them to his Congregation at *St. Paul's*, not one of his Auditors would have thought the Revolution condemn'd by the Homily, whatever they might have thought of the Doctor.

My Lords, That which we accuse him for, is, That he lays down this General Doctrine of Non-Resistance, in Terms exclusive of any Exception ; and, not content with that, points out the Revolution, for Men to compare it with, and condemn it by. How much better would it have become the Doctor, to have imitated that Zeal which appears in the Compilers of those Homilies, for a Protestant Queen against a Popish Faction ; than to arraign the Revolution, upon the defaming of which, the Hopes of a Popish Faction against a Protestant Queen are built ?

My Lords, Let us now consider the other Books, or Writings, the Doctor has produced to justify his Doctrine ; These are chiefly, if not all of them, the Labours of Divines ; and I will place them in these Two Classes, Those before the Revolution, and those since. And, my Lords, I will say, If this Question of Submission were left by the Divines, to those who make the Municipal Laws of their Country, or the Nature of Laws in general, their Study ; and they would confine themselves to the pressing a Legal Submission only, founded (as it is by the Law of *England*) on common Consent, and common Good ; it would be much more for the

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Honour

Honour of Religion, and the Peace and Felicity both of the Sovereign and the Subject.

And this will be very manifest, if your Lordships call to mind but Two of the Doctor's Quotations before the Revolution, which were read to your Lordships: The one is a Passage out of Bishop *Sanderſon*, the other the *Oxford Decree* in 1683.

My Lords, Bishop *Sanderſon* (and he only of all that have been quoted) has put the Case of Resistance for the Preservation of Church and State, which are but other Words for the Constitution; and has deliver'd this Doctrine of Non-Resistance in such unlimited and bold Terms, as I shall not repeat, to create a Second Displeasure in this Great Assembly. And I willingly admit, he was a very Learned, Judicious, and Pious Prelate: And if so great and good a Man fell into such indiscreet, indecent and shocking Expressions on that Subject, as did visibly affect such an Assembly as this, one would think it should discourage others from delivering that Doctrine in such a Latitude.

The next is the *Oxford Decree*, which condemns all Resistance whatsoever: But, my Lords, it is observable, that in the same Decree, there is a Condemnation of this Proposition that I am going to read to your Lordships; *That it is Lawful to Preclude the next Heir from his Right and Succession to the Crown*: And yet at the same Time, the condemning this Proposition, that is, the *holding, affirming or maintaining* the contrary Proposition, was (by the 13th *Eliz. Cap. 1.*) made High Treason in her Time, and a Forfeiture of Goods and Chattels ever after. And how the Law now stands as to that Particular, by the *Act for Securing Her Majesty's Person and Government, and the Succession of the Crown of Great Britain in the Protestant Line*, every one knows. And, my Lords, when we find so Great and Learned a Body criminally erring in a Point so Fundamental, and upon which our Prospect of Happiness to future Ages doth, under God, depend; ought it not to discourage particular Divines, from pretending to determine Points of Law and Policy? For my own Part, I should hope, that that University's having fall'n in at first so heartily with the Revolution, is as sincere a Condemnation of the Doctrine of Unlimited Non-Resistance, as their solemn taking the Abjuration-Oath is a publick Profession, that a Parliamentary Exclusion is Lawful.

As for all the Passages which have been read to your Lordships out of the Books or Sermons of Divines before the Revolution, in Favour of Non-Resistance, your Lordships may observe their Reasons reach only so far, as when the Mischief is not Universal; or if it be Universal, where it is tolerable, and not so mischievous as a Civil War. I shall not mention any Passages in them, (which have not been read) to limit the Generality of the Expressions concerning Non-Resistance; because I avoid bringing in any Thing, which hath not been given in Evidence. But how candid the Doctor's Collections have been, your Lordships may judge by that Quotation out of my Lord Bishop of *Salisbury's* Book, where there is an express Exception of the Case of subverting Fundamentals: But your Lordships may see the same Candor shining out in several Passages of the Doctor's Sermon, with respect to that Reverend Prelate, whose Services, my Lords, (before, and at the Time of the Revolution,) will never be forgotten by one Part of the Nation, nor forgiven by another.

My Lords, I come now to the Sermons and Writings since the Revolution: And I may appeal to your Lordships, whether they don't most plainly condemn the Doctor; those, I mean, where we had the Fortune to be ready to call for other Passages to be read out of the same Books. Does not my Lord Bishop of *Lincoln* expressly mention the Case of the Revolution, and justify the Resistance then used? How carefully does his Grace the Archbishop of *York* limit this Doctrine of Passive Obedience, which the Doctor says ought to be deliver'd in the most unconfined Terms? And it is by his Grace's Notion of this Doctrine, that the Commons desire this Cause may be judged and determined. I beg Leave to read again to your Lordships his remarkable Words: *Care must be taken, that this General Doctrine be not misapplied in particular Countries. Tho' Non-Resistance or Passive Obedience be a Duty to all Subjects, and under all Governments, yet it is not express'd the same way in all Places; but both the Objects and the Instances of it do vary in different Nations, according to the different Models of their Government. To speak this as plainly as I can: As the Laws of the Land are the Measures of our Active Obedience, so are also the same Laws the Measure of our Submission. And as we are not bound to obey, but where the Laws and Constitution require our Obedience; so neither are we bound to submit, but as the Laws and Constitution do require our Submission.*

This, my Lords, is the Doctrine the Commons are maintaining, and are calling this Criminal to an Account for contradicting. If our Obedience and Submission is not to be extended to the Prejudice of the Constitution, the Resistance at the Revolution, for preserving the Constitution, stands justified, and the Doctor's unlimited Doctrine of Non-Resistance stands condemn'd.

How prudently does his Grace, my Lords, caution the Doctor, and the rest of the Clergy, in another Part of his Sermon, by these Words? *If, indeed, a Preacher should in the Pulpit presume to give his Judgment about the Management of Publick Affairs, or to lay down Doctrines (as from Christ) about the Forms and Models of Kingdoms or Commonwealths, or to adjust the Limits of the Prerogative of the Prince, or of the Liberties of the Subject in our present Government: I say, if a Divine should meddle with such Matters in his Sermon, I do not know how he can be excused from the just Censure of meddling with Things that nothing concern him. This is indeed a Praesiding in State Matters, and is Usurping an Office that belongs to another Profession, and to Men of another Character. And I should account it every whit as undecent in a Clergyman, to take upon him to deal in these Points, as it would be for him to determine Titles of Lands in the Pulpit, which are in Dispute in Westminster-Hall.* And how well the Doctor has observ'd this necessary Caution laid down by his Grace, I leave your Lordships to consider.

My Lords, I have purposely omitted taking notice of any Writings, except such as were produced by the Doctor, and I am satisfied how superficially I have consider'd them: But, in general, I may appeal to your Lordships, whether in the lowest Ebb of Liberty, there have been wanting those in this as well as other Countries, who have denied this slavish Doctrine of Unlimited Non-Resistance; whether since the Revolution this Nation has been so ungrateful to their Deliverer, or unthankful for their Deliverance, as to want those who have maintain'd the

the Principles of the Revolution, and have shew'd them to be as agreeable to the Christian Religion, as they are to the Nature of that Excellent Government we live under, which is that of Limited Monarchy.

And yet notwithstanding the unanswer'd Performances of divers, both of the Clergy and Laity, upon this Subject, the Doctor has the Boldness to affirm his Doctrine to be the Doctrine of our Blessed Saviour and his Apostles.

My Lords, I can't mention this, without the deepest Concern for the Honour of the Christian Religion. I beseech your Lordships, What is Liberty but Justice, and what is Justice, but doing to every one as we would be done by? And nothing, I think, is likelier to promote the Practice of this Christian Precept, than spreading a true Sense and Love of Liberty, that Principle which casts out of us a narrow Regard to our selves, and introduces a diffusive Benevolence to others.

And against this Principle is it, that the Doctor has offended.

My Lords, I have endeavour'd to shew that the Charge in the First Article stands prov'd against the Doctor, and that this Proof remains unanswer'd; and if so, his being a Minister of the Gospel, his having taken the Oaths to the late King, and to Her present Majesty, his being a Fellow of that College which was in a particular manner delivered by the Revolution, are all of them Aggravations of his Offence (if it can be aggravated;) and which, if prov'd, his own Council admit, brings a fatal Imputation on Her Majesty and Her Government, makes Her Government an Usurpation, and Her Subjects Rebels; and that no Punishment can be too great for him.

My Lords, I never saw that Criminal for whom I had not a hearty Compassion, but there is both Compassion and Justice due to the injur'd Innocent. Your Lordships have before you on the one hand, the Care and Concern of Doctor *Sacheverell*; on the other, the Honour and Prosperity of a wise and brave Nation, who as they have thought nothing too much to give or hazard to defend their Liberties against a Foreign Enemy; so they hope your Lordships Justice on this Offender, will secure those Liberties against Domestick ones.

Mr. Solicitor General. MY Lords, I am commanded by the Commons to join with the Learned Gentleman who spoke last, in Replying to the Defence that has been made upon the First Article of this Impeachment, which the Commons insist upon to be well grounded, and fully prov'd, notwithstanding the several Objections and Excuses that have been offer'd by Doctor *Sacheverell* and his Council.

One of the Doctor's Council has agreed, That if he has asserted, that the Resistance used to bring about the Revolution was Unlawful, no Punishment can be too great for him; But what they have offer'd to your Lordships in his Defence is, That no such Position can be made out without the help of *Immuendos* and forced Constructions, which infer a Meaning contrary to the Natural Sense and Import of his Words; and this way of Charging a Man with a Crime, they truly say, is not agreeable to the Rules of Law, and would contradict one of the Reasons given for the Judgment of the House of Lords, in the Case of Sir *Samuel Barnardiston*: And if this was the Case, it would not become the Commons of Great Britain, who have such an Af-

fessionate Regard to the Laws and Liberties of their Country, to proceed upon an Impeachment so ill grounded. But when the Commons had so fully and particularly proved the Assertions charged upon the Doctor by this Article, they little expected to have heard that his Words had been wrested to wrong Meanings; and made to speak what he never thought: And therefore, since the Question depends altogether upon Construction, and your Lordships have been told that the Passage upon which this Charge is grounded, has not been fully stated, the Commons must give you the trouble of Reading the Passage at large, as it stands in the Sermon; that your Lordships may judge, whether they have not taken his Words in the common and ordinary Sense, and given them the only Meaning they can bear.

The Passage is in these Words.

"The grand Security of the Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an Absolute and Unconditional Obedience to the Supreme Power in all Things Lawful, and the utter Illegality of Resistance upon any Pretence whatsoever. But this Fundamental Doctrine, notwithstanding its Divine Sanction in the express Command of God in Scripture, and without which, it is impossible any Government, of any Kind of Denomination in the World, should subsist with Safety, and which has been so long the Honourable and Distinguishing Characteristick of our Church, is now, it seems, quite Exploded and Ridicul'd out of Countenance, as an Unfashionable, Superannuated, nay (which is more wonderful) as a dangerous Tenet, utterly Inconsistent with the Right, Liberty, and Property of the People; who, as our New Preachers, and New Politicians teach us, (I suppose by a New and Unheard-of Gospel, as well as Laws) have, in Contradiction to Both, the Power invested in them, the Fountain and Original of it, to Cancel their Allegiance at pleasure, and call their Sovereign to Account for High Treason against his Supreme Subjects, forsooth! Nay, to Dethrone and Murther him for a Criminal, as they did the Royal Martyr, by a Judiciary Sentence. And, what is almost Incredible, presume to make their Court to their Prince, by maintaining such Antimonarchical Schemes. But God be thank'd! neither the Constitution of our Church or State is so far alter'd, but that by the Laws of both, (still in Force, and which I hope for ever will be) these Damnable Positions, let them come from the Pulpit or the Press, either from *Rome* or *Geneva*, are condemned for Rebellion and High Treason. Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly they are the greatest Enemies of that, and his late Majesty, and the most Ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon Both. How often must they be told, that the King himself Disclaim'd the least Imputation of Resistance in his Declaration; and that the Parliament declar'd, That they set the Crown upon his Head, upon no other Title, but that of the Vacancy of the Throne? And did they not Unanimously condemn to the Flames (as it justly deserv'd) that Infamous Libel that would have pleaded the Title of Conquest, by which Resistance was suppos'd?

And the Question now before your Lordships is, Whether by these words he has asserted, *That his late Majesty in his Declaration disclaim'd the least Imputation of Resistance; and that to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the Revolution;* which are the Assertions charg'd upon him in this Article, as *Suggesting and Maintaining, that the necessary Means us'd to bring about the late happy Revolution were odious and unjustifiable:* Now that there was Resistance in the Revolution, and that such Resistance, in a case of that absolute and unavoidable Necessity, is consistent with the Doctrine of the Church, and the Fundamental Law of the Kingdom, is agreed by the Council; and they have endeavour'd to convince your Lordships, that the Doctor has asserted nothing to the contrary; for they say, "The Resistance which the Doctor affirms the King to have disclaim'd, was only a Resistance which tended to Conquest; and that the Doctor did well to wipe off this Imputation; for the Parliament had declared it injurious to his rightful Title to the Crown, and had order'd a Treatise to be burnt, which Suggested a Title by Conquest; and that the Doctor having his Eye in that Expression on the matter of Conquest, expressed the same by Resistance, which was applicable to the Subject-Matter before, and therefore ought not to be wrested to any other Purpose."

This, my Lords, is the Turn which the Council would give to the Doctor's Assertion, *That the King disclaim'd the least Imputation of Resistance.* And indeed the Words of the Sermon are so plain and particular, that they are forced to have Recourse to this Evasion of a Resistance by Conquest: But I wonder Gentlemen can argue in this manner, and at the same time speak of reading the Words with Candor and Ingenuity; when 'tis most apparent that there is no *previous Discourse* of a Title by Conquest, or of any Treatise in which it had been asserted, that could give occasion for his vindicating the late King from any such Imputation, or to which these Words can in any Construction be applied; for the Doctor says nothing of Conquest 'till after he had Asserted that the King disclaim'd the least Imputation of Resistance; and then he goes on and lays another Foundation for the Settlement upon the Revolution, by grounding it upon the Vacancy of the Throne, before he says any thing about Conquest, or mentions the Book which had pleaded that Title; and even then he condemns that Title for no other Reason but because it implied Resistance; which plainly shews, that his Argument was carried on upon the Subject of Resistance, and not upon that of Conquest.

And the Answer which they have given to that part of the Article, whereby he is charg'd with Asserting, *That to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the Revolution;* is equally evasive.

What they have offer'd to your Lordships upon this Head is, That the Doctor is not speaking of the utter Illegality of Resistance, when he introduceth his Discourse about casting Black and Odious Colours, by saying, *Our Adversaries think they have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence;* but of the damnable Positions with which the Doctor charges the new Preachers and new Politicians, in the Words immediately preceding. And in this place it is, that the Manager appointed to maintain this Article is charg'd with omitting about twen-

ty or thirty Lines between the General Doctrine and the Passage concerning the Revolution, in which several distinct and entire Sentences are contain'd, concerning those Persons and their Principles, to which that Passage entirely relates: And your Lordships are told, that to apply the Instance of the Revolution to justify such wicked Principles, is what the Doctor calls casting Black and Odious Colours upon his late Majesty and the Revolution.

But the Commons take it to be very clear, That upon stating of the whole Paragraph, and all the Words in the order in which they lye, and upon comparing the several Passages, it will manifestly appear, that what the Doctor said about *casting Black and Odious Colours* upon the Revolution, can be applied only to those who maintain, that the Resistance us'd to bring about the Revolution was lawful and just, and that the Persons he calls *our Adversaries* are such as urg'd the Revolution in opposition to his general Doctrine of the utter Illegality of Resistance upon any Pretence whatsoever; and not to those who urge the Revolution in Defence of those damnable Positions, which, he says, the new Preachers and new Politicians had laid down.

This the Commons apprehend to be the only Meaning that his Words in any Construction can bear; for *the Point* he is speaking of, and which he says his Adversaries thought they had him sure and unanswerable upon, must be some certain single Position which was mentioned before, some one Position or Principle, and not many; for 'tis *this Point*, not *these Principles*; and that single Point could be no other, than the *Point of Resistance*: And the Persons he calls his Adversaries, who think they have him so sure, can be no other than those who deny his general Doctrine, and not those new Preachers and new Politicians, who say the People have a Power vested in them to cancel their Allegiance at pleasure; because those who deny this General Position of the utter Illegality of Resistance, as applied to any one particular Case, are certainly his Adversaries, and Enemies to his Fundamental Doctrine: For whoever can find an excepted Case, or shew an Instance in which Resistance is lawful, destroys his general Assertion. And he sufficiently shews, that he meant those who oppos'd his general Doctrine of absolute Non-Resistance, by *our Adversaries*, when he says that they urg'd the Revolution of that Day in their Defence; because the Resistance at the Revolution, which was founded in Unavoidable Necessity, could be no Defence to a Man that was attack'd for asserting that the People might cancel their Allegiance at Pleasure, or Dethrone and Murder their Sovereign by a Judiciary Sentence. For it can never be infer'd from the Lawfulness of Resistance at a Time when a *Total Subversion* of the Government both in Church and State was intended, that a People may take up Arms and call their Sovereign to account at pleasure; and therefore, since the Revolution could be of no Service in giving the least colour for asserting any such wicked Principle; the Doctor could never intend to put it into the Mouths of those new Preachers and new Politicians for a Defence; unless it be his Opinion, that the Resistance at the Revolution can bear any Parallel with the Execrable Murder of the Royal Martyr, so justly detested by the whole Nation; or that there was no other Difference between the two Cases, than what the Learned Gentleman, who first spoke for him, was pleas'd to mention in the Conclusion of his Argument, by quoting an odious Expression which I forbear to repeat: But it was very proper

proper to take notice of the Resistance at the Revolution, as an Objection to his general Doctrine, for it really is so; and 'tis impossible that Doctrine can be true in its full Extent, if the Resistance at the Revolution was lawful; for 'tis most apparent, that the Justice of a Revolution, founded in Resistance, and the Principle of Non-Resistance upon any Pretence whatsoever, can never stand together.

And therefore he could mean nothing by *the Point* his Adversaries thought they had him so sure upon, but the general Position of Non-Resistance, which was the only Point contended for in that Place; and he must mean those only who denied his Doctrine of absolute Non-Resistance, by *our Adversaries*: And having no other way of maintaining the utter Illegality of Resistance upon any Pretence whatsoever, and of answering the Case of the Revolution, which, from the Resistance that was in it, was made an Objection; he goes on and denies the Resistance, by saying, That *the King solemnly disclaim'd the least Imputation of Resistance*; and calls those who say that there was any Resistance in the Revolution, *the greatest Enemies of that and his late Majesty, and the most ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon both.*

This, my Lords, is plainly Asserting, That to impute Resistance to the Revolution, is to represent it as Black and Odious; and this Assertion is fairly collected from the plain Course and Tendency of his Argument, not from strain'd Inferences and Innuendo's, nor from suppos'd or forc'd Constructions, but from his own Words, as they lye together, taken in their natural and genuine Sense, and is the only Construction that can give them any reasonable Meaning or Coherence.

And therefore the Commons apprehend, That the Charge against the Doctor, for asserting, That *to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the Revolution*, is fully prov'd, and stands answer'd.

But tho' the Charge, and the Passages produc'd for the Proof of it, are so very particular, and directly pointed at the Resistance us'd to bring about the late happy Revolution, yet the Doctor and his Council are pleas'd to say, "That he has only Asserted the Doctrine of Non-Resistance in general Terms, as it has been taught by the Apostles, the Homilies, and the Fathers of the Church in all Ages: That in this Case, as in all other general Propositions, Cases of unavoidable Necessity, *as the Revolution undoubtedly was*, are always understood to be excepted; and that there is no other Difference between the Gentlemen of the House of Commons and the Doctor, but Whether when the general Rule of Obedience is taught, the particular Exceptions which may be made out of that Rule are always to be express'd; or, Whether when the general Rule is laid down, the particular Exceptions are not more properly to be understood or implied: And upon this ground they have been very Elaborate, and have produc'd many Proofs to satisfy your Lordships, that the Doctor's general Assertion of the utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever, without mentioning any Exception, is warranted by the Doctrine of the Church, and by the Law of the Land.

But, with great Submission, all this Pains might have been spar'd; for 'tis plain that the Doctor is

not Impeach'd for preaching a general Doctrine, and enforcing the general Duty of Obedience, but for preaching against an Excepted Case, after he has stated the Exception. He is not Impeach'd for preaching the general Doctrine of Obedience, and the utter Illegality of Resistance upon any Pretence whatsoever; but because, having first laid down the general Doctrine as true, without any Exception, he states the excepted Case, the Revolution in express Terms, as an Objection; and then assumes the Consideration of that excepted Case, denies there was any Resistance in the Revolution; and asserts, that to impute Resistance to the Revolution would cast Black and Odious Colours upon it. This, my Lords, is not preaching the Doctrine of Non-Resistance in the general Terms us'd by the Homilies, and the Fathers of the Church, where Cases of Necessity may be understood to be excepted by a Tacit Implication, as the Council have allow'd; but is preaching directly against the Resistance at the Revolution, which in the Course of this Debate has been all along admitted to be necessary and just, and can have no other Meaning, than to bring a Dishonour upon the Revolution, and an Odium upon those great and illustrious Persons, those Friends to the Monarchy and the Church, that assisted in bringing it about. For had the Doctor intended any thing else, he would have treated the Case of the Revolution in a different manner, and have given it the true and fair Answer; he would have said, that the Resistance at the Revolution was of Absolute Necessity, and the only Means left to revive the Constitution; and must be therefore taken as an excepted Case, and could never come within the Reach or Intention of the general Doctrine of the Church. But instead of this, he denies that there was any Resistance in the Revolution, and represents it as a Scandal upon the Revolution to say there was any Resistance in it; *Those*, says he, *are the greatest Enemies to it, who cast such Black and Odious Colours upon it.*

My Lords, If extraordinary Cases, if Cases of Necessity, which are implicitly Excepted, are not to be stated at the Time when the general Prohibition is inculcated, and it would be of dangerous Consequence in this particular Instance of the Doctrine of Non-Resistance, "by picking Holes for the Subject to creep out of his Allegiance"; I submit it to your Lordships Consideration, whether stating an Excepted Case, and then bringing it within the general Prohibition, particularly in this Instance of the Revolution, must not have the same pernicious Consequence: "Does not this plainly shew what Spirit the Doctor is of, and what he aims at?"

But your Lordships have been told, that "What the Doctor asserts concerning the utter Illegality of Resistance to the Supreme Power, can never be applied to the Revolution; for the Legislative, the King, Lords and Commons, is the Supreme Power; and there was no Resistance to the Lords and Commons, for they join'd with his late Majesty in bringing about the Revolution; the Resistance was made only to that unfortunate Prince who was then upon the Throne. But 'tis plain from his applying the Illegality of Resisting the Supreme Power to the Case of the Revolution, that he meant the Executive Power, which was then Resisted; and he uses *Sovereign*, and *Prince*, as Synonymous Terms with the Supreme Power in other parts of the same Paragraph of the Sermon; for he speaks of calling

ing the Sovereign to Account, and of Cancelling Allegiance at Pleasure, which can be due only to the Prince ; which shews, that the Prince only, and not the Legislature, can be understood by *His Supreme Power*.

I shall not trouble your Lordships, to shew that the Resistance us'd at the Revolution was consistent with the Doctrine of the Church, and with the Law and Constitution of *England* : This is no Part of the Controversy, and is not disputed by the Council ; for they agree such Cases to be excepted out of the General Rule, and profess to use the several Passages that have been read to your Lordships, only to excuse or extenuate the Doctor's Offence, and not to arraign the Justice of the Revolution ; and therefore I shall not enter into a particular Examination of them, but only observe, That if the Books, out of which these Passages were taken, were narrowly examined, 'tis possible some Expressions might be found, to shew that the Authors never intended that their General Rule should extend to Cases where the total Subversion of a Government was aim'd at. For your Lordships must needs have observ'd, from the Use that has been made of the Book of a Learned Prelate, call'd, *A Vindication of the Authority, Constitution and Laws of the Church and State of Scotland* ; Printed in 1673. that a perfect State of Truth is not altogether to be depended upon, from the Proofs that have been collected out of several Authors, and read to your Lordships ; and that the Sincerity of the Collector is very much to be question'd : For that Book was produced to prove the Duty of Absolute Submission, and a Passage was read for that Purpose ; but when the Managers look'd into the Book, they found another Passage, where the Author stating the Case of Abuses tending to a total Subversion, allows, That in such a Case, the Supreme Power may be administred by another : Which shews, That this Reverend Prelate, who was so instrumental in the Revolution, did not act in Contradiction to his former Sentiments, (as was insinuated, by citing this Treatise ;) but was firm and constant to himself, when he embark'd in that Glorious Enterprize.

Several Sermons that have been preach'd since the Revolution, have been likewise offer'd to your Lordships, to shew that the Doctrine of Non-Resistance has been deliver'd in general Terms ; but these can be of no Service in his Defence, for the Reasons that have been given. Besides, the Commons don't think themselves concern'd to enter into the Examination of private Opinions. And for those that have been preach'd by the Right Reverend Fathers of the Church now living, they are the best Expositors of their own Meaning ; and I should mispend your Lordships Time, to enter into any Explication of them. The Doctor has appeal'd to the Right Reverend Fathers of the Church ; to these Right Reverend Fathers we leave him ; not doubting but the Nation will be satisfied how much they are concern'd for the Honour of the Revolution, and the Security of the present Happy Establishment under Her Majesty, by the just Judgment they will give upon this Occasion.

And as to the Laws of the Kingdom, there needs little to be said, after what the Learned Gentleman who spoke last, has offer'd to your Lordships ; especially since the Council for the Doctor have all of them own'd, That the General Expressions in the Laws don't extend to any such Case as that of the Revolution, which no Municipal Law can be sup-

pos'd to include. And if Doctor *Sacheverell* had been satisfied with laying down the General Doctrines of Obedience and Non-Resistance, in the manner the Laws have done, the Commons had never given your Lordships this Trouble. 'Tis his entering into the Debate of what is agreed by his own Council to be an Excepted Case, and his arraigning the Justice of the Revolution, (which has been already stated at large to your Lordships) that has given Occasion for the Prosecution upon this Article.

Besides this, there have been other Things said in the Doctor's Behalf.

The Commons had alledg'd, That to shake the Justice of the Revolution, and the Validity of those Acts of Parliament, by which Her Majesty's Title to the Crown was declared, and the Succession settled in the Protestant Line, was a Matter of the greatest Consequence, at a Time when the Hereditary Right to the Crown was contested ; and that the Friends of the Pretender could advance his Interest upon no other Ground. But it has been urg'd for the Doctor, That he could never mean any Service to the Pretender ; for he asserts the Hereditary Right to be in the Queen ; and that those who deny Her Hereditary Right, are most like to bring in the Pretender. And by this Answer, they insinuate, That the Doctor has asserted an Hereditary Right in Her Majesty ; and that those who defend Her Parliamentary Title, deny Her Hereditary Right. The Passage they cite for his asserting an Hereditary Right in Her Majesty, is *Pag. 2.* where he calls Her Majesty, *The Good and Pious Relict of the Royal Family* : And they argue, That if Her Majesty be the Relict, and the only Prince of that Family left, she must have the Hereditary Right of Course.

This Passage, your Lordships cannot but observe, requires some Straining, to give it any Appearance of answering the Purpose to which they would apply it ; and after all, it can carry no such Meaning : Her Majesty is not the only Descendant of the Royal Family now in being ; there are several Branches of it yet remaining ; and I can't believe, that the Gentlemen who use this Argument, intend to exclude the Illustrious House of *Hanover* from being Part of it. In the next Place, they turn it upon the Commons, as if they denied the Hereditary Right (which they shall ever avow) when they asserted the Title by Act of Parliament. I submit it to your Lordships, Whether any thing more was said, than that the Hereditary Right was contested ? And this is notorious to all the World - - - is taken notice of in our Oath of Abjuration, and was claim'd Two Years ago, by the Pretender's Attempting an Invasion. And in such a Case, 'tis certainly the Duty of every Subject, to make good all the Fences which guard Her Majesty's Title to the Crown. And, my Lords, We have Reason to lay some Weight upon a Parliamentary Title, since the Protestant Succession entirely depends upon it ; and to defend the Power of Parliament, to limit the Succession of the Crown, since the Doctor has offer'd to your Lordships in Evidence a Decree of the University of *Oxford*, in the Year 1683. where this Proposition, *viz.* " That it is Lawful to Preclude the next Heir from his Right and Succession to the Crown, was solemnly condemned, as False, Seditious and Impious : " Which I the rather take notice of, because the Doctor relies so much upon the Authority of that University. But I must take Leave to say, That if the same Principle should still
continue

continue to be taught, or to be believ'd in that University, where so many of our Gentlemen receive their first Impressions, it must one Time or other involve us in Blood, and leave Posterity in endless Disputes about the Title to the Crown. And therefore 'tis of the greatest Consequence to Her Majesty, and the Security of Her Person and Government, the Continuance of the Succession in the Protestant Line, and the Peace and Happiness of this Kingdom, to maintain the Power of Parliament to settle the Succession to the Crown; which has been exercis'd in all Times, and frequently resorted to by Her Majesty's greatest and wisest Predecessors. This is not to make way for the Pretender, but to shew that he is effectually and legally excluded; and that Her Majesty has not only the Hereditary Right, but the Sanction of an Act of Parliament, which has been always thought sufficient to bind the Succession to the Crown, and is the plain way to establish Her Majesty's Throne against all Attempts whatsoever.

But your Lordships are told, That these Sermons were not preach'd with a Seditious Intention; and that the Doctor can never be suppos'd to have a Design to undermine the Government, by Preaching up the utter Illegality of Resistance.

This, my Lords, has indeed some Shew of an Excuse; but if your Lordships consider in what manner he has applied his Doctrine of Non-Resistance, and the Use he has made of it, together with the General Design of the Sermon, which is a virulent Invective throughout; it will appear, that he could not take a more proper Course to incite the People to Sedition, and to create Jealousies and Discontents in the Kingdom. For, First, He endeavours to shew, That if there was any Resistance in the Revolution, the Foundations of our present Happy Settlement were laid in an unlawful Force; because such Resistance was, as he says, utterly Illegal, Odious, and Unjustifiable. And having laid this Ground, he charges Her Majesty, and those in Authority under Her, with a General Male-Administration: And what Inference can the People make from such Positions as these; but that the Government they are under is ill founded, and therefore no Obedience is due to it; and since there is a General Mismanagement in the whole Administration of the Executive Power, 'tis their Interest to get rid of it as soon as they can?

This, my Lords, is the plain Tendency of his whole Discourse; and whose Interest is best serv'd by such Discourses as these, whether that of Her Majesty, our most Gracious Queen, or that of the Pretender, I submit to your Lordships impartial Consideration.

My Lords, The Doctor will have no Reason to complain of being hardly us'd, in having his Intentions censur'd as seditious, if he considers what that Great Prelate, my Lord Archbishop of York, has said in the Sermon that has been produc'd in Evidence before your Lordships; in which there is this Paragraph, *viz.*

“ They are the Factious, they are the Setters up
“ or Abettors of Parties, who endeavour to destroy,
“ or unsettle, or disparage, or at least to hurt and
“ weaken the Government and the Laws, as they
“ are establish'd; let the Principles upon which
“ they go, or the Pretences they make, be what
“ they will.

And if his Seditious Intentions be apparent from the Sermon, his having taken the Oaths of Allegiance,

his Signing the Association, and his taking the Abjuration, are so many Aggravations of his Guilt.

I have troubled your Lordships a great while; but I can't forbear taking notice of one Thing, which the Doctor has complain'd of as a Hardship; I mean, that he has been prosecuted in this Publick Manner by an Impeachment, by which, he says, he shall have been abundantly punish'd, tho' he should have the Happiness to be at last acquitted. But this Complaint is answer'd by his own Council, who acknowledge his Case to be a Cause of very great Moment; and that the Points now under your Lordships Consideration, are proper only to be settled in Parliament. And certainly, no other Course could have been so proper: For when the Foundations of the Government in Church and State are apparently struck at, and undermin'd, under Pretence of Zeal for the Constitution; when Her Majesty's Title to the Crown is endeavour'd to be weaken'd, under the Colours of Obedience and Loyalty; when the Quiet and Repose of Her Majesty's Protestant Subjects is disturb'd, under a pretended Zeal for the Good of the Church; when the Safety of the Church is in the greatest Danger, from those who declare the most affectionate Concern for her Welfare and Prosperity; when the Fathers of the Church are defam'd, by those who pretend the greatest Reverence for the Episcopal Order; and when Her Majesty's Happy Administration is publicly vilified and expos'd, in the most audacious and insolent manner; where should the Commons apply for Justice, but to this Supreme Judicature? Or where could they expect an adequate Remedy to these great and growing Evils, but in full Parliament?

They have therefore brought this great Offender before your Lordships; and have the highest Satisfaction, in a full Assurance of your Lordships Impartial Judgment.

Mr. Lechmere. **M**Y Lords, The Gentlemen who have now spoke before me, have gone thro' the Substance of the Reply to this First Article: They have shewn to your Lordships the Weakness and Vanity of the Defence, which has been made to it; and have fully reasserted this Part of our Charge, by which Doctor Sacheverell stands accus'd, in the Name of the Commons of Great Britain, of Condemning the Necessary Means us'd to bring about the Happy Revolution.

Your Lordships Consideration of this Branch of our Impeachment, and of what has been offer'd to you in Maintenance of it, has, doubtless, created in your Minds an Impression equal to its Weight, and to the many great Consequences which depend upon it: But we persuade our selves, that when you reflect on the Nature and Method of the Defence, 'twill more clearly discover to your Lordships and the World, how necessary a Task the Commons have taken on themselves in this Prosecution; of what high Concern it is to Her Majesty and Her Government, and to our common Security, that this Fundamental Question should receive this Publick and Solemn Discussion; That the false Zeal, which the disguis'd Enemies of Her Majesty's Title have the Confidence to put on, by endeavouring to cover the worst Designs, under the Sacred Names of God and Religion, and the strongest Professions of Loyalty and Allegiance, may be brought to the Test, and the true Foundations of the Safety of the Kingdom be understood and asserted.

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The Part assigned me in opening the Charge, leads me to take Notice of some Passages which have fall'n from the Council ; and tho' what I shall first mention, has been already observed and fully refused, yet I must beg your Patience to resume it a little. The Gentleman who began the Defence said, That 'twas insisted on the first Day of the Trial, *That the Doctor had not only asserted the utter*

Illegality of Resistance on any Pretence whatsoever ; but that he had likewise declared

himself, That the Revolution was not such a Case as ought to be excepted out of his General Rule,

and this he said, he denied ; and if such an Expression could be found in the Doctor's Sermon, he

should think no Punishment too great for him. Your Lordships could not but observe the Argument

which immediately followed : 'Tis one thing, says he, expressly to affirm the Revolution is such a Case

as ought not to be excepted, and another thing not to make that Exception. You were told, indeed, in

the Beginning of the same Discourse, and afterwards by the Doctor himself, That his general Assertion of

the utter Illegality of Resistance on any Pretence whatsoever, did not relate to the Resistance used to

bring about the Revolution, it being applied to the Supreme Legislative Power, to which no Resistance

was then made, the Lords and Commons joining in it. This, my Lords, is a Meaning which the Do-

ctor had not in view when he preach'd the Sermon ; for, by observing the Passages, you will find that

the Words Supreme Power, are no Part of the Assertion of the utter Illegality of Resistance on any

Pretence whatsoever. He doth, indeed, affirm unconditional Obedience to the Supreme Power in all

things lawful, but the Illegality of Resistance is indefinitely and universally affirm'd, and not restrain'd

to the Supreme Power. 'Tis likewise evident, not only from his mentioning the Case of the Revolution,

which was the Case of Resistance to the King, as an Objection to his general Rule of the utter Ille-

gality of Resistance, but likewise from the subsequent Parts of the same Paragraph, that the Non-

Resistance which he preach'd up, was Non-Resistance to the Supreme Executive Power ; and, indeed, this

is still more evident from the Fallacy of that, which is offer'd to induce your Lordships to think other-

wise, it being undeniable, that the Lords and Commons did not join in that Resistance, as part of the

Legislative and Supreme Power, but as part of the collective Body of the Nation. This Subterfuge, fri-

volous as it is, being soon departed from, the Argument proceeded upon the Supposition, that the

general Assertion in the Sermon was to be understood of the Supreme Executive Power. I return there-

fore to the Objection as stated before, which being deliver'd with uncommon Ostentation, your Lord-

ships will allow me to enter into the Examination of it. The Subjects Obligation to an unconditional

Obedience to the Supreme Power in all things Lawful, and the utter Illegality of Resistance on any Pre-

tence whatsoever, is the Doctor's general Rule, which he affirms to be the Security of our Government,

and the Belief of this the very Pillar on which it stands. Your Lordships may here observe, that the

Doctor, in delivering his general Rule, has gone pretty much beyond that Apostle he would be

thought to imitate : The Apostle in general Terms enjoins the Duties of Obedience and Subjection to

the higher Powers, not mentioning any Exception, when he lays down those Precepts. The Doctor

goes on, and his next Sentences contain a general Observation, That tho' his fundamental Doctrine

was now become unfashionable and exploded, as a

dangerous Tenet, inconsistent with the Rights, Li-

berties and Property of the People ; yet, God be

thanked, it still continued to be the Doctrine both

of Church and State : And then follow these Words,

Our Adversaries think they effectually stop our

Mouths, and have us sure and unanswerable on this

Point, when they urge the Revolution of this Day in

their Defence. No Body can doubt what Revolution

the Doctor means, nor, that under the Term

Revolution, by which he expresses the Objection

made to the general Rule of Non-Resistance, he

meant the Resistance suppos'd to be made at that Re-

volution. This he states, as the unanswerable Ob-

jection made by his Adversaries to his Point, to his

Rule of Non-Resistance on any Pretence what-

soever.

If your Lordships collect the Sense of the Para-

graph thus far, it will stand thus. Those Persons

who explode absolute Non-Resistance to the Prince

as a Tenet dangerous to Liberty ; in Defence of that

their Opinion, object to us, who avow this Tenet

as the honourable and distinguishing Characteristick

of our Church, the Resistance us'd to bring about

the late happy Revolution, as an Exception out of

our general Rule of Non-Resistance. The Doctor

having thus laid down his Rule in universal Terms,

and expressly taken Notice of the Case of the Revo-

lution as an Objection raised against it by other

People ; your Lordships are next to consider what

becomes of this Objection ; in what manner is it

treated by him, and what Judgment does he pass

upon it ? My Lords, The Doctor does not drop the

Objection without considering it further ; he is not

silent in the Matter ; he doth not leave this as an

Exception implied, and to be suppos'd by the general

Rule ; he proceeds and argues expressly upon it for

two or three Sentences together : The Doctor's Ex-

pressions in this respect also are not entirely agreeable

to those of the Apostle. In the next place, Doth

the Doctor yield the Objection to his Adversaries ?

Doth he allow the Resistance used to bring about the

late happy Revolution to have been a lawful Resistance,

and to be an Exception out of his general Rule ?

No, my Lords, just the contrary : He is so far from

agreeing with his Adversaries in this Point, or giving

way to the Exception, that in Vindication of the

Revolution, as he would be thought to speak, he

pronounces those who make the Exception, and

contend for the Lawfulness of that Resistance, to be

Enemies to the Revolution ; and that Resistance,

which the Commons assert to be the necessary Means

by which it was brought about, he describes to be

odious Colours cast upon the Revolution. In his

next Sentence he insinuates, That there was no Re-

sistance at the Revolution, and to that End, misre-

presents his late Majesty as having disclaim'd it ;

and with the same Intent likewise, that the Parlia-

ment set the Crown on his Head on no other Title

than of the Vacancy of the Throne ; and still the

more effectually to delude his Hearers into the Belief

of his general Assertion, grossly and ridiculously per-

verts the Censure pass'd by a future Parliament upon

the Notion of Conquest, as a Condemnation of

that Resistance. Having thus consider'd this Ob-

jection of the Revolution, and the following Parts

of his Paragraph being Expressions of Triumph

over his Adversaries, whose Objection he would be

supposed to have confuted, towards the Close of it

he uses these Words, as his Conclusion and Judg-

ment upon it : In short, as the English Government

can never be secure on any other Principles but strictly

those

those of the Church of England, so he will be bold to say, &c. His general Rule of Non-Resistance on any Pretence whatsoever he had before laid down as the Doctrine and Principle of the Church; which, after having consider'd the Case of the Revolution as an imaginary Exception to it, he reasserts in those Words. And what clearer Indication can your Lordships receive of the Doctor's Intention in his general Assertion? Can your Lordships, or any Body that shall consider the Tenor of that Part of his Discourse, retain any Doubt whether he has *plainly and fully declared* himself, That the Resistance used to bring about the late happy Revolution was odious and unjustifiable, and not to be excepted out of his Fundamental Rule of the Illegality of Resistance on any Pretence whatsoever? And, my Lords, Can it be said that this Interpretation of his Discourse is *strained and unnatural*? Is this Part of our Charge maintain'd by *conjoining distant and independent Passages*? Or is not the Connexion clear and necessary, and the Sense we contend for, the only Sense the Words can properly bear, in the most candid and genuine Interpretation of them? The Gentleman, whose Objection from the Bar I have been considering, said, *That 'tis one thing expressly to affirm that the Revolution is not to be excepted, and another thing not to make that Exception*. But tho' the Words of the Sermon are not an express and literal Affirmation, yet if this Construction appears to your Lordships to be necessary and certain, they will be taken by you to be an ample and undeniable Declaration of his Mind; and this poor Shift, thus emphatically insisted on at the Bar, will amount to no more than what the Doctor had before said in his Answer in plainer Words, That he had not maintain'd the Necessary Means to be Odious and Unjustifiable, because he had not made use of those very Words.

The next Passage which I shall observe to your Lordships, fell from the Gentleman who spoke third in Defence of this Article; his Words were these: I have been *careful and exact* in collecting them. One Learned Gentleman, says he, did observe, that there was an Original Contract; and that by that Contract, if the Executive Power invaded the rest, that Contract was broke, and the People discharged from their Allegiance; but he did not think fit to take Notice when that Contract was made. I would fain know, whether it was before *Magna Charta*, or since; if it was before, it is much no Mention was made of it there, for that has been always look'd upon as the Great Charter of the Rights of the People. Was it before 25 Ed. 3.? Then I would know, Whether that Contract, made before the 25. Ed. 3. could ever discharge that Act which was made after it? If it doth discharge the Subject of their Allegiance, I have never yet known it pleaded to any Indictment for High Treason upon that Act; and therefore, *Till the Legislature shall determine what that Contract is, and what Breach of it shall discharge the Subjects of their Allegiance, I must take Leave to say, that Resistance stands still upon the Foot of the Statute of 25 Ed. 3.*

My Lords, The Nature and Consequence of this Passage would bear a much more ample Consideration, than my Time has allowed me to give it, or than may be fit to trouble your Lordships with on this Reply; but I conceive a short Notice of it, and of the near Relation it bears to the Matter now before you in Judgment, may yield a pretty clear Discovery and Explanation of the whole. But the Distance of Time since the opening of the Charge,

and the many palpable Misconstructions which some of the Council have allow'd to themselves, or what has been offer'd by some of us in behalf of the Commons, makes it necessary for me, even in this Particular, to remind your Lordships of the Connexion of the Discourse, out of which this Observation was rais'd. Your Lordships were acquainted, in opening the Charge, with how great Caution, and with what unfeigned Regard to Her Majesty and Her Government, and to the Duty and Allegiance of Her Subjects, the Commons made choice of the Words *Necessary Means*, to express the Resistance that was made use of to bring about the Revolution, and with the condemning of which the Doctor is charged by this Article; not doubting, but that the Honour and Justice of that Resistance, from the Necessity of that Case, and to which alone we have strictly confin'd our selves, when duly consider'd, would confirm and strengthen, and be understood to be, an effectual Security of the Allegiance of the Subject to the Crown of this Realm in every other Case, where there is not the same Necessity; and that the Right of the People to Self-defence, and Preservation of their Liberties by Resistance, as their last Remedy, is the Result of a Case of such Necessity only, and by which the Original Contract between King and People is broke. This was the Principle laid down and carried thro' all that was said with respect to Allegiance; and on which Foundation, in the Name, and on the Behalf of all the Commons of *Great Britain*, We assert and justify that Resistance by which the late happy Revolution was brought about. When the Gentleman from the Bar endeavour'd thus, in a ludicrous manner, to explode the Original Contract between the King and People, he must not be supposed to be ignorant, that those very Words are part of the Vote of the Abdication, the Vote of both Houses of Parliament, at the Time of the Revolution, antecedent to that Settlement of the Crown, on which Her Majesty's Parliamentary Title and our present Establishment is founded. I have thought it necessary to transcribe that Proceeding from your Lordships Journals, now lying on your Table, and will state it to you as I have taken it from thence.

Upon the Twenty Ninth of January, 1688. A Message was brought from the Commons by Mr. Hambden and others, who said, *The Commons taking into their Consideration the State of this Kingdom, had pass'd a Vote, to which they desired your Lordships Concurrence; which Vote was as follows: Resolved, That King James the Second having endeavoured to subvert the Constitution of the Kingdom, by breaking the Original Contract between King and People; and by Advice of Jesuits and other wicked Persons, having violated the Fundamental Laws of this Kingdom; and having withdrawn himself out of this Kingdom, has abdicated the Government, and the Throne is thereby become Vacant.* Your Lordships House Resolved it self into a Committee of the whole House, and the Vote, containing in it divers Particulars, upon the 30th Day of January, was considered by Paragraphs; the first of which was, *That King James the Second having endeavoured to subvert the Constitution of the Kingdom, by breaking the Original Contract between King and People: To which the Committee, and the House afterwards, agreed without any Amendment.* Now, when it appears to your Lordships and the World, that *breaking the Original Contract between King and People*, were the Words made Choice of by that House of Commons, with the greatest Deliberation and Judgment,

and approv'd of by your Lordships, in that first and fundamental Step made towards the Re-establishment of the Government, which had receiv'd so great a Shock from the evil Councils which had been given to that unfortunate Prince, and that they are stated in that Vote as a Consequence of his endeavouring to subvert the Constitution of the Kingdom; I need not say how much the Lawfulness of that Resistance, which had been before made by the People, and which is now the immediate Question, nay, how much the Justice of the Revolution it self would be affected by a Condemnation of that Position: And what Light doth it give to the Question now before your Lordships, when at your Bar, in Defence of a Person accus'd by the Commons, for condemning the Necessary Means which brought about the Revolution, you have heard that Original Contract, at that Time so solemnly declar'd to be a *Fundamental Principle*, publicly deny'd, ridicul'd, and endeavour'd (in what Manner 'tis easy to judge.) to have been exploded?

My Lords, The Truth of that Position has its Foundation in the Nature and Essence of the Constitution of our Government, and it will stand so long as this remains; and the Sanction it has receiv'd from your Lordships, and from that House of Commons, who had with so much Wisdom and Bravery asserted the Rights of the Kingdom in that extraordinary Juncture, and who, pursuant to that Resolution, settl'd the Crown upon Her Sacred Majesty, ought to render it indisputable, so long at least as that Establishment is preserv'd to us. But yet, could I think it seasonable to enter into it, to consider more particularly the Nature of our Government, to draw together some of the many incontestible Evidences of its Original Freedom, to consider the Nature, Antiquity and History, of the Coronation-Oath, and the Oath of Allegiance, and the mutual Obligations and Consequences arising from them to the Prince and People: Was I to go over the several Branches that make up the ancient Frame of our Government, and which speak and express a Consent and Compact between the Prince and People in their Institution; and was I to observe that inseparable Relation and equal Security which they import between the Crown and the Subject, and which are so many infallible Tokens of Original Consent stamp'd upon them; the Truth and Certainty of that Position of an Original Contract between the King and People, might be laid down to your Lordships in demonstrative Terms. The Gentleman that rais'd this Observation, soon afterwards, in the same Discourse, suppos'd, That by the Original Contract, the Original Constitution was meant; how strictly proper that Manner of speaking might be found to be, I will not now determine; yet thus much may with Certainty be concluded, That the denying the Original Contract, is not only to disavow the whole Proceeding at the Time of the Revolution, but to renounce the Constitution it self, to disclaim those many and undeniable Proofs and Testimonies of it, which almost every Part of our History, our Records, and Memorials of Antiquity, will furnish: To deny the Original Contract of Government, is to contradict and condemn the Voice and Tenor of all our Laws, of every Act of the Supreme Legislative Power, the Force and Efficacy of which exists upon the Consent of the Crown, Lords, and Commons, and are therefore so many lasting and unerring Proofs of that, as the Original Foundation of that Supreme

Power; 'tis not only to oppose the constant Judgment of all learned Men, who have understood and wrote impartially of our Government, but even the Sense of many of those Writings which have been produc'd and read to you in the Doctor's Defence, and more particularly that of the judicious Mr. Hooker: To deny and condemn the Original Contract between King and People, what other Consequences could it produce, than to unhinge the Government, and to destroy that excellent Balance of Power, which is secur'd by it, and by which it has been so long preserv'd? It must weaken the ancient and just Prerogatives of the Crown, subvert the Foundations of your Lordships Legislative and Judicial Powers, render the Parliamentary Rights of the Commons precarious and uncertain, and terminate at length in that absurd, yet dangerous Opinion, of the *Patriarchal Right*, which, when joined together with the Doctrines of absolute and unlimited Non-Resistance, and unconditional Obedience of the Subject to their Prince, compleats that fatal System, which has been, of late, so much contended for, towards the enslaving Mankind.

But your Lordships will consider further, what Use and Application was made of this Passage by the Council; his Conclusion was, *That till the Legislature had determin'd what the Contract was, and what Breach of it shall discharge the Subjects of their Allegiance, he took leave to say, that Resistance still stood upon the Foot of 25. E. 3.*

My Lords, We stand here entrusted to maintain the Charge contain'd in our Article, to assert the Justice of that Resistance only, which brought about the late happy Revolution; and that being the Resistance in Question, and to which alone we have apply'd our selves, and in Support of which the Original Contract was mention'd; what is the plain *English* of this Inference drawn from the denial of it? Does it not amount to an open and positive Declaration from the Mouth of Dr. Sacheverell's Council, That that Resistance which was the necessary Means us'd to bring about the late happy Revolution, instead of being an Honourable and Lawful Resistance, was an Act of Rebellion and High-Treason?

Having consider'd these Particulars, I beg your Indulgence to make a few Observations on the Nature and Method of the Defence to this Article: Your Lordships will remember, tho' it seems to have been totally forgot on the Prisoner's Part, that the Maintenance of this Article has not rested on the Doctor's general Assertion alone, but upon the following Passages, now stated to you; from whence we have undertaken to convince your Lordships, that Dr. Sacheverell has apply'd that general Rule of Non-Resistance to the particular Case of the Revolution; and this having render'd the Independant Consideration of the general Assertion wholly immaterial, when you afterwards heard the Admissions that were made by the Council, of the Legality of the Resistance us'd to bring about the Revolution, your Lordships might reasonably have expected, that the only Question remaining on this Article would have been, How far those subsequent Passages of the Sermon did evince the Intent of the general Assertion? But, tho' the Question has been thus plainly stated and maintain'd, and the Method of the Doctor's Vindication thus clearly pointed out to him, yet how little has been said? How little Notice has been taken of this, which was his proper Defence? The Gentleman who began the Defence has, indeed, denied the Charge of this Article; the Force of that, and

and of his Argument which followed, have been considered; but if your Lordships shall not think fit to accept that single Attempt as sufficient to acquit the Prisoner, (together with a nervous Observation of the Interposition of some Lines between the general Assertion, and that Sentence wherein the Revolution is named) how much will your Lordships find, throughout that long and labour'd Harangue, that can be judged by you at all material to the true Question before you? For tho' the general Doctrine of Non-Resistance, the Doctrine of the Church of England, as stated in her Homilies, or elsewhere deliver'd, by which the general Duty of Subjects to the Higher Powers is taught, be owned to be, as unquestionably it is, a godly and wholesome Doctrine; tho' this general Doctrine has been constantly inculcated by the Reverend Fathers of the Church, dead and living, and preach'd by them as a Preservative against the Popish Doctrine of deposing Princes, and as the ordinary Rule of Obedience; and, tho' the same Doctrine has been preach'd, maintain'd and avow'd by our most Orthodox and able Divines from the Time of the Reformation; and, how *Innocent a Man* soever Doctor Sacheverell had been, if, *with an honest and well-meant Zeal*, he had preach'd the same Doctrine, in the same general Terms, in which he found it deliver'd by the Apostles of Christ, as taught by the Homilies, and the Reverend Fathers of our Church, and, in Imitation of those great Examples, had only press'd the General Duty of Obedience, and the Illegality of Resistance, without taking Notice of any Exception; yet, what Excuse can be derived, to the Matter now in Question, from such Considerations as these, in Favour of the Doctor, who has not only asserted the general Rule in Terms of the greatest Latitude, but has expressly mention'd and disallow'd the Exception of the Resistance, which brought about the Revolution? And whatever is the Language of our Laws, *Repealed or in Force*; wherein the same general Duty of Subjects is stated, and the Rule laid down to them, as Necessary and Fundamental for the Safety of the Crown and Government, and the Peace of the Kingdom, and which are meant to enforce and secure their Civil Obedience in ordinary Cases, (but which no Body will say can be construed to extend to the Case of a People threatened by their Prince with total Destruction, the utter Subversion of their Laws, and the Loss of their Religion and Liberties, to a Case of the last Necessity, (*such a Case as the Revolution was*), yet no Use can possibly be made of such Declarations in our Acts of Parliament to justify the Doctor, who by his general Assertion, has not only out-gone even those general Declarations, but has undeniably applied it in Condemnation of the Case of the Revolution, which is the Charge of this Article.

Your Lordships will allow me to observe yet a little farther; The Nature of this Article appearing to every Body to be of that near Concern to Her Majesty and Her Government, you have, indeed, heard very warm and pathetick Expressions of Loyalty, of very tender and dutiful Regard to Her Majesty's Title, and much Labour and Vehemence was used to persuade your Lordships into a Belief of this: But yet, your Lordships could not but observe, where the real Stress and Force of the Argument was placed, and where it center'd at last; your Lordships will find, the great Effort was made to establish the general Doctrine of Non-Resistance, to inculcate this, in Terms of the largest Extent, in the same universal Terms, wherein the Doctor

has deliver'd it, and than which I am at a Loss to find Words that can extend it further: If your Lordships should think fit to look back, with particular Exactness, upon the several Discourses which have been made from the Bar on this Article, and, for your more accurate Judgment, shall think proper to lay them together, and observe their Consistency; and if, from such an Examination, you should see Cause to compare that which was first deliver'd, with that which was afterwards *spoke* by the Doctor himself, (for, my Lords, between them the Resemblance seems to be the nearest, and *the Difference between them in the Notions of Allegiance but very small*), your Lordships may perhaps, in a great Measure, collect from thence the true Genius of this Defence. Your Lordships will observe, in how different a Manner, with what different Zeal, the main Points in Agitation have been handled by them; I mean, the Justice of the Resistance, which brought about the Revolution, and the general Doctrine of Non-Resistance. It has already been observed to you, that the Doctor himself made no Admissions concerning the Lawfulness of that Resistance, but has us'd Expressions of due Regard to the Protestant Succession; The Gentleman, who open'd the Defence, it being, it seems, of no Consequence to the present Occasion, came to no Declaration in this Point of the Protestant Succession; But, as to the Honour and Justice of the Revolution, his Approaches are nearer: He has acquainted your Lordships, That *there is nothing further from our Hearts, nor any Thing less Necessary for our Defence, than for us to call in Question the Justice of the Revolution*. At another Time, he delivered himself in general Terms: *Such a Case*, (that is a Case of Necessity, a Case never to be mentioned, but to be supposed and implied) *the Revolution was*: But, in other Parts of the same Discourse, the Expressions even concerning the Revolution will be found to be more reserv'd and wary, and always soften'd with some saving Particle: Thus shy and tender at the best, have the Admissions been from those Two Discourses, of the Lawfulness of that Resistance which brought about the late Happy Revolution: But as for the Doctrine of Absolute, Unlimited Non-Resistance, by which, if it be not an Erroneous Doctrine, the Justice of the Resistance, which was the necessary Means that brought about the Revolution, (and in pursuance of which, the Crown was settled on Her Majesty and the Protestant Line) must for ever remain condemn'd. What Fervency and Copiousness of Expression was used to establish that? What Cautions have appear'd to guard and secure this Doctrine as inviolable? How often, and with what Zeal was it inculcated, that the general Doctrine, was that Doctrine which alone was to be preach'd and press'd? The Exception, *The Case of Necessity, the Case of the Revolution*, the only Case contended for, was not fit to be mention'd: The Doctor's general Rule was that alone, which was proper to be inculcated and believ'd; the excepted Case never to be stated, but to be suppos'd or imply'd, and *to be left to justify it self*.

My Lords, How comes it to pass, that so little Concern has been shewn, in the Course of this Debate from the Bar, to that which was the proper Defence of the Criminal, to clear the Passages of his Sermon from the noxious Meaning they had been shewn to bear? How comes it to pass, that the Honour and Justice of the Revolution is thus tenderly acknowledged; but yet all that has been said

to support it; has by this Gentleman been endeavour'd to be enervated; and at the same Time the extremest Zeal shewn to establish the general Position, tho' altogether immaterial? I'll once more venture at a *charitable Reconciliation* of *those* seeming *Inconsistencies*: Upon a very strict and minute Recollection, your Lordships will find that *the Resistance, the Necessary Means* us'd to bring about the Revolution, is never once acknowledg'd in that first Discourse, in *plain and express Terms*: The Case of Necessity in general, the Case of the Revolution, was so ambiguously spoke of, and so skillfully given up, that, by the *kind Help of some happy Distinction, when the Season is proper*, 'twill be easy to retrieve it. Tho' your Lordships may remember some plausible Expressions concerning the Justice of the Revolution, yet you will find the real Conclusions of the Discourse tend to condemn it; and such remarkable Instances chosen, such as the Case of the *Two Spencers*, which, being applied to the Case of the Revolution, represent its Principles damnable, its Consequences detestable, and the Assertors of it deserving Banishment; Your Lordships will find the Argument so well adjusted to the *main Point in view*, to establish the *slavish* Doctrine of *Absolute, Unlimited Non-Resistance*; that, if the worst should happen, even that against which we are now contending, the judicious Reserves that Gentleman has used on the Point in Question, and the real Service he may be thought to have done to that *slavish* Doctrine, may, in due Time, raise a Merit in Favour of all its Consequences.

But, as an undeniable Evidence of a *sincere Affection* to the Case of Necessity, the Case of the Revolution, let me put your Lordships in mind of the Passage quoted from Mr. Pym in his Declaration against Doctor Manwaring: The Doctrine preach'd in those Days, and for which he was impeach'd by the Commons, was, The attributing an Absolute Power to the King over the Property of the Subject, tho' with some *decentful* Limitations, as that of extreme and urgent Necessity. Mr. Pym had shewn the Vanity and Fruitlessness of that Limitation, it being left to the Prince to determine what is an urgent and pressing Necessity. And to represent the Danger of such a Case, of allowing any Exception upon any Pretence, even that of extreme Necessity, he cites the Charter of Lewis 10. of France to the Dutchy of Normandy, wherein that Prince having acknowledged the Franchises of the Dutchy, and granted to them, that for ever afterwards they should be free from all Exactions from him and his Successors, these Words followed, *unless great Necessity required*; which small Exception, Mr. Pym observed, had in Time devoured all their Immunities. Mr. Pym, in that Speech, arguing against the Position advanced by Doctor Manwaring, condemns the least Pretence of any Exception: The Gentleman, who quoted this Passage from him, having endeavour'd to establish his general Doctrine of Absolute Non-Resistance, the Doctrine preach'd by Dr. Sacheverell, and having shewn the Danger of mentioning any Exception to it, even that of the Case of Necessity, and *such a Case*, he had before told your Lordships, *the Revolution was*, concludes from that Instance, that such Exceptions wou'd in Time devour all Allegiance. This, my Lords, hath been the Method, these have been the Arguments us'd to acquit the Doctor, to shew the Innocence of his Intention, and that there was no Design either in his Sermon, or his Defence, to condemn the Resistance, *the necessary Means* which brought about the late

Happy Revolution; And from these Observations you may possibly discern the Consistency of the whole Defence. I beg leave only to *turn the Case*, to suppose a Case of a real Design to condemn the late glorious Revolution, and all the happy Consequences of it. At a Time, when express Declarations of such a wicked and traiterous Intention may not be judged proper; at a Time, when some plausible Expressions of the Justice of it, may be thought Useful and Necessary; and, at such a Time, let the Illegality of Resistance on any Pretence whatsoever, be laid down and enforc'd in its utmost Extent; let the Danger of stating or mentioning any Exception to it, be strongly inculcated; let the Justice of the Exception, even of the Case of Necessity, *such a Case as the Revolution was*, be illustrated by an Instance, wherein 'tis expressly condemned; and, May it not be said, 'Tis easy to discern what Spirit such a Person is of, of what Party he is, what he aims at, and what he intends; that he has not been speaking in Defence of the late Revolution, can't be look'd upon to have been arguing for it, and to shew the Justice of it, but was covering the Treason of his Heart, and under Pretence of justifying one Revolution, was labouring to bring about another. But, what vain Imaginations must possess those Minds, which can flatter themselves into a Belief, that, even whilst they are maintaining Principles that tend most certainly to undermine the Foundation of Her Majesty's Government, and the Protestant Succession, the most solemn Protestations out of the same Mouth, and in the same Breath, should pass for an Atonement with your Lordships, or give Satisfaction to any that hear them.

My Lords, Your Lordships will consider the evident and necessary Tendency of the Doctrines, which have been preach'd by the Prisoner, and have been again asserted, though not openly avow'd, in their full Extent and Consequence, in Defence of this Article: The Doctrine of *Absolute Non-Resistance*, the condemning the Original Contract, renouncing the Ancient Legal Constitution of the Government, which is our Title to our Liberties, are Positions, which can have no better Tendency, than to shake the present Settlement of the Crown, and our present Establishment, and to make way for the Pretence of a Natural and Divine Right of Succession. Are not those the Principles taught, and avow'd by Papists and Nonjurors, and whereon their Hopes are founded? And are they more Wholesome, or less Dangerous, when they fall from the Mouth, or drop from the Pen of the Prisoner, or are asserted in his Defence, tho' gilded over with specious Pretences, and under the Umbrage of a true Son of the Church? If these Doctrines of Unlimited Non-Resistance, of a sole Hereditary and Divine Right of Succession to the Crown, are the very Doctrines, on the Belief of which, the professed Enemies of Her Majesty and Her Government, inviolably engage themselves against Her Title, and against the Protestant Succession; If these are the Tenets, by which they openly condemn the late Glorious Revolution, and all its Consequences; From which Part of this Defence can your Lordships collect the Innocence of the Prisoner? By what way of Reasoning can it be concluded, that the same Opinions, embrac'd by this Gentleman, do not inevitably engage him in the same Interest?

Sir Peter King. **M**Y Lords, It is my Part to Reply to the Answer that has been given by the Doctor, to the Charge of the Com-

Commons of Great Britain, with Relation to the Second Article. When I was entrusted by the Commons to manage this Part of the Charge, I both quoted and read the Passages of the Sermon, to make good that Charge; I did not desire that any Thing should be taken upon Trust, nor any Thing receiv'd against him, but what appear'd from his plain express Words, or by clear, necessary and unavoidable Consequence. Indeed, after the whole Sermon had been read by the Clerk, I thought it too great a Trouble to your Lordships, to have the Clerk read over the particular Passages again at the Table, and therefore I read them my self, truly and fairly, as they were in his Sermon; and if I had done otherwise, the Doctor and his Council would have set me right. I agree with the Doctor and his Council, that in a Case of this Nature, and I will say further, in all Cases whatsoever relating to Crimes, the Charge must be maintain'd by positive plain Words, or necessary and unavoidable Inference, such as no reasonable Man can withstand the Light of. And therefore, if there was nothing in this Case but dark Hints, strain'd Innuendo's, and forc'd Construtions, I am sure, neither the Commons of Great Britain, nor my self, would appear before your Lordships with an Attempt to make out a Charge of this Nature; if it is not prov'd by plain, positive and express Words, or necessary and unavoidable Inference, I am sure your Lordships will never convict him; because it would not be just and right so to do. It is a perverting of Common Justice to condemn a Person without plain and direct Proof; therefore what we represent to your Lordships is, that by plain and clear Passages in his Sermon, he is guilty of the Charge in the Second Article, of maintaining, *That the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable; and that he is a false Brother with Relation to God, Religion, or the Church, who defends Toleration, and Liberty of Conscience.*

When the Doctor put in his Answer to this Article, he had not found out that there was a Toleration granted by Law to the Dissenters; but his Council have now found it out, and they do agree, that there is a Toleration granted by Law, and that it is that Indulgence which is contain'd in the Act made in the Time of the late King and Queen; but they insist at the same Time, that the Doctor in his Sermon has not condemn'd or censur'd that Toleration; they say he has condemn'd a Toleration, but they insinuate there are Two Tolerations mention'd in his Sermon, the one a Toleration granted by Law, which he allows and approves of; and the other a general unlimited Toleration, which they admit he does condemn; so that we are now agreed upon the Word *Toleration*, and they do admit that he doth in his Sermon Censure and Condemn a Toleration: But, say they, it is not the Toleration granted by Law, because he took Care in his Sermon that his general Expressions should not be misconstru'd, and put in this express Caution in the 20th Page: *I would not be here misunderstood, as if I intended to cast the least invidious Reflection upon that Indulgence the Government has condescended to give 'em, which I am sure all those that wish well to our Church, are ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law has prescrib'd.* This, they say, is an express and full Declaration of his Meaning, that he is not against the particular Toleration granted by Law; and therefore all those other Passages in his Sermon condemning Toleration, are to be applied

to a general Toleration, and not to the particular Legal one.

When I made out this Charge, I mention'd this Caution of the Doctor's, but at the same Time submitted it, whether such a general Expression as that is, could screen him from other plain Passages in which he has condemn'd the Toleration; if in other Places he has condemn'd it, this Caution is but *Protestatio contra factum*; an oblique Defamation may be as Criminal as a direct one: In the common Cases of Scandal, if I obliquely defame another, and describe him so, that it is impossible but every one must know him, it is no Excuse that I do not positively accuse him; so that the Question will be, whether the Doctor has not in the other Passages cited against him, plainly censur'd and condemn'd the Toleration granted by Law.

The first Passage cited out of his Sermon, to prove this Charge upon him, was in the 10th Page; I trouble your Lordships with reading it again, that I may be sure to do him no Injury; the Words are, *So that in all those Cases before-mention'd, whosoever presumes to innovate, alter, or misrepresent any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traytor to our State; Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other, and consequently a Crime that concerns the Civil Magistrate as much to punish and restrain, as the Ecclesiastical.*

The former Part is relative to what went before; the latter Part is a general Assertion, that *Heterodoxy in the Doctrines of the Church infers Rebellion and High Treason in the State.*

The relative Part of this Clause has Relation to the several Doctrines mention'd before; among which, one of the Cases and Instances of false Brotherhood is, *the affirming that the Divine Apostolical Institution of Episcopacy is a Novel Doctrine, not sufficiently warranted by Scripture; whoever affirms this, is guilty of an Innovation or Alteration of the Articles of our Church.* Now the Dissenters of all Sorts universally hold this Proposition, and they are exempted from subscribing the 36th Article, which asserts Episcopacy: But, saith the Doctor, though they are exempted, yet whosoever asserts this Proposition, is to be punish'd as a Traytor to the State, as well as an Enemy to the Church.

The Learned Civilian of Council for the Doctor says, that the reading the whole Passage will show, that it was not intended for the Dissenters, but for one in Holy Orders; that if such an one should maintain this Doctrine, *he would be an Apostate from his own Order*; now this Allegation is true, as it stands in Page 8.; absolutely consider'd in its self, it is there applied to one in Holy Orders; but as it stands in Relation to this Clause, in Page 10. it is a general Assertion, that *whosoever innovates, or alters that Article of the Church*, which the Dissenters do, *ought to be arraign'd as a Traytor to the State.*

Another Answer that hath been given hereto, is, That the Doctor there means those who are for Innovations and Alterations, in Matters of Faith, which can't respect the Dissenters or their Toleration, because the Dissenters agree with the Church in Matters of Faith, and differ only in Matters of Discipline. But if you give this Turn to it, it alters the Sense and Meaning of the Doctor; for he is not speaking here of Matters of Faith, in Con-

tradistinction

tradistinction to Matters of Discipline, but he is speaking in general of the Articles of Faith of our Church; *whoever presumes in any of the Cases before-mentioned to innovate, alter, or misrepresent any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traytor to the State.* Now what are the Articles of Faith of our Church? Are they not the Thirty Nine Articles? Are not they the Articles of the Faith and Religion of the Church? Doth not the Thirty Sixth Canon expressly require the Clergy to subscribe willingly, and *ex animo*, that all and every the Articles of Religion, being in Number Thirty Nine, are agreeable to the Word of God? Now if the Thirty Nine Articles be the Articles of Faith of our Church, and the Dissenters disbelieve the Thirty Sixth Article; and if for that Innovation or Alteration they are to be arraign'd as Traytors to the State, what then is become of the Toleration, that exempts them from the Penalties, and from subscribing the said Thirty Sixth Article?

As to the general Proposition immediately following in the same Clause, *viz. Heterodoxy in the Doctrine of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other, and consequently a Crime that concerns the Civil Magistrate as much to punish and restrain, as the Ecclesiastical*; I don't remember that any Answer whatsoever was given to it by the Doctor or his Council. And I pray your Lordships cast your Eyes on this, and see here is an Affirmation, that any different Opinion in any of the Articles of the Church, is a Crime against the State. Now all the Dissenters are exempted by the Act of Toleration from subscribing Three Articles and an half, others from Four and an half, and others from all. And when this Act grants them all these Exemptions, shall it be affirm'd that this Heterodoxy allow'd by that Act is High Treason and Rebellion, and that they ought to be arraign'd as Traytors? I submit to every ones Judgment, whether any Thing can be more plain against the Toleration than this.

The next Passage cited out of his Sermon, to prove the Charge of the Second Article, is in the 16th and 17th Pages: *What could not be gain'd by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pull'd down, it may be blown up; and no Matter with these Men how 'tis destroy'd, so that it is destroy'd.*

My Lords, Here is an Affirmation, that Toleration was doing open Violence to the Church, that the False Brethren had a Design by Toleration to pull down the Church. Now the Answer given to this by one of the Council, is what one can scarce imagine he was serious in, *viz.* That this doth not suggest the Toleration to be unreasonable, or the Allowance of it unwarrantable; but that it is rather a Commendation of the Toleration, because it shews that it could not do the Church any Hurt, it could not pull down the Church, and therefore they have found out a more pestilent Way, of Occasional Conformity and Moderation. But all that can be collected from hence, is, that Toleration is a less successful Evil than Moderation: Toleration was a storming the Church by Violence, and an endeavouring to pull it down; but though, by the good Providence of God, it hath not been so successful an Evil as Moderation, which is a Secret Treachery to undermine the Church, and blow it

up, yet it is an Evil: And to suppose the Church to be either pull'd down, or blown up, which way soever it be done, it is so great an Evil, that every Member of the Church must be for preventing it, and using all his Endeavours to prevent both those Evils; and therefore to represent Toleration to be such an Evil to the Church, as to be doing open Violence to the Church, and pulling it down, is an undue Reflection on the Fathers of the Church, and on that Parliament that granted that Toleration, as if they concurr'd in Endeavours to pull down the Church, and destroy it.

Another Passage, in Page 14. of the Sermon, was cited by the Council of the other Side, as a Passage cited by me to make out the Charge against the Doctor; but herein they mistook me, it was not cited by me for that Purpose, but to shew that the Doctor understood the Act of Indulgence to be a Toleration; and the Passage was this, *Certainly the Toleration was never intended to indulge, and cherish such Monsters and Vipers in our Bosom, that scatter their Pestilence at Noon-day, and will rend, distract and confound the firmest and best settled Constitution in the World.*

I cited this Passage to shew, that the Doctor himself, at the Time he preach'd this Sermon, knew what was meant by the Toleration; and it plainly proves it, and the Doctor himself doth not now disown it. But as to the Proposition it self contain'd in that Part of his Sermon, I agree with him that the Toleration was not intended, and I hope will never be made use of, to support Atheism, Deism, Tritheism, or any such Monsters and Vipers, but only dissenting Protestants.

The next Passage I cited was in the 8th Page. *If upon all Occasions to comply with the Dissenters, both in publick and private Affairs, as Persons of tender Conscience and Piety, to promote their Interests in Elections, to sneak to them for Places, and Preferments; to defend Toleration, and Liberty of Conscience; and under the Pretence of Moderation, to excuse their Separation, and lay the Fault upon the true Sons of the Church, for carrying Matters too high; if to court the Fanaticks in private, and to bear 'em with Patience, if not Approbation; rail at and blaspheme the Church; and upon Occasion to justify the King's Murder; if to flatter both Dead and Living in their Vices, and to tell the World, that if they had Wit, and Money enough, they need no Repentance, and that only Fools and Beggars can be damn'd; if these, I say, are the modish and fashionable Criteria of a true Church-man, God deliver us all from such False Brethren.* So that here the Doctor makes it one of the Characters of a False Brother to defend Toleration, and Liberty of Conscience.

The Answer given to it is this, That where the Doctor blames those that defend Toleration, it is not those that defend that only and singly, and do no other Thing, but they must at the same Time not only defend Toleration, but excuse the Separation, not by Reason of the Toleration, but by laying the Fault on the Sons of the Church for carrying Things too high: He don't blame them that barely justify Toleration, unless they fall too on the Sons of the Church for carrying Things too high: But whether or no that Place is capable of such an Interpretation, your Lordships will be the best Judges, by looking on the Place, and considering whether any Two of those Characters are to be united in any one Person to make him a False Brother. Whether these several Characters are, not so many

many different *Criteria* of False Brotherhood; if he does defend Toleration and Liberty of Conscience; if he does excuse their Separation, and lay the Fault upon the True Sons of the Church, for carrying Matters too high, &c. They are all different Marks of False Brotherhood; so that whosoever defends Liberty of Conscience, and the Toleration, is a False Brother.

It was also answer'd, That in the Act of Indulgence there are a great many Restrictions; and therefore this Passage must be understood of a Toleration of such as are not qualified by the Act to receive it: And for that end the Act was read, in which are several Restrictions; and the Toleration is not unlimited, but to Persons under such and such Qualifications, conforming themselves to the Rules there laid down. But what Foundation is there for this Answer in the Passage it self? Doth not he there condemn Toleration generally? Doth not an Universal Indefinite Proposition include all manner of Toleration, whether General or Special? If he had meant it in this restrained Sense, he should then have express'd himself, That he that defends Toleration, except such Toleration as is allow'd by Law, is a False Brother; but not doing so, but expressing it generally, it is plain, that he has condemn'd that Toleration that is granted by Law: And it is submitted to your Lordships, that this is a plain Proof against him of this Article.

The next Passage, is that relating to the Perfidiousness of Archbishop Grindall, in deluding Queen Elizabeth to the Toleration of the *Genevian* Discipline: The Doctor, in his Answer, did conceive he had good Authority from History to make out that Assertion; but whether he had or no, he did apprehend that such Assertion was no Proof of his maintaining or suggesting, that the present Legal Toleration was unreasonable, or the Allowance of it unwarrantable.

I did, in making out the Charge, agree with the Doctor, That whether he was, or was not mistaken in that Fact, was not the material Point in Question; but that he had put it on the right Question, Whether that Assertion (true or false) relating to Archbishop Grindall, was a Condemnation of the Toleration now granted by Law? To that I principally applied my self, to shew that that Fact, as stated by the Doctor, was a Censure of the Toleration; not forgetting, at the same Time, to say something in Vindication of the Memory of that Great Prelate.

But now, the Doctor's Council (in their Defence) have in a great measure quitted the true Point that the Doctor rightly put it upon in his Answer, and instead of endeavouring to shew that this is no Reflection on the Toleration, have rather endeavoured to shew, that this Fact of the Archbishop is true; That the Reason of his Disgrace was, for deluding the Queen to the Toleration of the *Genevian* Discipline, and for giving up the Discipline of the Church: That at that Time, there was no Law to indulge any Separation from the Church; and therefore for the Head of the Church, under the Queen, to give up the Discipline of the Church, was an High Crime in him; and tho' it be a harsh Term, yet it was true to call him a Perfidious Prelate, and False Son of the Church.

For this End, they did produce and read Two Letters; the one from Queen Elizabeth, to the Bishops throughout England, for suppressing the Exercise called *Prophefying*, and the other of the Archbishop to the Council; and out of these Two, they

say, there is Proof out of the Archbishop's own Mouth, That the Reason why he was under a Suspension, was for deluding Her Majesty to permit a Toleration of the *Genevian* Discipline; and that he acknowledg'd the Justice of his Punishment for that Crime. And they farther aggravate it, That it would be an invidious Reflection on the Character of that Glorious Queen, that she should cause an Archbishop to be suspended, for prosecuting *Julio* the Italian for having Two Wives, or for not giving up the Palace at Lambeth to the Earl of Leicester: As if I had insinuated, or could have imagined, that the apparent visible Reason of the Disgrace of the Archbishop, were these Things! No; it can't be thought I meant so. The apparent visible Cause of Grindall's Disgrace was, no doubt, the Encouraging of the Exercise called *Prophefying*; and Queen Elizabeth knew no other: But yet the real Spring, the secret History, and true Reason, was the Artifice of the Earl of Leicester, who had the greatest Power and Credit at that Time with the Queen. The good Archbishop had, by his Prosecution of *Julio* the Italian Physician, and by his Refusal to alienate Lambeth, offended this Great Earl, who thereupon meditates Revenge against him: And knowing the Archbishop to be a great Favourer and Promoter of the Exercises called *Prophefying*s, which were far from being Conventicles, or Parts of the *Genevian* Discipline; he misrepresented these to the Queen, and by those Means incens'd the Queen; and the Queen was angry with the Archbishop, only upon the Account of these *Prophefying*s. But these Misrepresentations, that incens'd the Queen, had not been, if the Archbishop had not first incens'd Leicester in the fore-mentioned Two Particulars. To make this out to be the Fact, I desire your Lordships Patience, whilst I refer to One or Two Histories of good Credit. Fuller, in the Ninth Book of his Ecclesiastical History, p. 130. after he hath recited a long Letter of Grindall's to the Queen about this Matter, thus concludes: *Alas! all in vain: Leicester had so fill'd Her Majesty's Ears with Complaints against him, there was no Room to receive his Petition. Indeed Leicester cast a Covetous Eye on Lambeth-House, alledging as good Arguments for his obtaining thereof, as ever were urg'd by Ahab for Naboth's Vineyard. Now Grindall, tho' generally condemn'd for Remissness in this kind, (parting with more from his See, than ever his Successors thank'd him for) stoutly oppos'd the Alienating of this his Principal Palace, and made the Leicesterian Party to malice him.*

This is as express an Account as can be, that this was one of the secret Springs of that Prosecution: And as for the other, That he carried on the Prosecution against *Julio*, that is taken notice of by the same Author, in Page 163. and by Camden, in his History of Queen Elizabeth, and other Authors: So that the true secret Reason of Grindall's Disgrace, was not for Toleration of the *Genevian* Discipline. And indeed it would be a Paradox, that the Earl of Leicester, who was the Great Patron and Support of the Puritans, should run down this Archbishop for encouraging of *Puritanism*. Can that be thought? No: It shews plainly, there was some other Reason. And it is no Reflection on Queen Elizabeth, that she was deceiv'd by the Misrepresentation of a Person on whom she entirely relied. Princes are not exempt from the common Frailties of Human Nature, and may be impos'd on by those whom they most trust.

But, my Lords, without considering the latent Causes of his Disgrace, let us consider the visible Cause, which was known only to Queen Elizabeth. Do the Letters (which they have produc'd) prove, that the Archbishop suffer'd for deluding the Queen to the Toleration of the *Genevian* Discipline? It appears thereby, that Queen Elizabeth was displeased at those Exercises, called *Prophefying*, which the Archbishop encouraged and favoured; but it is a great Mistake, to think, that those *Prophefying*s were Conventicles; or Assemblies of Puritans: They were really Meetings of the Parochial Clergy of the Church of England, (which since have been called Conferences,) to improve one another in the Expounding of the Scriptures. The Manner of these *Prophefying*s was this: The Minister within each Archdeaconry, or some other Precinct, met on some Week-Day, in the most noted Place in that Precinct; some Ancient Grave Minister, appointed by the Bishop, did preside: Then every Minister successively (the youngest still beginning) did handle some Text of Scripture, shewing the Sense of the Place, the Propriety of the Words, the Diversity of Interpretation, the Virtues enjoined, and the Vices prohibited. No Layman was ever suffer'd to speak, nor any Clergyman, unless first Licensed by the Bishop. This was that which they call'd *Prophefying*, and continued about Two Hours; and then the Conclusion was with a Prayer for the Queen and all Estates, as is appointed by the Book of Common-Prayer, and a *Psalm*. Now can any one think, this was an Encouragement of the *Genevian* Discipline?

The Parochial Clergy met by Consent of the Bishop, and discoursed about the Meaning of some Text of Scripture, and closed with a Prayer, as is appointed in the Common-Prayer-Book, and with a *Psalm*: And can this be said to be Encouraging the *Genevian* Discipline? Can this be called the Holding of Conventicles; or Receding from the Discipline of the Church? Nothing like it: Tho', if it were, it appears by the Letters, that he did not delude the Queen to encourage the *Genevian* Discipline. No; if this was the *Genevian* Discipline, the Queen would not be deluded by him; and because he would not obey the Queen in suppressing these *Prophefying*s, this was the apparent Cause of his Disgrace.

As to the Letter, because it is said the Archbishop owns his Crime; how does he do it? *I can't deny*, says he, *but that I have been Commanded, both by the Queen's Majesty Her self, and also by divers of your Honourable Lordships in her Name, to suppress all those Exercises within my Province, that are commonly called Prophefying*s. He did not deny the Queen had given him that Command, or that he did not comply with it: But, saith he, *I do protest before God, the Judge of all Hearts, that I did not of any Stubbornness or Wilfulness refuse to accomplish the same, but only upon Conscience*: And goes on and shews the Reasons on which that Conscience was founded. He denied it not out of *Stubbornness or Disobedience*, but out of a *Persuasion of Conscience*, because he found it profitable and useful to the Church. Well, how did he behave himself under this? And whereas, says he, *I have sustained the Restraint of my Liberty, and Sequestration of my Jurisdiction, now by the Space of Six Months; I am so far from repining thereat, or thinking my self injuriously or hardly dealt withal therein at Her Majesty's Hands, that I do thankfully embrace, and frankly, with all Humility, acknowledge*

her Princely, Gracious, and Rare Clemency toward me; who having Authority and Power to have used greater and sharper Severity against me, and for good Policy and Example thinking it so expedient, hath notwithstanding dealt so mercifully, mildly and gently with me.

What Language more becoming a Grave Prelate could be used? He patiently submits to Her Majesty's Authority; neither murmuring, nor obstinate: But there being a superior Obligation of Conscience, which it was not in the Power of any Man to dispense with, he thinks himself obliged, as a true Example to all Clergymen and others, to submit to the Dictates of his Conscience; but still with Patience, Calmness and Obedience.

Is there any Thing in this, that looks like giving up the Interests of the Church? Not only this good Archbishop, but several others of the best Bishops of those Times, had those Exercises in their Dioceses, and concurr'd with him in the Encouragement of them. And can it be thought, that those Bishops, who were Exiles in Queen Mary's Time, and were afterwards the Happy and Glorious Instruments, under God, in settling the Liturgy and the Articles of the Church, were for giving up the Establishment of the Church, by introducing that which is now insinuated to be the *Genevian* Discipline? But those Bishops then thought, it was a likely way to make an Honest, Learned, and Laborious Clergy. Is there any thing in this, to occasion the calling him a perfidious Prelate? A perfidious Man, is he that violates his Conscience, to obtain a Temporal End; but he chose to lose the Queen's Favour, rather than part with a good Conscience.

I never found, that Archbishop Grindall was ever spoke hardly of by any *English* Divine of Credit, till the Time of Archbishop Laud; and then, to extol Archbishop Laud for an active, zealous Prelate, it became the Fashion to run down his Predecessor, Abbot, as a remiss Man; to court the present Archbishop, by detracting from the Memory of the last. And, to carry on the Compliment, a Parallel was made between Archbishop Grindall, and his Successor *Whitgift*. I only mention this, to shew that for a long Time the Memory of that good Archbishop was had in Esteem; and he was always look'd upon as a principal Father of the Reformation of the Church, before this Time.

But, my Lords, it is now Time to come to the main Point; and that is, Whether or no the Doctor's Representation of Archbishop Grindall, as a False Son of the Church, and a perfidious Prelate, for doing what he lays to his Charge; and, Whether his Commendation of Queen Elizabeth, for the Resolution she took to suppress the Dissenters, and for her Prudence in Exercising Wholesome Severities on them, whereby the Crown sat easy on her Head, be a Censure or Condemnation of the present Toleration?

As to this, the Council for the Doctor first say, That in Queen Elizabeth's Time, Schism was in its Infancy; the Number of Dissenters were but few, and therefore the Exercising of Severities at that Time was wholesome, because it might have crush'd them in their Beginning, and prevented the growing Encroachments of those Persons: But at the Time when the Act of Toleration was made, the Dissenters were increased, and were Possessors of great Property, and it was reasonable to grant them a Toleration; for it might be a Disturbance to the State, to exercise those Severities upon them, which might

might have been safely done in the Time of Queen *Elizabeth*, when Schism was in its Infancy, and their Numbers few : And thence they infer, that what was spoken of the Toleration then, can't be applied to the Toleration now.

My Lords, Supposing the Fact to be true, then it follows, that the Justice and Reasonableness of the present Toleration depends only on the Strength and Number of the Dissenters : When they are Strong and Numerous, then they are to be Tolerated and Permitted ; but when their Numbers decrease, and it shall be alledg'd that they are but few, then they are to be crush'd, and the wholesome Severities are to be renew'd upon them again ; notwithstanding the Preamble of the Bill to prevent Occasional Conformity, which says, " That Persecution for Conscience only, is directly contrary to the Profession of the Christian Religion, " and particularly to the Doctrine of the Church " of *England*, and that the Act of Toleration " ought to be inviolably preserved". If it ought to be inviolably preserved, then, whether the Dissenters in *England* be more or less, they ought to be Tolerated.

This brings to my Mind the memorable Edict that was Publish'd by the *French King* for reverting the Edict of *Nantz*, in *October 1685*. the Preamble of which Edict recites, " That by reason of " the great Troubles and Wars occasion'd by those " of the Reformed Religion, his Grandfather *Henry* " the Fourth had given them Liberty by the Edict " of *Nantz*, retaining notwithstanding a Design of " bringing all back again to the *Romish Church* ; " and his Father and himself had had all along the " same Design ; and that in his Time the best and " greatest Part of the Protestants were Converted " to the Catholick Faith, and that by reason thereof " the Execution of that Edict was become of " no use ; and therefore, entirely to wipe out the " Memory of those Troubles and Confusions which " the Protestants had occasion'd, he thereby Revok'd that Edict.

May it not be said in this Case, That in Queen *Elizabeth's* Time, because the Number of Dissenters were few, therefore those Severities were good ; and that when the Toleration-Act was made, there were greater Numbers, and therefore those Severities were then fit to be taken away ; but now the Dissenters are but few again, therefore it may be fit to return to those Severities again.

Another Answer that hath been given is, That in Queen *Elizabeth's* Time there was no Toleration establish'd by Law, and all the Doctor aim'd at was to Excite the Magistrates to put the Laws in Execution against such Offenders as are not Exempted by the Toleration Act. But I submit to your Lordships, whether the Words are capable of that Interpretation. Here is a Commendation of the Piety and Zeal of Queen *Elizabeth*, who resolv'd entirely to suppress the Dissenters, and she in her Prudence put those wholesome Severities in Execution. What those wholesome Severities were, your Lordships have been told ; they were Hanging, Burning, Abjuration, Confiscation, Imprisonment, Loss of Estate, Liberty and Life ; I say no more of them ; but I believe there is not one Person here, but if these Severities were to be inflict'd on him, would be far from thinking them wholesome, and desire to be excus'd from them. I would not be thought in any thing to reflect on the Memory of that glorious Queen, who was so eminent an Instrument of God, to deliver this

Kingdom from Popery, from the Power of *Spain*, and to settle the Protestant Religion among us ; but it must be confess'd, there were these Spots and Blemishes in her Reign, permitted by God's Providence for wise Ends and Purposes ; and this should raise our Gratitude to Almighty God, and our Thanks to Her present Majesty, whose Reign hath exceeded Her Predecessor's, Queen *Elizabeth*, without being chequer'd with any of those Spots or Stains. And as Queen *Elizabeth* preserv'd this Kingdom from the Monarchy of *Spain*, so Her Majesty has preserv'd us from the united Power of *France* and *Spain*, been the Terror of Her Enemies abroad, whilst at the same time She has, with universal Clemency and Justice, cherish'd and protect'd all Her Subjects at Home ; and as by these Means She has engag'd in the strongest Affection the Hearts of all Her People, so no doubt they will always continue to retain the strictest Duty to a Queen, who hath been so universally good to all Her Subjects.

The last part of the Charge is, That the Doctor asserts it is the Duty of Superior Pastors to thunder out their Ecclesiastical Anathema's against Persons entitled to the Benefit of the Toleration ; and insolently dares or desires any Power on Earth to reverse such Sentences. One of the Council said, that the thundering out those Anathema's, is no more than declaring the Judgments of God denounc'd in Scripture against the Wickedness of Men ; and that he desires the Superior Pastors to denounce them, because the greater the Authority of the Person denouncing them is, the greater Influence they will have on the Minds of the People. But the Anathema's he excites them to, are Ecclesiastical Anathema's, which are plainly Ecclesiastical Censures and Excommunications ; it is a plain exciting the Superior Pastors to denounce Excommunications and other Ecclesiastical Censures. It is said, that this Expression is ty'd up only to those Anathema's and Sentences that are ratify'd in Heaven, and those, they say, no Power on Earth can reverse. I shall not enter into that Question, whether this is a Proposition strictly just in Divinity : All I shall say as to that, is this, That all who have wrote the highest of the Power of the Keys, allow and maintain that there is a double Power, a Power of remitting as well as retaining, of loosing as well as of binding, of opening as well as of shutting, both exercis'd by the Church on Earth. If the Superior Pastor has for good Cause bound or shut any Person out of the Church, that Sentence is ratify'd in Heaven ; but yet notwithstanding, if that Person, so censur'd, reforms and amends, and the Church on Earth restore him again, the first Sentence, tho' ratify'd in Heaven, is vacated and done away by the Church's Power on Earth.

But this is not the Matter now before your Lordships ; the Question is, Whether he excites the Superior Pastors of the Church to thunder out their Anathema's against Persons that are entitled to the Toleration ; and I think, that he does so, is own'd by his Council ; for they say, that Schism doth expose a Man to the Censures of the Church ; that the Dissenters were Schismatics before the Act of Toleration, and that that Act don't excuse the Schism ; and therefore remaining Schismatics still, they are still liable to the Censures of the Church : Now I do agree with the Doctor, that the Act of Toleration hath made no Alteration as to the Sin of Schism ; if the Dissenters were Schismatics before the Toleration, they are Schismatics still ; and taking that for granted, then here is the Force of the Doctor's

Argument: The Dissenters were Schismatics before the Act of Toleration; as they were Schismatics before, so they are Schismatics still; it is the Duty of all Superior Pastors to thunder out their Anathema's against Schismatics; when they thunder out those Anathema's they are ratify'd in Heaven; whatever is ratified in Heaven, no Power on Earth can reverse; therefore, tho' the Dissenters be exempted from Human Penalties by the Toleration Act, and are thereby preserv'd in the free Exercise of their Religion and Consciences; yet notwithstanding that, *Let the Superior Pastors do their Duty, and thunder out their Anathema's against them, and let any Power on Earth reverse those Anathema's if they can.* Now can there be a more plain, positive and direct Proof of this part of the Article, than this is? Can any thing be a clearer Evidence to prove this last part of the Charge against him, That he *Suggests and Maintains that it is the Duty of Superior Pastors to Thunder out their Ecclesiastical Anathema's against Persons entitled to the Benefit of the Toleration Act, and that he insolently Dares or Desies any Power on Earth to Reverse such Sentences?*

My Lords, This is what I have to offer by way of Reply: There is a Gentleman to come after me, who will amply supply what I have omitted, and therefore I shall not trouble your Lordships any further.

Then the LORDS Adjourned to their House Above.

Friday, March 10. The Tenth Day.

THE Lords coming down into Westminster-Hall, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor, Gentlemen, you that are Managers for the House of Commons may proceed in your Reply.

Mr. Cowper. MY Lords, When, by Command of the Commons, I spoke to your Lordships a few Days since, in Maintenance of the Second Article, towards the Conclusion of what I then said, I presented to your Lordships a short View of what I apprehended we might reasonably expect would be the Consequence of the Doctor's bitter Invectives against the Act of Toleration, and the Persons intended to be protected by it. I likewise took Notice of those Heats and Disputes, of the Feuds and Animosities, which were then apparently stirred up throughout the Kingdom.

I am sorry to have so early an Occasion to say, that my Apprehensions in this Particular were so well grounded: Your Lordships have seen, that this seditious Libel, under the specious Title of a Sermon, calculated to seduce and delude the Rabble, has, even during the Continuance of the Tryal, produced an actual Rebellion; in which several

Places of Religious Worship (appointed for those Persons, who are by Law tolerated and allowed, but have the Misfortune nevertheless to be represented by Doctor Sacheverell as necessary to be destroyed) have been accordingly pulled down, and burnt, in Defiance of the Supreme Power of the Kingdom; and this, my Lords, at the Instigation of one who would be thought an Advocate for Passive Obedience.

I could wish the Prisoner's indiscreet Behaviour (which seems to have abused the Liberty with which your Lordships have indulged him) may not unhappily have given some Occasion to the Outrage and Violence of late committed, notwithstanding the Apology he has made in this Particular.

Sure I am, that Discord which flames in the Kingdom was unheard-of among us, until the Toleration was thus publicly and seditiously branded; until Doctor Sacheverell had presumed to represent it to the People, it's impossible to say how! without referring to his whole Libel.

His Council have observed, that the Second Article contains several Charges, and have insisted that the Passages given in Evidence by the Commons, are not sufficient to maintain the first and second; and as to the third and fourth, they seem rather to justify than deny those Branches of the Charge.

My Lords, The Commons apprehend, notwithstanding what has been said, First,

That Doctor Sacheverell has plainly suggested and maintain'd, *That the Toleration granted to Dissenters is unreasonable, and the Allowance of it unwarrantable.*

This, my Lords, we insist he has done, not in ambiguous or doubtful Words, not in uncertain Expressions, but in direct and positive Assertions.

The Council admit, That to speak against a Law in Being cannot be justified. The Act of Toleration is not only a Law in Being, but is a Law which has visibly attained the End for which it was made; that is to say, by giving Ease to scrupulous Consciences in the Exercise of Religion, it has proved an effectual Means to unite Her Majesty's Protestant Subjects in Interest and Affection.

Yet, my Lords, this Law, which, by the Experience of more than Twenty Years, has been found so useful and necessary, hath been traduced and arraigned by the Prisoner, both from the Pulpit, and the Press, with a malicious and seditious Purpose, to destroy the Publick Peace, and Security of the Kingdom.

This Offence, it seems, is of too high a Nature to be justified by the Prisoner and his Council, and therefore it is thought more expedient to deny it. The Turn that's given is this; say they, Doctor Sacheverell affirms nothing touching Legal Indulgence or Toleration, but all that he has said respects only Universal Toleration.

My Lords, I thought I had obliterated this Excuse, by observing that this Notion of Universal Toleration has been conceived and brought forth since the Impeachment.

However I am willing to enter into the Question: Whether the Toleration mentioned in the Libel, is intended or can be understood of Universal Toleration.

Fol. 34. Your Lordships will find these Words: *Nay, now they have* Vide Sermon. *advanced themselves, from the Religious Liberty our Gracious Sovereign has indulged them, to claim a Civil Right, as they term it, and to juggle the Church out of her Establishment, by giving their Toleration into its Place.* My

My Lords, Will any Man deviate so far from Sense, as to say, that the Doctor here meant Universal Toleration; in the Sense the Doctor and his Council have defined it? Is Universal Toleration a Religious Liberty, with which our Gracious Sovereign hath indulged her Subjects? Nay, my Lords, Have not every one of them argued, and that rightly, that the Doctor's Universal Toleration is not tolerated by Law? That Atheists, Deists, Tritheists, Socinians, and those who go to no Religious Place of Worship, are not exempted from the former Penalties? How then is it possible the Doctor should be understood, as speaking of Universal Toleration in this Passage? Is not this directly and positively affirmed of the Toleration, with which the Dissenters are indulged by our Gracious Sovereign? Can your Lordships conceive the Dissenters are not the Persons intended, when he says, *They claim a Civil Right, as they term it, to jussle the Church out of her Establishment, by basing their Toleration into its Place?*

Again, Folio 27. *They thrive upon Concessions, take Permission for Power, and advance Toleration into an Establishment.* — Pray, my Lords, What Concessions have been made to Persons not within the Benefit of the Act of Toleration? What Permission is it they can be said to take for Power? What Toleration have they to advance into an Establishment.

My Lords, Folio 14, and in many other Places, your Lordships cannot but see that all the Doctor's Spleen is level'd at the Legal Indulgence or Toleration. But it is mispending your Time, to prove what it is impossible not to know and be convinc'd of, upon reading every Passage in the Libel where Toleration is but so much as mention'd.

The next Thing they urge in the Doctor's Defence is, That if his Expressions do relate to the Legal Indulgence or Toleration, they are so dubious and uncertain, that nothing can be infer'd from them without Innuendo's and forc'd Constructions.

My Lords, Now the Question is, Whether Doctor Sacheverell's Expressions relating to the Toleration, and the Persons indulged, are dubious and uncertain? Whether any Innuendo or forc'd Construction is necessary to demonstrate their Majesty's

Your Lordships will be pleas'd to remember, that the Council, from the first to the last, maintained very strenuously (as did the Doctor likewise in his Speech) that altho' the Act of Toleration exempts the Dissenters from Penalties, yet they remain Schismatics notwithstanding; for, say they, Dissenters are Schism before the Statute, and a bare Exemption from a Penalty has not alter'd the Case, but the same remains Schism still; and this Position, I find, is agreeable to the Doctor's Opinion as deliver'd in his Sermon, with this Addition only, that all Schism and Separation is damnable Sin, without making any Allowance for Ignorance, or Prejudice of Education.

His Words are these, Folio 8. *Is this the Spirit and Doctrine of our Holy Mother? To assert Separation from her Communion to be no Schism; or if it is, that Schism is no damnable Sin.*

My Lords, When I observe in this and other Passages what Spirit this Man is of, I wonder not to find, that the most Christian Virtues of Charity and Moderation are mention'd by him with Slight and Contempt. Folio 25, you will find him citing a Passage from St. Paul's Epistle to the Galatians, Chap. 2. after which he adds these Words: *If our*

Dissenters, says he, had lived in those Times, they would have branded him (i. e. St. Paul,) for an intemperate, hot, furious Zealot, that wanted to be sweetned by the gentle Spirit of Charity and Moderation, forsooth! My Lords, If our Dissenters had lived in those Days, they would have been highly to blame, if they had branded the Apostle with those opprobrious Names; whoever peruses that Chapter, will find there is not the least Occasion for it. But Doctor Sacheverell would willingly have St. Paul thought like himself.

My Lords, I cannot take upon me to say what the Dissenters would have said, had they lived in St. Paul's Days: But for my own part, I cannot forbear saying now, That since it appears to be the Doctor's Opinion that all Separatists are Schismatics, and that all Schismatics are damned, I cannot but think that Doctor Sacheverell wants to be sweetned by that ridicul'd Spirit of Charity and Moderation. I own, my Lords, I was amaz'd to hear this Gentleman in his Speech affirm, that he had not betrayed any want of Christian Moderation in his Sermon: I wish he has not been unmindful even of Christianity it self; when it is so apparent that in this short Sentence, and in the Passage (Folio 24.) which I formerly cited at large, he has sentenc'd to Eternal Damnation, not only the Dissenters of whatsoever Denomination, but those also who defend the Toleration.

It is to be hoped, some Things which he has vowed and said for himself in his Defence, may have more of Truth in them than this has.

But, my Lords, to return: The Doctor and his Council are agreed that all Dissenters are Schismatics; consequently when he speaks of Schism and Schismatics, he must mean the Dissenters; and then he pleas'd, my Lords, to judge if the Doctor's Expressions touching the Toleration, and the Dissenters, can be said to be dubious; on the contrary, whether they are not plain, positive and certain.

Before I enter into this Matter, I cannot but take Notice again of that remarkable Passage, (Fol. 16, and 17.) *What could not be gained by Toleration, must be brought about by Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pull'd down, it may be blown up; and no matter with these Men how it is destroyed, so it is destroyed.* My Lords, Is not here a direct Assertion that the Toleration is downright open Violence, and Occasional Conformity secret Treachery? Is not here an Assertion, that altho' the Toleration has not been able to answer the End for which it was designed, (i. e.) to pull down the Church, yet Occasional Conformity may blow it up? Pray, my Lords, What Construction can these Words admit of, *No Matter with these Men how it is destroyed, so it is destroyed?* What Men are here intended? Even Dissenters and Occasional Conformists.

Is this Passage doubtful and ambiguous? Is here any Occasion for a forc'd Construction, or an Innuendo? My Lords, 'tis most scandalously plain, and as plainly seditious.

Your Lordships have observ'd, that neither the Doctor, or any of his Council, (one only excepted) have taken the least Notice, in their Answer of this Passage: It was produced and given in Evidence against him, and twice at least mention'd by the Managers. I wonder the Author wou'd not vouchsafe to explain it, Is not this Silence a Confession of his Guilt?

The Council that did mention it, was pleased to say, that it rather commended the Toleration, than found Fault with it; as if it was some Credit to the Toleration, which was intended to pull down and destroy the Church, that it had not done it. In what Humour, my Lords, that Answer was made, to so high and Criminal a Charge, I know not; the Commons might reasonably have expected a more serious Answer. But, my Lords, from hence we conclude that no Answer can be given to it.

Again (*Folio 10.*) the Doctor affirms, *That whoever presumes to alter or innovate any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traytor to the State; Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other, and consequently a Crime that concerns as much the Civil Magistrate to punish and restrain, as the Ecclesiastical.* Then he goes on, and adds, *This Assertion at first View, may look look like an high flown Paradox.* ----- I own, at first View it look'd to me something like it, and I am not yet convinc'd but it is so.

Are not the Dissenters Heterodox in Opinion? Consequently they are Rebels and Traytors, according to Doctor Sacheverell, and ought to be punished by the Civil Magistrate as such: That is to say, they are to be hang'd as Rebels, and damn'd as Dissenters.

Still, my Lords, we have the Doctor's Word for it, he has not betray'd the least Want of Christian Charity or Moderation.

Many are the Paragraphs in this Libel equally obnoxious, and which, like these, are too plain to admit of any Answer.

My Lords, I shall not lose Time as to the Second Head, or Charge, in this Article. *Folio 8.* you will find it asserted, as plain as Words can speak, that to defend Toleration is the Mark or Characteristick of a False Brother; and (*Folio 24.*) you will find his Portion assigned him, with all the rest of the False Brethren, *with Hypocrites and Unbelievers, with all Lyars, in the Lake which burns with Fire and Brimstone, with the Grand Father of Falshood, the Devil and his Angels.*

My Lords, The Charge which relates to Archbishop Grindall is, *That Doctor Sacheverell asserts, Queen Elizabeth was deluded by him to the Toleration of the Genevian Discipline; and that, to shew his Resentment against the Archbishop for favouring Toleration, he calls him a false Son of the Church, and a perfidious Prelate.*

The Doctor, throughout his Sermon, is arguing with a furious and intemperate Zeal against the present Toleration; he is representing it as a Law that gives Encouragement and Protection to Schismatical Impostors, Enthusiasts, Hypocrites, to a Mungril Union of Sects, to Fanaticks, Rebels, Traytors, Atheists, Deists, Tritheists, Socinianists, to the Principles of Fanaticism, Regicide, and Anarchy, to Monsters and Vipers, that scatter their Pestilence at Noon-day, to *Jews, Quakers, and Mahometans*; in a word, to all false Brethren; and after a great deal more of this unpresidented Language, he breaks out, (*Folio 19.*) *These Charges are so flagrant and undeniable, that a Man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gained, or won over, by any other Grants or Indulgence, than giving up our whole Constitution.*

Have they not, says he, ever since their unhappy Plantation in this Kingdom, by the Intercession of that false Son of the Church, Bishop Grindall, always improved, and rise upon their Demands in the Permission of the Government.

My Lords, I would fain know whether Doctor Sacheverell, by these Words, *A Man must be weak, or worse, that thinks the Dissenters are to be won by any other Indulgence than giving up our whole Constitution*, could mean any other than the present Dissenters, and that Indulgence which is at present afforded them.

In the very Line following he calls them *Clamorous, Insatiable, and Church-devouring Malignants*; and then proceeds in the Words I have mentioned: *Have they not, (i. e.) the Dissenters, ever since their unhappy Plantation in this Kingdom, by the Intercession of that false Son of the Church, Archbishop Grindall, improved and risen upon their Demands in the Permission of the Government.*

The Prisoner's Defence has explained this Passage; they were barely permitted or suffered, he says, for a Time by Queen Elizabeth, but they have improved and risen upon their Demands, till in this Age they have obtained an Indulgence by Act of Parliament, and this Act of Parliament is manifestly what the Doctor has taken Offence at.

Then he goes on-----*Insomuch, says he, that Queen Elizabeth, who was deluded by that perfidious Prelate, to the Toleration of the Genevian Discipline, found it such an headstrong, encroaching Monster, that in Eight Years she found it would endanger the Monarchy, as well as the Hierarchy: And, like a Queen of true Resolution, and pious Zeal for both, pronounced them Fattious, and suppress'd them by wholesome Severities.*

My Lords, I think we should have been wanting in that Duty we owe to the Memory of that great Prelate and Father of the Church, who was so considerable in establishing the Reformed Religion, had we not taken Notice of these harsh and unjustifiable Expressions.

Doctor Sacheverell speaks of them as carrying an undue Asperity, but such as he hopes may be forgiven, since it was necessary, he pretends, that either Queen Elizabeth, or that Archbishop, must bear the Blame; and he rather thought it reasonable to charge it on the Archbishop, than to suffer it to lye at the Queen's Door.

My Lords, Your Lordships will observe, that all the Answer he has given to this Part of the Charge, is, as if the Commons had impeached him for being too free with Archbishop Grindall, for using, as he calls it, an undue Asperity of Expression towards him.

But your Lordships will discern that this Passage is made use of in our Charge, to shew that the Dissenters are represented as headstrong and encroaching Monsters, dangerous to the Monarchy, as well as the Hierarchy; and the Example of Queen Elizabeth is produced, to shew how necessary it is by wholesome Severities to suppress them.

Are any strain'd Constructions or Innuendo's necessary to apply this Evidence to the first and main Head of the Charge, which is, *That Doctor Sacheverell asserts and maintains, that the Toleration is unreasonable, and the Allowance of it unwarrantable?*

My Lords, Before I take my Leave of this Head, I cannot forbear saying upon this Occasion, that sure I am the Toleration is not so dangerous to the Monarchy, as is this late Notion of an Hierarchy to the Supremacy of the Queen's Majesty; which however I hope shall be continued and preserved in the Crown of England, for the Peace and Safety of the Church as by Law established, to all Posterity.

My Lords, To the next and last Part, which relates to the Thundring out Ecclesiastical *Anathema's*, the Defence is, That those *Anathema's* are not intended against the Persons intitled to the Toleration.

To this I answer: He is particularly speaking, in this Part of the Libel, of the Schismatics and Dissenters, and expressly names them in these Words, (Fol. 25.)

And yet if our Dissenters had lived in those Times, they would have branded him as an intemperate, hot and furious Zealot. — Schism and Faction are Things of impudent and encroaching Natures, they thrive upon Concessions, take Permission for Power, and advance a Toleration immediately into an Establishment. — Are not the Dissenters here expressly named? Are we not to understand the Words Schism and Faction, as coupled with Toleration, to be meant of the Dissenters, and of them only? Sure this is too plain to admit of any Doubt.

Then, my Lords, he proceeds; *And are therefore to be treated like growing Mischiefs, or infectious Plagues, kept at a Distance, lest their deadly Contagion spread. Let us therefore have no Fellowship with these Works of Darkness, but rather reprove them: Let our Superior Pastors do their Duty, in Thundring out their Ecclesiastical Anathema's, and let any Power on Earth dare reverse a Sentence ratified in Heaven.*

My Lords, Is here one Word of Heresies, Blasphemies, and the rest of those enormous Offences, to which the Doctor would have these *Anathema's* relate? No, there is nothing to be found here but Dissenters, Schism, and Toleration.

If these *Anathema's* are to be understood (as certainly they are) to extend to Persons entitled to Toleration; then, my Lords, that Air of Insolence that concludes the Period is explained.

Let our Superior Pastors do their Duty; that is to say, let them exert themselves; and Thunder out their Anathema's, and let any Power on Earth dare reverse them.

These Words, my Lords, seem too big and mighty, to mean any little or subordinate Power.

Thus have we supported, and made good the several Charges contained in the Second Article.

My Lords, As the Commons are fully sensible how necessary it is to support the Honour and Justice of the Revolution, to which we owe no less than the inestimable Blessing of Her present Majesty, the Guardian Angel of this Church and State, the future Expectation of a Protestant Succession, the Religion, Laws, Rights, and Liberties of the British Nation; so are they thoroughly convinced that the Peace and Welfare, the Security and Strength of the Kingdom in great measure depend upon the inviolable Preservation of the Act of Toleration, which has been most maliciously and seditiously traduced and misrepresented by Dr. Sacheverell.

Mr. Thompson. MY Lords, It is my Part to trouble your Lordships with a Reply to such Answers as have been offered to the Third Article of this Impeachment; and notwith-

standing what has been said by the Council, what has been produced in Evidence; and what has been alledged by the Doctor himself to move your Lordships Compassion, I am concerned, even for his Sake, that I can observe it to your Lordships, That the Charge in this Article remains entirely unanswered.

Before I enter into the Particulars, I must observe to your Lordships, that if there were any doubtful, or any the least favourable Construction to be made of some Passages in this Sermon, the Commons would not have given your Lordships this Trouble, nor the Doctor an Opportunity of censuring their Impeachment as a hard-hearted and uncharitable Prosecution.

My Lords, I cannot but think it very ungenerous to insult any Man in Misfortunes, or to treat one in his Condition with Scorn and Indignity; neither have I, or shall I be guilty of it; but I must take leave to say, that no other Interpretation can be made of some Passages applicable to this Head, but what is Criminal, since so many Learned Council, since so many Able Heads who have assisted the Doctor in his Defence; nay, since he himself, who should know best his own Meaning, has not been capable of giving the least Colour or Pretence of any Construction of them in his Favour.

Whatever Pity your Lordships may be inclined to in your private Capacities, for any one who has (I cannot say through Inadvertency) brought himself into Affliction, whatever Dispositions you may have to Mercy, yet I need not say, that there is a Compassion, a tender Regard due to the Welfare of your Countrey, a Care incumbent on you to suppress what has the least Tendency to Sedition, and the Disturbance of the publick Peace of the Kingdom, and that these important Trusts have a Claim to your Lordships Justice, preferable to any private Concern whatsoever.

Not to detain your Lordships any longer in Generals, I shall proceed to state the Charge and Defence, that your Lordships may have a View of the Insufficiency of the latter. My Lords, the Charge is, "That the Doctor suggests and maintains, that the Church of England is in a Condition of great Peril and Adversity under Her Majesty's Administration:" He denies that he suggests any Danger to the Church, only from Vice, Infidelity, Blasphemy and Heresy, but not at all from or under any Part of Her Majesty's Administration.

The first Passage I produced to your Lordships, to prove the Charge, was in Page the 5th; I must beg leave to trouble your Lordships with reading it again, because it may be necessary; "Tho' it were very obvious to draw a Parallel here betwixt the sad Circumstances of the Church of Corinth formerly, and the Church of England at present, wherein our Holy Communion has been rent and divided by Factious and Schismatical Impostors; her pure Doctrine has been corrupted and defiled, her Primitive Worship and Discipline prophaned and abused, her Sacred Orders denied and vilified, her Priests and Professors (like St. Paul) calumniated, misrepresented and ridiculed, her Altars and Sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say without Discouragement, I am sure with Impunity, not only by our professed Enemies, but, which is worse, by our pretended Friends and false Brethren.

The learned Council pretended to shew, that most of these Calamities attending the Church, proceeded from the Blasphemous and Heretical Books and Pamphlets produced to your Lordships, and that the Doctor meant them to be the Cause of the Danger he suggests: Now, pray my Lords, how can that Construction be made? How can this be consistent with the Doctor's Assertion, that all this is done, not only by professed Enemies (which every Body will agree takes in the Infidels, Blasphemers and Hereticks) but by pretended Friends and false Brethren? When I took the Liberty to observe on this Passage, I stated it thus; Who could prostitute Altars and Sacraments to Hypocrites, Deists, Socinians and Atheists, but some of the Doctor's own Order? And who were to punish those Crimes? Who could they be that did not discourage them, but suffered them to be committed with Impunity, but his Ecclesiastical Superiors? And that they were Part of Her Majesty's Administration, no Body could deny.

Now what Answer, my Lords, was given to this? To the first Part of this Paragraph, about rending the Communion by Schismatical Impostors, and so to the other Particulars, 'till the last, it was shifted off to the professed Enemies, the Infidels, Blasphemers and Hereticks, Dissenting Teachers, and Popish Priests, but nothing laid to the false Brethren, who, the Doctor says, neither Punish nor Discourage. But when the learned Council came to the last Calamity of the Church, that of prostituting the Altars and Sacraments, &c. they are pleas'd to make Occasional Conformists their Atheists, &c. that receive the Sacraments; but as to the Charge of arraigning the Persons that do not discourage or punish those who prostitute Altars to Atheists, &c. they thought fit to slide it over, and not say one Syllable to it; they did not so much as mumble this Thistle, and the others but very tenderly. Pray, my Lords, in the Interpretation I make, where is there any foreign Intendment, any forced Construction, or strained Inference against the Doctor's express Words, and positive Assertions? Let every candid Reader, without Prejudice, impartially consider the Meaning of this Passage; Is this a Danger suggested from Books or Pamphlets? Or is it not a plain and direct Invektive against those Persons in the Church, who are charged with being the Occasion of these Dangers to the Church by their Remissness in their Duty, not only in not punishing, but not so much as discouraging those Crimes: And to whom can his lazy Defenders within relate, but to the same Persons, those that are within the Church, and are to protect it?

But if it were true, that Altars and Sacraments were thus prostituted, why must the World be told in this Manner of it? Tho' it is the Duty of a Clergyman at all Seasons, and in all Places, as one of the Doctor's Council was pleas'd to say, to preach against Vice and Infidelity, Immorality and Prophaneness; yet sure none will say, that he is to revile his Superiors, and charge them in this Method with their want of Duty, and Care for the Church: What other End must such licentious Reproaches produce, but a Contempt of their Persons, a lessening the Dignity of their Order, and a Diminution of that Character which gives them the Capacity of doing Good in the World whilst they preserve a Veneration and Esteem, but which must cease when they meet with the contrary: The Doctor was so sensible of this, when he mentioned it as his own Case, that he thought the very Imputation of a

Crime to any of his Function, tho' acquitted of it, must leave a Scar so as to blemish his Character; sure then he ought to have used the utmost Caution, before he preached or published this Sermon, and to have considered the pernicious Consequences of reviling those in Authority. If, as he was pleas'd to say, ill treating of him, who was an Ambassador of Christ, was despising Christ himself; sure it cannot be thought an unnatural Inference, if Her Majesty is said to be reviled, by reflecting on those who act under Her Commission, and are Part of Her Administration.

The second Passage I troubled your Lordships with, is in Page 16; he had been talking of the Comprehension and Union of the Church and Dissenters, and giving a great many hard Names to it, which Design your Lordships know had its Rise from a Commission under the Great Seal from his late Majesty to several Lords, Bishops, and other learned Divines, who were to consider of proper Methods to accomplish it: "But he thanks God, that Providence had blasted the long projected Scheme of these Ecclesiastical *Achneophels*," with other scurrilous Reflections on the Design, and those concerned in it; and then he says, "That since this Model of universal Liberty and Coalition failed, and these false Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will more plausibly and slyly effect her Ruin; what could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pulled down, it may be blown up; and no Matter with these Men how 'tis destroyed, so that it is destroyed."

Now pray, my Lords, where is the forced Construction to make the Doctor in this Passage speak of Persons in Church and State who endanger the Church, and not of Books and Pamphlets, Vice, Infidelity, &c.?

He is on his second general Head of the Perils of False Brethren in Church and State, and of those Persons who could not accomplish the Destruction of the Church by the Comprehension, but were doing it another Way, by Occasional Conformity and Moderation; I do not know that either of these are condemned by the Law for Vice, Infidelity, Blasphemy, Heresy or Prophaneness; be that as it will, 'tis from the Persons in Church and State the Danger is suggested to arise, and who, as he is pleas'd to say, make use of these only as means to blow up and destroy the Church: But then I suppose these Persons in the Church must be interpreted to be only the most inferior, and so no Reflection on the Administration: As Men of Characters and Stations in the State were construed to be Constables, Excise-Men and Custom-House Officers, so these Persons who were to bring about the Comprehension, and are now blowing up and undermining the Church in another Manner, must be Church-Wardens, Parish-Clerks and Sextons. These Sort of Constructions by the Doctor's Learned Council, are so easy and natural, that I must agree with his Observation, that they have not much Argument, Learning or Eloquence to support them.

And I cannot but observe a very extraordinary Method of answering this Passage and the next, by one of the Learned Council; he is pleas'd to cite Two other Passages in the Sermon, which were never

ver mentioned by me, or any of the Managers of this Article; and with very strenuous Zeal he explains those Passages by chiming in with the Doctor, in charging Occasional Conformists with Atheism, Deism, and the worst of Crimes; and then he concludes, that the Doctor, in those Passages he cited, has not asserted the Church to be in Danger under Her Majesty's Administration; but not one Syllable to this Passage, which I cited in Page the 16th.

The third Place I troubled your Lordships with, was in the 18th Page; his Words are, "Falseness always implies Treachery; and whether that is a Qualification for any one to be trusted, especially with the Guardianship of our Church or Crown, let our Governors consider": These Words speak so plainly, they need no Comment, nor have they offer'd at any Explanation of them; they must relate to Persons, and can have no Reference to Books or Pamphlets, Blasphemies or Heresies, &c. by any Construction whatever.

The Fourth Passage, my Lords, was in Page the 20th; he is talking of Dangers from National Sins, which are occasioned by Dissenters and False Brethren; and then he says, "And now are we under no Danger in these deplorable Circumstances? Must we lull our selves under this sad Repose, and in such a stupid lethargick Security embrace our Ruin? I pray God we may be out of Danger; but we may remember the King's Person was voted to be so, at the same Time that his Murderers were conspiring his Death."

The Substance of the Charge in this Passage, is an Intention to reflect on the Members who voted the Church to be out of Danger, by the Comparison and Allusion to the Vote relating to the King. The Meaning seems evidently, that though the King was voted to be out of Danger, yet he was not out of Danger; and so, though the Church was voted out of Danger, yet the Church was then, and is still in Danger: But whether he meant it of the Members that passed that Vote, is the Question; he says he only meant it according to his Notion of that Vote of the King, that those not privy to the Design against him voted him safe, whilst others conspired his Murder; so when the Members voted the Church of England to be in no Danger under Her Majesty's Administration, it was none of them, but others that were conspiring her Ruin.

The Doctor was pleas'd to say too, That that Vote was a Year and half before the King's Death, and that there were not a Tenth Part of those Members who voted the King safe, the rest being turned out, and no House of Lords: Be that as it will, they were the same Parliament that voted the King out of Danger; and they that conspired his Death, were Part of those who voted him safe, and who turned out the rest to accomplish their Designs: And though the Parallel should not run so as to reflect on both Houses of Parliament, and all the Members, yet if it glances at some of them, and was so intended, it is a Circumstance of Aggravation, and that is the only Intention of its being Part of the Article; and I can't but think the Doctor was apprehensive of some Reflection of that Kind, for he says immediately the very next Words, "That he hopes what he has so freely spoken will not give Offence: If he had not a View to that Vote of the Danger of the Church, there was no Occasion for that Apology."

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The fifth and last Place I troubled your Lordships with, was in the last Page, where there were some Pathetical Expressions which the Doctor chose out of the Scripture, and managed them with others of his own, so as to represent the Church to be in the utmost Peril; he mentions nothing of Vice, Blasphemy or Infidelity, "But that she lies bleeding of the Wounds she has received in the House of her Friends": He cited the *Lamentations* for it, but there being no such Text there, I took the Liberty of saying it was a Lamentation of his own making.

I should not trouble your Lordships any more as to this Particular, but that I am in some measure oblig'd to vindicate my self from what one of the Learned Council hinted upon this Occasion; he was pleas'd to say in the Defence to the First Article, he was as much at a Loss to find out a Passage in the Sermon, as one of the Managers was to find the Text in the *Lamentations*. Though, my Lords, this is but a Trifle to the Thing in Question before your Lordships, yet since that Learned Gentleman was pleas'd to triumph, as if he had me sure and unanswerable on this Point, I beg your Lordships Indulgence that it may appear which of us is in the right.

The Doctor cited that Text to be in the 2d *Lam.* 4th. I looked through the *Lamentations*, therefore knew I might venture to say what I did; I have looked over it again, and am sure there is no such Text there. It gave me Occasion to read and reflect on the other Texts cited by the Doctor in the Prophecy of *Zachariah*, the 13th Chapter, where there are some Words that I suppose are meant, though I could not but observe the Doctor to be very unhappy in the Choice of his Scripture, this as well as others being directly contrary to his Purpose. The Words cited are in the 6th Verse, the two preceeding Verses explain them; the Subject Matter was false Prophecy. In the 4th Verse 'tis said, *It shall come to pass in that Day, that the Prophet shall be ashamed, every one of his Vision, when he has prophesied.* In the 5th Verse the Prophet is to deny that he is a Prophet, and say he is a *Husbandman, and no Prophet.* And in the 6th Verse he is asked where he received his Wounds? He answers, *in the House of his Friends*: So that he retains the Character of a false Prophet all along; and what he says in each Verse is equally true, and consequently that the Wounds he received were not in the House of his Friends. Whatever may be thought of the Doctor in this Matter, I think I may conclude, that his Learned Council had his Scripture by Hearsay, or else he would not have triumph'd when he had so little Reason. There was a Dispute, my Lords, not many Years since, between Two Learned Divines of our Church, about the Rights of the Convocation; one insulted the other for his Ignorance in the *Common-Prayer Book*; but upon Examination it appear'd, that he who triumph'd most, was most ignorant of what he charged on the other: Whether this Case is not somewhat applicable, I submit to your Lordships.

Having done, my Lords, with the several Passages made use of to maintain this Article, I think I may say the Charge contained in it, (That the Doctor asserts the Church to be in Danger, not only generally, or so as to be meant from Vice, Infidelity, Schism or Heresies, Blasphemy or Prophaneness, but from and under Her Majesty's Administration.)

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is not only affirmed, but strongly proved. He is not charged here with speaking contrary to his Words, or with Negative Crimes, nor is his Silence, as he was pleased to say, made Criminal.

I must now beg leave to observe a little on the Evidence produced on the Doctor's Behalf, and in his Defence to this Article. Your Lordships had a Collection of many scandalous Books and Pamphlets, drawn from Obscurity, to be republish'd to the World, for the more effectual suppressing Blasphemy and Prophaneness: And since the Doctor's Council forbore to mention the Particulars, I shall not enter into them; only in general I think I may say, that they have been proved to be no way material to what is in Issue before your Lordships: But it may not be improper to take Notice, that most of these Books appear'd to have stol'n into the World, and the Authors still concealed; some of them Printed in *Holland* seventeen Years ago; and others Publish'd since the Doctor's Sermon: And for the *Observators*, and *Rights of the Christian Church*, 'tis well known the Author of one, and Publisher of the other have been Prosecuted; so that these cannot be said to be tolerated with Impunity, nor meant as the Provocation for the Doctor's Censure.

I am sorry there are any of these prophane and impious Pamphlets: There are some others too that have been published within this Seventeen Years, which might have been taken notice of, but I don't find them in the Doctor's Catalogue. There was a blasphemous Sermon preach'd and publish'd by Doctor *Binks*; Mr. *Dodwell's Charge of Schism*, and unbishoping most of the present Bishops; the same Gentleman's *Baptismal Union of the Spirit*, or his *No Immortality of the Soul*; and one Mr. *Lesley's Project of uniting ours and the Gallic Church*. Whether these Books were thought by the Doctor to tend to the right Establishing our Church and true Religion, I need not say, but I do think they were worthy his Notice, and may vie with most in his Collection; and if he had been so incens'd against erroneous Doctrines, it had been a worthy Task sure, and well becoming his honest well-meaning Zeal, to have endeavour'd a Confutation of them; then his Asperity in rebuking, his harsh and vehement Expressions, would not have been ill employ'd: But, instead of this, to turn his Violence against his Superiors, for not Punishing what, it may be, they never heard of; and to lay the Danger from these Doctrines at their Doors, is not to be justified by any pretended Provocation of this Kind whatsoever.

There was another Piece of Evidence produced to your Lordships, some Proclamations against Immorality and Prophaneness: If there is any Thing to be infer'd from them in the Doctor's Favour, I must own I can't conceive it. Because the Queen commands the Magistrates to put the Laws in Execution, therefore every private Divine may arraign his Superiors for a suppos'd Neglect of their Duty, as often as he thinks fit; I say, I don't understand this Inference, but I can easily apprehend the Consequence to all Governments that will suffer such Presumptions.

The Doctor himself was pleased to say, That one of the Dangers of the Church mention'd by him was forgot by the Managers, that was from Papists and their emissaries: I will do him the Justice to remember, that he has bestow'd six Lines on this Danger, but Twenty six large Pages on the

Danger from those in Church and State. Then it was said, that the Doctor prays for the Queen, has taken the Oaths to the Queen, and therefore he could have no Intention to reflect on Her Majesty, or any Part of Her Administration either in Church or State. And the Doctor in his own Speech was pleased to acknowledge Her Majesty to be a Nursing-Mother to the Church: But I could not observe one Syllable to the Reverend Fathers of the Church, of his Opinion of their Care of it: I could hear him admonish that Venerable Bench of the Guilt of departing from the Church, and abandoning the Principles of the Church, if they should punish him, a true Son of the Church, for Preaching the same Doctrine with theirs; as if there was no manner of Difference whatever.

It seems, my Lords, very strange, that after a Charge of this Nature of Reflection upon his Ecclesiastical Superiors, that, after having studied so much Submission, he should not prevail with himself for so much as a Compliment upon this Occasion. Such Behaviour seems to need no Explanation. I should be very unwilling to recollect any of the Doctor's charitable Opinions of his own Brethren, who, as he is pleased to say, can sacrifice their solemn Declarations and Oaths to Complaisance and Preferments. I would be so charitable as to believe well, and think favourably of all Men; but when the contrary does so manifestly appear, it would be Injustice to the rest of Mankind not to judge accordingly. It would be a Remissness and Negligence of Duty, justly blameable, if we were to shut our Eyes, and resolve not to see what so evidently threatens the Peace and Quiet of the Kingdom. If Men must be allow'd to vent their Displeasure at such Proceedings of their Governors which do not suit their particular Humours, what must become of the Credit and Reputation of any Government, which is so necessary to preserve it?

Your Lordships have heard a great many Objections against *Minuendo's*, that they are dangerous Things, and never encourag'd; and that your Lordships have been pleas'd to shew your Dislike of them. I shall not scruple to own, that to lay a Meaning to a Man when his Words will not bear it, to make any invidious Construction when it will admit of a favourable one, I can neither approve or desire. But because the extreme or ill Use of any Thing is not to be allowed, that therefore you must never apply it at all, is such Logick and Law as I have not been us'd to.

My Lords, In the Case *de Libellis famosis*, cited by the Doctor's Council, your Lordships will find, that if only plain positive Assertions are Libels, there will be no Fence against the Envy and Malice of wicked Spirits: And if the Law has guarded every private Man's Reputation, so as not to be blasted by oblique Turns and scandalous Insinuations; it would be very hard if those in Authority should be exposed to the Virulence of every discontented Humourist. Malice will never want a Pretext, or Means to convey Scandal and Reproach by sly Parallels and Allusions, which may do equal Mischief with positive Assertions: But I must observe to your Lordships, That there are not only oblique Insinuations, but positive Assertions.

Not only those Passages which I have produc'd which are express, but the whole Scope and Tenor of his Sermon, relates to the Peril of the Church

Church from Persons in Church and State, and not those evasive Shifts of Vice and Infidelity, Books and Pamphlets. If the Doctor had only rebuk'd Immorality, Blasphemy, Prophaneness and Irreligion, he might still have attended his Flock, * and they not have been brought to attend him; nor would he have been thought to arraign the Resolution of the Parliament. But for him to take upon him to censure and expose his Superiors, and to insinuate into the Minds of the People the Danger of the Church from those Persons who have the Protection of it, is no likely Method to suppress Immorality and Prophaneness, and is directly contrary to the Words and Intent of the Resolution of your Lordships and the Commons.

To what End the Doctor has thought fit thus to disperse his Sermons, may be easily imagined; and your Lordships cannot be unacquainted with the History of a Neighbour Nation, what temporal Ends were to be accomplish'd by a loud Outcry of Danger to the Church, the Church, Religion and the Church! Whether that will not bear a Parallel with the groundless Clamours which have occasion'd many of our present unhappy Divisions, I submit to your Lordships.

It remains, my Lords, that I answer one of the Learned Council, what the Nature of this Offence is: I shall only tell him in the Words of your Lordships and the Commons Resolution, made publick by Her Majesty's Proclamation, "That whoever creates unreasonable Distrusts, and groundless Jealousies in the Minds of the People; whoever distracts the Kingdom by false and seditious Rumours of the Danger of the Church, to cover Designs they dare not own; whoever goes about to insinuate that the Church is not in a safe and flourishing Condition under Her Majesty's happy Administration, is an Enemy to the Queen, the Church, and the Kingdom." Which, in other Words, is, Against the Law, against the Temple, and against *Cæsar* has he offended.

Nay, my Lords, Has not this bold Offender gone yet farther? Has he not told your Lordships at your own Bar, That, notwithstanding the Toleration, the Dissenters are Schismatics, and liable to Spiritual Censure; that by continuing the Indulgence to them, you countenance Schism; and that while Schism is continued, the Church must be in Danger? So that resolve what you please, and make what Laws you will in their Favour, he must still thunder out his vehement *Anathema's* against them, as dangerous to the Church.

This, my Lords, is a Specimen of that Independence of the Church that of late has been so much struggled for; and which, if not confuted in time by Authority, may soon devour the Supremacy and the State. And since the Doctor has and does still thus presume to defie and arraign the Resolution of your Lordships and the Commons, he is properly before this Tribunal; and I may apply to him the Saying to a Goat browsing on a Vine, and which was applied to one of another Function upon such an Occasion, who had defied the Power of Parliaments:

*Rode Caper vitem tamen hinc cum stabis ad Aras
In tua quod fundi Cornua possit, erit.*

My Lords, The Commons are so fully assur'd of your Lordships Wisdom and Justice, that they can-

not question but your Determination in this Proceeding will be to their Satisfaction; therefore I shall trouble you no farther, but submit to your Lordships Judgment.

Serj. Parker. **M**Y Lords, Having already, by Command of the Commons, endeavour'd to make good the *Fourth Article* of this Charge; It is now my Duty to support, what I offer'd before, both against the particular *Objections*, and the general *Rules*, propos'd or insinuated by the *Council*, or the *Prisoner*.

The first Thing I attempted to prove by particular *Passages*, was the second Clause of this Article,

"That Doctor Sacheverell suggests, That there are *Men of Characters and Stations* in Church and State, who are *False Brethren*, and do in themselves *weaken, undermine and betray*, and do encourage and put it in the Power of others, who are professed Enemies, to *overturn and destroy the Constitution and Establishment*."

This I thought would be plainly made out, if I could shew these *Two Things*:

1. That the Doctor has asserted, in express Terms, of all *False Brethren* in general, that they do in themselves *weaken, undermine and betray*, and do encourage and put it in the Power of others, who are professed Enemies, to *overturn and destroy the Constitution and Establishment*. And,

2. That he charges *Persons of Characters and Stations* with *False Brotherhood*.

Apprehending the *Consequence clear*, that if these *Two Things* were asserted by the Doctor, the Charge was just:

I used likewise some farther Proofs, which I shall not need repeat.

Besides some little Cavils as to the *Two Propositions*, which I shall take Notice of by the way; great Complaint is made, often repeated, and much exaggerated, that I have brought together these *Two Propositions*, that are twelve, or nine, or at least seven Pages asunder.

My Lords, I took Notice of this *Trifling Objection* before; and what I said to it, neither the Doctor nor his Council have attempted to Answer.

But they all seeming to lay the greatest Stress upon this Part, and the Council every one repeating it, I beg Leave to state once more how that Matter stands.

The Doctor in this Sermon proposes (1.) To describe *False Brotherhood*; (2.) To shew the *Mischief*; and (3.) the *Malignity* of it.

And this *single Consideration* would make one expect, that these *Heads* should relate to one another, at whatever Distance he takes them up.

Under the Second Head, * Page 15, he asserts, of all *False Brethren in general*, that "they do in themselves *weaken, undermine and betray*, and do encourage, and put it in the Power of others, who are professed Enemies, to *overturn and destroy the Constitution and Establishment*."

This is my first Proposition in Terms, and nothing is objected to it.

Only a little Attempt is made to divert the Question, by mentioning some particular sorts of *False Brethren*, and saying he there speaks of *False Brethren* in some of those Senses of the Word.

* Note, The Pages of the Sermon are referred to as in the Second Edition, which was that which was proved and read in Evidence.

* His Parishioners part of the Mob that attended him to and from his Tryal.

I agree it: He that speaks of *all*, speaks of such as are included in those *Senses* of the Word which he mentions; but likewise speaks of *all others too*; speaks of such as *he* has mention'd *any where else*, as well as *there*, such as are *Men of Characters and Stations*, as well as such as are *not*.

Under the Third Head,

In shewing the *Malignity* of this Sin (not in it *self*, that he had shewn before, but) *with regard to the World*: He instances first, in the *Mischiefs* arising from *Men of Characters and Stations*, in the Words I formerly cited. This, I thought made out my Second Proposition to be the Doctor's, "That *Men of Characters and Stations* are *False Brethren*."

This is *faintly deny'd*; and 'tis said, he does not here suggest *Men of Characters and Stations* to be *False Brethren*; but what is *here* spoke relates to their *private Behaviour*, and not to the *Administration*.

Besides, that this is directly against the *plain Import* of the Words; to let your Lordships see the *Candor* of this Defence, let us suppose it *true*; and that it is the Doctor's *Opinion* that the Persons he here speaks of, be they *great or mean*, are *not False Brethren*.

Then the Doctor, to be *consistent* with this Defence, must affirm, that he here sets forth the *Malignity* of *False Brotherhood*, by shewing the *Malignity* of *another Sin* which is *not FALSE BROTHERHOOD*, in *Persons of Characters and Stations*, who are *not FALSE BRETHREN*.

This is the wretched Shift he is driven to, taking it the best for him.

That these *Characters and Stations* relate both to *Church and State*, all his *Discourse* in the *Places cited*, and *every where else*, shews; nor has *he* or his *Council* made it an *Objection* that they do *not*; so that it would be very much mispending your Lordships Time, to go to *prove*, what is *not deny'd*, that by *Men of Characters and Stations*, he intends *Men of Characters and Stations in Church and State*.

The Two Propositions being thus cleared, let us see if that which is laid hold of to *declaim* so earnestly upon, have any more weight in it, that is, the *joining together* these Two *distant* Propositions.

The Objection, rightly stated, is this:

He has in *one Place* affirmed of *all False Brethren* in general, "That they do in themselves *weaken, undermine and betray, and put it in the Power of others, who are profess'd Enemies, to overturn and destroy the Constitution and Establishment*:"

And seven Pages off, has represented *Men of Characters and Stations* as *False Brethren*:

And we (very unreasonably!) have charged him with suggesting, "That there are *Men of Characters and Stations in Church and State*, who are *False Brethren*, and do in themselves *weaken, undermine and betray, and do encourage and put it in the Power of others who are profess'd Enemies, to overturn and destroy the Constitution and Establishment*."

This is the *true Strength* of the Objection, and the very *stating it exposes it*.

The *general Mischief* he mentions, as common to *all False Brethren*, Page 15, I presume will be admitted to belong to *those* described Page 7; Why then not as well to *those* Page 22?

Must not what is said of *all False Brethren*, extend both to *those* whose *Crime* he describes,

and to *those* whose *Malignity* for that *Crime* he exposes?

And which is most to be regarded, the *Distance* of the *Place*, or the *Connexion* of the *Scheme*, and the *Nature* of the *Propositions*?

The Doctor himself seems rather to press the Objection thus, That this is *Inference*, and *joining independent Propositions*; which, tho' spoke by him in general, the *Unanimity* of his Council in falling upon this Part of what I said, shew, it was spoke principally with a *View* to these two *Passages*. Are then *Passages* that speak of *all False Brethren*, and that speak of *some particular False Brethren, independent*?

My Lords, These are so far from being *independent*, and so *ill* have they *chosen* out what to find fault with, that (if your Lordships will pardon the *Pedantry*, considering I have a Man of *Logick* and *Disputation* to deal with) the two Propositions are the two Propositions of a *Syllogism*, concluding in the *first Figure*.

And the *Inference* he complains of is the *Conclusion* necessarily arising from them, according to the *Rules of Logick*.

The whole Syllogism runs thus.

All *False Brethren* do in themselves *weaken, undermine, and betray, and do encourage and put it in the Power of others who are profess'd Enemies, to overturn and destroy the Constitution and Establishment*.

Persons of *Characters and Stations* are *False Brethren*.

Therefore Persons of *Characters and Stations*, do, &c.

The two first Propositions are what I have shewn the Doctor plainly to lay down; the other only a *necessary Consequence*.

Would any one expect that the Doctor should be so forgetful of the *Rules of Logick*, as when he had laid down the *Premises*, to deny the *Conclusion*? Or to deny the *Conclusion* to be HIS DOCTRINE, who laid down those *Premises*?

Can it be thought, that he laid them down without an *Intention* that his *Hearers* should make the *Conclusion*? Or could he think it *possible* they should *not* make it?

Or shall the *suppressing* a *Conclusion* so plainly arising, which is taken Notice of in some that write of *Logick* as an *Elegance* in *Discourse*, pass for an *Excuse*?

Let the Doctor describe *False Brethren* in general as *Betrayers and Destroyers* of the *Church*, and the proper *Objects* of the *Rage* and *Fury* of the *People*, and then expose as *False Brethren* those in the *Administration*, Persons of *Characters and Stations*, from the *chief* to the *least*, the *People* will quickly make the *Application*.

If any one should inflame the Mob to such a Degree of *Rage* and *mistaken Zeal*, as to forget the *Spirit* of the *Gospel*, and to believe it their *Duty* to serve God by breaking the *publick Peace*, and to support his Church, by pulling down all Meeting-Houses, and rilling the Houses of all Dissenters; he needs afterwards only to tell them, THIS IS A MEETING-HOUSE; HERE LIVETH A DISSENTER; they are not so dull as to fail of making the *Conclusion*; THEREFORE THIS HOUSE IS TO BE PULL'D DOWN; THEREFORE THIS MAN IS TO BE PLUNDERED; and of putting it immediately in *Execution* where they dare.

Suppose such a Man should, in Defence of himself, say, "I did not bid them pull down *this House*, nor *rifle that*; my telling them *All Meeting-houses* were to be pull'd down, *All Dissenters* to be *mark'd* and *plunder'd*, was *Four Months* before I told them **THIS WAS A MEETING HOUSE, OR THAT MAN A DISSENTER**; and to *carry back* a Man's Words, spoke only by way of *Information*, to what was said *Four Months* before by way of *Doctrine*, is the greatest *Hardship* in the *World*.

Would this pass for an *Excuse*? Or would it not add to the *Indignation* against so impertinent a *Tri-er* on so *sad* an Occasion.

My Lords, The burning a *Meeting-House*, the burning *all* the *Meeting-Houses*, the laying this *Metropolis* once more in *Ashes* by the *Enemies* of our *Constitution*, is nothing to the *inflaming* the *Nation*, and rendring the **QUEEN** and Her **ADMINISTRATION** odious to the *People*.

Shall it then be an *Excuse* for the Doctor here, when he has laid down the *Premises*, to say, that he has not in *Words* expressed the *Conclusion*?

Shall the *meanest* of the *People*, clearly and *rightly* collect, This is Doctor Sacheverell's *Doctrine*; and shall not *we* in *accusing*, and your *Lordships* in *judging*, be allowed to collect it, when we are endeavouring to preserve the *Queen* and *Constitution*, and *all* that is *dear* to us?

Surely, my Lords, we shall. Nor is the *strict* *Consequence* that your *Lordships* find in this *Clause*, always *necessary* in *Cases* of this *Nature*: But I was willing to shew it here, that your *Lordships* may see with what *Justice* this was made the great *Topick* whereupon to declaim against *Hardships*, and to couple such *Inferences* with *Innuendo's*, as if both were the *same*.

As for taking one *Part* of one *Sentence*, and another *Part* of another, whoever makes a *Conclusion* in *Logick* ever does it; and only *then* does amiss in it, when in doing it he departs from the proper *Rule*, and where the *Consequence* is *not just*; which I have *shewn* is *not* the *Case* here, and no *Body* has attempted to make out that it is.

'Tis as little to the *Purpose* what is said, that he has not restrained this to *Persons* of the **HIGHEST CHARACTERS AND STATIONS**; which I shew'd so fully before, that it has been thought more advisable to pretend I admitted what I believe I plainly *disprov'd*, than to offer any Answer to my *Reasons*.

I'll only add, that 'tis *not pretended*, that there is one *Word* in the *Sermon* that looks like the *least Hint*, that only *inferior* Officers were meant; and 'tis plainly *shewn*, that *others* were intended: And then the Doctor's *Excuse* amounts, at best, but to this: He has indeed spoke in reproachful Terms of *Magistrates in general*, he has pointed to those that *have*, and those that *bestow*, the *Honours* of the *Church*, and *Places* and *Preferments* in the *State*; he has pointed to the *Chief*, his *Reasoning*, when he shews the *Malignity* of the *Sin* from *Examples* of *Persons* of *Characters* and *Stations* is the *stronger*, the *Greater* these *Persons* are, as the *Examples* of the *Greatest* are the most *Contagious*; but yet he relies upon it, that since the *general* *Mention* of *Persons* of *Characters* and *Stations* takes in the *Meanest* as well as the *greatest*, 'tis *not* to be doubted but the *all-discerning* *People*; especially

when sufficiently *fur'd* and *enrag'd*, will restrain the *Words* to the most *innocent* *Meaning*, and apply them only to *inferior* Officers, *Constables*, and those in the nearest *Degrees* to them.

This is the *Sum* of this *notable* *Excuse*.

Let *this* therefore, where, by bending their united Force against it, they seem'd to have the *greatest* *Hopes* of making some *Impression*, serve for the *Specimen* chosen by *themselves*, of the *Hardships* of *Inferences* and *Innuendo's* in this *Charge*.

"The Third *Clause*, "That he chargeith Her Majesty, and those in Authority under Her, with a general Male-Administration; The first, That he suggests that Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution; are so manifest, that after what has been said, and is *unanswer'd*, it would be but losing Time to attempt to make them more plain.

And their Defence, and the Books and Pamphlets read on this Head, are not to the Purpose.

For sure, the shewing that there have been some *Paltry* *Scriblers*, few in Number, many long since dead, some mad, some that have undergone the infamous Punishment of the *Pillory*, most of them *prosecuted* or *unknown*, does not prove that there are *Seminaries* for the open Profession of those *Blasphemies* and *Impieties*; much less, that they are *suffered* by the *Government*, or that their *Follies* can be called an open *Violence* upon the *Church*, or their *Faults* made the *general* *Character* of the *Nation*, and *charg'd* upon the *Queen* and Her *Administration*.

When a *scandalous* *Book* is published, or *contagious* *Sin* committed, any Subject who has a *real* *Zeal* to prevent the *Mischief* spreading, may apply to the proper *Magistrate* to suppress it; and if *inferior* *Magistrates* neglect their *Duty*, may carry the *Complaint*, against *them* and *it*, to their *Superiors*.

But is it to be *endur'd*, in any established *Government*, that a Man pass over all the *Magistrates*, and make an *Appeal* to the *People*, not only against the *Offenders*, but against the *Magistrates* too?

This is properly *Faction*, this is invading the *Royal* *Authority*; 'tis, in the Doctor's own Words, "A rebellious Appeal to the People as the *Demer* Resort of Justice and Dominion;" 'tis erecting a *Popular* *Tribunal*, where not only *SCRIBLERS*, but the **QUEEN** and Her **AUTHORITY** are to be try'd.

The Doctor indeed pretends that his *Zeal* was only against those *Offenders*, and such as keep not within the *Bounds* of the *Toleration* *Act*; that his *Warmth* of *Speech*, was only to stir up the *Magistrates* to put the *Laws* strictly in *execution*; and he solemnly protests he intended no *Reflection* on the *Queen*, or Her *Ministry*; that by the *Dangers* of the *Church*, he meant only those *Judgments*, which the just *Anger* of a provok'd *God* might be reasonably expected to inflict on so wicked a *People*.

I can't pretend to repeat his very Words, but I apprehend this to be his Sense, and beg pardon if I mistake his Meaning.

My Lords, I am amazed at the Doctor's *Solemn* *Protestations*. I will avoid *hard* *Words* as much as I can; but if when he calls *God* to *Witness* in so solemn a *Manner*, he should then speak without

Foundation of Truth, plainly against his Sermon, and be even then using the little Arts of Evasion, and diverting the Question, instead of that Sincerity which ought to accompany so solemn an Oath, I leave it to your Lordships to give a Name to such Behaviour.

Is it possible to say he intended not to reflect on the Administration?

Give me Leave to read to your Lordships Two Pages in his Sermon, to which I before referred; and be pleased to observe, as I go along, how much they are applicable to unknown Authors, or the Dead, to *Asgill*, the *Observer*, the *Review*, or other Writers, that he has made so filthy a Collection out of; or to *Atheists*, or *Dissenters exceeding the Limits prescribed by the Toleration*; or to *Occasional Conformists*; *Dissenters too in the main*, but when the Occasion of a Place calls them to Church; and your Lordships will have one Instance of his Sincerity in his Solemn Protestations.

"2. Secondly, In regard to the World, What a vast Scandal, and Offence must it give to all Persons of Piety and Integrity, to see Men of Character, and Stations, thus shift and prevaricate with their Principles, and starting from their Religion upon any Occasion of Difficulty, or Tryal, and like the Disciples, flying from, and forsaking our Saviour, when his Life lay at Stake? To see Men's Opinions sit as loose about 'em as their Garments, to be put on, or off, for Convenience? What can unwary Persons conclude from such Tergiversation, and Hypocrisy, but that all Religion is State-Craft, and Imposture? That All Godliness is Gain; and that the Doctrines of the Church lie not so much in Her Articles, as Her Honours, and Revenues? Without doubt, this Modern Latitude, and infamous Double Dealing, as it can proceed from nothing but the rankest Atheism, so it must propagate it where-soever it goes; and 'tis not to be question'd, but that the Wonderful Increase, and Impudent Appearance of all Sects and Heresies in this Kingdom at present, beyond what was ever known in former Ages, is chiefly to be attributed to it. But this Crime is as pernicious to Human Society, as Religion; for it destroys all common Honesty, Faith, and Credit in the World, and in the Place of it, sets up an Universal Trade of Couzenage, Sharping, Dissimulation, and downright Knavery. For, what Dependance can there be upon a Man of no Principles? What Trust in Equivocations, Evasions, and Lyes? Nor indeed could any one be suppos'd so sottish, as to place the least Confidence in these Men, did they not bait their Hook, and cover their Treachery with the sacred and plausible Pretences of Friendship, whereby they are capable of doing much more Mischief, than a bare-faced, and profess'd Enemy. In what moving and lively Colours does the Holy Psalmist Paint out the crafty Insidiousness of such wilely Volpones? Wickedness, says he, is therein; Deceit and Guile go not out of their Streets. For it is not an open Enemy that has done me this Dishonour, for then I could have born it: Neither was it mine Adversary, that did magnify himself against me, for then peradventure I would have bid my self from him. But, it was even Thou! my Companion, my Guide, and mine own Familiar Friend. We took sweet Counsel together, and walked in the House of God as Friends. There is no Faithfulness in their Mouths, their inward Parts are very Wickedness; their Throats are

open Sepulchres, and their Words are smoother than Oil, yet be they very Swords. Like Joab, they pretend to speak Peaceably, and smite Us mortally under the Fifth Rib.

"3. Thirdly, With regard to a Man's self, it is hard to distinguish whether our False Brethren prove themselves Guilty of more excessive Knavery, or Folly. For whatever these cunning, temporizing Politicians may think, they will find, after all their Shuffling, and Compliance, that the plain Road of Truth, Honesty, and Integrity, is both the most Prudent, as well as the Safest Way they can follow, and that the Wisdom of this World is as much Foolishness with Men, as 'tis with God. For certainly there is no Sin that so much Disappoints its own Ends as This does. Perhaps the Man may obtain the present Advantage he has in Prospect, by relinquishing his Old Friends, and Principles; but is ever such a Mercenary Convert receiv'd heartily into the Bosom of his former Enemies? Or are They ever found so Credulous, and Good-natur'd, as to Forgive, and believe such an Apostate Cordial and Sincere, and fit to be trusted in any Matter of Weight, or Importance, who has betray'd his own Party for the little sordid Lucre of a Place, or Preferment: And is again ready to be Retrograde, whenever the Wind shall Change, and Veer about? Such a False Brother may serve the present Turn of his Adversaries, who may seem, whilst they want the Tool, to flatter and caress him; but let such a Turn-Coat rest assur'd, he shall meet with Hypocrisy, for Hypocrisy; and since He is got upon the Stage, shall Act his Part, and be hiss'd off when he has done. Such a wise Game do our Projectors Play, they Barter, and betray their Friends, only to sell themselves Slaves into the Hands of their Enemies, who shall treat them with more Insolence, Disdain and Tyranny, than honest Men do with Scorn, and Contempt, if they don't go the whole Lengths of their Party, stick at nothing, though never so impious, and absurd, and run from one Extream to a quite Contrary. Thus little, thus base, thus odious, thus contemptible, thus servile, nay thus execrable is the Traytor, and Double-Dealer in the Sight, not only of all honest Men, but the most profess'd Knaves, and Hypocrites! Who cannot but have a Tacit Regard, and Veneration, for a Man of Steadiness, and Probity, that upon all Occasions is true to himself, and his Cause; is above the Threats, as well as Flatteries of this World, still trusting in his God, and his own Integrity, and Justice, despising his Interest, or Success, and is under all Circumstances like that God, and Religion he believes and serves, without Variableness, or Shadow of Change, but is the same, to Day, to Morrow, and for ever. Farther, these False Brethren cannot be more odious to God and Man, than they are to themselves, who are always a Self-Contradiction, full of Confusion and Perplexity, perpetually haunting themselves, the worst of Demons, maintaining an irreconcilable War betwixt the outward and inward Man, Conformists in Profession, Half-Conformists in Practice, and Non-Conformists in Judgment. Such a Mixture of Inconsistency and Nonsense, that any one that has the least Spark of Conscience, or Reason, must renounce, and detest. But this dismal Effect has such a State of Habitual Hypocrisy, that it quite damps and extinguishes both, quenches the Holy Spirit of God, and

“and crucifies his Son afresh; and as it finds a Man void of Shame, generally (without a miraculous Conversion) leaves him incapable of Repentance, and both damns him here, and hereafter; and as he chose it in this World, appoints him in the next, his Portion with Hypocrites and Unbelievers, with all Lyars, that have their Part in the Lake which burns with Fire and Brimstone, with the Grand Father of Falshood, the Devil and his Angels. And so here we leave our False Brethren, in the Company they always keep Correspondence with.

To go on. Is that true, that he only calls upon the Magistrates for Justice upon these Offenders?

If his Intent really were to exhort the Magistrates (before whom he preached) to put the Laws in Execution, one would expect to find it vehemently pressed under the Fourth Head, where he undertakes to shew what should be the Result of all; but I have searched carefully, and can find nothing there, nor any where else, of any such Exhortation.

There is indeed a Calling upon the Pastors of the Church, who were not present, to thunder out Anathemas against Schism; which could not be to persuade those Pastors that did not hear him, but to condemn their Remissness to the People that did. But all the rest is to the People, to adhere to the Fundamental Principles; to watch against, MARK AND AVOID, those that desert them; to give Place, BY SUBJECTION, no not an Hour; to despise sneaking shuffling COMPLIANCES, and put on their BRAVEST Resolutions, which the PRESENT Case requir'd: There is a denouncing Woe to the fearful Heart and faint Hands; a shewing the Perils and low Estate of the Church, that her Sons deserted her, that she lay bleeding of her Wounds; that her Adversaries were CHIEF, and her Enemies AT THAT TIME prosper'd.

Is this the Language of one, that is only laying before Magistrates the Abuses of a few inferior Persons, within their Power, subject to their Authority, and whom they could easily crush, and desiring those Magistrates to correct them?

In short, Is it calling upon the Magistrates, or upon the People, for Justice?

Again:

He solemnly declares his Meaning in the Sermon to have been, That the Dangers of the Church are only such as arise from the Sins of the Nation, but not in the least from Her Majesty and Her Administration.

Let any one cast his Eye upon the Sermon, or upon the Dedication of that preach'd at Derby, and try how the several Expressions suit this Scheme; and he will see, the Doctor had nothing of it in View then, but that 'tis contriv'd since, for him to pretend now.

What Dangers of the Church and Constitution he means in the Sermon, is too plain to be shifted off by a Protestation: He tells you expressly what they are, and from whom; from Men, whom he describes as being in the Administration, who undermine and betray the Church, and enable others to destroy it; they are such as he apprehends, not from the Hands of God, but from the Treachery and Violence of Men.

Accordingly, the whole tends to stir up Anger, Indignation and Fury against those Men; not to move Humiliation and Prayers to God, to avert those impending Judgments.

But possibly he may expect to be understood, not of an immediate Vengeance of God, or his delivering us into the Hands of a Foreign Enemy. but his permitting wicked Men at home to overthrow the Church.

If we take it to be so, this solemn Protestation is a mere Evasion, and a shifting the Question.

'Tis true, the Overthrow of the Church and Constitution is the heaviest Judgment can befall us, and if it does happen, must be accounted the Act of Divine Justice punishing us for our Sins. All National Punishments are certainly the more immediate Acts of the Justice of Providence; and the Instruments made use of to bring them about, are very often wicked Men.

The Prophane Writers, the Atheists, the Abusers of the Toleration, the Vilifiers of Holy Orders, of the Church, and of Christianity, and other wicked Men, may have given great Provocations to Almighty God; and if I should say so great, as may give just Cause to fear a Judgment upon us, that may endanger the Church and Constitution; yet still the Question is, What Hands are about to execute this Judgment upon us? We charge him as representing the Church in Danger under Her Majesty's Administration; as suggesting that Her Majesty's Administration, in Church and State, tends to the Destruction of the Constitution; and consequently, that the Hands of those in the Administration are about to execute such Judgment: And he solemnly protests, he apprehends no Danger, but from God.

My Lords, This is trifling; for every such Danger is from God, and is his Judgment, whoever they be, whether Her Majesty, and Her Ministry, or any others, that immediately bring it upon us.

This therefore, instead of answering, is evading, and diverting your Lordships View from the Persons he charges to be working the Ruin of the Church, to God the Supreme Director and Overruler of all the Actions and Designs of Men. As if the Reflection on the Queen and Her Administration were the less, for saying, that they are the Instruments in the Hand of God to scourge the Nation for its Sins, and to execute his Vengeance in overthrowing the Church and Constitution.

So that I am afraid, this Part of his Solemn Protestation is either false, or evasive, or both.

And let so much suffice to be added on these Clauses.

To what I offer'd to your Lordships on the Clause of keeping up Distinction of Factions and Parties;

I desire to add the Weight of One Authority, out of the Excellent Sermon preach'd by the most Reverend Prelate, my Lord Archbishop of York, and produced by the Doctor.

The Words are these:

“They are Factionous, they are Setters up and Abettors of Parties, who endeavour to destroy, or unsettle, or disparage, or in the least hurt or weaken the Government, and the Laws as they are establish'd; let the Principles on which they go, or the Pretences they make, be what they will.

Whether the Doctor hath not endeavoured in the highest Degree to disparage the Government, and consequently to weaken it, your Lordships will judge.

As to the other Clauses, they have offered very little, and I will not repeat what I said before.

Only I would take notice, that under the Head of *stirring up to Arms*, something was urged by the Council, in relation to what I said upon some Texts of Scripture, but so entirely *mistaking* my Meaning, that I think my self *unconcerned* therein.

As for *pervverting Scripture* ;

The Council would seem to *pretend* something or other to be the *Mistake of the Printer*, without saying *where* the Mistake is, or *how* they would have it read.

I'll tell your Lordships what the *Mistake* is ; it is Printing the Second Chapter of *Lamentations* instead of the First, and Misplacing the References to *Lamentations* and *Zechariah* ; which I scorned to take Advantage of, and, in what I said, *rectify'd*.

But this serv'd for a *Shew* of an *Excuse*.

They said something more on this Head, but not to what was my *Objection* ; but *promised* the Doctor should *clear all*.

My Lords, I think I might reasonably here put an End to the Trouble I am giving your Lordships ; but that I apprehend *some Things* which fell from the Doctor, and which have not fall'n in my way already, may be proper to be *taken notice* of, so far as concerns what is within my *Province*.

I own, his *Speech* was extremely *well compos'd*, fitted not so much to *inform*, (his Case would not bear that) as to *move*, (wherein his Hopes were more justly placed ;) not so much to *state* the Question, and *clear* it, as to *divert* it : All the *plausible Topicks* were *labour'd*, and all the *Arguments* that *press'd* *hardest* upon Him, and *most requir'd* an Answer, *pass'd over in Silence* ; the Whole fram'd to give the *Passions* Mastery over *Reason*, and to induce a *Perswasion*, that so good, so excellent a Man as he painted himself, that has so many *Virtues*, so great *Sincerity*, so true a *Zeal* for Religion, *could not* be Guilty of this Charge, tho' *plainly prov'd* upon him : The *Protestations* were *strong* and *hearty*, and such as will *read well* amongst the People ; *clear* of all those *qualifying* Clauses, that might perhaps have made it *suit better* with the *Truth* of his Case, but would have had the *Inconvenience* of giving to the Readers *Suspicion of Guilt*. An agreeable *Concern* for Religion and *Virtue* ran thro' all ; which will always strike an Audience, and seems intended to make some *Amends* for the *Rage* and *Fury*, and *Zeal* for Party in the *Sermon*.

I only wish, for the Doctor's Sake, the *Composer* had preserv'd a little more *Regard*, as well to what was *fit* to be said *here*, (where the *Truth* of the whole Matter is known) as to what was fit to be said *abroad*, and given it a little more *Resemblance* of the Doctor and his *Sermon* ; That he had not calculated so many Parts of it for an *Appeal to the People*, and to obtain their *Acquittal* upon his *own Word*. And I must needs say for *my self*, (tho' my liking, or disliking it, is of very little Moment) had it had *fewer* and *less Solemn Appeals* to God Almighty, or *more Truth*, or I *known less* of the Matter, I should have lik'd it much better.

He begins with making his *Order*, the *Church* and *Christianity* to be concern'd in the Cause ; intending it, I presume, to be understood abroad as a Charge upon his *Accusers*, that in his Person they arraign all these.

But I shall not pretend to follow him throughout the whole *Speech*, only point out some *Fallacies* in it.

My Lords, Great *Regard* is to be had to the *Word*, much more to the *solemn Declaration*, much more to the *Oath* of a *Clergyman*, when he is *free* and *unbias'd*.

But when he *stands in Judgment*, when the *Rod* is *over him*, when there is only *one way* open for *Escape* from the just Punishment due to his Crimes, by *protesting* his *Innocence* ; neither his *Word*, nor his *Declaration*, nor his *Oath* is to be regarded.

That *Method* will acquit all that are accus'd ; and the *less Conscience* any such Wretch has, the *surer* and *easier* will be his *Escape*.

And therefore your Lordships will judge, by what the Doctor has *taught* the People, what he has *publish'd*, and not by what he *pretends* to be his *Intentions* in doing it.

He makes Complaint of the *Generality* of his Charge, that it was such that he *knew not where* it would point.

My Lords, Suppose we had follow'd the *more common Way*, and set forth *all the Passages* we have read, or the *whole Sermon* and *Dedication* verbatim, (as we might have done) without pointing out what we objected to, or *why* ; had that left him less in the dark ? It was therefore more for his *Advantage*, that we should tell him the *particular Points* we would insist upon, than if we had left our selves at Liberty at the *Tryal*, to make as many *Points* as we then pleased.

He lays it down for a Rule, That the *higher the Charge is*, the *more clear* ought the *Proof* to be.

My Lords, The *Proof* here is *indisputable* ; the *Sermons* and *Books* are not denied to be his. And these are all that *strictly* make the *Evidence* in the Case ; the rest is but *Argument*, and shewing them to be *Libellous* in the Particulars in the Charge.

But take *Proof* in a *larger Sense*, so as that it may extend to the *Reasoning* upon the Evidence, and to the making good the Charge, as in this Case is perhaps not improper :

I have no Reason, in *respect of this Charge* against him, to contest his Rule, because the *Proof* of it is *clear* in that *Sense* too.

But yet, for the Sake of *Justice*, I shall take the Liberty to say, that, as *apply'd* to this Case, it is a *Fallacy*.

This Sort of *Proof* arises from the *Sense* and *Doctrine* of his *Books*.

And I presume, the Doctor cannot hope, that because this is charged to be so *high a Crime*, as *Defaming* and *Undermining* the *Government*, any more *favourable Meaning* is to be put upon his *Words*, than if it were the *less Crime* of *Defaming* a *Private Person* ; or that your Lordships should not understand in this Case, (that which every body else that hears it, understands) and which your Lordships would have understood, if it had not *endanger'd* the *Government*.

I own, I cannot comprehend why your Lordships should be more shy of *Defending* the *Government*, than a *private Reputation* ; or *most afraid* of *Censuring* that which is of infinitely the *most dangerous* Consequence, if it escape *uncensured*.

On the contrary, in the Case of those Things which tend to the *Overthrow* of the *Constitution*, where the Rules and Methods of *Inferior Courts* cannot apply a proper Remedy, your Lordships (upon the *Impeachment* of the *Commons*) may. Let the *Contrivance* lye never so *deep*, be never so *artfully wrought*, when it strikes at our *All*, it would be *absurd* to say, the *Commons* may not bring it to the Bar of *Justice*, and your Lordships prevent its dreadful Effects, and give it the Punishment it deserves.

My Lords, Without that *Power*, your *Constitution* were *weak* and *precarious*.

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THE Doctor observes in what manner the Charge against him is supported, not by *express Sentences* of his, but by *Inferences*, and *joining independent Sentences*, (as to that part I have consider'd it already); and he seems to expect, that if he were Guilty of Suggesting and Maintaining the Things charg'd upon him, the *Passages* might as easily be pointed to in his Sermon, as the *Doctrine* in those he produced; and that bare reading, without a Comment, would convict him.

No, my Lords --- Even Doctor Sacheverell is not yet arrived at that Pitch, as to *Arraign the Government* as directly and openly, as to *preach a general Doctrine*.

This Fallacy seems very gross.

For is it reasonable to think, that a Man that intends to unhinge the *Government*, to expose an *Administration*, to fire the *People*, to raise *Sedition*, should speak *directly and plainly*? No --- he is to cover his Design even from those he is to draw in; he is to *pretend Zeal* for Religion, *insinuate* himself by degrees, not *shock* his Hearers at first with a Declaration against a *Queen* they are fond of; he must *pretend Zeal* for Her Majesty, to preserve their good Opinion of himself, while he is doing that which by degrees will alienate their Affections from Her. *This he must do*, tho' there were none to punish, and to prevent the Dashing his own Hopes of Success. But when he knows that the *Power* of the *Administration* he is to Reville and Rail at, is over him, and at hand; that is a farther Reason for *Caution*: Therefore in such *Discourses*, dark Phrases are to be studied, *confus'd Descriptions* will be frequent, with a perpetual *Perplexity of Expression*, between saying what his *Rancour* will not let him withhold, and withholding what his *Fear* will not let him speak out. *Schemes of Speech* are to be contriv'd, that have two Meanings; the one more obvious and plain, to have its full Effect upon the *People*; and the other (that will occur to no Body else) a *Reserve* to be offer'd to a *Court of Justice*. This is naturally to be expected in *Seditious Discourses*. But if your Lordships will pass this by, which has spoke infinitely more plain and audaciously than any other (I believe) that ever so publicly dar'd Authority, your Lordships may expect to see a new *Discourse* from the Doctor, where *Sedition*, that had but a very thin *Disguise* in this, shall there have none at all.

And this may serve for an Answer to what is urg'd from his *zealous Expressions* for the *Queen*; for if the whole *Discourse* have quite another *Tendency*, it is plain that those are only Parts of the *Blind* and *Disguise*.

He complains, That he is *Accused* for what he has omitted, as if done with Design; and his Silence is made Criminal.

My Lords, I was the Person that took Notice of his *Omissions*, but I did not make them a part of his Charge.

Indeed, when he in his Answer protested (as now he does, more Solemnly) his *Loyalty*, I took that Profession into Consideration, as a part of his Defence, which I ought to take notice of.

I had learn'd that the best way to try the Truth or Falsity of Pretenders to Virtue or Religion, was by their *Fruits*.

Accordingly I considered his *Management of his Text* in this Sermon, how agreeable it was to such *Profession*, and to see what *Fruits of Loyalty* I could find there.

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And your Lordships will now apply those Observations to his *solemn Appeal* to God before your Lordships, that his *Intentions* in that Sermon were to exert his BEST ENDEAVOUR for the *Security of Her Majesty*.

I shew'd your Lordships, that he omitted the only true *Notion* of False Brotherhood in State, which took in the *Non-Jurors* and *Disaffected*, tho' his Text led to it; that he had omitted to make the proper Use of the *Doctrine of Passive Obedience*, which was to press Obedience and Submission TO HER MAJESTY, tho' the Day and the Doctrine seem'd both to require it.

That he had set up another *Notion* of False Brotherhood, which I shew'd to be, upon his own Principles, wrong.

By these I try'd his Pretences, and shew'd, that if they were sincere, this Behaviour was unaccountable; but if he were at Heart for the Pretender, I made it manifest that all his Procedure was just, nay, that even his *Notion* of False Brotherhood was right to him that was of that Mind, and that his Application of the first of Lamentations was exact and fine upon that Supposition, which is never to be justified or excus'd on any other.

This I then press'd no farther, than to shew that his Sermon had in it no *Fruits of that Loyalty* which he pretended.

But I may make a farther Use of it now, as a plain Contradiction to his *solemn Declaration*.

For has he pretended to give any Answer to this?

Was I wrong in my *Notion* of False Brotherhood, or was he right in his? Has he made that Use of *Passive Obedience*, as to press Submission to the *Queen* from it? Has he not let the *Non-Jurors* escape, tho' his Text led him to speak against them, and advanced a wrong *Notion* of False Brotherhood merely to fall foul upon those that justify the Resistance in the Revolution, and cut off thereby every Colour of Title to the Pretender? Or does he offer to reconcile that Proceeding with his Pretence? No --- And then, tho' bare Omission were not a Fault, yet I may now ask; Is that Omission consistent with his *Protestation* of an Intention to exert his best Endeavour for Security of the *Queen*? Did he exert, or intend to exert his best Endeavours, that omitted things so very obvious? Nay, where does he shew that he has exerted any such Endeavour at all?

On the contrary, he has fallen into the *Methods* us'd by those that are against Her Majesty, to undermine and weaken her Title, and to disparage her Government, and to render it odious to the People.

He Complains that where he presses Obedience to the *Queen*, we say he means the Pretender.

My Lords, It was one of the *Omissions* that I urg'd against him in the manner I have just mention'd, that he no where presses Obedience to the *Queen*.

Does he think it had not become him to shew where he did press it, if he could?

Or what Name does he think is to be given to his taking it for granted, that he had done that, which it was expressly charged he had not done, and which he cannot shew he has?

He seems to complain of some Expressions that have been us'd against him by the Managers, as nor becoming this Place, or his Order.

My Lords, I hope we shall always demean our selves with *just Respect* towards your Lordships.

And as to *him*, he is to consider, that there is a wide Difference between what a *private Man* says of others, much more of his *Governors*, in *Conversation*, or in *popular Assemblies*, and what is spoke of an *accus'd Person* at his *Tryal*. In the former Case, it is not *fit* to speak ill of them, that which is *true*; in the other, the *Crime* is to be represented as it is, and the *Person* is to have no *Respect* paid him that shall any way tend to prevent shewing the full *Enormity* of the *Crime* in all its *true Colours*. And if any thing has been said, which otherwise his *Orders* would have secur'd him from, let him remember that his *Crime* deprives him at *this Time* of that *Protection*; where 'tis *one Aggravation*, that he has *abus'd* his *Holy Function*; which it was the *Business* of the *Managers*, both to *say* and to *make out*.

He complains that there is *no Allowance* made to a *Minister rebuking Vice and Irreligion with Zeal*, when he happens thereby to be carry'd into an *Expression* not well guarded.

My Lords, His *Zeal* is levell'd more at *Persons* than *Crimes*, he mentions not *false Doctrines* to confute them, nor the *Faults* of those that bear him, that they may amend them; but rails at *Persons absent* to expose them, and raise the *Passions* of his *Auditory* against them; his *Zeal* leads to hunt out *Faults*, for an *Occasion* of *Complaint*; to magnify whatever is amiss, and charge all home upon the *Government*; departing from the Office of an *Ambassador of the Prince of Peace*, and preaching *Sedition* and *Rebellion*.

And in such Case, his *Orders* are so far from being an *Excuse*, that they are an *Aggravation*; when he who ought to preach *Peace*, *Long-Suffering*, *Gentleness* and *Submission*, foments *Divisions*, creates *Jealousies*, heightens *Animosities*, and disturbs the *Government*.

But where there is a *Sermon* truly tending to promote *Religion* and *Virtue*, God forbid that any *incautious Expressions* in it, tho' justly *exceptionable*, should be laid hold on as an *Occasion* to punish the *Preacher*; it has not been done, nor, I think, ought to be.

Yet when a *Minister* presumes to go out of his *Way*, and to meddle with the *Government*, he ought to be more than ordinarily wary in his *Expressions*, since his *Character* gives his *Reflections* greater Weight and Force with the *People*, and his *Errors* will therefore do the greatest *Mischief*.

And this *Man* that *Professes* to preach *Politicks*, and laughs at those that tell him 'tis his *Duty* to preach *Peace*, and is *inflaming* the *People* against their *Sovereign*, must not think himself entitled to that *Favour*.

I own I am very well pleas'd to hear the *Doctor's Declaration* in Favour of the *Succession* in the *House of Hanover*, and his earnest *Prayer* for perpetuating it. Because, whenever our *Sins* shall be the *Occasion* of our losing the best of *Queens*, the *Security* of our *Religion* and *Liberties* for our *Posterity* depends upon it.

But I a little wonder, that he appeals to God that in this *Sermon* he had sincere *Intentions* to exert his best *Endeavours* for the *Security* of the *Queen*, and the *Protestant Succession*. I hope he is hearty for both, but sure, his best *Endeavours* for them are not exerted in *this Sermon*.

As for the *Queen*, I have spoke already.

As for the *Succession*, I own my self entirely at a Loss, in what part of the *Sermon* it is, that he has exerted any *Endeavour* at all for the *Security* of the *Protestant Succession*: I do not find any thing that I apprehend can concern it, except that Place where he ridicules the *Notion* of any *Right* to the *Crown*, but an *Hereditary Right*.

THE COUNCIL having in great measure declin'd that Head about *Wrestling and perverting divers Texts and Passages of Holy Scripture*, and seeming to *Promise* that the *Doctor* should give *Satisfaction* therein; I was in great *Expectation* of his *Performance* there; but am miserably disappointed, and cannot but be in some *Confusion* for the *Doctor*; tho' he seems to have entire *Satisfaction* in himself.

His Conduct upon this Clause, from first to last, amazes me.

His Answer put in before your Lordships to the Charge of the *Commons*, is throughout evasive and reflecting; but in this part of it there is a *Master-piece* of *Equivocation* and *Malice*, to avoid either confessing or denying the Charge, and to cast an *Odium* on the *Commons*, as *Persecutors* of the *Clergy*.

The Words are these:

"Hard is the Lot of the *Ministers* of the Gospel, if when they cite the *Word of God* in their general Exhortations to *Piety* and *Virtue*; or in Reproof of *Men's Transgressions*, or where they are lamenting the *Difficulties* and *Conflicts* with which the *Church of Christ*, whilst *Militant* here on Earth, must always struggle; the several Texts and Passages by them cited, shall be said to have been by them meant of particular Persons and Things, and shall be considered in the most criminal Sense, and be made by such Construction, one Ground of an *Impeachment* for *High Crimes* and *Misdemeanors*.

These are the Words of his Answer; and give me leave to ask, Do they deny, or do they confess the Charge?

Neither --- But are an *Appeal* to the *Passions* of the *People*, amongst whom it has been so industriously and irregularly dispers'd.

Yet I dare say every unwary Reader took the *Doctor* to have deny'd this Charge, and felt some Indignation against the *Commons* for making it.

My Lords, He has now come upon his *Tryal*, he has been charg'd home upon this Head.

And permit me to say, there cannot be a heavier Charge upon a *Minister of the Gospel*, nor more affecting to any one that has not abandon'd all Pretence to *Common Honesty*.

Give me leave to mention some of those solemn Words, wherein a *Priest* receives his *Orders*. "Receive the *Holy Ghost*, for the *Office* and *Work* of a *Priest* in the *Church of God*; and be thou a faithful *Dispenser* of the *Word of God*, and of his *Sacraments*, in the *Name of the Father*, of the *Son*, and of the *Holy Ghost*.

This *Crime* therefore, when committed by a *Priest*, is betraying that sacred *Trust* repos'd in him with his holy *Orders*; 'tis forging the *Authority* of God, 'tis assuming a *Superiority* over the inspir'd *Writers*, if not over Him that inspir'd them.

The *Doctor* therefore, that is sensible (as he says) of the *Load of Guilt* and *Infamy* the Charge of the *Commons* lays upon him, and whereof this is surely the heaviest Part; What does he say to this?

He

He says, if he be guilty he is to answer it at another Tribunal, where he is to be judg'd by those Scriptures.

My Lords, So he is to answer at that great Tribunal for every Branch of this present Charge.

But is this all? Is he negligent of his Reputation in no other Instance but this, that is the tenderest and most affecting?

Or will he thus give himself up for a Falsifier of the Word of God, and yet have the Confidence to hope for any Reputation, or any Capacity of doing good in preaching it?

Is it thus the Dignity of the Sacred Order is to be supported?

Is this the Cause of the Church, and of Christianity? And are they wound up in the Fate of an Impostor and false Prophet?

Pardon the Warmth of Expression; his not saying a Word to the Charge, owns all this.

My Lords, It is true (as the Doctor has said) the Sacred Order, the Church and Christianity are concerned in this Cause; but 'tis, that they may be clear'd from the Reproach brought upon them by this unhappy Man.

But if he be self-condemned, if he dare not open his Mouth on this Subject, how dare he declare his Hopes, that those of your Lordships, whose Studies more particularly lead that way, should acquit him?

My Lords, He has made an Appearance before your Lordships in a manner very extraordinary, not only as in a Defence of a Prosecution, but as in a most solemn Act of Devotion, before the most August Judicature on Earth, appealing to a yet greater in Heaven.

But with what Sincerity! what Candor! or what Sense of that which he has done!

I am amazed, that a Person in Holy Orders, in his distinguishing Habit, before this awful Assembly, should dare to take the tremendous Name of God into his Lips, and appeal to him for the Sincerity and Integrity of his Heart, at that very Time when he stands charg'd with this black Crime, and is neither able to repel it, nor has the Sincerity and Honesty to repent, to take Shame upon himself in the most publick manner, and to ask Pardon of God and the World for it.

But while he can thus, with such Assurance as your Lordships have seen, and now see, face out such a Crime, and be equivocating and playing double with your Lordships, with God Almighty, and his own Conscience; what Regard is to be had to his most solemn Protestations? His manifest Insincerity in this plain Point, leaves him no Credit in any thing; and his having taken the Abjuration Oath, gives me not the least Difficulty, after what I have observ'd of his more solemn Oath before your Lordships.

My Lords, The just Veneration we owe to the Divine Majesty, (for the Doctor's Behaviour has made that now part of the Case) the Honour of Christianity, the Church and its Holy Orders, the Security of the present Establishment and the Protestant Succession, the Safety of Her Majesty's Person, the Quiet of Her Government, the Duty we owe to Her as our Sovereign, the Gratitude for Her most gracious Administration, the Honour of our Prelates, the Obligations we are under to prevent Seditions and Tumults, to undeceive the People, to quiet the Minds of the Protestant Dissenters, and convince them that the Toleration allow'd them by Law is not to be taken away from them, to secure at pre-

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sent, and transmit to our Posterity (as far as in us lies) our Religion and Liberties, and vindicate the Revolution (which is the Foundation on which they stand) and the Glory of our late Royal Deliverer, to whom under God we ow'd it; and to banish Sedition from the Pulpit, which is, and ever ought to be sacred to Divine Purposes, REQUIRE the Commons to demand your Lordships Judgment on this Offender.

But, my Lords, he observes so far rightly, that his Punishment is not all we aim at.

No, my Lords,--- What we expect from your Lordships Justice, is, the Supporting our Establishment, the preventing all Attempts to sap its Foundation, and answering those other great Purposes I have mention'd; and I hope the Clergy will be instructed, not to preach the Doctrine of Submission in such manner as to prepare the way to Rebellion, but to follow the Advice and Example of my Lord Archbishop of York, rather than tread in the Steps of Doctor Sacheverell.

And we doubt not, but that those to whom our Proceedings have been so industriously misrepresented, will see and own the Favour shewn to this Man, in the manner of the Charge; and our Care for the Honour of the Church and Clergy, in singling out for an Example for these impious Attempts against his Country, him that now plainly appears the Shame of his own Order.

Lord Nottingham. My Lords, I desire your Opinion, whether I may propose a Question to the Judges here.

Thereupon the Lords, being moved to adjourn, adjourned to the House of Lords; and being returned, and seated as before, Proclamation was made for Silence.

Note, During this Adjournment, the Lords on Debate agreed, That the Question should be proposed in Westminster-Hall.

Lord Nottingham. My Lords, The Question I humbly propose to your Lordships, that my Noble Lord on the Woolfack may propose to the Reverend Judges, is, Whether by the Law of England, and constant Practice in all Prosecutions, by Indictment or Information for Crimes and Misdemeanors by Writing or Speaking, the particular Words, supposed to be Criminal, must not be expressly specified in such Indictment or Information.

Then the Lords were moved to adjourn, and accordingly adjourned to the House of Lords; and being returned, and seated as before, Proclamation was made for Silence.

Lord Chancellor. I take it, the Question that your Lordships are of Opinion to ask the Judges for them to give an Answer to, is, Whether by the Law of England, and constant Practice in all Prosecutions, by Indictment or Information for Crimes and Misdemeanors by Writing or Speaking, the particular Words, supposed to be Criminal, must not be expressly specified in such Indictment or Information?

Mr. Baron Lovell. My Lords, I have always taken it to be so, and by constant Experience we have practis'd it so, that all Words and Writings, which are supposed to be Criminal, ought to be expressly mention'd in the Information or Indictment.

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Mr.

Mr. *Justice Dormer*. My Lords, I am of Opinion, That by the Laws of *England*, and constant Practice in all Prosecutions, by Indictment or Information for Crimes and Misdemeanors by Writing or Speaking, the particular Words supposed to be Criminal, ought to be specify'd in such Indictment or Information, in the Courts of *Westminster-Hall*.

Mr. *Baron Bury*. My Lords, I am of the same Opinion with my Brothers.

Mr. *Justice Tracy*. My Lords, I am of the same Opinion.

Mr. *Justice Gould*. My Lords, I am of the same Opinion. It is our Practice in the *King's Bench*; and we specify the Words in the Indictment, or it is Cause of Demurrer.

Mr. *Justice Blencowe*. My Lords, I am of the same Opinion with my Brothers.

Mr. *Justice Powys*. My Lords, I am of the same Opinion.

Mr. *Justice Powell*. My Lords, The Law of *England* is certainly so.

Lord Chief-Baron. My Lords, I am of the same Opinion.

Lord Chief Justice Trevor. My Lords, I am of the same Opinion, That by the Laws of *England* the Words ought to be specify'd in the Indictment or Information.

Then the Lords adjourned to the House of Lords, as before

Note, The Lords did not come again into *Westminster-Hall* till Monday the 20th of this Month of March; but in order to the Delivery of their Opinions, did on some of the intermediate Days come to these following Resolutions, viz.

Saturday, March 11.

Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That this House will proceed to the Determination of the Impeachment of Doctor *Henry Sacheverell*, according to the Law of the Land, and the Law and Usage of Parliament.

Tuesday, March 14.

It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That by the Law and Usage of Parliament, in Prosecutions by Impeachments for High Crimes and Misdemeanors, by Writing or Speaking, the particular Words supposed to be Criminal are not necessary to be expressly specify'd in such Impeachments.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That on Thursday next, at Eleven a Clock, this House shall proceed upon the Impeachment of *Henry Sacheverell*, Doctor in Divinity, Article by Article.

Thursday, March 16.

It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That the Commons have made good their first Article of Impeachment against *Henry Sacheverell*, Doctor in Divinity.

Friday, March 17.

The like Questions were severally put concerning the Second, Third, and Fourth Articles, and severally Resolved in the Affirmative.

It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That the Commons have made good the Second, Third and Fourth Articles of their Impeachment against *Henry Sacheverell*, Doctor in Divinity.

Saturday, March 18.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Question to be put to each Lord in *Westminster-Hall* shall be,

Is *Henry Sacheverell*, Doctor in Divinity, Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons? And the Answer thereunto shall be, Guilty, or Not Guilty, only.

Monday, March 20.

The Lords coming down into *Westminster-Hall*, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant-at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Your Lordships having fully heard and considered of the Evidence and Arguments in this Case, have agreed upon a Question, which is severally to be put to your Lordships in the usual Order. The Question is this, That Doctor *Henry Sacheverell* is Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons.

Lord Chancellor. Lord Pelham, What is your Lordships Opinion; Is Doctor *Henry Sacheverell* Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons?

Lord Pelham, Guilty.

The same Question was severally put to the rest, whose Names and Votes are as follow.

Lord Hervey, Guilty.
 Lord Conway, Not Guilty.
 Lord Guernsey, Not Guilty.
 Lord Halifax, Guilty.
 Lord Haversham, Not Guilty.
 Lord Herbert, Guilty.
 Lord Weston, Not Guilty.
 Lord Leimster, Not Guilty.
 Lord Guilford, Not Guilty.
 Lord Stawell, Not Guilty.
 Lord Dartmouth, Not Guilty.
 Lord Ossulston, Guilty.
 Lord Osborne, Not Guilty.
 Lord Craven, Not Guilty.

Lord

Lord Cornwallis, Guilty.
 Lord Berkeley of Stratton, Not Guilty.
 Lord Lexington, Not Guilty.
 Lord Rockingham, Guilty.
 Lord Colepeper, Guilty.
 Lord Byron, Guilty.
 Lord Leigh, Not Guilty.
 Lord Mohun, Guilty.
 Lord Howard of Efcrick, Not Guilty.
 Lord Hunsdon, Guilty.
 Lord Chandos, Not Guilty.
 Lord North and Gray, Not Guilty.
 Lord Paget, Guilty.
 Lord Willoughby of Broke, Not Guilty.
 Lord Fitzwalter, Guilty.
 Lord Ferrers, Not Guilty.
 Lord De la War, Guilty.
 Bishop of St. Asaph, Guilty.
 Bishop of Norwich, Guilty.
 Bishop of Chester, Not Guilty.
 Bishop of Lincoln, Guilty.
 Bishop of Bath and Wells, Not Guilty.
 Bishop of Oxford, Guilty.
 Bishop of Peterborough, Guilty.
 Bishop of Ely, Guilty.
 Bishop of Sarum, Guilty.
 Bishop of Rochester, Not Guilty.
 Bishop of Durham, Not Guilty.
 Bishop of London, Not Guilty.
 Lord Viscount Weymouth, Not Guilty.
 Lord Viscount Say and Sele, Not Guilty.
 Earl of Ilay, Guilty.
 Earl of Glasgow, Guilty.
 Earl of Roseberry, Guilty.
 Earl of Seafeld, Guilty.
 Earl of Orkney, Guilty.
 Earl of Northesk, Not Guilty.
 Earl of Leven, Guilty.
 Earl of Wymes, Not Guilty.
 Earl of Loudoun, Guilty.
 Earl of Mar, Not Guilty.
 Earl of Crawford, Guilty.
 Earl of Cholmley, Guilty.
 Earl Powlet, Not Guilty.
 Earl of Wharton, Guilty.
 Earl of Greenwich, Guilty.
 Earl of Grantham, Guilty.
 Earl of Jersey, Not Guilty.
 Earl of Orford, Guilty.
 Earl of Bradford, Guilty.
 Earl of Warrington, Guilty.
 Earl of Scarborough, Not Guilty.
 Earl of Portland, Guilty.
 Earl of Plymouth, Not Guilty.
 Earl of Holderness, Guilty.
 Earl of Abingdon, Not Guilty.
 Earl of Rochester, Not Guilty.
 Earl of Nottingham, Not Guilty.
 Earl of Berkeley, Guilty.
 Earl of Yarmouth, Not Guilty.
 Earl of Radnor, Guilty.
 Earl of Sussex, Not Guilty.
 Earl of Carlisle, Guilty.
 Earl of Anglesey, Not Guilty.
 Earl of Scarisdale, Not Guilty.
 Earl of Sunderland, Guilty.
 Earl of Thanet, Not Guilty.
 Earl of Winchelsea, Guilty.
 Earl of Stamford, Guilty.
 Earl Rivers, Guilty.
 Earl of Berkshire, Not Guilty.
 Earl of Manchester, Guilty.

Earl of Westmorland, Guilty.
 Earl of Denbigh, Not Guilty.
 Earl of Northampton, Not Guilty.
 Earl of Leicester, Guilty.
 Earl of Bridgewater, Guilty.
 Earl of Dorset and Middlesex, Guilty.
 Earl of Lincoln, Guilty.
 Earl of Pembroke, Not Guilty.
 Earl of Derby, Guilty.
 Marquis of Dorchester, Guilty.
 Lord Chamberlain of the Household, Guilty.
 Duke of Dover, Guilty.
 Duke of Roxborough, Guilty.
 Duke of Montrose, Guilty.
 Duke Hamilton, Not Guilty.
 Duke of Buckinghamshire, Not Guilty.
 Duke of Bedford, Guilty.
 Duke of Leeds, Not Guilty.
 Duke of Shrewsbury, Not Guilty.
 Duke Schomberg, Guilty.
 Duke of Bolton, Guilty.
 Duke of St. Albans, Guilty.
 Duke of Northumberland, Not Guilty.
 Duke of Beaufort, Not Guilty.
 Duke of Ormond, Not Guilty.
 Duke of Grafton, Guilty.
 Duke of Richmond, Guilty.
 Duke of Cleveland and Southampton, Guilty.
 Lord Steward, Guilty.
 Lord Privy Seal, Guilty.
 Lord President, Guilty.
 Lord Treasurer, Guilty.
 Archbishop of York, Not Guilty.
 Lord Chancellor, Guilty.

Then some Time being spent by the Lord Chancellor in numbring the Opinions of the Lords :

Lord Chancellor. My Lords, I have cast them up with as much Exactness as I can ; and I find that there are of your Lordships present in all One Hundred Twenty one ; of these Sixty Nine of your Lordships have found Doctor Henry Sacheverell Guilty of the High Crimes and Misdemeanors charged on him by the Impeachment of the House of Commons, and Fifty Two have found him Not Guilty.

Then Doctor Henry Sacheverell was brought to the Bar, and kneel'd till he was bid to stand up by the Lord Chancellor.

Lord Chancellor. Doctor Henry Sacheverell, The Lords having fully considered of your Case, have found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons.

Doctor Sacheverell. My Lords, One of your Lordships Officers acquainted me, that it was your Lordships Order, That neither I nor my Council might have the Privilege of standing at the Bar while your Lordships were giving your Opinions whether I was Guilty of the Crimes laid to my Charge ; by which means I was prevented from offering several Matters to your Lordships Consideration in Arrest of Judgment, which I now beg leave to offer to your Lordships Consideration, and I desire my Council may be heard to them.

The first is, That no entire Clause, Sentence or Expression, contained in either of my Sermons or Dedications, is particularly set forth in my Impeachment, which I have already heard the Judges declare to be necessary in all Cases of Indictments or Informations.

I desire to add another Exception, That the Impeachment is by the Knights, Citizens and Burgeses, Commissioners of Shires and Burghs, in the Name of Themselves, and of all the Commons of *Great Britain*; but the Articles are only by the Knights, Citizens and Burgeses, in the Name of Themselves, and of all the Commons of *Great Britain*; which is neither agreeable to the Impeachment, nor to the Title of the House of Commons since the Happy Union.

Then the Lords adjourned to the House of Lords, Where they took into Consideration the Matter moved by Doctor *Sacheverell* in Arrest of Judgment; and thereupon ordered,

That this House will, To-Morrow at Eleven of the Clock, take into Consideration what Censure to pass upon the said Doctor *Henry Sacheverell*.

Tuesday, March 21.

The Lords, upon Debate in the House of Lords, agreed upon the Judgment to be pass'd in this Case upon Doctor *Henry Sacheverell*, in the Form hereafter mentioned.

Wednesday, March 22. in the House of Lords.

A Message was sent to the House of Commons, to acquaint them, That the Lords are ready to give Judgment in the Case of *Henry Sacheverell*, Doctor in Divinity, if they with their Speaker will come and demand the same.

Thursday, March 23. in the House of Lords.

A Message was brought from the House of Commons, to acquaint the House of Lords, That the House of Commons, with their Speaker, do intend immediately to come to the House of Lords, to demand Judgment against Doctor *Henry Sacheverell*; and therefore desire that the Painted Chamber, and Passage to the House (of Lords) may be cleared.

The Messengers were called in and told, the the Lords would give Order as desired.

Which was done accordingly.

Then the House of Lords Adjourned during Pleasure to Robe.

And being resumed,

The Commons, with their Speaker, being present at the Bar of the House of Lords,

The Deputy-Gentleman Usher of the Black Rod brought the Prisoner to the Bar, who after low Obeysances made, kneel'd, until the Lord Chancellor bid him stand up.

Then the Speaker said as followeth, *viz.*

My Lords, The Knights, Citizens and Burgeses in Parliament Assembled, in the Name of themselves, and of all the Commons of *Great Britain*, did at this Bar Impeach Doctor *Henry Sacheverell* of High Crimes and Misdemeanors, and did exhibit Articles of Impeachment against him, and have made good the same:

I do therefore, in the Name of the Knights, Citizens and Burgeses in Parliament Assembled, and of all the Commons of *Great Britain*, demand Judgment of your Lordships against Doctor *Henry Sacheverell*, for the said High Crimes and Misdemeanors.

Then the Lord Chancellor said,

Mr. Speaker, The Lords are now ready to proceed to Judgment in the Case by you mentioned.

Doctor *Sacheverell*, The Lords having found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons; and you being thereupon admitted to the Bar, and acquainted therewith, moved Two Things in Arrest of Judgment.

First, That no entire Clause of either of the Books or Sermons referred to in the Impeachment, is specify'd, or particularly set forth, in any of the Articles of Impeachment.

Secondly, That in the Title of the Articles Exhibited by the Commons, the Stile of the Commons runs thus,

"The Knights, Citizens and Burgeses in Parliament Assembled, in the Name of themselves, and of all the Commons of *Great Britain*, &c. Omitting the Words, Commissioners of Shires and Burghs.

I am to acquaint you, That the Lords took these Points into Consideration.

I. And as to the First, they found

That on Occasion of the Question before put to the Judges in *Westminster-Hall* in this Case, and their Answer thereto, their Lordships had before fully debated and considered of that Matter, and had come to the following Resolution:

That this House will proceed to the Determination of the Impeachment of Doctor *Henry Sacheverell*, according to the Law of the Land, and the Law and Usage of Parliament.

And after, to this Resolution;

That by the Law and Usage of Parliament, in Prosecutions by Impeachments for High Crimes and Misdemeanors, by Writing or Speaking, the particular Words supposed to be Criminal are not necessary to be expressly specified in such Impeachments.

So that, in their Lordships Opinion, the Law and Usage of the High Court of Parliament being a Part of the Law of the Land, and that Usage not requiring the Words should be expressly specified in Impeachments, the Answer of the Judges, which related only to the Course used in Indictments and Informations, does not in the least Affect your Case.

II. As to the Second,

Their Lordships finding, that in the Act made in the Sixth Year of Her now Majesty, For rendering the Union of the Two Kingdoms more Entire and Compleat, the Terms Commissioners of Shires and Knights of the Shires, Commissioners of Boroughs and Burgeses, are used as Synonymous Terms, signifying the same Thing; they were clearly of Opinion there can be no Weight in that Exception, and accordingly Over-ruled the same; without entering into the further Consideration, how far a Mistake in the Title of the Articles, would Viciate or Avoid an Impeachment, if such a Mistake had happen'd.

So that the Lords find themselves oblig'd by Law to proceed to Judgment against you, which I am order'd to pronounce.

And in which you cannot but observe an extreme Tendernefs towards your Character, as a Minister of the Church of England.

Therefore this High Court doth adjudge as followeth,

That you *Henry Sacheverell*, Doctor in Divinity, shall be, and you are hereby enjoind not to Preach during the Term of Three Years next ensuing.

That

That your Two Printed Sermons, referred to by the Impeachment of the House of Commons, shall be Burnt before the Royal-Exchange in London, between the Hours of One and Two of the Clock, on the Twenty Seventh Day of this Instant March, by the Hands of the Common Hangman, in the Presence of the Lord Mayor of the City of London, and the Sheriffs of London and Middlesex.

Then the Speaker with the Commons returned to their House; and Doctor *Sacheverell* being withdrawn,

The House was Adjourned during Pleasure, to Unrobe.

The House was Resumed.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Doctor *Henry Sacheverell's* Two Printed Sermons, one Preach'd at *Derby Affizes*, and the other at *St. Paul's, London*, referred to by the Impeachment of the House of Commons, shall be Burnt before the *Royal-Exchange* in *London*, between the Hours of One and Two of the Clock, on the Seven and Twentieth Day of this Instant *March*, by the Hands of the Common Hangman, in the Presence of the Lord-Mayor of the City of *London*, and the Sheriffs of *London* and *Middlesex*.

To the Lord-Mayor of the City of London, and the Sheriffs of London and Middlesex.

The House taking into Consideration a Judgment and Decree of the University of *Oxford*, pass'd in their Convocation the One and Twentieth of *July*, One Thousand Six Hundred Eighty Three, given in

Evidence by Doctor *Henry Sacheverell* at his Tryal, upon the Impeachment of the House of Commons, and thereupon lately Reprinted, It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That the said Judgment and Decree contains in it several Positions contrary to the Constitution of this Kingdom, and destructive to the Protestant Succession as by Law Establish'd.

It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the said Judgment and Decree, lately Printed and Publish'd in a Book or Pamphlet, entitled, *An Entire Confutation of Mr. Hoadly's Book of the Original of Government, taken from the London Gazette, Publish'd by Authority; London, Reprinted in the Year 1710.* shall be burnt by the Hands of the Common Hangman, in the Presence of the Sheriffs of *London* and *Middlesex*; at the same Time and Place, when and where the Sermons of Doctor *Henry Sacheverell* are Ordered to be burnt.

To the Sheriffs of London and Middlesex.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Lord High Chancellor of *Great Britain* do give Order for the Printing and Publishing the Tryal of *Henry Sacheverell*, Doctor in Divinity; and that no other Person do Presume to Print the same. And further, That the last-mentioned Resolution and Order agreed on this Day, be Printed at the End of the said Tryal.





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